UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	
	)	
ARCADIA GROUP (USA) LIMITED (in Administration),[1]	)	Chapter 15
	)	
Debtor in a Foreign Proceeding.	)	Case No. 19-11650 (JLG)
	)	

DECLARATION OF CHARLES RICHARD OBANK IN SUPPORT OF VERIFIED PETITION FOR RECOGNITION OF FOREIGN MAIN PROCEEDING AND CERTAIN RELATED RELIEF

I, Charles Richard Obank, declare under penalty of perjury as follows to the best of my knowledge, information and belief:

1. I am a solicitor duly admitted to practice in England and Wales and a partner in the law firm of DLA Piper UK LLP, located at Princes Exchange, 2 Princes Square, Leeds, LS1 4BY, United Kingdom. I submit this declaration (the "**Declaration**") in support of the *Verified Petition for Recognition of Foreign Main Proceeding and Certain Related Relief* (together with the Official Form 401 Petition [ECF No. 1] filed contemporaneously herewith, the "**Chapter 15 Petition**") filed in the above-captioned chapter 15 case on this day. The Chapter 15 Petition seeks, among other relief, recognition under chapter 15 of title 11 of the United States Code (the "**Bankruptcy Code**") of the English law insolvency process of administration (as further described below) with respect to Arcadia Group (USA) Limited (in Administration) (the "**Foreign Debtor**" or the "**Company**") commenced pursuant to Schedule B1 to the Insolvency Act 1986 (the "**Insolvency Act**"), a true and correct copy of which is attached to this Declaration as **Exhibit A**.

[1] The Foreign Debtor is incorporated and registered in England and Wales with Company Number 06404527. The Foreign Debtor's mailing address (and its registered office) is Colegrave House, 70 Berners Street, London, W1T 3NL, United Kingdom.

2. In this Declaration, after describing my background and qualifications, I provide a description of English law and the practice relevant to this Court's consideration of the Chapter 15 Petition.

3. In preparing this Declaration, I have reviewed (i) the Chapter 15 Petition, (ii) the documents submitted in this chapter 15 case and (iii) the relevant provisions of the Insolvency Act and other relevant provisions of English law as I consider are relevant to this application.

PROFESSIONAL BACKGROUND AND QUALIFICATIONS

4. I graduated with a bachelor of laws degree from the University of Manchester in 1986. I subsequently attended the College of Law, Guildford where I completed the Legal Practice Course, which I passed in the summer of 1987. I undertook my solicitor's training contract with the successor law firm now known as Squire Patton Boggs (previously known as A.V. Hammond & Co, Hammond Suddards and Squire Sanders) between September 1987 and September 1989 and was admitted to practice as a solicitor of England and Wales on December, 1 1989. I am a partner in the Finance, Projects and Restructuring group of DLA Piper UK LLP, having joined DLA Piper UK LLP in June 2000 following a move from the law firm Herbert Smith (now known as Herbert Smith Freehills), where I was made a partner in 1996, and have specialised in the practice of insolvency and restructuring law since my qualification. I am a qualified insolvency practitioner (non-appointment taker) licensed by the Institute of Chartered Accountants in England and Wales.

5. I have extensive experience in matters relating to English insolvency and restructuring law. I have advised insolvency practitioners, creditors, debtors and other stakeholders in relation to the processes of administration, receivership, liquidation, schemes of arrangement, voluntary arrangements, cross border recognition proceedings and related matters.

I have advised in relation to a number of high profile administrations, many of which had cross-border aspects.

6. My firm has been advising the joint administrators of the Foreign Debtor prior to their appointment in connection with their preparation for the administration appointment and the cross-border recognition of the same, since the beginning of April 2019. I have been handling the matter on their behalf and I am supported by a number of other partners and associates of the firm.

STATEMENTS ON ENGLISH LAW AND PRACTICE

7. Under the Insolvency Act, an administrator may be appointed by one of the methods described in paragraph 8 below to manage a company's affairs, business and property. A company is "in administration" while the appointment of an administrator of the company has effect and a company "enters administration" when the appointment of an administrator takes effect.[2]

8. A person may be appointed as an administrator of a company by (i) order of the a court having jurisdiction to wind up the company in question, which, for any company registered in England and Wales, includes the High Court of Justice (the "**English Court**")[3] following an appropriate application to the English Court; (ii) the directors of the company (which is relevant in this matter, see further below); (iii) the company itself; or (iv) the holder of a "qualifying floating charge."[4] There are different procedures for each method of appointment. An administrator is an officer of the English Court whether or not he is appointed by the English

[2] Paragraph 1 of Schedule B1 to the Insolvency Act.
[3] Administration applications are heard in the Insolvency and Companies List, which was previously known as the Companies Court, and is a specialist court within the Business and Property Courts of the High Court of Justice.
[4] Paragraph 2 of Schedule B1 to the Insolvency Act.

Court[5], and as such is subject to the control and supervision of the English Court. A person may only be appointed as an administrator if he is qualified to act as an insolvency practitioner in relation to the company.[6]

9. An administrator of a company must perform his functions with the objective of (a) rescuing the company as a going concern, or (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or (c) realizing property in order to make a distribution to one or more secured or preferential creditors (these objectives often being referred to as "the purpose of administration"). The administrator must perform his functions with the objective of rescuing the company as a going concern unless he thinks either it is not reasonably practicable to achieve that objective, or that the objective expressed in (b) above would achieve a better result for the company's creditors as a whole. The administrator may perform his functions with objective (c) only if he thinks it is not reasonably practicable to achieve either of objectives (a) or (b), and he does not unnecessarily harm the interests of the creditors of the company as a whole.[7]

10. The appointment of an administrator to a company by the company's directors under the Insolvency Act takes effect when a notice of appointment and other prescribed documents, in each case complying with the requirements of the Insolvency Act and the Insolvency Rules, are filed with the English Court.[8] Where an appointment is made by the directors under paragraph 22 of Schedule B1 to the Insolvency Act, the directors are required to give at least five (5) business days' written notice to any person who is or may be entitled to appoint: an administrative receiver of the company; or an administrator of the company under

[5] Paragraph 5 of Schedule B1 to the Insolvency Act.
[6] Paragraph 6 of Schedule B1 to the Insolvency Act. As to qualification provisions see Part XIII of the Insolvency Act.
[7] Paragraph 3 of Schedule B1 to the Insolvency Act.
[8] Paragraphs 29 and 31 of Schedule B1 to the Insolvency Act.

paragraph 14 of Schedule B1 to the Insolvency Act i.e. the holder of a qualifying floating charge,[9] by way of serving a notice of intention to appoint an administrator by company or directors ("**NoI**"). Among other requirements, the NoI must be accompanied by a statutory declaration by or on behalf of the directors as to various matters, including that the company is or is likely to become unable to pay its debts.[10] If, following the giving of notice of intention to appoint, the relevant floating charge holder(s) provides their written consent to the appointment, the appointment may proceed without waiting for the five (5) business day notice period to expire.[11]

11. The directors are required to state in the NoI and the notice of appointment, whether the proceedings flowing from the appointment will be main, secondary or territorial proceedings for the purposes of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings (Recast) (the "**EU Regulation**") or whether such proceedings will be non-EU proceedings, being proceedings to which the EU Regulation does not apply.[12] The company's center of main interests should be presumed in accordance with article 3(1) of the EU Regulation to be at the place of the company's registered office. A true and correct copy of the EU Regulation currently in effect is attached to this Declaration as **Exhibit B**. The EU Regulation applies to proceedings in respect of a debtor whose center of main interests is located within the European Union (the "**EU**").[13] The EU Regulation provides that the "center of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties."[14]

[9] Paragraph 26(1) of Schedule B1 to the Insolvency Act.
[10] Paragraph 27(2) of Schedule B1 to the Insolvency Act.
[11] Paragraph 28(1)(b) of Schedule B1 to the Insolvency Act.
[12] Rules 3.23(1)(i), 3.24(1)(h) and 3.25(2)(i) of the Insolvency Rules.
[13] Paragraph 25 of the Preamble to the EU Regulation.
[14] Article 3(1) of the EU Regulation.

12. In this matter, the directors have stated at paragraph 6 of each of the NoI and the notice of appointment that the appointment of administrators to the Foreign Debtor will be main proceedings, and the reasons for this statement are also noted at paragraph 6(i) of both the NoI and the notice of appointment. Those reasons are as follows: (i) the Company is a private limited liability company, incorporated in England and Wales; (ii) the Company operates and manages its world-wide affairs from its registered office in England; (iii) the Company files its statutory accounts and annual return with Companies House in the United Kingdom; (iv) its registered office and headquarters are located at Colegrave House, 70 Berners Street, London, W1T 3NL; (v) the Company's directors reside and work in England; (vi) the physical board meetings are held at the Company's registered office in England; (vii) the IT systems are mainly provided from England principally by Arcadia Group Limited ("**AGL**"), which is also based in England, with some systems (such as the employee communication system) being supplied by TSTML; (viii) the Company's human resources functions are also provided by TSTML; TSTML's Head of HR is based in England;, and (ix) the Company's sole secured creditor, holding the qualifying floating security, is England-based AGL. The Company, therefore, conducts the administration of its interests on a regular basis in England and this is known to its key creditors and is ascertainable by other parties.

13. In order to enter administration, a company must be a "company" as defined in paragraph 111(1A) of Schedule B1 to the Insolvency Act. A "company" under that paragraph means (a) a company registered under the Companies Act 2006 in England and Wales or Scotland; (b) a company incorporated in an EEA State (being a state that is a contracting party to the Agreement on the European Economic Area) (an "**EEA State**") other than the United

Kingdom or (c) a company not incorporated in an EEA State but having its center of main interests in a EU member state (other than Denmark).

14. The jurisdiction of the English Court to open administration proceedings is circumscribed by the EU Regulation. Article 3(1) of the EU Regulation "International Jurisdiction" provides that the courts of the member state within the territory of which the center of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. The EU Regulation defines "insolvency proceedings" by reference to a list of proceedings set out in Annex A to the EU Regulation. In relation to the United Kingdom, Annex A expressly lists administration proceedings, including appointments made by filing prescribed documents with the English Court. Under the EU Regulation, a collective proceeding means proceedings which include all or a significant part of a debtor's creditors, provided that, in the latter case, the proceedings do not affect the claims of creditors which are not involved in them.

15. Pursuant to Article 19 of the EU Regulation, the courts of the EU member states (other than Denmark) are obligated to recognize an administration for a company with its center of main interests located in the United Kingdom.

16. While a company is in administration, the administrator may under the Insolvency Act do anything necessary or expedient for the management of the affairs, business and property of the company,[15] (including disposing of assets subject to a floating charge without the consent of the charge holder)[16] and the company's directors are, in nearly all respects, restricted from exercising any of their powers of management without the consent of the administrator.[17] The administrator shall on his appointment to the company take custody or control of all the property

[15] Paragraph 59(1) of Schedule B1 to the Insolvency Act.
[16] Paragraph 701(1) of Schedule B1 to the Insolvency Act.
[17] Paragraph 64(1) of Schedule B1 to the Insolvency Act.

to which he thinks the company is entitled[18] and at all times the administrator must perform his functions in accordance with the purpose of administration (see paragraph 9 above).

17. When a company is in administration, a statutory moratorium under the Insolvency Act, broadly akin to the Bankruptcy Code's automatic stay of section 362, comes into effect automatically.[19] The statutory moratorium prohibits the commencement of winding up proceedings in respect of the company, save for limited exceptions which relate to winding up in the public interest, winding up of *societas europaea*, and winding up on the petition of certain financial regulators. The statutory moratorium also prohibits the taking of steps to enforce security over the company's property, the taking of steps to repossess goods in the company's possession under a hire-purchase agreement, the institution or continuation of legal process against the company or property of the company and the exercise of certain rights of forfeiture in relation to premises leased to the company, in each case either without the consent of the administrator or the permission of the English Court. Importantly, the statutory moratorium operates so as to prevent a landlord forfeiting a lease unless an administrator consents or the English Court permits it on an application.[20] The moratorium does not have extra-territorial effect so as to be binding on the courts of a foreign country which explains the rationale for this application for recognition under chapter 15 of title 11 of the United States Code in view of the company operating 11 standalone Top Shop shores and 11 standalone Top Man stores in the US from leasehold premises.

18. Subject to any direction from the English Court, an administrator is required to manage the affairs, business and property of the company in accordance with the proposals

[18] Paragraph 67 of Schedule B1 to the Insolvency Act.
[19] Paragraph 43 of Schedule B1 to the Insolvency Act.
[20] Paragraph 43(4) of Schedule B1 to the Insolvency Act.

approved by the creditors[21] (as described further in paragraph 23 of this Declaration below). The administrator must comply with any directions given to him by the English Court in connection with any aspect of his management of the company's affairs, business or property.[22]

19. The administrator acts as agent of the company,[23] and is granted broad statutory powers (which may be exercised without sanction of the English Court) and which are set out in Schedule 1 to the Insolvency Act,[24] a true and correct copy of which is attached hereto as **Exhibit C**. These include the power to do all acts and to execute documents in the name of the company, to sell property of the company, to carry on the business of the company, to raise or borrow money, to appoint professionals to assist him in the performance of his functions, to bring or defend legal proceedings in the name of the company, to establish subsidiaries and transfer property to them, to make any payments necessary or incidental to the performance of his functions, to grant or accept a surrender of a lease or tenancy of any property of the company, to make any arrangement or compromise on behalf of the company and to do all things incidental to the exercise of such powers.

20. In my view, the powers granted to an administrator under the Insolvency Act are sufficiently broad to allow him to act as a foreign representative (as defined in the Bankruptcy Code) of the company of which he is an administrator.

