
STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PARTS VIII TO XINSOLVENCY OF INDIVIDUALS; BANKRUPTCY

PART VIII

INDIVIDUAL VOLUNTARY ARRANGEMENTS

CHAPTER I

DEEDS OF ARRANGEMENT

Deeds of arrangement to which this Chapter applies

209.—(1) A deed of arrangement to which this Chapter applies shall include any of the instruments mentioned in paragraph (2), whether under seal or not,—

- (a) made by, for or in respect of the affairs of a debtor for the benefit of his creditors generally;
- (b) made by, for or in respect of the affairs of a debtor who was insolvent at the date of the execution of the instrument for the benefit of any 3 or more of his creditors;

otherwise than in pursuance of Chapter II or Chapter I of Part IX.

(2) The instruments referred to in paragraph (1) are—

- (a) an assignment of property;
- (b) a deed of or agreement for a composition;

and in cases where creditors of the debtor obtain any control over his property or business—

- (c) a deed of inspectorship entered into for the purpose of carrying on or winding up a business;
- (d) a letter of licence authorising the debtor or any other person to manage, carry on, realise or dispose of a business with a view to the payment of debts; and
- (e) any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorising the debtor or any other person to manage, carry on, realise or dispose of the debtor's business with a view to the payment of his debts.

(3) Articles 218, 221, 222(1)(a) and 223 shall not apply to a deed of arrangement made for the benefit of any 3 or more of the debtor's creditors unless it is in fact for the benefit of the debtor's creditors generally.

(4) In determining for the purposes of this Chapter the number of creditors for whose benefit a deed is made, any 2 or more joint creditors shall be treated as a single creditor.

Registration of deeds of arrangement

Registrar and deputy registrar

210.—(1) The Department may for the purposes of the registration of deeds of arrangement under this Chapter appoint an officer of the Department as registrar.

(2) The Department may, if it thinks expedient to do so, appoint one or more than one officer of the Department to act as deputy to the registrar.

Mode of registration

211.—(1) Subject to paragraph (2), a deed of arrangement under this Chapter shall be registered by presenting to and filing with the registrar within 7 clear days from the execution of the deed—

- (a) such number of copies as the registrar may determine of the deed, and of every schedule or inventory annexed to the deed or referred to in the deed; and
- (b) an affidavit verifying the time of execution, and containing—
 - (i) the name, residential address and occupation of, the debtor; and
 - (ii) the address of the place or places where his business is carried on; and
- (c) an affidavit by the debtor stating—
 - (i) the total estimated amount of property and liabilities included under the deed; and
 - (ii) the total amount of the composition (if any) payable under the deed; and
 - (iii) the names and addresses of his creditors.

(2) A deed of arrangement shall not be registered unless the original of the deed, duly stamped with the proper revenue duty, is produced to the registrar at the time of the registration.

Form of register

212. The registrar shall keep a register in which he shall record in respect of each deed of arrangement presented for registration—

- (a) the date of the deed;
- (b) the name, residential address and occupation of the debtor;
- (c) the address of the place or places where his business was carried on at the date of the execution of the deed;
- (d) the title of the firm or firms under which the debtor carried on business;
- (e) the name and address of the trustee (if any) under the deed;
- (f) the date of registration;
- (g) the amount of property and liabilities included under the deed, as estimated by the debtor;
- (h) such other particulars as may be prescribed.

Rectification of register

213. Where, on the application of any party interested, the High Court is satisfied that—

- (a) the omission to register a deed of arrangement within the time required by this Chapter, or
- (b) the omission or mis-statement of the name, residential address, place of business or occupation of any person,

was accidental, or due to inadvertence, or to some cause beyond the control of the debtor and not imputable to any negligence on his part, the Court may, on such terms and conditions as are just and expedient, extend the time for registration, or order the omission or mis-statement to be supplied or rectified by the insertion in the register of the true name, residential address and place of business or occupation.

Avoidance of deeds of arrangement

Avoidance of unregistered deeds of arrangement

214. A deed of arrangement shall be void unless—

- (a) it is registered—
 - (i) within 7 clear days from the first execution of the deed by the debtor or any creditor; or
 - (ii) if it is executed in any place out of Northern Ireland, within 7 clear days from the time at which it would, in the ordinary course of post, arrive in Northern Ireland, if posted within one week after the execution of the deed; and
- (b) it bears such stamp as is mentioned in Article 211(2).

