

## **GN 12**

### **AN OUTLINE OF THE INSOLVENCY (NI) ORDER 1989 AND PART II OF THE COMPANIES (NI) ORDER 1989**

The Insolvency (Northern Ireland) Order 1989 and the Companies (Northern Ireland) Order 1989 (Part II of which deals with Company Directors Disqualification) came fully into operation on 1 October 1991.

Should insolvency strike you or your company you may well be affected by the provisions of the legislation.

This leaflet gives an outline of the legislation.

#### **The Insolvency Practitioner**

Authorisation to act as an insolvency practitioner is required by:

- a trustee in bankruptcy or under a deed or arrangement
- a liquidator
- an administrator
- an administrator receiver, or
- a nominee or a supervisor under the voluntary arrangements procedures.

Authorisations are granted by recognised professional bodies or the Department of Enterprise, Trade and Investment.

Insurance bonding requirements have also been extended.

#### **The Director and Corporate Insolvency**

The Department of Enterprise, Trade and Investment has discretionary powers to ask the courts to disqualify from office, and from any similar office, any company director who is or has been demonstrably unfit for the job.

Official Receivers, liquidators, administrators and administrative receivers have a duty to report such unfitness.

Where companies become insolvent and have traded wrongfully the High Court may declare directors to be personally liable to contribute to the assets of those companies.

Directors are not able without permission of the High Court, to reuse the names of failed companies (or similar names) within five years of liquidation.

## **Company Administration**

Companies in difficulties may be able to turn to an administrator, appointed by the High Court on the petition of the company, its directors or creditors.

Between petition and appointment, the company and its assets may be wound up or secured only with the High Court's authority.

The administrator must propose a strategy, and try to obtain the creditor's support for it, within three months.

His or her role will then be to manage the company (as a whole or in part) until it is again profitable or until the assets can be realised more advantageously.

## **Receivership**

The Insolvency Order clarifies some aspects of receivership, and sets out the main powers of receivers appointed effectively to the whole of the company's property; such officers will be known as administrative receivers.

Creditors have certain rights to information from administrative receivers.

## **Company Winding Up**

There are two forms of winding up - by the High Court and voluntary.

### **Winding up by the Court:**

The Official Receiver's main function is to carry out investigations which can lead to prosecution for fraud or to disqualification. First meetings of creditors will be held when appropriate and creditors will be given information, about the company's affairs and about possible dividends, generally within three months.

### **Voluntary winding up:**

Certain information will be available to creditors, and liquidators do not normally have power to sell company assets until the creditors have met.

In a members' voluntary liquidation (where company owners consider that the company can meet its debts in full) the liquidator must, if he subsequently disagrees, inform the creditors.

## **Common Provisions**

- To help liquidators, administrators, and administrative receivers ('insolvency practitioners'), company officers must supply company information on request.
- The High Court has power to order the payment of debts to the company and/or the return of company property.
- Essential suppliers (gas, electricity etc.) are unable to demand payment of past debts as a condition for continued supplies required for business purposes.
- Recent credit transactions on questionable terms may be reappraised by the High Court.
- Other transactions entered into during insolvency, or causing insolvency, may similarly be set aside.

### **Company Voluntary Arrangements**

These arrangements may particularly interest small companies in short-term financial difficulties. They allow insolvent companies to come to binding terms much more informally with their creditors.

The posts of nominee and supervisor are central to an arrangement. The nominee (with the directors) prepares proposals and obtains the agreement of members and creditors to them; he or she then may become the supervisor responsible for implementing the finalised proposals.

### **Bankruptcy**

Opening procedures for individuals follow company practice, with bankruptcy petition following non-payment of debt.

Recognition will be given to the married partner's interests in the matrimonial home will receive greater recognition.

Debtors can make a proposal to their creditors for a personal voluntary arrangement with the objective of avoiding bankruptcy; debtors who present their own bankruptcy petitions to the High Court may be referred to insolvency practitioners with the same objectives (the procedure being similar to company voluntary arrangements)