21. An administrator must take certain action as soon as is reasonably practicable following his appointment, including publishing a notice of his appointment in certain prescribed publications, obtaining a list of the company's creditors and sending a notice of his appointment to each creditor of whose claim and address he is aware. If an administrator without reasonable

[21] Paragraph 68(1) of Schedule B1 to the Insolvency Act.
[22] Paragraph 68(2) of Schedule B1 to the Insolvency Act.
[23] Paragraph 69 of Schedule B1 to the Insolvency Act.
[24] Paragraph 60(1) of Schedule B1 to the Insolvency Act.

excuse fails to comply with his duties regarding the announcement of his appointment as prescribed in the Insolvency Act he commits an offence.[25]

22. The administrator must also prepare a statement setting out proposals for achieving the purpose of the administration and send a copy of the statement to certain prescribed persons, including every creditor of the company (other than an opted-out creditor) of whose claim and address he is aware. The statement must be sent as soon as is reasonably practicable after the company enters administration and in any event before the end of the period of eight weeks beginning with the day on which the company enters administration.[26] The administrator must seek a decision from the company's creditors as to whether they approve the administrator's proposals. The initial decision date for that decision must be within the period of ten weeks beginning with the day on which the company enters administration. There are various means by which the decision can be sought. An administrator commits an offence if he fails without reasonable excuse to comply with these obligations.[27] In certain circumstances, including where the administrator has stated in the proposals that he thinks that the company has insufficient property to enable a distribution to be made to unsecured creditors (other than by way of the 'prescribed part'), the administrator is not automatically required to seek a decision from the company's creditors as to whether they approve the statement of proposals but must do so if requested by creditors whose debts amount to at least ten percent of the total debts of the company.[28]

23. The company's creditors may approve the administrator's proposals without modification or with modification to which the administrator consents. The administrator must

[25] Paragraph 46 of Schedule B1 to the Insolvency Act.
[26] Paragraph 49 of Schedule B1 to the Insolvency Act.
[27] Paragraph 51 of Schedule B1 to the Insolvency Act.
[28] Paragraph 52 of Schedule B1 to the Insolvency Act.

report any decision taken by the company's creditors to the English Court and certain other prescribed persons.[29] If the company's creditors have failed to approve the administrator's proposals, the English Court may make any order it thinks appropriate, including ending the administration from a specified time or that the company be wound up.[30]

24. The administrator is required to seek further decisions from the company's creditors if requested to do so by creditors whose debts amount to at least ten percent of the total debts of the company or directed to do so by the court.[31]

25. A creditor or member of a company in administration may apply to the English Court, claiming that the administrator is acting or has acted (or proposes to act) so as unfairly to harm the interests of the applicant (whether alone or in common with some or all other members or creditors). A creditor or member of a company in administration may also apply to the English Court, claiming that the administrator is not performing his functions as quickly or efficiently as is reasonably practicable. The English Court has wide discretion on such a challenge to the administrator's conduct to make such order as it thinks appropriate including to regulate the administrator's exercise of his functions, require the administrator to do or not to do a specified thing, require a decision of the company's creditors to be sought on a matter or provide for the appointment of the administrator to cease to have effect.[32]

26. The English Court may also examine the conduct of an administrator, on the application of certain prescribed persons, including any creditor of the company. Such an application must allege that the administrator has misapplied or retained money or other property of the company, has become accountable for money or other property of the company, has

[29] Paragraph 53 of Schedule B1 to the Insolvency Act.
[30] Paragraph 55(2) of Schedule B1 to the Insolvency Act.
[31] Paragraph 56 of Schedule B1 to the Insolvency Act.
[32] Paragraph 74 of Schedule B1 to the Insolvency Act.

breached a fiduciary or other duty in relation to the company or has been guilty of misfeasance. The English Court may order the administrator to repay, restore or account for money or property, to pay interest, or to contribute a sum by way of compensation for breach of duty or misfeasance. Any compensation awarded as a consequence is payable to the insolvent company for distribution to the creditors.[33]

[Declaration Page Follows]

[33] Paragraph 75 of Schedule B1 to the Insolvency Act.

CONCLUSION

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 22nd day of May 2019
In Leeds, United Kingdom

Charles Richard Obank
Partner, DLA Piper UK LLP

Exhibit A
(Schedule B1 to the Insolvency Act 1986)

SCHEDULES

[F1SCHEDULE B1

ADMINISTRATION

Annotations:

Amendments (Textual)

F1 Sch. B1 inserted (15.9.2003) by 2002 c. 40, ss. 248(2), 279, Sch. 16 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C1 Sch. B1: specified provisions applied (with modifications) (5.10.2004) by Energy Act 2004 (c. 20), ss. 159(1), 198, **Sch. 20 Pts. 1-3**; S.I. 2004/2575, **art. 2(1)**, Sch. 1

C2 Sch. B1 applied (with modifications) (1.7. 2005) by S.I. 1994/2421, art. 6(1), Sch. 2 (as amended (1.7.2005) by S.I. 2005/1516, **arts. 3**, 7, Sch. 1 (with art. 2))

C3 Sch. B1: specified provisions applied (with modifications) (1.10.2011) by Postal Services Act 2011 (c. 5), ss. 73, 93(2)(3), {Sch. 10 Pts. 1, 2}; S.I. 2011/2329, **art. 3** (with arts. 4, 5)

C4 Sch. B1 amendment to earlier affecting provision S.I. 1994/2421, Sch. 2 (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 11(b)**

ARRANGEMENT OF SCHEDULE

NATURE OF ADMINISTRATION

Administration

1 (1) For the purposes of this Act "administrator" of a company means a person appointed under this Schedule to manage the company's affairs, business and property.

(2) For the purposes of this Act—

(a) a company is "in administration" while the appointment of an administrator of the company has effect,

(b) a company "enters administration" when the appointment of an administrator takes effect,

(c) a company ceases to be in administration when the appointment of an administrator of the company ceases to have effect in accordance with this Schedule, and

(d) a company does not cease to be in administration merely because an administrator vacates office (by reason of resignation, death or otherwise) or is removed from office.

2 A person may be appointed as administrator of a company—

(a) by administration order of the court under paragraph 10,

(b) by the holder of a floating charge under paragraph 14, or

(c) by the company or its directors under paragraph 22.

Purpose of administration

3 (1) The administrator of a company must perform his functions with the objective of—

(a) rescuing the company as a going concern, or

(b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or

(c) realising property in order to make a distribution to one or more secured or preferential creditors.

(2) Subject to sub-paragraph (4), the administrator of a company must perform his functions in the interests of the company's creditors as a whole.

(3) The administrator must perform his functions with the objective specified in sub-paragraph (1)(a) unless he thinks either—

(a) that it is not reasonably practicable to achieve that objective, or

(b) that the objective specified in sub-paragraph (1)(b) would achieve a better result for the company's creditors as a whole.

(4) The administrator may perform his functions with the objective specified in sub-paragraph (1)(c) only if—

(a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-paragraph (1)(a) and (b), and

(b) he does not unnecessarily harm the interests of the creditors of the company as a whole.

4 The administrator of a company must perform his functions as quickly and efficiently as is reasonably practicable.

Status of administrator

5 An administrator is an officer of the court (whether or not he is appointed by the court).

General restrictions

6 A person may be appointed as administrator of a company only if he is qualified to act as an insolvency practitioner in relation to the company.

7 A person may not be appointed as administrator of a company which is in administration (subject to the provisions of paragraphs 90 to 97 and 100 to 103 about replacement and additional administrators).

8 (1) A person may not be appointed as administrator of a company which is in liquidation by virtue of—

(a) a resolution for voluntary winding up, or

(b) a winding-up order.

(2) Sub-paragraph (1)(a) is subject to paragraph 38.

(3) Sub-paragraph (1)(b) is subject to paragraphs 37 and 38.

9 (1) A person may not be appointed as administrator of a company which—

(a) has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 (c. 37) or 1987 (c. 22), but

(b) is not an authorised deposit taker.

(2) A person may not be appointed as administrator of a company which effects or carries out contracts of insurance.

(3) But sub-paragraph (2) does not apply to a company which—

(a) is exempt from the general prohibition in relation to effecting or carrying out contracts of insurance, or

(b) is an authorised deposit taker effecting or carrying out contracts of insurance in the course of a banking business.

(4) In this paragraph—

"authorised deposit taker" means a person with permission under Part IV of the Financial Services and Markets Act 2000 (c. 8) to accept deposits, and

"the general prohibition" has the meaning given by section 19 of that Act.

(5) This paragraph shall be construed in accordance with—

(a) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment),

(b) any relevant order under that section, and

(c) Schedule 2 to that Act (regulated activities).

APPOINTMENT OF ADMINISTRATOR BY COURT

Administration order

10 An administration order is an order appointing a person as the administrator of a company.

Conditions for making order

11 The court may make an administration order in relation to a company only if satisfied —

(a) that the company is or is likely to become unable to pay its debts, and

(b) that the administration order is reasonably likely to achieve the purpose of administration.

Administration application

12 (1) An application to the court for an administration order in respect of a company (an "administration application") may be made only by—

(a) the company,

(b) the directors of the company,

(c) one or more creditors of the company,

(d) the **[**F2designated officer**]** for a magistrates' court in the exercise of the power conferred by section 87A of the Magistrates' Courts Act 1980 (c. 43) (fine imposed on company), or

(e) a combination of persons listed in paragraphs (a) to (d).

(2) As soon as is reasonably practicable after the making of an administration application the applicant shall notify—

(a) any person who has appointed an administrative receiver of the company,

(b) any person who is or may be entitled to appoint an administrative receiver of the company,

(c) any person who is or may be entitled to appoint an administrator of the company under paragraph 14, and

(d) such other persons as may be prescribed.

(3) An administration application may not be withdrawn without the permission of the court.

(4) In sub-paragraph (1) "creditor" includes a contingent creditor and a prospective creditor.

[F3(5) Sub-paragraph (1) is without prejudice to section 7(4)(b).**]**

Annotations:

Amendments (Textual)

F2 Words in Sch. B1 para. 12(1)(d) substituted (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 299**; S.I. 2005/910, **art. 3(y)**

F3 Sch. B1 para. 12(5) added (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), **art. 2(2)**

Powers of court

13 (1) On hearing an administration application the court may—

(a) make the administration order sought;

(b) dismiss the application;

(c) adjourn the hearing conditionally or unconditionally;

(d) make an interim order;

(e) treat the application as a winding-up petition and make any order which the court could make under section 125;

(f) make any other order which the court thinks appropriate.

(2) An appointment of an administrator by administration order takes effect—

(a) at a time appointed by the order, or

(b) where no time is appointed by the order, when the order is made.

(3) An interim order under sub-paragraph (1)(d) may, in particular—

(a) restrict the exercise of a power of the directors or the company;

(b) make provision conferring a discretion on the court or on a person qualified to act as an insolvency practitioner in relation to the company.

(4) This paragraph is subject to paragraph 39.

Annotations:

Modifications etc. (not altering text)

C5 Sch. B1 para. 13 restricted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 162(3)**, 198; S.I. 2004/2575, **art. 2(1)**, Sch. 1

APPOINTMENT OF ADMINISTRATOR BY HOLDER OF FLOATING CHARGE

Power to appoint

14 (1) The holder of a qualifying floating charge in respect of a company's property may appoint an administrator of the company.

(2) For the purposes of sub-paragraph (1) a floating charge qualifies if created by an instrument which—

(a) states that this paragraph applies to the floating charge,

(b) purports to empower the holder of the floating charge to appoint an administrator of the company,

(c) purports to empower the holder of the floating charge to make an appointment which would be the appointment of an administrative receiver within the meaning given by section 29(2), or

(d) purports to empower the holder of a floating charge in Scotland to appoint a receiver who on appointment would be an administrative receiver.

(3) For the purposes of sub-paragraph (1) a person is the holder of a qualifying floating charge in respect of a company's property if he holds one or more debentures of the company secured—

(a) by a qualifying floating charge which relates to the whole or substantially the whole of the company's property,

(b) by a number of qualifying floating charges which together relate to the whole or substantially the whole of the company's property, or

(c) by charges and other forms of security which together relate to the whole or substantially the whole of the company's property and at least one of which is a qualifying floating charge.

Annotations:

Modifications etc. (not altering text)

C6 Sch. B1 para. 14 restricted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 163**, 198; S.I. 2004/2575, **art. 2(1)**, Sch. 1

Restrictions on power to appoint

15 (1) A person may not appoint an administrator under paragraph 14 unless—

(a) he has given at least two business days' written notice to the holder of any prior floating charge which satisfies paragraph 14(2), or

(b) the holder of any prior floating charge which satisfies paragraph 14(2) has consented in writing to the making of the appointment.

(2) One floating charge is prior to another for the purposes of this paragraph if—

(a) it was created first, or

(b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.

(3) Sub-paragraph (2) shall have effect in relation to Scotland as if the following were substituted for paragraph (a)—

(“) it has priority of ranking in accordance with section 464(4)(b) of the Companies Act 1985 (c. 6), ".

16 An administrator may not be appointed under paragraph 14 while a floating charge on which the appointment relies is not enforceable.

17 An administrator of a company may not be appointed under paragraph 14 if—

(a) a provisional liquidator of the company has been appointed under section 135, or

(b) an administrative receiver of the company is in office.

Notice of appointment

18 (1) A person who appoints an administrator of a company under paragraph 14 shall file with the court—

(a) a notice of appointment, and

(b) such other documents as may be prescribed.

(2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—

(a) that the person is the holder of a qualifying floating charge in respect of the company's property,

(b) that each floating charge relied on in making the appointment is (or was) enforceable on the date of the appointment, and

(c) that the appointment is in accordance with this Schedule.

(3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—

(a) that he consents to the appointment,

(b) that in his opinion the purpose of administration is reasonably likely to be achieved, and

(c) giving such other information and opinions as may be prescribed.

(4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).

(5) The notice of appointment and any document accompanying it must be in the prescribed form.

(6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.

(7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—

(a) which is false, and

(b) which he does not reasonably believe to be true.

Commencement of appointment

19 The appointment of an administrator under paragraph 14 takes effect when the requirements of paragraph 18 are satisfied.

20 A person who appoints an administrator under paragraph 14—

(a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 18 are satisfied, and

(b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

Invalid appointment: indemnity

21 (1) This paragraph applies where—

(a) a person purports to appoint an administrator under paragraph 14, and

(b) the appointment is discovered to be invalid.

(2) The court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS

Power to appoint

22 (1) A company may appoint an administrator.

(2) The directors of a company may appoint an administrator.

Annotations:

Modifications etc. (not altering text)

C7 Sch. B1 para. 22 restricted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 163**, 198; S.I. 2004/2575, **art. 2(1)**, Sch. 1

Restrictions on power to appoint

23 (1) This paragraph applies where an administrator of a company is appointed—

(a) under paragraph 22, or

(b) on an administration application made by the company or its directors.

(2) An administrator of the company may not be appointed under paragraph 22 during the period of 12 months beginning with the date on which the appointment referred to in sub-paragraph (1) ceases to have effect.

24 (1) If a moratorium for a company under Schedule A1 ends on a date when no voluntary arrangement is in force in respect of the company, this paragraph applies for the period of 12 months beginning with that date.

(2) This paragraph also applies for the period of 12 months beginning with the date on which a voluntary arrangement in respect of a company ends if—

(a) the arrangement was made during a moratorium for the company under Schedule A1, and

(b) the arrangement ends prematurely (within the meaning of section 7B).

(3) While this paragraph applies, an administrator of the company may not be appointed under paragraph 22.

25 An administrator of a company may not be appointed under paragraph 22 if—

(a) a petition for the winding up of the company has been presented and is not yet disposed of,

(b) an administration application has been made and is not yet disposed of, or

(c) an administrative receiver of the company is in office.

[F4 25A (1) Paragraph 25(a) does not prevent the appointment of an administrator of a company if the petition for the winding up of the company was presented after the person proposing to make the appointment filed the notice of intention to appoint with the court under paragraph 27.