Avoidance of deeds of arrangement unless assented to by a majority of the creditors

215.—(1) A deed of arrangement, which either is expressed to be or is in fact for the benefit of a debtor's creditors generally, shall be void unless, before the expiration of 21 days from the registration of the deed, or within such extended time as the High Court may allow, it has received the assent of a majority in number and value of the creditors of the debtor.

(2) The list of creditors annexed to the affidavit of the debtor filed on the registration of the deed of arrangement shall be prima facie evidence of the names of the creditors and the amounts of their claims.

(3) The assent of a creditor for the purposes of paragraph (1) shall be established by his executing the deed of arrangement or sending to the trustee his assent in writing attested by a witness, but not otherwise.

(4) The trustee shall file with the registrar at the time of the registration of a deed of arrangement, or, in the case of a deed of arrangement assented to after registration, within 28 days from registration or within such extended time as the High Court may allow, a statutory declaration by the trustee that the requisite majority of the creditors of the debtor have assented to the deed of arrangement, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be prima facie evidence, of the fact declared.

(5) In calculating a majority of creditors for the purposes of this Article, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding £100 shall be reckoned in the majority in value but not in the majority in number.

Deeds otherwise void or voidable

216. Nothing in this Chapter shall give validity to any deed or instrument which is by law void or voidable.

Provisions as to trustees

Notice to creditors of avoidance of deed

217.—(1) When a deed of arrangement is void by virtue of this Chapter for any reason other than that, being for the benefit of creditors generally, it has not been registered within the time allowed for the purpose by Article 214, the trustee shall—

- (a) as soon as practicable after he has become aware that the deed is void, give notice in writing thereof to each creditor whose name and address he knows; and
 - (b) file a copy of the notice with the registrar.
- (2) If paragraph (1) is contravened the trustee shall be guilty of an offence.

Trustee acting when deed of arrangement void

218.—(1) If a trustee acts under a deed of arrangement—

- (a) after it has to his knowledge become void by reason of non-compliance with any of the requirements of this Chapter or any statutory provision repealed by this Order, or
- (b) after he has failed to give security within the time provided for by Article 221,

he shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

(2) It is a defence for a person charged under this Article to prove that the contravention was due to inadvertence, or that his action has been confined to taking such steps as were necessary for the protection of the estate.

Protection of trustees under void deeds

219. Where a deed of arrangement is void by reason—

- (a) that the requisite majority of creditors have not assented to the deed, or
- (b) in the case of a deed for the benefit of 3 or more creditors,—
 - (i) that the debtor was insolvent at the time of the execution of the deed, and
 - (ii) the deed was not registered as required by this Chapter,

but is not void for any other reason, and a bankruptcy order is made against the debtor upon a petition presented after the expiration of 3 months from the execution of the deed, the trustee under the deed shall not be liable to account to the trustee in the bankruptcy for any dealings with or payments made out of the debtor's property which would have been proper if the deed had been valid, if he proves that at the time of such dealings or payments he did not know, and had no reason to suspect, that the deed was void.

Payment of expenses incurred by trustees

220. Where a deed of arrangement is avoided by reason of the bankruptcy of the debtor, any expenses properly incurred by the trustee under the deed in the performance of any of the duties imposed on him by this Chapter shall be allowed or paid to him by the trustee in the bankruptcy as a first charge on the estate.

Security by trustee

221.—(1) The trustee under a deed of arrangement shall, within 7 days from the date on which the statutory declaration certifying the assent of the creditors is filed, give security with respect to the proper administration of the deed and to account fully for the assets which come to his hands,

unless a majority in number and value of the debtor's creditors, either by resolution passed at a meeting convened by notice to all the creditors, or by writing addressed to the trustee, dispense with his giving such security.

(2) When a dispensation such as is mentioned in paragraph (1) has been so given, the trustee shall forthwith make and file with the registrar a certificate to that effect, which certificate shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be prima facie evidence, of the facts certified.

(3) If a trustee under a deed of arrangement contravenes this Article, on the application of any creditor the High Court may, after hearing such persons as it may think fit, declare the deed of arrangement to be void or make an order appointing another trustee in the place of the trustee appointed by the deed of arrangement.

(4) In calculating a majority of creditors for the purposes of this Article, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding £100 shall be reckoned in the majority in value but not in the majority in number.

Transmission of accounts

222.—(1) Every trustee under a deed of arrangement shall—

- (a) at the expiration of 6 months from the date of the registration of the deed, and thereafter at the expiration of every subsequent period of 6 months until the estate has been finally wound up, send to each creditor who has assented to the deed a statement in the prescribed form of the trustee's accounts and of the proceedings under the deed down to the date of the statement; and
- (b) when verifying his accounts transmitted to the Department under paragraph (2), state whether or not he has duly sent such statements, and the dates on which the statements were sent.

