

## SCHEDULES

### SCHEDULE 8

Article 379.

#### TRANSITIONAL PROVISIONS AND SAVINGS

### PART I

#### COMPANY INSOLVENCY AND WINDING UP

##### *Administration orders*

1.—(1) Where any right to appoint an administrative receiver of a company is conferred by any debentures or floating charge created before the commencement date, the conditions precedent to the exercise of that right are deemed to include the presentation of a petition applying for an administration order to be made in relation to the company.

(2) In sub-paragraph (1) “administrative receiver” has the meaning assigned by Article 5(1).

##### *Receivers and managers*

2.—(1) Parts IV and VII do not apply in relation to any receiver or manager of a company’s property who was appointed before the commencement date.

(2) In relation to any such receiver or manager as is mentioned in sub-paragraph (1) the Companies Order has effect without the amendments and repeals specified in Article 12 and in Schedules 9 and 10.

(3) This paragraph is without prejudice to the power conferred by this Order under which rules under Article 359 may make transitional provision in connection with the coming into operation of those rules; and such provision may apply those rules in relation to the receiver or manager of a company’s property notwithstanding that he was appointed before the coming into operation of the rules or Article 359.

##### *Winding up already in progress*

3.—(1) Subject to the following provisions of this Part, Parts V to VII do not apply in relation to any winding up which has commenced, or is treated as having commenced, before the commencement date.

(2) In relation to any such winding up as is mentioned in sub-paragraph (1) the statutory provisions specified in Schedules 9 and 10 have effect without the amendments and repeals specified in Article 13 and in those Schedules.

(3) Where any instrument made under a statutory provision referred to in sub-paragraph (2) is in operation immediately before the commencement date, that instrument continues to have effect on and after that date in relation to any such winding up as is mentioned in sub-paragraph (1).

*Status: This is the original version (as it was originally made).*

*Statement of affairs*

4.—(1) Where a winding up by the High Court has commenced, or is treated as having commenced, before the commencement date, the official receiver or (on appeal from a refusal by him) the Court may, at any time on or after that date—

- (a) release a person from an obligation imposed on him by or under Article 489 of the Companies Order (statement of affairs), or
- (b) extend the period specified in paragraph (6) of that Article.

(2) Accordingly, on and after the commencement date, Article 489(6) of the Companies Order has effect in relation to a winding up to which this paragraph applies with the omission of the words from “or within” onwards.

*Provisions relating to liquidator*

5.—(1) This paragraph applies as regards the liquidator in the case of a winding up by the High Court commenced, or treated as having commenced, before the commencement date.

(2) The official receiver may, at any time when he is liquidator of the company, apply to the Department for the appointment of a liquidator in his (the official receiver's) place; and on any such application the Department shall either make an appointment or decline to make one.

(3) Where immediately before the appointed day the liquidator of the company has not made an application under Article 506 of the Companies Order (release of liquidators), then—

- (a) except where the Department otherwise directs, Articles 124(1) and (2) and 146(7) of this Order apply, and Article 508 of the Companies Order does not apply, in relation to any liquidator of that company who holds office on or at any time after the commencement date and is not the official receiver;
- (b) Article 124(3) of this Order applies in relation to the carrying out at any time after that date by any liquidator of the company of any of his functions; and
- (c) a liquidator in relation to whom Article 146(7) of this Order has effect by virtue of this paragraph has his release with effect from the time specified in Article 148(4)(d) of this Order.

(4) Paragraph (6) of Article 148 of this Order has effect for the purposes of sub-paragraph (3) (c) as it has for the purposes of that Article, but as if the reference to Article 176 were to Article 584 of the Companies Order.

*Saving for power to make rules*

6. Paragraphs 3 to 5 are without prejudice to the power conferred by this Order under which rules made under Article 359 may make transitional provision in connection with the coming into operation of those rules; and such provision may apply those rules in relation to a winding up notwithstanding that the winding up commenced, or is treated as having commenced, before the coming into operation of the rules or Article 359.

*Setting aside of preferences and other transactions*

7.—(1) Where a provision in Part V of this Order applies in relation to a winding up or in relation to a case in which an administration order has been made, a preference given, floating charge created or other transaction entered into before the commencement date shall not be set aside under that provision except to the extent that it could have been set aside under the law in operation immediately

before that date, assuming for this purpose that any relevant administration order had been a winding-up order.

(2) The references in sub-paragraph (1) to setting aside a preference, floating charge or other transaction include the making of an order which varies or reverses any effect of a preference, floating charge or other transaction.

## PART II

### INDIVIDUAL INSOLVENCY

#### *Bankruptcy general*

**8.**—(1) Subject to the following provisions of this Part, Parts VIII to X do not apply in relation to any case in which a bankruptcy petition was presented, or an adjudication in bankruptcy was made, before the commencement date.

(2) In relation to any such case as is mentioned in sub-paragraph (1), the statutory provisions specified in Schedules 9 and 10, so far as they relate to bankruptcy, have effect without the amendments and repeals specified in those Schedules.