(2) But sub-paragraph (1) does not apply if the petition was presented under a provision mentioned in paragraph 42(4).**]**

Annotations:

Amendments (Textual)

F4 Sch. B1 para. 25A inserted (26.5.2015) by Deregulation Act 2015 (c. 20), s. 115(3)(n), **Sch. 6 para. 5**

Notice of intention to appoint

26 (1) A person who proposes to make an appointment under paragraph 22 shall give at least five business days' written notice to—

(a) any person who is or may be entitled to appoint an administrative receiver of the company, and

(b) any person who is or may be entitled to appoint an administrator of the company under paragraph 14.

(2) A person who **[**F5 gives notice of intention to appoint under sub-paragraph (1)**]** shall also give such notice as may be prescribed to such other persons as may be prescribed.

(3) A notice under this paragraph must—

(a) identify the proposed administrator, and

(b) be in the prescribed form.

Annotations:

Amendments (Textual)

F5 Words in Sch. B1 para. 26(2) substituted (1.10.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 6**; S.I. 2015/1732, art. 2(e)(ii)

27 (1) A person who gives notice of intention to appoint under paragraph 26 shall file with the court as soon as is reasonably practicable a copy of—

(a) the notice, and

(b) any document accompanying it.

(2) The copy filed under sub-paragraph (1) must be accompanied by a statutory declaration made by or on behalf of the person who proposes to make the appointment—

(a) that the company is or is likely to become unable to pay its debts,

(b) that the company is not in liquidation, and

(c) that, so far as the person making the statement is able to ascertain, the appointment is not prevented by paragraphs 23 to 25, and

(d) to such additional effect, and giving such information, as may be prescribed.

(3) A statutory declaration under sub-paragraph (2) must—

(a) be in the prescribed form, and

(b) be made during the prescribed period.

(4) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—

(a) which is false, and

(b) which he does not reasonably believe to be true.

28 (1) An appointment may not be made under paragraph 22 unless the person who makes the appointment has complied with any requirement of paragraphs 26 and 27 and—

(a) the period of notice specified in paragraph 26(1) has expired, or

(b) each person to whom notice has been given under paragraph 26(1) has consented in writing to the making of the appointment.

(2) An appointment may not be made under paragraph 22 after the period of ten business days beginning with the date on which the notice of intention to appoint is filed under paragraph 27(1).

Notice of appointment

29 (1) A person who appoints an administrator of a company under paragraph 22 shall file with the court—

(a) a notice of appointment, and

(b) such other documents as may be prescribed.

(2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—

(a) that the person is entitled to make an appointment under paragraph 22,

(b) that the appointment is in accordance with this Schedule, and

(c) that, so far as the person making the statement is able to ascertain, the statements made and information given in the statutory declaration filed with the notice of intention to appoint remain accurate.

(3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—

(a) that he consents to the appointment,

(b) that in his opinion the purpose of administration is reasonably likely to be achieved, and

(c) giving such other information and opinions as may be prescribed.

(4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).

(5) The notice of appointment and any document accompanying it must be in the prescribed form.

(6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.

(7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—

(a) which is false, and

(b) which he does not reasonably believe to be true.

30 In a case in which no person is entitled to notice of intention to appoint under paragraph 26(1) (and paragraph 28 therefore does not apply)—

(a) the statutory declaration accompanying the notice of appointment must include the statements and information required under paragraph 27(2), and

(b) paragraph 29(2)(c) shall not apply.

Commencement of appointment

31 The appointment of an administrator under paragraph 22 takes effect when the requirements of paragraph 29 are satisfied.

32 A person who appoints an administrator under paragraph 22—

(a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 29 are satisfied, and

(b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

33 If before the requirements of paragraph 29 are satisfied the company enters administration by virtue of an administration order or an appointment under paragraph 14—

(a) the appointment under paragraph 22 shall not take effect, and

(b) paragraph 32 shall not apply.

Invalid appointment: indemnity

34 (1) This paragraph applies where—

(a) a person purports to appoint an administrator under paragraph 22, and

(b) the appointment is discovered to be invalid.

(2) The court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

ADMINISTRATION APPLICATION – SPECIAL CASES

Application by holder of floating charge

35 (1) This paragraph applies where an administration application in respect of a company —

(a) is made by the holder of a qualifying floating charge in respect of the company's property, and

(b) includes a statement that the application is made in reliance on this paragraph.

(2) The court may make an administration order—

(a) whether or not satisfied that the company is or is likely to become unable to pay its debts, but

(b) only if satisfied that the applicant could appoint an administrator under paragraph 14.

Intervention by holder of floating charge

36 (1) This paragraph applies where—

(a) an administration application in respect of a company is made by a person who is not the holder of a qualifying floating charge in respect of the company's property, and

(b) the holder of a qualifying floating charge in respect of the company's property applies to the court to have a specified person appointed as administrator (and not the person specified by the administration applicant).

(2) The court shall grant an application under sub-paragraph (1)(b) unless the court thinks it right to refuse the application because of the particular circumstances of the case.

Application where company in liquidation

37 (1) This paragraph applies where the holder of a qualifying floating charge in respect of a company's property could appoint an administrator under paragraph 14 but for paragraph 8(1)(b).

(2) The holder of the qualifying floating charge may make an administration application.

(3) If the court makes an administration order on hearing an application made by virtue of sub-paragraph (2)—

(a) the court shall discharge the winding-up order,

(b) the court shall make provision for such matters as may be prescribed,

(c) the court may make other consequential provision,

(d) the court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and

(e) this Schedule shall have effect with such modifications as the court may specify.

38 (1) The liquidator of a company may make an administration application.

(2) If the court makes an administration order on hearing an application made by virtue of sub-paragraph (1)—

(a) the court shall discharge any winding-up order in respect of the company,

(b) the court shall make provision for such matters as may be prescribed,

(c) the court may make other consequential provision,

(d) the court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and

(e) this Schedule shall have effect with such modifications as the court may specify.

Effect of administrative receivership

39 (1) Where there is an administrative receiver of a company the court must dismiss an administration application in respect of the company unless—

(a) the person by or on behalf of whom the receiver was appointed consents to the making of the administration order,

(b) the court thinks that the security by virtue of which the receiver was appointed would be liable to be released or discharged under sections 238 to 240 (transaction at undervalue and preference) if an administration order were made,

(c) the court thinks that the security by virtue of which the receiver was appointed would be avoided under section 245 (avoidance of floating charge) if an administration order were made, or

(d) the court thinks that the security by virtue of which the receiver was appointed would be challengeable under section 242 (gratuitous alienations) or 243 (unfair preferences) or under any rule of law in Scotland.

(2) Sub-paragraph (1) applies whether the administrative receiver is appointed before or after the making of the administration application.

EFFECT OF ADMINISTRATION

Dismissal of pending winding-up petition

40 (1) A petition for the winding up of a company—

(a) shall be dismissed on the making of an administration order in respect of the company, and

(b) shall be suspended while the company is in administration following an appointment under paragraph 14.

(2) Sub-paragraph (1)(b) does not apply to a petition presented under—

(a) section 124A (public interest), or

[[F6](aa) section 124B (SEs),**]**

(b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by [F7Financial Conduct Authority or Prudential Regulation Authority]).

(3) Where an administrator becomes aware that a petition was presented under a provision referred to in sub-paragraph (2) before his appointment, he shall apply to the court for directions under paragraph 63.

Annotations:

Amendments (Textual)

F6 Sch. B1 para. 40(2)(aa) inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), **reg. 73(4)(c)**

F7 Words in Sch. B1 para. 40(2)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 55(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C8 Sch. B1 para. 40 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 119**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C9 Sch. B1 para. 40(1)(a) applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Dismissal of administrative or other receiver

41 (1) When an administration order takes effect in respect of a company any administrative receiver of the company shall vacate office.

(2) Where a company is in administration, any receiver of part of the company's property shall vacate office if the administrator requires him to.

(3) Where an administrative receiver or receiver vacates office under sub-paragraph (1) or (2)—

(a) his remuneration shall be charged on and paid out of any property of the company which was in his custody or under his control immediately before he vacated office, and

(b) he need not take any further steps under section 40 or 59.

(4) In the application of sub-paragraph (3)(a)—

(a) "remuneration" includes expenses properly incurred and any indemnity to which the administrative receiver or receiver is entitled out of the assets of the company,

(b) the charge imposed takes priority over security held by the person by whom or on whose behalf the administrative receiver or receiver was appointed, and

(c) the provision for payment is subject to paragraph 43.

Annotations:

Modifications etc. (not altering text)

C10 Sch. B1 para. 41 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

C11 Sch. B1 para. 41(2) excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 8(2)**

Moratorium on insolvency proceedings

42 (1) This paragraph applies to a company in administration.

(2) No resolution may be passed for the winding up of the company.

(3) No order may be made for the winding up of the company.

(4) Sub-paragraph (3) does not apply to an order made on a petition presented under—

(a) section 124A (public interest), or

[F8(aa) section 124B (SEs),**]**

(b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by **[**F9Financial Conduct Authority or Prudential Regulation Authority**]**).

(5) If a petition presented under a provision referred to in sub-paragraph (4) comes to the attention of the administrator, he shall apply to the court for directions under paragraph 63.

Annotations:

Amendments (Textual)

F8 Sch. B1 para. 42(4)(aa) inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), **reg. 73(4)(c)**

F9 Words in Sch. B1 para. 42(4)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 55(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C12 Sch. B1 para. 42 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 119**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C13 Sch. B1 para. 42 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Moratorium on other legal process

43 (1) This paragraph applies to a company in administration.

(2) No step may be taken to enforce security over the company's property except—

(a) with the consent of the administrator, or

(b) with the permission of the court.

(3) No step may be taken to repossess goods in the company's possession under a hire-purchase agreement except—

(a) with the consent of the administrator, or

(b) with the permission of the court.

(4) A landlord may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company except—

(a) with the consent of the administrator, or

(b) with the permission of the court.

(5) In Scotland, a landlord may not exercise a right of irritancy in relation to premises let to the company except—

(a) with the consent of the administrator, or

(b) with the permission of the court.

(6) No legal process (including legal proceedings, execution, distress and diligence) may be instituted or continued against the company or property of the company except—

(a) with the consent of the administrator, or

(b) with the permission of the court.

[F10(6A) An administrative receiver of the company may not be appointed.**]**

(7) Where the court gives permission for a transaction under this paragraph it may impose a condition on or a requirement in connection with the transaction.

(8) In this paragraph "landlord" includes a person to whom rent is payable.

Annotations:

Amendments (Textual)

F10 Sch. B1 para. 43(6A) inserted (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), **art. 2(3)**

Modifications etc. (not altering text)

C14 Sch. B1 para. 43 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

C15 Sch. B1 para. 43(2) excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 8(1)(a)**

Interim moratorium

44 (1) This paragraph applies where an administration application in respect of a company has been made and—

(a) the application has not yet been granted or dismissed, or

(b) the application has been granted but the administration order has not yet taken effect.

(2) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator under paragraph 14 is filed with the court until—

(a) the appointment of the administrator takes effect, or

(b) the period of five business days beginning with the date of filing expires without an administrator having been appointed.

(3) Sub-paragraph (2) has effect in relation to a notice of intention to appoint only if it is in the prescribed form.

(4) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator is filed with the court under paragraph 27(1) until—

(a) the appointment of the administrator takes effect, or

(b) the period specified in paragraph 28(2) expires without an administrator having been appointed.

(5) The provisions of paragraphs 42 and 43 shall apply (ignoring any reference to the consent of the administrator).

(6) If there is an administrative receiver of the company when the administration application is made, the provisions of paragraphs 42 and 43 shall not begin to apply by virtue of this paragraph until the person by or on behalf of whom the receiver was appointed consents to the making of the administration order.

(7) This paragraph does not prevent or require the permission of the court for—

(a) the presentation of a petition for the winding up of the company under a provision mentioned in paragraph 42(4),

(b) the appointment of an administrator under paragraph 14,

(c) the appointment of an administrative receiver of the company, or

(d) the carrying out by an administrative receiver (whenever appointed) of his functions.

Annotations:

Modifications etc. (not altering text)

C16 Sch. B1 para. 44 restricted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 162(4)**, **163(4)**, 198; S.I. 2004/2575, **art. 2(1)**, Sch. 1

C17 Sch. B1 para. 44 restricted (1.10.2011) by Postal Services Act 2011 (c. 5), **ss. 76(4)**, 85(8), 93(2)(3); S.I. 2011/2329, **art. 3** (with arts. 4, 5)

C18 Sch. B1 para. 44 restricted (1.10.2011) by Postal Services Act 2011 (c. 5), **ss. 77(5)**, 85(8), 93(2)(3); S.I. 2011/2329, **art. 3** (with arts. 4, 5)

C19 Sch. B1 para. 44(1)(a) applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

C20 Sch. B1 para. 44(5) applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Publicity

[F11 45 (1) While a company is in administration, every business document issued by or on behalf of the company or the administrator, and all the company's websites, must state—

(a) the name of the administrator, and

(b) that the affairs, business and property of the company are being managed by the administrator.

(2) Any of the following persons commits an offence if without reasonable excuse the person authorises or permits a contravention of sub-paragraph (1)—

(a) the administrator,

(b) an officer of the company, and

(c) the company.

(3) In sub-paragraph (1) "business document" means—

(a) an invoice,

(b) an order for goods or services,

(c) a business letter, and

(d) an order form,

whether in hard copy, electronic or any other form.**]**

Annotations:

Amendments (Textual)

F11 Sch. B1 para. 45 substituted (1.10.2008) by The Companies (Trading Disclosures) (Insolvency) Regulations 2008 (S.I. 2008/1897), **reg. 4(1)**

PROCESS OF ADMINISTRATION

Announcement of administrator's appointment

46 (1) This paragraph applies where a person becomes the administrator of a company.

(2) As soon as is reasonably practicable the administrator shall—

(a) send a notice of his appointment to the company, and

(b) publish a notice of his appointment in the prescribed manner.

(3) As soon as is reasonably practicable the administrator shall—

(a) obtain a list of the company's creditors, and

(b) send a notice of his appointment to each creditor of whose claim and address he is aware.

(4) The administrator shall send a notice of his appointment to the registrar of companies before the end of the period of 7 days beginning with the date specified in sub-paragraph (6).

(5) The administrator shall send a notice of his appointment to such persons as may be prescribed before the end of the prescribed period beginning with the date specified in sub-paragraph (6).

(6) The date for the purpose of sub-paragraphs (4) and (5) is—

(a) in the case of an administrator appointed by administration order, the date of the order,

(b) in the case of an administrator appointed under paragraph 14, the date on which he receives notice under paragraph 20, and

(c) in the case of an administrator appointed under paragraph 22, the date on which he receives notice under paragraph 32.

