

SCHEDULE 1

Regulation 20(3)

Inserted Schedule 1A to the Payment and Electronic Money Institution Insolvency Regulations 2021

“SCHEDULE 1A

Regulation 47(1A)

How special administration applies to Northern Ireland LLPs

1. This Schedule makes provision about how special administration applies to institutions which are formed as limited liability partnerships under the law of Northern Ireland.
2. In this Schedule “LLPR (NI) 2004” means the Limited Liability Partnerships Regulations (Northern Ireland) 2004(1).
3. The provisions of the I(NI)O 1989 mentioned in the first column of the Table apply to institutions which are formed as limited liability partnerships with the further modifications (in addition to any set out in the table in regulation 37A) set out in the third column.

<i>Provision</i>	<i>Subject</i>	<i>Modifications</i>
Those mentioned in regulation 5(2) of the LLPR (NI) 2004		Those set out in regulation 5(2) of the LLPR (NI) 2004 (except regulation 5(2)(f) of those Regulations).
Article 13	Meaning “contributory”	<p>of To be read as if—</p> <p>(a) in paragraph (1) for “every person” there were substituted—</p> <p>“every past and present member of the limited liability partnership”;</p> <p>(b) at the end of paragraph (2), there were inserted “or Article 178A (adjustment of withdrawals)”.</p> <p>(c) paragraph (3) were omitted.</p>
Article 61	Liability of present and past members	<p>as To be read as if it were substituted with—</p> <p>(1) When a limited liability partnership goes into special administration, every present and past member of the limited liability partnership is liable to contribute to its assets as follows.</p> <p>(2) Where a member has agreed with the other members or with the limited liability partnership, that that member be liable to contribute to the assets of the limited liability partnership in the event that that body goes into liquidation or special administration, that member is liable, to the extent that they have so agreed, to contribute—</p>

(1) S.R. 2004 No. 307.

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<i>Provision</i>	<i>Subject</i>	<i>Modifications</i>
		<ul style="list-style-type: none"> <li>(a) to its assets to any amount sufficient for payment of its debts and liabilities;</li> <li>(b) to the expenses of the special administration;</li> <li>(c) for the adjustment of the rights of the contributories among themselves.</li> </ul> <p>(3) A past member shall only be liable under this Article if the obligation arising from such agreement in paragraph (2) survived them ceasing to be a member of the limited liability partnership.”.</p>
Articles 63-65	Contributories	Omitted.
Article 69	Companies registered under the Companies Act 2006	Omitted.
Article 158	Power to make over assets to employees	Omitted.
Article 163	Resolutions passed at meetings	To be read as if after “contributories” there were inserted “or of the members of a limited liability partnership”.
Article 178	Wrongful trading	To be read as if after paragraph (2), “but the High Court shall not” to the end of the paragraph were omitted.
After Article 178	Adjustment of withdrawals	The I(NI) O 1989 is to be read as if after Article 178 there were inserted—

(1) This Article has effect in relation to a person (“P”) who is or has been a member of a limited liability partnership where, in the course of the special administration of that limited liability partnership, it appears that paragraph (2) of this Article applies in relation to P.

(2) This paragraph applies in relation to P if—

- (a) within the period of two years ending with the commencement of the special administration, P was a member of the limited liability partnership who withdrew property of the limited liability partnership, whether in the form of a share of profits, salary, repayment of or payment of interest on a loan to the limited liability partnership or any other withdrawal of property, and
- (b) it is proved by the administrator to the satisfaction of the court that at the time of the withdrawal P knew or had

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		<p>reasonable grounds for believing that the limited liability partnership—</p> <ul style="list-style-type: none"><li>(i) was at the time of the withdrawal unable to pay its debts, or</li><li>(ii) would become so unable to pay its debts after the assets of the limited liability partnership had been depleted by that withdrawal taken together with all other withdrawals (if any) made by any members contemporaneously with that withdrawal or in contemplation when that withdrawal was made.</li></ul> <p>(3) Where this Article has effect in relation to P, the court, on the application of the administrator, may declare that P is to be liable to make such contribution (if any) to the limited liability partnership’s assets as the court thinks proper.</p> <p>(4) The court may not make a declaration in relation to P the amount of which exceeds the aggregate of the amounts or values of all the withdrawals referred to in paragraph (2) made by P within the period of two years referred to in that paragraph.</p> <p>(5) The court may not make a declaration under this Article with respect to P unless P knew or ought to have concluded that after each withdrawal referred to in paragraph (2) there was no reasonable prospect that the limited liability partnership would avoid going into an insolvency procedure under the Insolvency (Northern Ireland) Order 1989 or special administration.</p> <p>(6) For the purposes of paragraph (5) the facts which P ought to know or ascertain and the conclusions which P ought to reach are those which would be known, ascertained, or reached by a reasonably diligent person having both—</p> <ul style="list-style-type: none"><li>(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by P in relation to the limited liability partnership, and</li><li>(b) the general knowledge, skill and experience that P has.</li></ul> <p>(7) In this Article “member” includes a shadow member.</p>