(2) Every trustee under a deed of arrangement shall, at such times as may be prescribed, transmit to the Department, or as it directs, an account of his receipts and payments as trustee, in the prescribed form and verified in the prescribed manner.

(3) If a trustee contravenes this Article he shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

Preferential payment to creditor

223. If a trustee under a deed of arrangement pays to any creditor out of the debtor's property a sum larger in proportion to the creditor's claim than that paid to other creditors entitled to the benefit of the deed, then, unless the deed authorises him to do so, or unless such payments are either made to a creditor entitled to enforce his claim by distress or are such as would be lawful under Chapter II and Parts IX and X, he shall be guilty of an offence.

Miscellaneous

Applications to the High Court

224. Any application by the trustee under a deed of arrangement, which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, or by the debtor or by any creditor entitled to the benefit of such a deed of arrangement, for the enforcement of the trusts or the determination of questions under it, shall be made to the High Court.

Inspection of register, etc., certified copies and evidence

225.—(1) Any person may, on payment of the specified fee, at all reasonable times,—

- (a) search the register, and
- (b) inspect any registered deed of arrangement;

and copies certified by the registrar of, or extracts from, any deed registered under this Chapter shall on payment of the specified fee, be furnished to any person.

(2) The accounts transmitted to the Department under Article 222(2) may be inspected by the debtor or any creditor or other person interested on payment of the specified fee, and copies of the accounts shall, on payment of the specified fee, be furnished to the debtor, the creditors, or any other persons interested.

(3) Any copy or extract purporting to be a certified copy or extract shall, in all courts and before all arbitrators or other persons, be admitted as prima facie evidence thereof, and of the fact and date of registration as shown thereon.

CHAPTER II

VOLUNTARY ARRANGEMENTS

Moratorium for insolvent debtor

Interim order of High Court

226.—(1) In the circumstances specified in Articles 227 and 229, the High Court may in the case of a debtor (being an individual) make an interim order under this Article.

(2) An interim order has the effect that, during the period for which it is in force—

- (a) no bankruptcy petition relating to the debtor may be presented or proceeded with, and
- (b) no other proceedings, and no execution or other legal process, may be commenced or continued against the debtor or his property except with the leave of the High Court.

Application for interim order

227.—(1) Application to the High Court for an interim order may be made where the debtor intends to make a proposal to his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs (referred to, in either case, as a “voluntary arrangement”).

(2) The proposal must provide 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.

(3) Subject to paragraphs (4) and (5), the application may be made—

- (a) if the debtor is an undischarged bankrupt, by the debtor, the trustee of his estate, or the official receiver, and
- (b) in any other case, by the debtor.

(4) An application shall not be made under paragraph (3)(a) unless the debtor has given notice of his proposal (that is, the proposal to his creditors for a voluntary arrangement) to the official receiver and, if there is one, the trustee of his estate.

(5) An application shall not be made while a bankruptcy petition presented by the debtor is pending, if the High Court has, under Article 247, appointed an insolvency practitioner to inquire into the debtor’s affairs and report.

Effect of application

228.—(1) At any time when an application under Article 227 for an interim order is pending, the High Court may stay any action, proceedings, execution or other legal process against the property or person of the debtor.

(2) Any court in which proceedings are pending against an individual may, on proof that an application under Article 227 has been made in respect of that individual, either stay the proceedings or allow them to continue on such terms as it thinks fit.

Cases in which interim order can be made

229.—(1) The High Court shall not make an interim order on an application under Article 227 unless it is satisfied—

- (a) that the debtor intends to make such a proposal as is mentioned in that Article;
- (b) that on the day of the making of the application the debtor was an undischarged bankrupt or was able to petition for his own bankruptcy;
- (c) that no previous application has been made by the debtor for an interim order within the 12 months immediately preceding that day; and
- (d) that the nominee under the debtor’s proposal to his creditors is a person who is for the time being qualified to act as an insolvency practitioner in relation to the debtor, and is willing to act in relation to the proposal.

(2) The High Court may make an order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor’s proposal.

(3) Where the debtor is an undischarged bankrupt, the interim order may contain provision as to the conduct of the bankruptcy, and the administration of the bankrupt’s estate, during the period for which the order is in force.

(4) Subject to paragraph (5), the provision contained in an interim order by virtue of paragraph (3) may include provision staying proceedings in the bankruptcy or modifying any provision in Parts VIII to X, and any provision of the rules in their application to the debtor’s bankruptcy.