(7) The court may direct that sub-paragraph (3)(b) or (5)—

(a) shall not apply, or

(b) shall apply with the substitution of a different period.

(8) A notice under this paragraph must—

(a) contain the prescribed information, and

(b) be in the prescribed form.

(9) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

Annotations:

Modifications etc. (not altering text)

C21 Sch. B1 para. 46 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Statement of company's affairs

47 (1) As soon as is reasonably practicable after appointment the administrator of a company shall by notice in the prescribed form require one or more relevant persons to provide the administrator with a statement of the affairs of the company.

(2) The statement must—

(a) be verified by a statement of truth in accordance with Civil Procedure Rules,
(b) be in the prescribed form,
(c) give particulars of the company's property, debts and liabilities,
(d) give the names and addresses of the company's creditors,
(e) specify the security held by each creditor,
(f) give the date on which each security was granted, and
(g) contain such other information as may be prescribed.

(3) In sub-paragraph (1) "relevant person" means—

(a) a person who is or has been an officer of the company,
(b) a person who took part in the formation of the company during the period of one year ending with the date on which the company enters administration,
(c) a person employed by the company during that period, and
(d) a person who is or has been during that period an officer or employee of a company which is or has been during that year an officer of the company.

(4) For the purpose of sub-paragraph (3) a reference to employment is a reference to employment through a contract of employment or a contract for services.

(5) In Scotland, a statement of affairs under sub-paragraph (1) must be a statutory declaration made in accordance with the Statutory Declarations Act 1835 (c. 62) (and sub-paragraph (2)(a) shall not apply).

Annotations:

Modifications etc. (not altering text)

C22 Sch. B1 para. 47 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

48 (1) A person required to submit a statement of affairs must do so before the end of the period of 11 days beginning with the day on which he receives notice of the requirement.

(2) The administrator may—

(a) revoke a requirement under paragraph 47(1), or
(b) extend the period specified in sub-paragraph (1) (whether before or after expiry).

(3) If the administrator refuses a request to act under sub-paragraph (2)—

(a) the person whose request is refused may apply to the court, and

(b) the court may take action of a kind specified in sub-paragraph (2).

(4) A person commits an offence if he fails without reasonable excuse to comply with a requirement under paragraph 47(1).

Annotations:

Modifications etc. (not altering text)

C23 Sch. B1 para. 48 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Administrator's proposals

49 (1) The administrator of a company shall make a statement setting out proposals for achieving the purpose of administration.

(2) A statement under sub-paragraph (1) must, in particular—

(a) deal with such matters as may be prescribed, and

(b) where applicable, explain why the administrator thinks that the objective mentioned in paragraph 3(1)(a) or (b) cannot be achieved.

(3) Proposals under this paragraph may include—

(a) a proposal for a voluntary arrangement under Part I of this Act (although this paragraph is without prejudice to section 4(3));

(b) a proposal for a compromise or arrangement to be sanctioned under **[**F12Part 26 of the Companies Act 2006 (arrangements and reconstructions)**]** .

(4) The administrator shall send a copy of the statement of his proposals—

(a) to the registrar of companies,

(b) to every creditor of the company **[**F13, other than an opted-out creditor,**]** of whose claim and address he is aware, and

(c) to every member of the company of whose address he is aware.

(5) The administrator shall comply with sub-paragraph (4)—

(a) as soon as is reasonably practicable after the company enters administration, and

(b) in any event, before the end of the period of eight weeks beginning with the day on which the company enters administration.

(6) The administrator shall be taken to comply with sub-paragraph (4)(c) if he publishes in the prescribed manner a notice undertaking to provide a copy of the statement of proposals free of charge to any member of the company who applies in writing to a specified address.

(7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).

(8) A period specified in this paragraph may be varied in accordance with paragraph 107.

Annotations:

Amendments (Textual)

F12 Words in Sch. B1 para. 49(3)(b) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 3(1), **Sch. 1 para. 100(a)** (with arts. 6, 11, 12)

F13 Words in Sch. B1 para. 49(4)(b) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(2)**; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C24 Sch. B1 para. 49 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

C25 Sch. B1 para. 49 modified (E.W.) (7.6.2013) by The Energy Supply Company Administration Rules 2013 (S.I. 2013/1046), rules 1, **20(2)** (with rules 3, 208)

[F14 Creditors' meeting]

50 [F14(1) In this Schedule "creditors' meeting" means a meeting of creditors of a company summoned by the administrator—

(a) in the prescribed manner, and

(b) giving the prescribed period of notice to every creditor of the company of whose claim and address he is aware.

(2) A period prescribed under sub-paragraph (1)(b) may be varied in accordance with paragraph 107.

(3) A creditors' meeting shall be conducted in accordance with the rules.]

Annotations:

Amendments (Textual)

F14 Sch. B1 para. 50 and heading omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(3)**; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C26 Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

[F15 Consideration of administrator's proposals by creditors]

51 [F16(1) The administrator must seek a decision from the company's creditors as to whether they approve the proposals set out in the statement made under paragraph 49(1).

(2) The initial decision date for that decision must be within the period of 10 weeks beginning with the day on which the company enters administration.

(3) The "initial decision date" for that decision—

(a) if the decision is initially sought using the deemed consent procedure, is the date on which a decision will be made if the creditors by that procedure approve the proposals, and

(b) if the decision is initially sought using a qualifying decision procedure, is the date on or before which a decision will be made if it is made by that

qualifying decision procedure (assuming that date does not change after the procedure is instigated).**]**

(4) A period specified in this paragraph may be varied in accordance with paragraph 107.

(5) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

Annotations:

Amendments (Textual)

F15 Sch. B1 para. 51 heading substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(4)**; S.I. 2015/1329, reg. 3(d)

F16 Sch. B1 para. 51(1)-(3) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(5)**; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C27 Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

52 (1) Paragraph 51(1) shall not apply where the statement of proposals states that the administrator thinks—

(a) that the company has sufficient property to enable each creditor of the company to be paid in full,

(b) that the company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of section 176A(2)(a), or

(c) that neither of the objectives specified in paragraph 3(1)(a) and (b) can be achieved.

(2) But the administrator shall **[**F17seek a decision from the company's creditors as to whether they approve the proposals set out in the statement made under paragraph 49(1) if requested to do so**]** —

(a) by creditors of the company whose debts amount to at least 10% of the total debts of the company,

(b) in the prescribed manner, and

(c) in the prescribed period.

[F18(3) Where a decision is sought by virtue of sub-paragraph (2) the initial decision date (as defined in paragraph 51(3)) must be within the prescribed period.**]**

(4) The period prescribed under sub-paragraph (3) may be varied in accordance with paragraph 107.

Annotations:

Amendments (Textual)

F17 Words in Sch. B1 para. 52(2) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(6)**; S.I. 2015/1329, reg. 3(d)

F18 Sch. B1 para. 52(3) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(7)**; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C28 Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

[F19Creditors' decision]

53 **[**F20(1) The company's creditors may approve the administrator's proposals—

(a) without modification, or

(b) with modification to which the administrator consents.**]**

(2) **[**F21The**]** administrator shall as soon as is reasonably practicable report any decision taken **[**F22by the company's creditors**]** to—

(a) the court,

(b) the registrar of companies, and

(c) such other persons as may be prescribed.

(3) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (2).

Annotations:

Amendments (Textual)

F19 Sch. B1 para. 53 heading substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(8)**; S.I. 2015/1329, reg. 3(d)

F20 Sch. B1 para. 53(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(9)**; S.I. 2015/1329, reg. 3(d)

F21 Word in Sch. B1 para. 53(2) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(10)(a)**; S.I. 2015/1329, reg. 3(d)

F22 Words in Sch. B1 para. 53(2) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(10)(b)**; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C29 Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Revision of administrator's proposals

54 (1) This paragraph applies where—

(a) an administrator's proposals have been approved (with or without modification) **[**F23by the company's creditors**]** ,

(b) the administrator proposes a revision to the proposals, and

(c) the administrator thinks that the proposed revision is substantial.

(2) The administrator shall—

(a) **[**F24summon a creditors' meeting,**]**

(b) send a statement in the prescribed form of the proposed revision **[**F25with the notice of the meeting sent**]** to each creditor **[**F26who is not an opted-out creditor**]** ,

(c) send a copy of the statement, within the prescribed period, to each member of the company of whose address he is aware, and

[F27(d) seek a decision from the company's creditors as to whether they approve the proposed revision.**]**

(3) The administrator shall be taken to have complied with sub-paragraph (2)(c) if he publishes a notice undertaking to provide a copy of the statement free of charge to any member of the company who applies in writing to a specified address.

(4) A notice under sub-paragraph (3) must be published—

(a) in the prescribed manner, and

(b) within the prescribed period.

[F28(5) The company's creditors may approve the proposed revision—

(a) without modification, or

(b) with modification to which the administrator consents.**]**

(6) **[**F29The**]** administrator shall as soon as is reasonably practicable report any decision taken **[**F30by the company's creditors**]** to—

(a) the court,

(b) the registrar of companies, and

(c) such other persons as may be prescribed.

(7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (6).

Annotations:

Amendments (Textual)

F23 Words in Sch. B1 para. 54(1)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(11)**; S.I. 2015/1329, reg. 3(d)

F24 Sch. B1 para. 54(2)(a) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(12)**; S.I. 2015/1329, reg. 3(d)

F25 Words in Sch. B1 para. 54(2)(b) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(13)(a)**; S.I. 2015/1329, reg. 3(d)

F26 Words in Sch. B1 para. 54(2)(b) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(13)(b)**; S.I. 2015/1329, reg. 3(d)

F27 Sch. B1 para. 54(2)(d) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(14)**; S.I. 2015/1329, reg. 3(d)

F28 Sch. B1 para. 54(5) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(15)**; S.I. 2015/1329, reg. 3(d)

F29 Word in Sch. B1 para. 54(6) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(16)(a)**; S.I. 2015/1329, reg. 3(d)

F30 Word in Sch. B1 para. 54(6) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(16)(b)**; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C30 Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Failure to obtain approval of administrator's proposals

55 **[**F31(1) This paragraph applies where an administrator—

(a) reports to the court under paragraph 53 that a company's creditors have failed to approve the administrator's proposals, or

(b) reports to the court under paragraph 54 that a company's creditors have failed to approve a revision of the administrator's proposals.**]**

(2) The court may—

(a) provide that the appointment of an administrator shall cease to have effect from a specified time;

(b) adjourn the hearing conditionally or unconditionally;

(c) make an interim order;

(d) make an order on a petition for winding up suspended by virtue of paragraph 40(1)(b);

(e) make any other order (including an order making consequential provision) that the court thinks appropriate.

Annotations:

Amendments (Textual)

F31 Sch. B1 para. 55(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(17)**; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C31 Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

*Further creditors' **[**F32decisions**]***

56 (1) The administrator of a company shall **[**F33seek a decision from the company's creditors on a matter**]** if—

(a) it is requested in the prescribed manner by creditors of the company whose debts amount to at least 10% of the total debts of the company, or

(b) he is directed by the court to **[**F34do so**]** .

(2) An administrator commits an offence if he fails without reasonable excuse to **[**F35seek a decision from the company's creditors on a matter**]** as required by this paragraph.

Annotations:

Amendments (Textual)

F32 Word in Sch. B1 para. 56 heading substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(18)**; S.I. 2015/1329, reg. 3(d)

F33 Words in Sch. B1 para. 56(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(19)(a)**; S.I. 2015/1329, reg. 3(d)

F34 Words in Sch. B1 para. 56(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(19)(b)**; S.I. 2015/1329, reg. 3(d)

F35 Words in Sch. B1 para. 56(2) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(20)**; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C32 Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Creditors' committee

57 (1) **[**[F36]The company's creditors may, in accordance with the rules,**]** establish a creditors' committee.

(2) A creditors' committee shall carry out functions conferred on it by or under this Act.

(3) A creditors' committee may require the administrator—

(a) to attend on the committee at any reasonable time of which he is given at least seven days' notice, and

(b) to provide the committee with information about the exercise of his functions.

Annotations:

Amendments (Textual)

F36 Words in Sch. B1 para. 57(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(21)**; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C33 Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

[**[F37]Correspondence instead of creditors' meeting**]

58 **[**[F37](1) Anything which is required or permitted by or under this Schedule to be done at a creditors' meeting may be done by correspondence between the administrator and creditors—

(a) in accordance with the rules, and

(b) subject to any prescribed condition.

(2) A reference in this Schedule to anything done at a creditors' meeting includes a reference to anything done in the course of correspondence in reliance on sub-paragraph (1).

(3) A requirement to hold a creditors' meeting is satisfied by conducting correspondence in accordance with this paragraph.**]**

Annotations:

Amendments (Textual)

F37 Sch. B1 para. 58 and heading omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(22)**; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C34 Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

FUNCTIONS OF ADMINISTRATOR

General powers

59 (1) The administrator of a company may do anything necessary or expedient for the management of the affairs, business and property of the company.

(2) A provision of this Schedule which expressly permits the administrator to do a specified thing is without prejudice to the generality of sub-paragraph (1).

(3) A person who deals with the administrator of a company in good faith and for value need not inquire whether the administrator is acting within his powers.

Annotations:

Modifications etc. (not altering text)

C35 Sch. B1 para. 59 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

60 [F38(1)] The administrator of a company has the powers specified in Schedule 1 to this Act.

[F39(2) But the power to sell, hire out or otherwise dispose of property is subject to any regulations that may be made under paragraph 60A.]

Annotations:

Amendments (Textual)

F38 Sch. B1 para. 60 renumbered as Sch. B1 para. 60(1) (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 129(2)**, 164(3)(i)(ii)

F39 Sch. B1 para. 60(2) inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 129(3)**, 164(3)(i)(ii)

Modifications etc. (not altering text)

C36 Sch. B1 para. 60 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

[F40 60A (1) The Secretary of State may by regulations make provision for—

(a) prohibiting, or

(b) imposing requirements or conditions in relation to,

the disposal, hiring out or sale of property of a company by the administrator to a connected person in circumstances specified in the regulations.

(2) Regulations under this paragraph may in particular require the approval of, or provide for the imposition of requirements or conditions by—

(a) creditors of the company,

(b) the court, or

(c) a person of a description specified in the regulations.

(3) In sub-paragraph (1), "connected person", in relation to a company, means—

(a) a relevant person in relation to the company, or

(b) a company connected with the company.

(4) For the purposes of sub-paragraph (3)—

(a) "relevant person", in relation to a company, means—

(i) a director or other officer, or shadow director, of the company;

(ii) a non-employee associate of such a person;

(iii) a non-employee associate of the company;

(b) a company is connected with another if any relevant person of one is or has been a relevant person of the other.

(5) In sub-paragraph (4), "non-employee associate" of a person means a person who is an associate of that person otherwise than by virtue of employing or being employed by that person.