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		(8) In this section a reference to being unable to pay debts is to be read in accordance with section 93(4) of the BA 2009 (as applied and modified by the EMR 2011 and the PSR 2017).
		(9) This Article does not limit the effect of Article 178.”.
Article 179	Proceedings under Article 177 or 178	To be read as if—  (a) in paragraph (1), for “Article 177 or 178” there were substituted “Article 177, 178 or 178A”;  (b) in paragraph (2), for “either Article” there were substituted “any of those Articles”;  (c) in paragraph (4), for “either Article” there were substituted “any of those Articles”;  (d) in paragraph (5), for “Articles 177 and 178” there were substituted “Articles 177, 178 and 178A”.
Article 182	Prosecution of delinquent officers and members of company	To be read as if—  (a) in paragraph (1), for “officer, or any member, of the company” there were substituted “member of the limited liability partnership”;  (b) in paragraph (2), (3) and (5) for “officer of the company, or any member of it,” there were substituted “member of the limited liability partnership”.
Article 346 and Schedule 4 to the I(NI)O 1989 (and Schedule 3 to the Pension Schemes (Northern Ireland) Act 1993)	Preferential debts	To be read as if, in Article 346—  (a) in paragraph (1), “or an individual” were omitted;  (b) in paragraph (2), “or the individual” were omitted.
Article 347	“The relevant date”	To be read as if paragraphs (5) and (6) were omitted.
Article 373	Offences by bodies corporate	To be read as if the reference to “secretary” in section 20(2) of the IA(NI) 1954, as referred to in Article 374(4), were omitted.
Schedule paragraph 43	B1, Moratorium on insolvency proceedings	To be read as if for sub-paragraph (2) there were substituted—  “(2) No determination to wind up the limited liability partnership voluntarily may be made.”.
Schedule paragraph 62	B1, Directors	To be read as if for paragraph 62 there were substituted—  “ <b>62.</b> The administrator may prevent any person from taking part in the management of the business

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		of the limited liability partnership and may appoint any person to be a manager of that business.”
Schedule paragraph 63	B1, Power to call meetings	To be read as if—  (a) the existing provision were renumbered as sub-paragraph (1);  (b) after that sub-paragraph there were inserted— “(2) The meeting must be held in a manner provided by the Payment and Electronic Money Institution Insolvency Regulations 2021, special administration insolvency rules or the limited liability partnership agreement.  (3) The quorum required for a meeting of the members of the limited liability partnership is any quorum required by the limited liability partnership agreement for meetings of the members of the limited liability partnership and if no requirement for a quorum has been agreed upon, the quorum is 2 members.”.
Schedule paragraph 92	B1, Replacement	To be read as if sub-paragraph (1)(c) were omitted.
Schedule paragraph 106	B1, Majority decision of directors	Omitted.

4. The CDD(NI)O 2002 as applied and modified by these Regulations applies to institutions which are formed as limited liability partnerships with the further modifications set out in regulation 4(2) of and Part 2 of Schedule 2 to the LLPR (NI) 2004.

5. The following legislation applies to institutions which are formed as limited liability partnerships with such modifications as the context requires—

- (a) to give effect to the I(NI)O 1989 as applied and modified by these Regulations—
  - (i) the Insolvency Practitioners Regulations (Northern Ireland) 2006(2);
  - (ii) the Insolvency Practitioners (Recognised Professional Bodies) Order (Northern Ireland) 1991(3);
  - (iii) the Insolvency (Fees) Order (Northern Ireland) 2006(4);
  - (iv) the Insolvency (Deposits) Order (Northern Ireland) 2006(5); and
- (b) to give effect to the CDD(NI)O 2002 as applied and modified by these Regulations and the CA 2006—
  - (i) the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules (Northern Ireland) 2003(6);
  - (ii) the Uncertificated Securities Regulations 2001(7);

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(2) S.R. 2006 No. 33.  
 (3) S.R. 1991 No. 301.  
 (4) S.R. 2006 No. 54.  
 (5) S.R. 2006 No. 55.  
 (6) S.R. 2003 No. 358.  
 (7) S.I. 2001/3755.

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(iii) the Insolvent Companies (Reports on Conduct of Directors) Rules (Northern Ireland) 2003<sup>(8)</sup>.”

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<sup>(8)</sup> S.R. 2003 No. 357.