(3) Where any instrument made under a statutory provision referred to in sub-paragraph (2) is in operation immediately before the commencement date, that instrument continues to have effect on and after that date in relation to any such case as is mentioned in sub-paragraph (1).

**9.**—(1) In relation to any such case as is mentioned in paragraph 8(1) the references in any statutory provision to a petition, order or other matter which is provided for under the Bankruptcy Acts and corresponds to a petition, order or other matter provided for under provisions of Parts VIII to X of this Order continue on and after the commencement date to have effect as references to the petition, order or matter provided for by those Acts.

(2) Without prejudice to sub-paragraph (1), in determining for the purposes of Article 253 (period of bankruptcy) or paragraph 11 whether any person was an undischarged bankrupt at a time before the commencement date, an adjudication in bankruptcy and an annulment of a bankruptcy under the Bankruptcy Acts are to be taken into account in the same way, respectively, as a bankruptcy order under the provisions of Parts VIII to X of this Order and the annulment under Article 256 of this Order of such an order.

**10.** Transactions entered into before the commencement date have effect on and after that date as if references to acts of bankruptcy in the provisions for giving effect to those transactions continued to be references to acts of bankruptcy within the meaning of section 21 of the Bankruptcy (Ireland) Amendment Act 1872(1) but as if such acts included failure to comply with a statutory demand served under Article 242 of this Order.

#### *Discharge from old bankruptcy*

**11.**—(1) Where a person—

- (a) was adjudged bankrupt before the commencement date or is adjudged bankrupt on or after that date on a petition presented before that date, and
- (b) that person was not an undischarged bankrupt at any time in the period of 15 years ending with the adjudication,

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(1) 1872 c. 58

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

that person is deemed (if not previously discharged) to be discharged from his bankruptcy for the purposes of the Bankruptcy Acts, at the end of the discharge period.

- (2) Subject to sub-paragraph (3), the discharge period for the purposes of this paragraph is—
- (a) in the case of a person adjudged bankrupt before the commencement date, the period of 3 years beginning with that date, and
  - (b) in the case of a person who is adjudged bankrupt on or after that date on a petition presented before that date, the period of 3 years beginning with the date of the adjudication.

(3) Where the High Court exercising jurisdiction in relation to a bankruptcy to which this paragraph applies is satisfied, on the application of the official receiver, that the bankrupt has failed, or is failing, to comply with any of his obligations under the Bankruptcy Acts, any rules made under those Acts or any such rules as are mentioned in paragraph 16(1), the Court may order that the discharge period shall cease to run for such period, or until the fulfilment of such conditions (including a condition requiring the Court to be satisfied as to any matter) as may be specified in the order.

#### *Provisions relating to trustee*

**12.—**(1) This paragraph applies as regards the trustee in the case of a person adjudged bankrupt before the commencement date, or adjudged bankrupt on or after that date on a petition presented before that date.

(2) Where on the commencement date the trustee of a bankrupt's estate has not made an application under Article 27 of the Bankruptcy Amendment (Northern Ireland) Order 1980<sup>(2)</sup> as applied by Article 39 of that Order (release of trustee), then—

- (a) except where the Department otherwise directs, Articles 271(7), 277 and 304(1) to (3) of this Order apply, and Article 27 of that Order of 1980 as applied by Article 39 of that Order does not apply, in relation to any trustee of the bankrupt's estate who holds office on or at any time after the commencement date;
- (b) Article 304(4) of this Order applies in relation to the carrying out at any time on or after the commencement date by the trustee of the bankrupt's estate of any of his functions; and
- (c) a trustee in relation to whom Article 271(7) of this Order has effect by virtue of this paragraph has his release with effect from the time specified in Article 272(3)(d).

(3) Paragraph (5) of Article 272 has effect for the purposes of sub-paragraph (2)(c) as it has for the purposes of that Article.

(4) In the application of paragraph (3) of Article 304 in relation to a case by virtue of this paragraph, the reference in that paragraph to Article 303(1) has effect as a reference to Article 22(7) and (8) of the Bankruptcy Amendment (Northern Ireland) Order 1980 as applied by Article 39 of that Order of 1980.

(5) The trustee of the bankrupt's estate may employ a solicitor to assist him in the carrying out of his functions without the permission of the committee of inspection; but if he does so employ a solicitor, he shall inform the committee of inspection that he has done so.