(6) Subsection (10) of section 435 (extended definition of company) applies for the purposes of sub-paragraphs (3) to (5) as it applies for the purposes of that section.

(7) Regulations under this paragraph may—

(a) make different provision for different purposes;

(b) make incidental, consequential, supplemental and transitional provision.

(8) Regulations under this paragraph are to be made by statutory instrument.

(9) Regulations under this paragraph may not be made unless a draft of the statutory instrument containing the regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

(10) This paragraph expires at the end of the period of 5 years beginning with the day on which it comes into force unless the power conferred by it is exercised during that period.**]**

Annotations:

Amendments (Textual)

F40 Sch. B1 para. 60A inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 129(4)**, 164(3)(i)(ii)

61 The administrator of a company—

(a) may remove a director of the company, and

(b) may appoint a director of the company (whether or not to fill a vacancy).

Annotations:

Modifications etc. (not altering text)

C37 Sch. B1 para. 61 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

62 The administrator of a company **[**[F41]may—

(a) call a meeting of members of the company;

(b) seek a decision on any matter from the company's creditors.**]**

Annotations:

Amendments (Textual)

F41 Words in Sch. B1 para. 62 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(23)**; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C38 Sch. B1 para. 62 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

63 The administrator of a company may apply to the court for directions in connection with his functions.

Annotations:

Modifications etc. (not altering text)

C39 Sch. B1 para. 63 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

64 (1) A company in administration or an officer of a company in administration may not exercise a management power without the consent of the administrator.

(2) For the purpose of sub-paragraph (1)—

(a) "management power" means a power which could be exercised so as to interfere with the exercise of the administrator's powers,

(b) it is immaterial whether the power is conferred by an enactment or an instrument, and

(c) consent may be general or specific.

Annotations:

Modifications etc. (not altering text)

C40 Sch. B1 para. 64 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Distribution

65 (1) The administrator of a company may make a distribution to a creditor of the company.

(2) Section 175 shall apply in relation to a distribution under this paragraph as it applies in relation to a winding up.

(3) A payment may not be made by way of distribution under this paragraph to a creditor of the company who is neither secured nor preferential **[**[F42]unless—

(a) the distribution is made by virtue of section 176A(2)(a), or**]**

Annotations:

Amendments (Textual)

F42 Words in Sch. B1 para. 65(3) substituted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 128(2)**, 164(3)(i)(ii)

Modifications etc. (not altering text)

C41 Sch. B1 para. 65 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

C42 Sch. B1 para. 65(1) restricted (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 2(5)**

C43 Sch. B1 para. 65(2) applied by The Financial Market and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 14(5)(a)(i) (as substituted (1.10.2009) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 4(d)(ii)**)

66 The administrator of a company may make a payment otherwise than in accordance with paragraph 65 or paragraph 13 of Schedule 1 if he thinks it likely to assist achievement of the purpose of administration.

Annotations:

Modifications etc. (not altering text)

C44 Sch. B1 para. 66 restricted (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 2(5)**

C45 Sch. B1 para. 66 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

General duties

67 The administrator of a company shall on his appointment take custody or control of all the property to which he thinks the company is entitled.

Annotations:

Modifications etc. (not altering text)

C46 Sch. B1 para. 67 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

68 (1) Subject to sub-paragraph (2), the administrator of a company shall manage its affairs, business and property in accordance with—

(a) any proposals approved under paragraph 53,

(b) any revision of those proposals which is made by him and which he does not consider substantial, and

(c) any revision of those proposals approved under paragraph 54.

(2) If the court gives directions to the administrator of a company in connection with any aspect of his management of the company's affairs, business or property, the administrator shall comply with the directions.

(3) The court may give directions under sub-paragraph (2) only if—

(a) no proposals have been approved under paragraph 53,

(b) the directions are consistent with any proposals or revision approved under paragraph 53 or 54,

(c) the court thinks the directions are required in order to reflect a change in circumstances since the approval of proposals or a revision under paragraph 53 or 54, or

(d) the court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under paragraph 53 or 54.

Annotations:

Modifications etc. (not altering text)

C47 Sch. B1 para. 68 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Administrator as agent of company

69 In exercising his functions under this Schedule the administrator of a company acts as its agent.

Annotations:

Modifications etc. (not altering text)

C48 Sch. B1 para. 69 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Charged property: floating charge

70 (1) The administrator of a company may dispose of or take action relating to property which is subject to a floating charge as if it were not subject to the charge.

(2) Where property is disposed of in reliance on sub-paragraph (1) the holder of the floating charge shall have the same priority in respect of acquired property as he had in respect of the property disposed of.

(3) In sub-paragraph (2) "acquired property" means property of the company which directly or indirectly represents the property disposed of.

Annotations:

Modifications etc. (not altering text)

C49 Sch. B1 para. 70 excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 8(1)(b)**

C50 Sch. B1 para. 70 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Charged property: non-floating charge

71 (1) The court may by order enable the administrator of a company to dispose of property which is subject to a security (other than a floating charge) as if it were not subject to the security.

(2) An order under sub-paragraph (1) may be made only—

(a) on the application of the administrator, and

(b) where the court thinks that disposal of the property would be likely to promote the purpose of administration in respect of the company.

(3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums secured by the security—

(a) the net proceeds of disposal of the property, and

(b) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the property at market value.

(4) If an order under this paragraph relates to more than one security, application of money under sub-paragraph (3) shall be in the order of the priorities of the securities.

(5) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar of companies before the end of the period of 14 days starting with the date of the order.

(6) An administrator commits an offence if he fails to comply with sub-paragraph (5) without reasonable excuse.

Annotations:

Modifications etc. (not altering text)

C51 Sch. B1 para. 71 excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 8(1)(b)**

C52 Sch. B1 para. 71 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Hire-purchase property

72 (1) The court may by order enable the administrator of a company to dispose of goods which are in the possession of the company under a hire-purchase agreement as if all the rights of the owner under the agreement were vested in the company.

(2) An order under sub-paragraph (1) may be made only—

(a) on the application of the administrator, and

(b) where the court thinks that disposal of the goods would be likely to promote the purpose of administration in respect of the company.

(3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums payable under the hire-purchase agreement—

(a) the net proceeds of disposal of the goods, and

(b) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the goods at market value.

(4) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar of companies before the end of the period of 14 days starting with the date of the order.

(5) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (4).

Annotations:

Modifications etc. (not altering text)

C53 Sch. B1 para. 72 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Protection for secured or preferential creditor

73 (1) An administrator's statement of proposals under paragraph 49 may not include any action which—

(a) affects the right of a secured creditor of the company to enforce his security,

(b) would result in a preferential debt of the company being paid otherwise than in priority to its non-preferential debts, [F43]...

[[F44](bb) would result in an ordinary preferential debt of the company being paid otherwise than in priority to any secondary preferential debts that it may have,**]**

(c) would result in one preferential creditor of the company being paid a smaller proportion of **[**[F45]an ordinary preferential debt**]** than another **[**[F46], or

(d) would result in one preferential creditor of the company being paid a smaller proportion of a secondary preferential debt than another.**]**

(2) Sub-paragraph (1) does not apply to—

(a) action to which the relevant creditor consents,

(b) a proposal for a voluntary arrangement under Part I of this Act (although this sub-paragraph is without prejudice to section 4(3)), [F47]. . .

(c) a proposal for a compromise or arrangement to be sanctioned under **[**[F48]Part 26 of the Companies Act 2006 (arrangements and reconstructions)**][**[F49] or

(d) a proposal for a cross-border merger within the meaning of regulation 2 of the Companies (Cross-Border Mergers) Regulations 2007.**]**

(3) The reference to a statement of proposals in sub-paragraph (1) includes a reference to a statement as revised or modified.

Annotations:

Amendments (Textual)

F43 Word in Sch. B1 para. 73(1)(b) omitted (1.1.2015) by virtue of The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **10(2)** (with art. 3)

F44 Sch. B1 para. 73(1)(bb) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **10(3)** (with art. 3)

F45 Words in Sch. B1 para. 73(1)(c) substituted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **10(4)** (with art. 3)

F46 Sch. B1 para. 73(1)(d) and word inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **10(5)** (with art. 3)

F47 Word in Sch. B1 para. 73(2)(b) repealed (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 65(2)**

F48 Words in Sch. B1 para. 73(2)(c) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 3(1), **Sch. 1 para. 100(a)** (with arts. 6, 11, 12)

F49 Sch. B1 para. 73(2)(d) and preceding word inserted (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 65(3)**

Modifications etc. (not altering text)

C54 Sch. B1 para. 73 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Challenge to administrator's conduct of company

74 (1) A creditor or member of a company in administration may apply to the court claiming that—

(a) the administrator is acting or has acted so as unfairly to harm the interests of the applicant (whether alone or in common with some or all other members or creditors), or

(b) the administrator proposes to act in a way which would unfairly harm the interests of the applicant (whether alone or in common with some or all other members or creditors).

(2) A creditor or member of a company in administration may apply to the court claiming that the administrator is not performing his functions as quickly or as efficiently as is reasonably practicable.

(3) The court may—

(a) grant relief;

(b) dismiss the application;

(c) adjourn the hearing conditionally or unconditionally;

(d) make an interim order;

(e) make any other order it thinks appropriate.

(4) In particular, an order under this paragraph may—

(a) regulate the administrator's exercise of his functions;

(b) require the administrator to do or not do a specified thing;

[F50(c) require a decision of the company's creditors to be sought on a matter;**]**

(d) provide for the appointment of an administrator to cease to have effect;

(e) make consequential provision.

(5) An order may be made on a claim under sub-paragraph (1) whether or not the action complained of—

(a) is within the administrator's powers under this Schedule;

(b) was taken in reliance on an order under paragraph 71 or 72.

(6) An order may not be made under this paragraph if it would impede or prevent the implementation of—

(a) a voluntary arrangement approved under Part I,

(b) a compromise or arrangement sanctioned under **[**F51Part 26 of the Companies Act 2006 (arrangements and reconstructions)**]** , F52. . .

[F53(ba) a cross-border merger within the meaning of regulation 2 of the Companies (Cross-Border Mergers) Regulations 2007, or**]**

(c) proposals or a revision approved under paragraph 53 or 54 more than 28 days before the day on which the application for the order under this paragraph is made.

Annotations:

Amendments (Textual)

F50 Sch. B1 para. 74(4)(c) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(24)**; S.I. 2015/1329, reg. 3(d)

F51 Words in Sch. B1 para. 74(6)(b) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 3(1), **Sch. 1 para. 100(b)** (with arts. 6, 11, 12)

F52 Word in Sch. B1 para. 74(6)(b) repealed (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 65(4)**

F53 Sch. B1 para. 74(6)(ba) inserted (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), **reg. 65(5)**

Modifications etc. (not altering text)

C55 Sch. B1 para. 74 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Misfeasance

75 (1) The court may examine the conduct of a person who—

(a) is or purports to be the administrator of a company, or

(b) has been or has purported to be the administrator of a company.

(2) An examination under this paragraph may be held only on the application of—

(a) the official receiver,

(b) the administrator of the company,

(c) the liquidator of the company,

(d) a creditor of the company, or

(e) a contributory of the company.

(3) An application under sub-paragraph (2) must allege that the administrator—

(a) has misapplied or retained money or other property of the company,

(b) has become accountable for money or other property of the company,

(c) has breached a fiduciary or other duty in relation to the company, or

(d) has been guilty of misfeasance.

(4) On an examination under this paragraph into a person's conduct the court may order him—

(a) to repay, restore or account for money or property;

(b) to pay interest;

(c) to contribute a sum to the company's property by way of compensation for breach of duty or misfeasance.

(5) In sub-paragraph (3) "administrator" includes a person who purports or has purported to be a company's administrator.

(6) An application under sub-paragraph (2) may be made in respect of an administrator who has been discharged under paragraph 98 only with the permission of the court.

Annotations:

Modifications etc. (not altering text)

C56 Sch. B1 para. 75 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

ENDING ADMINISTRATION

Automatic end of administration

76 (1) The appointment of an administrator shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect.

(2) But—

(a) on the application of an administrator the court may by order extend his term of office for a specified period, and

(b) an administrator's term of office may be extended for a specified period not exceeding **[**F54one year**]** by consent.

Annotations:

Amendments (Textual)

F54 Words in Sch. B1 para. 76(2)(b) substituted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 127**, 164(3)(i)(ii)

77 (1) An order of the court under paragraph 76—

(a) may be made in respect of an administrator whose term of office has already been extended by order or by consent, but

(b) may not be made after the expiry of the administrator's term of office.

(2) Where an order is made under paragraph 76 the administrator shall as soon as is reasonably practicable notify the registrar of companies.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

78 (1) In paragraph 76(2)(b) "consent" means consent of—

(a) each secured creditor of the company, and

[F55(b) if the company has unsecured debts, the unsecured creditors of the company.**]**

(2) But where the administrator has made a statement under paragraph 52(1)(b) "consent" means—

(a) consent of each secured creditor of the company, or

(b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—

(i) each secured creditor of the company, and

[F56(ii) the preferential creditors of the company.**]**

[F57(2A) Whether the company's unsecured creditors or preferential creditors consent is to be determined by the administrator seeking a decision from those creditors as to whether they consent.**]**

(3) **[**[F58]Consent for the purposes of paragraph 76(2)(b) may be—

(a) written, or

(b) signified at a creditors' meeting.**]**

(4) An administrator's term of office—

(a) may be extended by consent only once,

(b) may not be extended by consent after extension by order of the court, and

(c) may not be extended by consent after expiry.

(5) Where an administrator's term of office is extended by consent he shall as soon as is reasonably practicable—

(a) file notice of the extension with the court, and

(b) notify the registrar of companies.

(6) An administrator who fails without reasonable excuse to comply with sub-paragraph (5) commits an offence.

Annotations:

Amendments (Textual)

F55 Sch. B1 para. 78(1)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(25)**; S.I. 2015/1329, reg. 3(d)

F56 Sch. B1 para. 78(2)(b)(ii) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(26)**; S.I. 2015/1329, reg. 3(d)

F57 Sch. B1 para. 78(2A) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(27)**; S.I. 2015/1329, reg. 3(d)

F58 Sch. B1 para. 78(3) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(28)**; S.I. 2015/1329, reg. 3(d)

Court ending administration on application of administrator

79 (1) On the application of the administrator of a company the court may provide for the appointment of an administrator of the company to cease to have effect from a specified time.

(2) The administrator of a company shall make an application under this paragraph if—

(a) he thinks the purpose of administration cannot be achieved in relation to the company,

(b) he thinks the company should not have entered administration, or

(c) **[**[F59]the company's creditors decide that he must**]** make an application under this paragraph.

(3) The administrator of a company shall make an application under this paragraph if—

(a) the administration is pursuant to an administration order, and

(b) the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company.