(5) An interim order shall not, in relation to a bankrupt, make provision relaxing or removing any of the requirements of provisions in Parts VIII to X, or of the rules, unless the High Court is satisfied that that provision is unlikely to result in any significant diminution in, or in the value of, the debtor’s estate for the purposes of the bankruptcy.

(6) Subject to Articles 230, 233, 234 and 236, an interim order made on an application under Article 227 ceases to have effect on the expiration of 14 days from the day on which it is made.

Nominee’s report on debtor’s proposal

230.—(1) Where an interim order has been made on an application under Article 227, the nominee shall, before the order ceases to have effect, submit a report to the High Court stating—

- (a) whether, in his opinion, a meeting of the debtor’s creditors should be summoned to consider the debtor’s proposal, and
- (b) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(2) For the purpose of enabling the nominee to prepare his report the debtor shall submit to the nominee—

- (a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and
- (b) a statement of his affairs containing—

- (i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and
 - (ii) such other information as may be prescribed.
- (3) The High Court may, on an application made by the debtor in a case where the nominee has failed to submit the report required by this Article, do one or both of the following, namely—
- (a) direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner in relation to the debtor;
 - (b) direct that the interim order shall continue, or (if it has ceased to have effect) be renewed, for such further period as the Court may specify in the direction.
- (4) The High Court may, on the application of the nominee, extend the period for which the interim order has effect so as to enable the nominee to have more time to prepare his report.
- (5) If the High Court is satisfied on receiving the nominee's report that a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, the Court shall direct that the period for which the interim order has effect shall be extended, for such further period as it may specify in the direction, for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the following provisions of this Chapter.
- (6) The High Court may discharge the interim order if it is satisfied, on the application of the nominee—
- (a) that the debtor has failed to comply with his obligations under paragraph (2), or
 - (b) that for any other reason it would be inappropriate for a meeting of the debtor's creditors to be summoned to consider the debtor's proposal.

Summoning of creditors' meeting

231.—(1) Where it has been reported to the High Court under Article 230 that a meeting of the debtor's creditors should be summoned, the nominee (or his replacement under Article 230(3)(a)) shall, unless the Court otherwise directs, summon that meeting for the time, date and place proposed in his report.

(2) The persons to be summoned to the meeting are every creditor of the debtor of whose claim and address the person summoning the meeting is aware.

- (3) For this purpose the creditors of a debtor who is an undischarged bankrupt include—
- (a) every person who is a creditor of the bankrupt in respect of a bankruptcy debt, and
 - (b) every person who would be such a creditor if the bankruptcy had commenced on the day on which notice of the meeting is given.

Consideration and implementation of debtor's proposal

Decisions of creditors' meeting

232.—(1) A creditors' meeting summoned under Article 231 shall decide whether to approve the proposed voluntary arrangement.

(2) The meeting may approve the proposed voluntary arrangement with modifications, but shall not do so unless the debtor consents to each modification.

(3) Subject to paragraph (4), the modifications subject to which the proposed voluntary arrangement may be approved may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner in relation to the debtor.

(4) The modifications mentioned in paragraph (3) shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in Article 227.

(5) The meeting shall not approve any proposal or modification which affects the right of a secured creditor of the debtor to enforce his security, except with the concurrence of the creditor concerned.

(6) Subject to paragraph (7), the meeting shall not approve any proposal or modification under which—

- (a) any preferential debt of the debtor is to be paid otherwise than in priority to such of his debts as are not preferential debts, or
- (b) a preferential creditor of the debtor is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

(7) The meeting may approve a proposal or modification such as is mentioned in paragraph (6) with the concurrence of the preferential creditor concerned.

(8) Subject to paragraphs (2) to (7), the meeting shall be conducted in accordance with the rules.

(9) In this Article “preferential debt” has the meaning given by Article 346; and “preferential creditor” is to be construed accordingly.

Report of decisions to High Court

233.—(1) After the conclusion in accordance with the rules of the meeting summoned under Article 231, the chairman of the meeting shall report the result of it to the High Court and, immediately after so reporting, shall give notice of the result of the meeting to such persons as may be prescribed.

(2) If the report is that the meeting has declined (with or without modifications) to approve the debtor’s proposal, the High Court may discharge any interim order which is in force in relation to the debtor.

Effect of approval

234.—(1) This Article has effect where the meeting summoned under Article 231 approves the proposed voluntary arrangement (with or without modifications).

(2) The approved arrangement—

- (a) takes effect as if made by the debtor at the meeting, and
- (b) binds every person who in accordance with the rules had notice of, and was entitled to vote at, the meeting (whether or not he was present or represented at it) as if he were a party to the arrangement.

