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Technical Release

TR 06/2016 - Insolvency (Amendment) (NI) Act 2016

Readers of this document should note that the interpretation of detailed provisions of this amending legislation has yet to be tested in the Courts.

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INTRODUCTION

- 1.Changes introduced by the Insolvency (Amendment) Act, 2016 (“the 2016 Act”) enhance the practical application of insolvency legislation in Northern Ireland and reduce the number of detailed variances from insolvency legislation applicable in Britain.
- 2.This Technical Release summarises key changes made by the 2016 Act to the Insolvency (Northern Ireland) Order 1989 (“the1989 Order”) which include:

- a person may be authorised to act as an insolvency practitioner only in relation to companies or only in relation to individuals (“partially authorised”), or in relation to all categories of insolvency appointment (“fully authorised”);
- the Department of Enterprise, Trade and Investment (“the Department”) will no longer authorise insolvency practitioners:
- statutory definitions of “regulatory functions” and “regulatory objectives” which a body (“RPB”) recognised by the Department must fulfil;
- statutory recognition of documents transmitted and stored by electronic means;
- permitting websites as an alternative means of providing information to creditors and other interested parties;
- requirement for an annual meeting in a voluntary liquidation abolished
- repeal of legislation governing deeds of arrangement
- removal of “early discharge” from bankruptcy
- restricting the power of the trustee in bankruptcy to make an “after-acquired property” claim against a bank.

3. This Technical Release is intended to assist members in understanding the changes made to insolvency legislation. However, it does not purport to be a detailed analysis of the provisions of the 2016 Act.

4. Statutory references are to the relevant sections of the 2016 Act, unless otherwise indicated.

COMMUNICATIONS

5. *Section 1* supplements existing provisions within Parts 7 and 10 of the 1989 Order to permit a meeting, whether in a company or personal insolvency “... held in such a way that persons who are not present together at the same place may attend it.”. In that context, “attends” is defined as being “... able to exercise any rights which that person may have to speak and vote at the meeting.”.

6. The meeting’s convener is obliged to “... make whatever arrangements the convener considers appropriate ...” to enable those persons not physically present to exercise their rights.

7. Any obligation in the 1989 Order obliging the insolvency office holder “... to give, deliver, furnish or send a notice or other document or information ...” can be satisfied by making that material available on a website (*Section 1*).

8. Article 2B of the 1989 Order, inserted by *Section 2*, specifies, with five exceptions listed in Article 2B(2), that references “... to a thing in writing includes that thing in electronic form.”.

MEETINGS

9. The requirement for the liquidator to convene an annual meeting in a members’ voluntary liquidation (“MVL”) or in a creditors’ voluntary liquidation (“CVL”) is abolished by *Section 3*.

POWERS

10. *Section 7* empowers the liquidator to compromise calls, debts and claims due to the company without having to seek sanction from the liquidation committee, the High Court (“the Court”), a meeting of the company’s creditors, or the company’s members by extraordinary resolution, as the case may be. Sanction remains necessary if entering a compromise with the company’s creditors.

11. Similar discretion is given to the trustee in bankruptcy by *Section 8*.

BANKRUPTCY

12. *Section 12* repeals Article 253(2) of the 1989 Order (which was rarely used) that enabled discharge from bankruptcy before the end of the first year if investigation is unnecessary or complete.

13. Article 280 of the 1989 Order permits the trustee in bankruptcy to claim “after-acquired property” – i.e. which became the property of the bankrupt before he or she is discharged. That power cannot be exercised against a person who has dealt with the after-acquired property in good faith and without notice of the bankruptcy.

14. To make it easier for a bank to offer an account to an undischarged bankrupt, *Section 13* amends Article 280 to restrict the power of the trustee in bankruptcy to claim against a bank to those circumstances where he or she has served notice on the bank specifically related to the after-acquired property claimed.

REGULATION OF INSOLVENCY PRACTITIONERS

15. Following implementation of the changes to Part 12, Insolvency Practitioners and their Qualification, Insolvency (Northern Ireland) Order, 1989, which are contained in *Section 14*, a person may be authorised to act only in relation to companies or only in relation to individuals (“partially authorised”), or in relation to all categories of insolvency appointment (“fully

authorised”). Those practitioners already authorised as at the commencement date will become fully authorised.

16.As *Section 14* repeals Articles 351 to 354 of the 1989 Order, the Department will no longer authorise insolvency practitioners.

17.*Section 15* provides statutory definitions of “regulatory functions” and “regulatory objectives” which a body (“RPB”) recognised by the Department must fulfil. It also refers to the regulatory principles that “... regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed...”.

18.Articles 350D to 350K of the 1989 Order, inserted by *Section 16*, contain the statutory framework governing sanctions the Department can impose on an RPB and the related appeals process.

19.*Section 18* gives the Department the power to apply to the High Court for a “direct sanctions order” (defined in Article 350O) against an individual insolvency practitioner “... if it appears to the Department that it would be in the public interest for the order to be made.”. A copy of the application must be sent to the RPB which authorised the individual.

20.The Department’s power to obtain information extends to persons “connected” to the insolvency practitioner (*Section 19*). Such persons include not only members of the practitioner’s firm or partnership (or his or her employee), but extends to a person who “... acted on behalf of the individual in any other way.”.

21.*Section 21* allows the Department to designate a single regulator for insolvency practitioners. It has stated it would exercise this power only “... will only be used if the changes introduced by *Sections 14 to 20* “... do not succeed in improving confidence in the regulatory regime for insolvency practitioners.”.

MISCELLANEOUS

22.In an individual voluntary arrangement (“IVA”) where the debtor has not sought protection through an interim order, *Section 5* amends the 1989 Order to require the nominee to prepare a report to the debtor’s creditors, rather than the Court.

23.Changes to the definition of “debt” in Article 2 of the 1989 Order draw a clear distinction between the criteria applied when determining the admissibility of a liability in bankruptcy and those applicable in company administration and winding up (*Section 9*).

24.*Section 11* repeals Chapter 1, Part 8 of the 1989 Order, which dealt with deeds of arrangement.