(4) On an application under this paragraph the court may—

(a) adjourn the hearing conditionally or unconditionally;

(b) dismiss the application;

(c) make an interim order;

(d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

Annotations:

Amendments (Textual)

F59 Words in Sch. B1 para. 79(2)(c) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(29)**; S.I. 2015/1329, reg. 3(d)

Termination of administration where objective achieved

80 (1) This paragraph applies where an administrator of a company is appointed under paragraph 14 or 22.

(2) If the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company he may file a notice in the prescribed form—

(a) with the court, and

(b) with the registrar of companies.

(3) The administrator's appointment shall cease to have effect when the requirements of sub-paragraph (2) are satisfied.

(4) Where the administrator files a notice he shall within the prescribed period send a copy to every creditor of the company **[**F60, other than an opted-out creditor,**]** of whose claim and address he is aware.

(5) The rules may provide that the administrator is taken to have complied with sub-paragraph (4) if before the end of the prescribed period he publishes in the prescribed manner a notice undertaking to provide a copy of the notice under sub-paragraph (2) to any creditor of the company who applies in writing to a specified address.

(6) An administrator who fails without reasonable excuse to comply with sub-paragraph (4) commits an offence.

Annotations:

Amendments (Textual)

F60 Words in Sch. B1 para. 80(4) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(30)**; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C57 Sch. B1 para. 80 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Court ending administration on application of creditor

81 (1) On the application of a creditor of a company the court may provide for the appointment of an administrator of the company to cease to have effect at a specified time.

(2) An application under this paragraph must allege an improper motive—

(a) in the case of an administrator appointed by administration order, on the part of the applicant for the order, or

(b) in any other case, on the part of the person who appointed the administrator.

(3) On an application under this paragraph the court may—

(a) adjourn the hearing conditionally or unconditionally;

(b) dismiss the application;

(c) make an interim order;

(d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

Public interest winding-up

82 (1) This paragraph applies where a winding-up order is made for the winding up of a company in administration on a petition presented under—

(a) section 124A (public interest), or

[F61(aa) section 124B (SEs),**]**

(b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by **[**F62Financial Conduct Authority or Prudential Regulation Authority**]**).

(2) This paragraph also applies where a provisional liquidator of a company in administration is appointed following the presentation of a petition under any of the provisions listed in sub-paragraph (1).

(3) The court shall order—

(a) that the appointment of the administrator shall cease to have effect, or

(b) that the appointment of the administrator shall continue to have effect.

(4) If the court makes an order under sub-paragraph (3)(b) it may also—

(a) specify which of the powers under this Schedule are to be exercisable by the administrator, and

(b) order that this Schedule shall have effect in relation to the administrator with specified modifications.

Annotations:

Amendments (Textual)

F61 Sch. B1 para. 82(1)(aa) inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), **reg. 73(4)(c)**

F62 Words in Sch. B1 para. 82(1)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 55(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Moving from administration to creditors' voluntary liquidation

83 (1) This paragraph applies in England and Wales where the administrator of a company thinks—

(a) that the total amount which each secured creditor of the company is likely to receive has been paid to him or set aside for him, and

(b) that a distribution will be made to unsecured creditors of the company (if there are any) **[**F63which is not a distribution by virtue of section 176A(2)(a)**]** .

(2) This paragraph applies in Scotland where the administrator of a company thinks—

(a) that each secured creditor of the company will receive payment in respect of his debt, and

(b) that a distribution will be made to unsecured creditors (if there are any) **[**F64which is not a distribution by virtue of section 176A(2)(a)**]** .

(3) The administrator may send to the registrar of companies a notice that this paragraph applies.

(4) On receipt of a notice under sub-paragraph (3) the registrar shall register it.

(5) If an administrator sends a notice under sub-paragraph (3) he shall as soon as is reasonably practicable—

(a) file a copy of the notice with the court, and

(b) send a copy of the notice to each creditor **[**F65, other than an opted-out creditor,**]** of whose claim and address he is aware.

(6) On the registration of a notice under sub-paragraph (3)—

(a) the appointment of an administrator in respect of the company shall cease to have effect, and

(b) the company shall be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the notice is registered.

(7) The liquidator for the purposes of the winding up shall be—

(a) a person nominated by the creditors of the company in the prescribed manner and within the prescribed period, or

(b) if no person is nominated under paragraph (a), the administrator.

(8) In the application of Part IV to a winding up by virtue of this paragraph—

(a) section 85 shall not apply,

(b) section 86 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (3),

(c) section 89 does not apply,

(d) sections **[**F6698,**]** 99 and 100 shall not apply,

(e) section 129 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (3), and

(f) any creditors' committee which is in existence immediately before the company ceases to be in administration shall continue in existence after that time as if appointed as a liquidation committee under section 101.

Annotations:

Amendments (Textual)

F63 Words in Sch. B1 para. 83(1)(b) inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 128(3)**, 164(3)(i)(ii)

F64 Words in Sch. B1 para. 83(2)(b) inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 128(3)**, 164(3)(i)(ii)

F65 Words in Sch. B1 para. 83(5)(b) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(31)**; S.I. 2015/1329, reg. 3(d)

F66 Word in Sch. B1 para. 83(8)(d) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(32)**; S.I. 2015/1329, reg. 3(d)

Moving from administration to dissolution

84 (1) If the administrator of a company thinks that the company has no property which might permit a distribution to its creditors, he shall send a notice to that effect to the registrar of companies.

(2) The court may on the application of the administrator of a company disapply sub-paragraph (1) in respect of the company.

(3) On receipt of a notice under sub-paragraph (1) the registrar shall register it.

(4) On the registration of a notice in respect of a company under sub-paragraph (1) the appointment of an administrator of the company shall cease to have effect.

(5) If an administrator sends a notice under sub-paragraph (1) he shall as soon as is reasonably practicable—

(a) file a copy of the notice with the court, and

(b) send a copy of the notice to each creditor **[**F67 , other than an opted-out creditor,**]** of whose claim and address he is aware.

(6) At the end of the period of three months beginning with the date of registration of a notice in respect of a company under sub-paragraph (1) the company is deemed to be dissolved.

(7) On an application in respect of a company by the administrator or another interested person the court may—

(a) extend the period specified in sub-paragraph (6),

(b) suspend that period, or

(c) disapply sub-paragraph (6).

(8) Where an order is made under sub-paragraph (7) in respect of a company the administrator shall as soon as is reasonably practicable notify the registrar of companies.

(9) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).

Annotations:

Amendments (Textual)

F67 Words in Sch. B1 para. 84(5)(b) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(33)**; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C58 Sch. B1 para. 84 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Discharge of administration order where administration ends

85 (1) This paragraph applies where—

(a) the court makes an order under this Schedule providing for the appointment of an administrator of a company to cease to have effect, and

(b) the administrator was appointed by administration order.

(2) The court shall discharge the administration order.

Annotations:

Modifications etc. (not altering text)

C59 Sch. B1 para. 85 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Notice to Companies Registrar where administration ends

86 (1) This paragraph applies where the court makes an order under this Schedule providing for the appointment of an administrator to cease to have effect.

(2) The administrator shall send a copy of the order to the registrar of companies within the period of 14 days beginning with the date of the order.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

Annotations:

Modifications etc. (not altering text)

C60 Sch. B1 para. 86 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

REPLACING ADMINISTRATOR

Resignation of administrator

87 (1) An administrator may resign only in prescribed circumstances.

(2) Where an administrator may resign he may do so only—

(a) in the case of an administrator appointed by administration order, by notice in writing to the court,

(b) in the case of an administrator appointed under paragraph 14, by notice in writing to the **[**[F68]holder of the floating charge by virtue of which the appointment was made**]**,

(c) in the case of an administrator appointed under paragraph 22(1), by notice in writing to the company, or

(d) in the case of an administrator appointed under paragraph 22(2), by notice in writing to the directors of the company.

Annotations:

Amendments (Textual)

F68 Words in Sch. B1 para. 87(2)(b) substituted (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), **art. 2(4)**

Modifications etc. (not altering text)

C61 Sch. B1 para. 87 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Removal of administrator from office

88 The court may by order remove an administrator from office.

Annotations:

Modifications etc. (not altering text)

C62 Sch. B1 para. 88 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Administrator ceasing to be qualified

89 (1) The administrator of a company shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

(2) Where an administrator vacates office by virtue of sub-paragraph (1) he shall give notice in writing—

(a) in the case of an administrator appointed by administration order, to the court,

(b) in the case of an administrator appointed under paragraph 14, to the **[**[F69]holder of the floating charge by virtue of which the appointment was made**]**,

(c) in the case of an administrator appointed under paragraph 22(1), to the company, or

(d) in the case of an administrator appointed under paragraph 22(2), to the directors of the company.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

Annotations:

Amendments (Textual)

F69 Words in Sch. B1 para. 89(2)(b) substituted (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), **art. 2(5)**

Modifications etc. (not altering text)

C63 Sch. B1 para. 89 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Supplying vacancy in office of administrator

90 Paragraphs 91 to 95 apply where an administrator—

(a) dies,

(b) resigns,

(c) is removed from office under paragraph 88, or

(d) vacates office under paragraph 89.

Annotations:

Modifications etc. (not altering text)

C64 Sch. B1 para. 90 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

91 (1) Where the administrator was appointed by administration order, the court may replace the administrator on an application under this sub-paragraph made by—

(a) a creditors' committee of the company,

(b) the company,

(c) the directors of the company,

(d) one or more creditors of the company, or

(e) where more than one person was appointed to act jointly or concurrently as the administrator, any of those persons who remains in office.

(2) But an application may be made in reliance on sub-paragraph (1)(b) to (d) only where —

(a) there is no creditors' committee of the company,

(b) the court is satisfied that the creditors' committee or a remaining administrator is not taking reasonable steps to make a replacement, or

(c) the court is satisfied that for another reason it is right for the application to be made.

Annotations:

Modifications etc. (not altering text)

C65 Sch. B1 para. 91 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

92 Where the administrator was appointed under paragraph 14 the holder of the floating charge by virtue of which the appointment was made may replace the administrator.

93 (1) Where the administrator was appointed under paragraph 22(1) by the company it may replace the administrator.

(2) A replacement under this paragraph may be made only—

(a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or

(b) where consent is withheld, with the permission of the court.

94 (1) Where the administrator was appointed under paragraph 22(2) the directors of the company may replace the administrator.

(2) A replacement under this paragraph may be made only—

(a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or

(b) where consent is withheld, with the permission of the court.

95 The court may replace an administrator on the application of a person listed in paragraph 91(1) if the court—

(a) is satisfied that a person who is entitled to replace the administrator under any of paragraphs 92 to 94 is not taking reasonable steps to make a replacement, or

(b) that for another reason it is right for the court to make the replacement.

Substitution of administrator: competing floating charge-holder

96 (1) This paragraph applies where an administrator of a company is appointed under paragraph 14 by the holder of a qualifying floating charge in respect of the company's property.

(2) The holder of a prior qualifying floating charge in respect of the company's property may apply to the court for the administrator to be replaced by an administrator nominated by the holder of the prior floating charge.

(3) One floating charge is prior to another for the purposes of this paragraph if—

(a) it was created first, or

(b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.

(4) Sub-paragraph (3) shall have effect in relation to Scotland as if the following were substituted for paragraph (a)—

(") it has priority of ranking in accordance with section 464(4)(b) of the Companies Act 1985 (c. 6), ".

Annotations:

Modifications etc. (not altering text)

C66 Sch. B1 para. 96 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

*Substitution of administrator appointed by company or directors: creditors' **[**F70 decision**]***

97 (1) This paragraph applies where—

(a) an administrator of a company is appointed by a company or directors under paragraph 22, and

(b) there is no holder of a qualifying floating charge in respect of the company's property.

[F71 (2) The administrator may be replaced by a decision of the creditors made by a qualifying decision procedure.

(3) The decision has effect only if, before the decision is made, the new administrator has consented to act in writing.**]**

Annotations:

Amendments (Textual)

F70 Word in Sch. B1 para. 97 heading substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(34)**; S.I. 2015/1329, reg. 3(d)

F71 Sch. B1 para. 97(2)(3) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(35)**; S.I. 2015/1329, reg. 3(d)

Vacation of office: discharge from liability

98 (1) Where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect) he is discharged from liability in respect of any action of his as administrator.

(2) The discharge provided by sub-paragraph (1) takes effect—

(a) in the case of an administrator who dies, on the filing with the court of notice of his death,

(b) in the case of an administrator appointed under paragraph 14 or 22 **[**F72who has not made a statement under paragraph 52(1)(b)**]** , at a time appointed by resolution of the creditors' committee or, if there is no committee, by **[**F73decision**]** of the creditors,

[F74(ba) in the case of an administrator appointed under paragraph 14 or 22 who has made a statement under paragraph 52(1)(b), at a time decided by the relevant creditors,**]** or

(c) in any case, at a time specified by the court.

(3) **[**F75For the purposes of sub-paragraph (2)(ba), the "relevant creditors" of a company are—**]**

(a) each secured creditor of the company, or

(b) if the administrator has made a distribution to preferential creditors or thinks that a distribution may be made to preferential creditors—

(i) each secured creditor of the company, and

[F76(ii) the preferential creditors of the company.**]**

[F78(3A) In a case where the administrator is removed from office, a decision of the creditors for the purposes of sub-paragraph (2)(b), or of the preferential creditors for the purposes of sub-paragraph (2)(ba), must be made by a qualifying decision procedure.**]**

(4) Discharge—

(a) applies to liability accrued before the discharge takes effect, and

(b) does not prevent the exercise of the court's powers under paragraph 75.

Annotations:

Amendments (Textual)

F72 Words in Sch. B1 para. 98(2)(b) inserted (1.10.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 7(2)**; S.I. 2015/1732, art. 2(e)(ii)

F73 Word in Sch. B1 para. 98(2)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(36)**; S.I. 2015/1329, reg. 3(d)

F74 Sch. B1 para. 98(2)(ba) inserted (1.10.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 7(3)**; S.I. 2015/1732, art. 2(e)(ii)

F75 Words in Sch. B1 para. 98(3) substituted (1.10.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 7(4)(a)**; S.I. 2015/1732, art. 2(e)(ii)

F76 Sch. B1 para. 98(3)(b)(ii) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(37)**; S.I. 2015/1329, reg. 3(d)

F77 Words in Sch. B1 para. 98(3)(b)(ii) substituted (1.10.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 7(4)(b)**; S.I. 2015/1732, art. 2(e)(ii)

F78 Sch. B1 para. 98(3A) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(38)**; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C67 Sch. B1 para. 98 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Vacation of office: charges and liabilities

99 (1) This paragraph applies where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect).

(2) In this paragraph—

"the former administrator" means the person referred to in sub-paragraph (1), and

"cessation" means the time when he ceases to be the company's administrator.