(3) Chapter I does not apply to the approved voluntary arrangement.

(4) Any interim order in force in relation to the debtor immediately preceding the expiration of the period of 28 days from the day on which the report with respect to the creditors' meeting was made to the High Court under Article 233 ceases to have effect at the end of that period.

(5) Paragraph (4) applies except to such extent as the High Court may direct for the purposes of any application under Article 236.

(6) Where proceedings on a bankruptcy petition have been stayed by an interim order which ceases to have effect under paragraph (4), that petition is deemed, unless the High Court otherwise orders, to have been dismissed.

Effect where debtor an undischarged bankrupt

235.—(1) Subject to paragraph (2), where the creditors' meeting summoned under Article 231 approves the proposed voluntary arrangement (with or without modifications) and the debtor is an undischarged bankrupt, the High Court may do one or both of the following, namely—

- (a) annul the bankruptcy order by which he was adjudged bankrupt;
- (b) give such directions with respect to the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

(2) The High Court shall not annul a bankruptcy order under paragraph (1)—

- (a) at any time before the expiration of 28 days from the day on which the report of the creditors' meeting was made to the Court under Article 233, or
- (b) at any time when an application under Article 236, or an appeal in respect of such an application, is pending or at any time in the period within which such an appeal may be brought.

Challenge of meeting's decision

236.—(1) Subject to the following provisions of this Article, an application to the High Court may be made, by any of the persons specified in paragraph (2) on one or both of the following grounds, namely—

- (a) that a voluntary arrangement approved by a creditors' meeting summoned under Article 231 unfairly prejudices the interests of a creditor of the debtor;
- (b) that there has been some material irregularity at or in relation to such a meeting.

(2) The persons who may apply under this Article are—

- (a) the debtor;
- (b) a person entitled, in accordance with the rules, to vote at the creditors' meeting;
- (c) the nominee (or his replacement under Article 230(3)(a) or 232(3)); and
- (d) if the debtor is an undischarged bankrupt, the trustee of his estate or the official receiver.

(3) An application under this Article shall not be made after the expiration of 28 days from the day on which the report of the creditors' meeting was made to the High Court under Article 233.

(4) Where on an application under this Article the High Court is satisfied as to either of the grounds mentioned in paragraph (1), it may do one or both of the following, namely—

- (a) revoke or suspend any approval given by the meeting;
- (b) give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal the debtor may make or, in a case falling within paragraph (1)(b), to reconsider his original proposal.

(5) Where at any time after giving a direction under paragraph (4)(b) for the summoning of a meeting to consider a revised proposal the High Court is satisfied that the debtor does not intend to submit such a proposal, the Court shall revoke the direction and revoke or suspend any approval given at the previous meeting.

(6) Where the High Court gives a direction under paragraph (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect in relation to the debtor of any interim order.

(7) In any case where the High Court, on an application made under this Article with respect to a creditors' meeting, gives a direction under paragraph (4)(b) or revokes or suspends an approval

under paragraph (4)(a) or (5), the Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

- (a) things done since the meeting under any voluntary arrangement approved by the meeting, and
- (b) such things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when they were done.

(8) Except in pursuance of the preceding provisions of this Article, an approval given at a creditors' meeting summoned under Article 231 is not invalidated by any irregularity at or in relation to the meeting.

Implementation and supervision of approved voluntary arrangement

237.—(1) This Article applies where a voluntary arrangement approved by a creditors' meeting summoned under Article 231 has taken effect.

(2) The person who is for the time being carrying out, in relation to the voluntary arrangement, the functions conferred by virtue of the approval on the nominee (or his replacement under Article 230(3)(a) or 232(3)) shall be known as the supervisor of the voluntary arrangement.

(3) If the debtor, any of his creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the High Court; and on such an application the Court may—

- (a) confirm, reverse or modify any act or decision of the supervisor,
- (b) give him directions, or
- (c) make such other order as it thinks fit.

(4) The supervisor may apply to the High Court for directions in relation to any particular matter arising under the voluntary arrangement.

(5) Without prejudice to section 40(2) of the Trustee Act (Northern Ireland) 1958(1) (power of court to appoint trustees), the High Court may, whenever—

- (a) it is expedient to appoint a person to carry out the functions of the supervisor, and
- (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person who is qualified to act as an insolvency practitioner in relation to the debtor, either in substitution for the existing supervisor or to fill a vacancy.

(6) The power conferred by paragraph (5) is exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.