#### *Second bankruptcy*

**13.—**(1) Articles 307 and 308 of this Order apply with the following modifications where the earlier bankruptcy (within the meaning of Article 307) is a bankruptcy in relation to which the Bankruptcy Acts apply instead of Parts VIII to X of this Order, that is to say—

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(2) 1980 NI 4

- (a) references to the existing trustee include references to the assignees of the bankrupt's estate for the purposes of the earlier bankruptcy; and
  - (b) references to property vested in the existing trustee under Article 280(3) of this Order have effect as references to such property vested in that trustee as was acquired by or devolved on the bankrupt after the commencement (within the meaning of the Bankruptcy Acts) of the earlier bankruptcy; and
  - (c) references to an order under Article 283 of this Order have effect as references to an order under section 319 of the Irish Bankrupt and Insolvent Act 1857(3) or section 51 of the Bankruptcy (Ireland) Amendment Act 1872(4).
- (2) Section 11 of the Bankruptcy Amendment Act (Northern Ireland) 1929(5) (second bankruptcy) does not apply where a person who is an undischarged bankrupt under the Bankruptcy Acts is adjudged bankrupt under this order.

#### *Setting aside of preferences and other transactions*

- 14.—(1) A preference given, assignment made or other transaction entered into before the commencement date shall not be set aside under any of Articles 312 to 317 of this Order except to the extent that it could have been set aside under the law in operation immediately before that date.
- (2) References in sub-paragraph (1) to setting aside a preference, assignment or other transaction include the making of any order which varies or reverses any effect of a preference, assignment or other transaction.

#### *Bankruptcy offences*

- 15.—(1) Where a bankruptcy order is made under this Order on or after the commencement date, a person is not guilty of an offence under Chapter VI of Part IX in respect of anything done before that date; but, notwithstanding the repeal by Article 382 and Schedule 10 of sections 11, 12 and 13(4) of the Debtors (Ireland) Act 1872(6) and sections 25 and 26 of the Bankruptcy Amendment Act (Northern Ireland) 1929 is guilty of an offence under the Act of 1872 or 1929 in respect of anything done before the commencement date which would have been an offence under that Act if the making of the bankruptcy order had been the making of an adjudication order under the Bankruptcy Acts.
- (2) Paragraph (5) of Article 321 of this Order applies (instead of section 25(2) or 26(2) of the Bankruptcy Amendment Act (Northern Ireland) 1929) in relation to proceedings for an offence under that Act which are instituted (whether by virtue of sub-paragraph (1) or otherwise) after the commencement date.

#### *Power to make rules*

- 16.—(1) The preceding provisions of this Part of this Schedule are without prejudice to the power conferred by this Order under which rules under Article 359 may make transitional provision in connection with the coming into operation of those rules; and such provision may apply those rules in relation to a bankruptcy notwithstanding that it arose from a petition presented before either the coming into operation of the rules or the commencement date.

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(3) 1857 c. 60  
(4) 1872 c. 58  
(5) 1929 c. 1 (N.I.)  
(6) 1872 c. 57

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

(2) Rules under Article 359 may provide for such debtor's summons served before the commencement date as may be prescribed to be treated for the purposes of this Order as statutory demands served under Article 242.

## PART III

### OTHER TRANSITIONAL PROVISIONS AND SAVINGS

#### *Deeds of arrangement*

17. Chapter I of Part VIII does not apply in relation to any deed of arrangement registered before the commencement date.

#### *Insolvency practitioners*

18. Where an individual began to act as an insolvency practitioner in relation to any person before the commencement date, nothing in Article 349(2) or (3) prevents that individual from being qualified to act as an insolvency practitioner in relation to that person.

#### *Official receiver*

19. Any property vested in the Official Assignee for bankruptcy for Northern Ireland, either alone or together with a creditor's assignee, before the commencement date, shall, on that date, vest in the official receiver without any conveyance, assignment or transfer.

#### *Transitional effect of Articles 367 to 369*

20.—(1) A transaction entered into before the commencement date shall not be set aside under Articles 367 to 369 except to the extent that it could have been set aside under the law in operation immediately before that date.

(2) References in sub-paragraph (1) to setting aside a transaction include the making of any order which varies or reverses any effect of a transaction.

#### *Periods of time*

21. Where any period of time specified in any provision repealed by Article 382 and Schedule 10 is current immediately before the commencement date, this Order has effect as if the corresponding provision had been in operation when the period began to run; and (without prejudice to the foregoing) any period of time so specified and current is deemed for the purposes of this Order—

- (a) to run from the date or event from which it was running immediately before the commencement date, and
- (b) to expire (subject to any provision of this Order for its extension) whenever it would have expired if this Order had not come into operation;

and any rights, priorities, liabilities, reliefs, obligations, requirements, powers, duties or exemptions dependent on the beginning, duration or end of such a period shall be under this Order as they were or would have been under that repealed provision.

*Saving*

**22.** The provisions of this Schedule shall have effect without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954(7).

*Interpretation*

**23.** In this Schedule—

“the Bankruptcy Acts” means the Bankruptcy Acts (Northern Ireland) 1857(8)(9)(10)(11) to 1980(12);

“the commencement date” for the purpose of any provision of this Schedule, means the day appointed under Article 1(2) for the coming into operation of that provision.

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(7) 1954 c. 33 (N.I.)  
(8) 1857 c. 60  
(9) 1872 c. 58  
(10) 1929 c. 1 (N.I.)  
(11) 1963 c. 23 (N.I.)  
(12) 1980 NI 4