(3) The former administrator's remuneration and expenses shall be—

(a) charged on and payable out of property of which he had custody or control immediately before cessation, and

(b) payable in priority to any security to which paragraph 70 applies.

(4) A sum payable in respect of a debt or liability arising out of a contract entered into by the former administrator or a predecessor before cessation shall be—

(a) charged on and payable out of property of which the former administrator had custody or control immediately before cessation, and

(b) payable in priority to any charge arising under sub-paragraph (3).

(5) Sub-paragraph (4) shall apply to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation; and for that purpose—

(a) action taken within the period of 14 days after an administrator's appointment shall not be taken to amount or contribute to the adoption of a contract,

(b) no account shall be taken of a liability which arises, or in so far as it arises, by reference to anything which is done or which occurs before the adoption of the contract of employment, and

(c) no account shall be taken of a liability to make a payment other than wages or salary.

(6) In sub-paragraph (5)(c) "wages or salary" includes—

(a) a sum payable in respect of a period of holiday (for which purpose the sum shall be treated as relating to the period by reference to which the entitlement to holiday accrued),

(b) a sum payable in respect of a period of absence through illness or other good cause,

(c) a sum payable in lieu of holiday,

F79(d) . . . . . ., and

(e) a contribution to an occupational pension scheme.

Annotations:

Amendments (Textual)

F79 Sch. B1 para. 99(6)(d) omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(3)(n), **Sch. 6 para. 27**

Modifications etc. (not altering text)

C68 Sch. B1 para. 99 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

C69 Sch. B1 para. 99(3) applied by The Financial Market and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 14(5)(a)(iii) (as substituted (1.10.2009) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 4(d)(iii)**)

GENERAL

Joint and concurrent administrators

100 (1) In this Schedule—

(a) a reference to the appointment of an administrator of a company includes a reference to the appointment of a number of persons to act jointly or concurrently as the administrator of a company, and

(b) a reference to the appointment of a person as administrator of a company includes a reference to the appointment of a person as one of a number of persons to act jointly or concurrently as the administrator of a company.

(2) The appointment of a number of persons to act as administrator of a company must specify—

(a) which functions (if any) are to be exercised by the persons appointed acting jointly, and

(b) which functions (if any) are to be exercised by any or all of the persons appointed.

Annotations:

Modifications etc. (not altering text)

C70 Sch. B1 paras. 100-103 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

101 (1) This paragraph applies where two or more persons are appointed to act jointly as the administrator of a company.

(2) A reference to the administrator of the company is a reference to those persons acting jointly.

(3) But a reference to the administrator of a company in paragraphs 87 to 99 of this Schedule is a reference to any or all of the persons appointed to act jointly.

(4) Where an offence of omission is committed by the administrator, each of the persons appointed to act jointly—

(a) commits the offence, and

(b) may be proceeded against and punished individually.

(5) The reference in paragraph 45(1)(a) to the name of the administrator is a reference to the name of each of the persons appointed to act jointly.

(6) Where persons are appointed to act jointly in respect of only some of the functions of the administrator of a company, this paragraph applies only in relation to those functions.

Annotations:

Modifications etc. (not altering text)

C71 Sch. B1 paras. 100-103 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

102 (1) This paragraph applies where two or more persons are appointed to act concurrently as the administrator of a company.

(2) A reference to the administrator of a company in this Schedule is a reference to any of the persons appointed (or any combination of them).

Annotations:

Modifications etc. (not altering text)

C72 Sch. B1 paras. 100-103 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

103 (1) Where a company is in administration, a person may be appointed to act as administrator jointly or concurrently with the person or persons acting as the administrator of the company.

(2) Where a company entered administration by administration order, an appointment under sub-paragraph (1) must be made by the court on the application of—

(a) a person or group listed in paragraph 12(1)(a) to (e), or

(b) the person or persons acting as the administrator of the company.

(3) Where a company entered administration by virtue of an appointment under paragraph 14, an appointment under sub-paragraph (1) must be made by—

(a) the holder of the floating charge by virtue of which the appointment was made, or

(b) the court on the application of the person or persons acting as the administrator of the company.

(4) Where a company entered administration by virtue of an appointment under paragraph 22(1), an appointment under sub-paragraph (1) above must be made either by the court on the application of the person or persons acting as the administrator of the company or—

(a) by the company, and

(b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the court.

(5) Where a company entered administration by virtue of an appointment under paragraph 22(2), an appointment under sub-paragraph (1) must be made either by the court on the application of the person or persons acting as the administrator of the company or—

(a) by the directors of the company, and

(b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the court.

(6) An appointment under sub-paragraph (1) may be made only with the consent of the person or persons acting as the administrator of the company.

Annotations:

Modifications etc. (not altering text)

C73 Sch. B1 paras. 100-103 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Presumption of validity

104 An act of the administrator of a company is valid in spite of a defect in his appointment or qualification.

Annotations:

Modifications etc. (not altering text)

C74 Sch. B1 para. 104 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Majority decision of directors

105 A reference in this Schedule to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company.

Penalties

106 (1) A person who is guilty of an offence under this Schedule is liable to a fine (in accordance with section 430 and Schedule 10).

(2) A person who is guilty of an offence under any of the following paragraphs of this Schedule is liable to a daily default fine (in accordance with section 430 and Schedule 10)—

(a) paragraph 20,

(b) paragraph 32,

(c) paragraph 46,
(d) paragraph 48,
(e) paragraph 49,
(f) paragraph 51,
(g) paragraph 53,
(h) paragraph 54,
(i) paragraph 56,
(j) paragraph 71,
(k) paragraph 72,
(l) paragraph 77,
(m) paragraph 78,
(n) paragraph 80,
(o) paragraph 84,
(p) paragraph 86, and
(q) paragraph 89.

Annotations:

Modifications etc. (not altering text)

C75 Sch. B1 para. 106 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Extension of time limit

107 (1) Where a provision of this Schedule provides that a period may be varied in accordance with this paragraph, the period may be varied in respect of a company—

(a) by the court, and
(b) on the application of the administrator.

(2) A time period may be extended in respect of a company under this paragraph—

(a) more than once, and
(b) after expiry.

Annotations:

Modifications etc. (not altering text)

C76 Sch. B1 paras. 107-109 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

108 (1) A period specified in paragraph 49(5)**[**[F80], 50(1)(b)**]** or 51(2) may be varied in respect of a company by the administrator with consent.

(2) In sub-paragraph (1) "consent" means consent of—

(a) each secured creditor of the company, and
[[F81](b) if the company has unsecured debts, the unsecured creditors of the company.**]**

(3) But where the administrator has made a statement under paragraph 52(1)(b) "consent" means—

(a) consent of each secured creditor of the company, or

(b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—

(i) each secured creditor of the company, and

[F82(ii) the preferential creditors of the company.**]**

(b) if the company has unsecured debts, the unsecured creditors of the company.

[F83(3A) Whether the company's unsecured creditors or preferential creditors consent is to be determined by the administrator seeking a decision from those creditors as to whether they consent.**]**

(4) **[**F84Consent for the purposes of sub-paragraph (1) may be—

(a) written, or

(b) signified at a creditors' meeting.**]**

(5) The power to extend under sub-paragraph (1)—

(a) may be exercised in respect of a period only once,

(b) may not be used to extend a period by more than 28 days,

(c) may not be used to extend a period which has been extended by the court, and

(d) may not be used to extend a period after expiry.

Annotations:

Amendments (Textual)

F80 Word in Sch. B1 para. 108(1) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(39)**; S.I. 2015/1329, reg. 3(d)

F81 Sch. B1 para. 108(2)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(40)**; S.I. 2015/1329, reg. 3(d)

F82 Sch. B1 para. 108(3)(b)(ii) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(41)**; S.I. 2015/1329, reg. 3(d)

F83 Sch. B1 para. 108(3A) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(42)**; S.I. 2015/1329, reg. 3(d)

F84 Sch. B1 para. 108(4) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(43)**; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C77 Sch. B1 paras. 107-109 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

109 Where a period is extended under paragraph 107 or 108, a reference to the period shall be taken as a reference to the period as extended.

Annotations:

Modifications etc. (not altering text)

C78 Sch. B1 paras. 107-109 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Amendment of provision about time

110 (1) The Secretary of State may by order amend a provision of this Schedule which—

(a) requires anything to be done within a specified period of time,

(b) prevents anything from being done after a specified time, or

(c) requires a specified minimum period of notice to be given.

(2) An order under this paragraph—

(a) must be made by statutory instrument, and

(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Annotations:

Modifications etc. (not altering text)

C79 Sch. B1 para. 110 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Interpretation

111 (1) In this Schedule—

"administrative receiver" has the meaning given by section 251,

"administrator" has the meaning given by paragraph 1 and, where the context requires, includes a reference to a former administrator,

F85 . . . . . .

[F86"correspondence" includes correspondence by telephonic or other electronic means,**]**

[F86"creditors' meeting" has the meaning given by paragraph 50,**]**

"enters administration" has the meaning given by paragraph 1,

"floating charge" means a charge which is a floating charge on its creation,

"in administration" has the meaning given by paragraph 1,

"hire-purchase agreement" includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

"holder of a qualifying floating charge" in respect of a company's property has the meaning given by paragraph 14,

"market value" means the amount which would be realised on a sale of property in the open market by a willing vendor,

"the purpose of administration" means an objective specified in paragraph 3, and

"unable to pay its debts" has the meaning given by section 123.

[F87(1A) In this Schedule, "company" means—

[F88(a) a company registered under the Companies Act 2006 in England and Wales or Scotland,**]**

(b) a company incorporated in an EEA State other than the United Kingdom, or

(c) a company not incorporated in an EEA State but having its centre of main interests in a member State other than Denmark.

(1B) In sub-paragraph (1A), in relation to a company, "centre of main interests" has the same meaning as in the EC Regulation and, in the absence of proof to the contrary,

is presumed to be the place of its registered office (within the meaning of that Regulation).**]**

(2) **F89** . . . . . .

(3) In this Schedule a reference to action includes a reference to inaction.

Annotations:

Amendments (Textual)

F85 In Sch. B1 para. 111(1) definition of "company" omitted (13.4.2005) by virtue of The Insolvency Act 1986 (Amendment) Regulations 2005 (S.I. 2005/879), **reg. 2(4)(a)** (with reg. 3)

F86 Words in Sch. B1 para. 111 omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 10(44)**; S.I. 2015/1329, reg. 3(d)

F87 Sch. B1 para. 111(1A)(1B) inserted (13.4.2005) by The Insolvency Act 1986 (Amendment) Regulations 2005 (S.I. 2005/879), **reg. 2(4)(b)** (with reg. 3)

F88 Sch. B1 para. 111(1A)(a) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 72} (with art. 10, Sch. 1 para. 84)

F89 Sch. B1 para. 111(2) repealed (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), **art. 4(2)**

Modifications etc. (not altering text)

C80 Sch. B1 para. 111 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Non-UK companies

[F90111A A company incorporated outside the United Kingdom that has a principal place of business in Northern Ireland may not enter administration under this Schedule unless it also has a principal place of business in England and Wales or Scotland (or both in England and Wales and in Scotland).**]**

Annotations:

Amendments (Textual)

F90 Sch. B1 para. 111A inserted (13.4.2005) by The Insolvency Act 1986 (Amendment) Regulations 2005 (S.I. 2005/879), **reg. 2(4)(c)** (with reg. 3)

Scotland

112 In the application of this Schedule to Scotland—

(a) a reference to filing with the court is a reference to lodging in court, and

(b) a reference to a charge is a reference to a right in security.

Annotations:

Modifications etc. (not altering text)

C81 Sch. B1 paras. 112-116 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

113 Where property in Scotland is disposed of under paragraph 70 or 71, the administrator shall grant to the disponee an appropriate document of transfer or conveyance of the property, and—

(a) that document, or

(b) recording, intimation or registration of that document (where recording, intimation or registration of the document is a legal requirement for completion of title to the property),

has the effect of disencumbering the property of or, as the case may be, freeing the property from, the security.

Annotations:

Modifications etc. (not altering text)

C82 Sch. B1 paras. 112-116 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

114 In Scotland, where goods in the possession of a company under a hire-purchase agreement are disposed of under paragraph 72, the disposal has the effect of extinguishing as against the disponee all rights of the owner of the goods under the agreement.

Annotations:

Modifications etc. (not altering text)

C83 Sch. B1 paras. 112-116 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

115 (1) In Scotland, the administrator of a company may make, in or towards the satisfaction of the debt secured by the floating charge, a payment to the holder of a floating charge which has attached to the property subject to the charge.

[F91(1A) In Scotland, sub-paragraph (1B) applies in connection with the giving by the court of permission as provided for in paragraph 65(3)(b).

(1B) On the giving by the court of such permission, any floating charge granted by the company shall, unless it has already so attached, attach to the property which is subject to the charge.**]**

(2) In Scotland, where the administrator thinks that the company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of section 176A(2)(a), he may file a notice to that effect with the registrar of companies.

(3) On delivery of the notice to the registrar of companies, any floating charge granted by the company shall, unless it has already so attached, attach to the property which is subject to the charge [F92]....

[[F93](4) Attachment of a floating charge under sub-paragraph (1B) or (3) has effect as if the charge is a fixed security over the property to which it has attached.**]**

Annotations:

Amendments (Textual)

F91 Sch. B1 para. 115(1A)(1B) inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 130(2)**, 164(3)(i)(ii)

F92 Words in Sch. B1 para. 115(3) omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 130(3)**, 164(3)(i)(ii)

F93 Sch. B1 para. 115(4) inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 130(4)**, 164(3)(i)(ii)

Modifications etc. (not altering text)

C84 Sch. B1 paras. 112-116 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

116 In Scotland, the administrator in making any payment in accordance with paragraph 115 shall make such payment subject to the rights of any of the following categories of persons (which rights shall, except to the extent provided in any instrument, have the following order of priority)—

(a) the holder of any fixed security which is over property subject to the floating charge and which ranks prior to, or pari passu with, the floating charge,

(b) creditors in respect of all liabilities and expenses incurred by or on behalf of the administrator,

(c) the administrator in respect of his liabilities, expenses and remuneration and any indemnity to which he is entitled out of the property of the company,

(d) the preferential creditors entitled to payment in accordance with paragraph 65,

(e) the holder of the floating charge in accordance with the priority of that charge in relation to any other floating charge which has attached, and

(f) the holder of a fixed security, other than one referred to in paragraph (a), which is over property subject to the floating charge.**]**

Annotations:

Modifications etc. (not altering text)

C85 Sch. B1 paras. 112-116 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to :

- Sch. B1 Sch. B1: specified provisions applied (with modifications) by S.I. 2012/3013, Sch. 2 Pt. 1 (as inserted) by S.I. 2018/728 reg. 3(6)Sch. 2
- Sch. B1 para. 49 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
- Sch. B1 para. 50-58 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
- Sch. B1 para. 62 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
- Sch. B1 para. 74 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
- Sch. B1 para. 98 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
- Sch. B1 para. 106 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
- Sch. B1 para. 107-109 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
- Sch. B1 para. 111 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
- Sch. B1 para. 112-116 amendment to earlier affecting provision 2009 c. 1, s. 145 Table 1 by S.I. 2017/400 reg. 5(9)
- Sch. B1 para. 84 amendment to earlier affecting provision 2009 c. 1, ss. 145, 154 by S.I. 2018/208 reg. 5(6)(a)
- Sch. B1 amendment to earlier affecting provision 2011 c. 5 Sch. 10 Pts. 1 2 by S.I. 2017/540 Sch. 1 para. 6(2)
- Sch. B1 amendment to earlier affecting provision S.I. 1994/2421, Sch. 2 by S.I. 2018/1244 art. 19(2)(3)
- Sch. B1 amendment to earlier affecting provision SI 1994/2421 Sch. 2 by S.I. 2017/540 Sch. 2 para. 6
- Sch. B1 para. 12 applied by 2016 c. 22 s. 106(8)
- Sch. B1 applied (with modifications) by S.I. 2010/3023, art. 2, Sch. (as amended) by S.I. 2018/208 reg. 12
- Sch. B1 para. 13 excluded by 2016 c. 22 s. 106(3)
- Sch. B1 para. 44 excluded by 2017 c. 19 s. 9(4)
- Sch. B1 para. 14 modified by 2016 c. 22 s. 107
- Sch. B1 para. 22 modified by 2016 c. 22 s. 107
- Sch. B1 para. 1 modified by 2016 c. 22 Sch. 5 Pt. 12
- Sch. B1 para. 40-49 modified by 2016 c. 22 Sch. 5 Pt. 12
- Sch. B1 para. 54 modified by 2016 c. 22 Sch. 5 Pt. 12
- Sch. B1 para. 59-68 modified by 2016 c. 22 Sch. 5 Pt. 12
- Sch. B1 para. 70-79 modified by 2016 c. 22 Sch. 5 Pt. 12
- Sch. B1 para. 83-91 modified by 2016 c. 22 Sch. 5 Pt. 12
- Sch. B1 para. 98-107 modified by 2016 c. 22 Sch. 5 Pt. 12
- Sch. B1 para. 109-111 modified by 2016 c. 22 Sch. 5 Pt. 12
- Sch. B1 para. 112-116 modified by 2016 c. 22 Sch. 5 Pt. 12
- Sch. B1 para. 62 modified by S.I. 2019/138 reg. 5
- Sch. B1 para. 46(4) modified by S.I. 2019/138 reg. 26
- Sch. B1 para. 49(4) modified by S.I. 2019/138 reg. 27
- Sch. B1 para. 53(2) modified by S.I. 2019/138 reg. 28
- Sch. B1 para. 54(6) modified by S.I. 2019/138 reg. 29
- Sch. B1 para. 78(5) modified by S.I. 2019/138 reg. 30
- Sch. B1 para. 83(5) modified by S.I. 2019/138 reg. 31

- Sch. B1 para. 84(5) modified by S.I. 2019/138 reg. 32
- Sch. B1 para. 50 modified (temp.) by 2016 c. 22 Sch. 5 Pt. 12
- Sch. B1 para. 73(2)(d) and word omitted by S.I. 2019/348 Sch. 3 para. 1
- Sch. B1 para. 74(6)(ba) omitted by S.I. 2019/348 Sch. 3 para. 1
- Sch. B1 para. 13 restricted by 2017 c. 19 s. 9(3)
- Sch. B1 specified provisions applied (with modifications) by 2013 c. 33 Sch. 6 para. 5
- Sch. B1 specified provisions applied (with modifications) by 2017 c. 19 Sch. 3
- Sch. B1 specified provisions applied (with modifications) by 2017 c. 19 Sch. 4
- Sch. B1 specified provisions applied (with modifications) by S.I. 2018/728 reg. 2(2)Sch. 1 Pt. 1
- Sch. B1 para. 73(1)(c) word omitted by S.I. 2018/1244 art. 13(3)(b)
- Sch. B1 para. 73 heading word substituted by S.I. 2018/1244 art. 13(3)(a)
- Sch. B1 para. 84(3) words inserted by S.I. 2017/702 Sch. para. 30(2)(b)(i)
- Sch. B1 para. 84(3) words inserted by S.I. 2017/702 Sch. para. 30(2)(b)(ii)
- Sch. B1 para. 84(6) words inserted by S.I. 2017/702 Sch. para. 30(3)
- Sch. B1 para. 84(7)(a) words inserted by S.I. 2017/702 Sch. para. 30(5)
- Sch. B1 para. 84(7)(c) words inserted by S.I. 2017/702 Sch. para. 30(5)
- Sch. B1 para. 84(3) words omitted by S.I. 2019/146 Sch. para. 44(a)(ii)
- Sch. B1 para. 84(6) words omitted by S.I. 2019/146 Sch. para. 44(a)(iii)
- Sch. B1 para. 84(7)(a) words omitted by S.I. 2019/146 Sch. para. 44(a)(v)
- Sch. B1 para. 84(7)(c) words omitted by S.I. 2019/146 Sch. para. 44(a)(v)
- Sch. B1 para. 111(1A)(b) words omitted by S.I. 2019/146 Sch. para. 44(b)(i)
- Sch. B1 para. 111(1B) words substituted by S.I. 2017/702 Sch. para. 31
- Sch. B1 para. 65(2) words substituted by S.I. 2018/1244 art. 13(2)(a)
- Sch. B1 para. 65(2) words substituted by S.I. 2018/1244 art. 13(2)(b)
- Sch. B1 para. 111(1A)(c) words substituted by S.I. 2019/146 Sch. para. 44(b)(ii)
- First Group of Parts amendment to earlier affecting provision S.I. 2006/3107, art. 3, Sch. by S.I. 2018/208 reg. 11

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act Amendment to earlier affecting provision SI 2011/245, reg. 15 by S.I. 2017/1064 Sch. para. 36(4)
- Act amendment to earlier affecting provision S.I. 1986/1999, art. 3, Sch. 1 Pt. 2 by S.I. 2017/1119 Sch. 3 para. 1
- Act amendment to earlier affecting provision S.I. 2001/1090, Sch. 3 by S.I. 2017/1119 Sch. 1 para. 37-53
- Act amendment to earlier affecting provision S.I. 2011/245, regs. 8(7), 9, 15, 16-21, 24, 25, Schs. 1-4 by S.I. 2018/208 reg. 13
- Act amendment to earlier affecting provision S.I. 2011/245. reg. 8(7), 9, 15, 16-21, 24, 25, Schs. 1-4 by S.I. 2017/400 reg. 10
- Act amendment to earlier affecting provision S.I. 2013/1388, Sch. 2 by S.I. 2017/400 reg. 11(2)
- Act amendment to earlier affecting provision S.I. 2013/1388, Sch. 2 by S.I. 2018/208 reg. 14
- Act amendment to earlier affecting provision SI 1994/2421 Sch. 4 by S.I. 2017/540 Sch. 2 para. 8
- Act amendment to earlier affecting provision SI 1994/2421 Sch. 7 by S.I. 2017/540 Sch. 2 para. 9
- Act applied (with modifications) by S.I. 2017/1212 reg. 166(2)167(2)Sch. 23
- Act applied in part (with modifications) by 2017 c. 19 s. 6(2)(b)s. 6(3)9-12
- Act excluded by S.I. 2018/1135 rule 4.10(2)
- Act modified by 1986 c. 46 s. 22H(4)(g) (as inserted) by S.I. 2017/1212 Sch. 4 para. 3
- Act modified by S.I. 2012/3013, Sch. 2 para. 34 (as inserted) by S.I. 2018/728 reg. 3(6)Sch. 2

- Act modified in part by 2016 c. 22 Sch. 5 para. 39
- Act modified in part by S.I. 2019/138 reg. 4-6
- Act power to modify conferred by 2016 c. 22 Sch. 5 para. 45(2)
- Act power to modify or exclude conferred by 2017 c. 19 s. 6(2)(a)(3)(4)
- Act specified provisions applied (with modifications) by 2013 c. 33 Sch. 6 para. 5

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 12-19 amendment to earlier affecting provision S.I. 2001/1090, reg. 5, Schs. 3, 4 by S.I. 2017/1119 Sch. 1 Pt. 23
- Pt. 2 amendment to earlier affecting provision S.I. 2010/3023, art. 2, Sch. by S.I. 2017/400 reg. 9
- Pt. 2 amendment to earlier affecting provision S.I. 2010/3023, art. 2, Sch. by S.I. 2018/208 reg. 12
- Pt. 2 amendment to earlier affecting provision S.I. 2014/229, art. 2(2) Sch. 1 Pts. 1, 3, 4 by S.I. 2018/208 reg. 15(3)(b)
- Pt. 2 amendment to earlier affecting provision SI 1994/2421 Sch. 2 by S.I. 2017/540 Sch. 2 para. 6
- Pt. 2 words substituted by S.I. 2019/146 Sch. para. 45(2) (This amendment is to 1986 c. 45, Pt. 2 as that Part had effect immediately before the coming into force of 2002 c. 40, s. 248 and in so far as it continues to have effect)
- s. 4(4)(d) and word inserted by S.I. 2018/1244 art. 5(b)
- s. 5A applied (with modifications) by S.I. 1994/2421, art. 16, Sch. 8 (as amended) by S.I. 2017/1119 Sch. 2 para. 4
- s. 12C applied (with modifications) by S.I. 1994/2421, art. 16, Sch. 8 (as amended) by S.I. 2017/1119 Sch. 2 para. 4
- s. 13-15C applied (with modifications) by S.I. 1994/2421, art. 16, Sch. 8 (as amended) by S.I. 2017/1119 Sch. 2 para. 4
- s. 41HB(2) words substituted by 2018 c. 14 s. 1(3)(b)
- s. 51(6)(a) words substituted by S.I. 2016/1034 Sch. 1 para. 4(2)
- s. 106(4A)(4B) amendment by S.I. 2017/702, Sch. para. 3 extended to Scotland by S.I. 2019/816 reg. 6(2)
- s. 106(4A)(4B) inserted by S.I. 2017/702 Sch. para. 3
- s. 106(4A)(4B) omitted by S.I. 2019/146 Sch. para. 18
- s. 106(7)(8) inserted by S.I. 2017/702 Sch. para. 56
- s. 106(7)(8) omitted by S.I. 2019/146 Sch. para. 134
- s. 142(3A) inserted by S.S.I. 2017/209 art. 4(a)
- s. 146(6)(7) amendment by S.I. 2017/702, Sch. para. 7 extended to Scotland by S.I. 2019/816 reg. 6(2)
- s. 146(6)(7) inserted by S.I. 2017/702 Sch. para. 7
- s. 146(6)(7) omitted by S.I. 2019/146 Sch. para. 22
- s. 146A inserted by S.I. 2017/702 Sch. para. 8
- s. 146A omitted by S.I. 2019/146 Sch. para. 23
- s. 170(8) amendment to earlier affecting provision 1998 c. 46, Sch. 8 para. 23(2)-(3) by S.I. 2016/679 art. 6
- s. 172(9)(10) inserted by S.I. 2017/702 Sch. para. 57
- s. 172(9)(10) omitted by S.I. 2019/146 Sch. para. 135
- s. 176ZB amendment to earlier affecting provision 2009 c. 1, s. 145 Table 2 by S.I. 2017/400 reg. 5(10)
- s. 176ZB applied (modifications) by 2009 c. 1, s. 103 (as amended) by S.I. 2017/400 reg. 5(4)
- s. 176ZB applied (modifications) by S.I. 2014/229, art. 2A (as inserted) by S.I. 2017/400 reg. 12(2)
- s. 176AZA applied (with modifications) by 2009 (c. 1), s. 103 Table (as amended) by S.I. 2018/1244 art. 14(1)
- s. 176AZA applied (with modifications) by S.I. 1994/2421, art. 4(3)(za) (as inserted) by S.I. 2018/1244 art. 16

- s. 176AZA applied (with modifications) by S.I. 1994/2421, art. 6(5)(za) (as inserted) by S.I. 2018/1244 art. 17
- s. 176AZA and cross-heading inserted by S.I. 2018/1244 art. 6
- s. 201(2)(2A)(2B) amendments by S.I. 2017/702, Sch. para. 9 extended to Scotland by S.I. 2019/816 reg. 6(2)
- s. 201(2A)(2B) inserted by S.I. 2017/702 Sch. para. 9(3)
- s. 201(2A)(2B) inserted by S.I. 2017/702 Sch. para. 58(2)
- s. 201(2A)(2B) omitted by S.I. 2019/146 Sch. para. 136(b)
- s. 202(2A)(2B) inserted by S.I. 2017/702 Sch. para. 10(2)
- s. 202(2A)(2B) omitted by S.I. 2019/146 Sch. para. 25(2)
- s. 202(6)(7) inserted by S.I. 2017/702 Sch. para. 10(5)(b)
- s. 202(6)(7) omitted by S.I. 2019/146 Sch. para. 25(5)
- s. 202(8) words omitted by S.I. 2019/146 Sch. para. 25(6)
- s. 202(8) words renumbered by S.I. 2017/702 Sch. para. 10(6)
- s. 204(4A)-(4E) inserted by S.I. 2017/702 Sch. para. 59
- s. 204(4A)-(4E) omitted by S.I. 2019/146 Sch. para. 137
- s. 205(2)(2A)(2B) amendments by S.I. 2017/702, Sch. para. 12 extended to Scotland by S.I. 2019/816 reg. 6(2)
- s. 205(2A)(2B) inserted by S.I. 2017/702 Sch. para. 12(3)
- s. 205(2A)(2B) inserted by S.I. 2017/702 Sch. para. 60(2)
- s. 205(2A)(2B) omitted by S.I. 2019/146 Sch. para. 26(3)
- s. 205(2A)(2B) omitted by S.I. 2019/146 Sch. para. 138(b)
- s. 210(2A)(2B) omitted by S.I. 2019/146 Sch. para. 24(3)
- s. 246ZA-246ZD applied (modifications) by 2009 c. 1, s. 145 Table 2 (as amended) by S.I. 2017/400 reg. 5(10)
- s. 246ZA-246ZC applied (with modifications) by 2017 c. 19 Sch. 3
- s. 246ZA-246ZC applied (with modifications) by 2017 c. 19 Sch. 4
- s. 246ZD applied (modifications) by 2009 c. 1, s. 103 (as amended) by S.I. 2017/400 reg. 5(4)
- s. 246ZD applied (with modifications) by 2017 c. 19 Sch. 3
- s. 246ZD applied (with modifications) by 2017 c. 19 Sch. 4
- s. 246ZE246ZF modified by SI 1994/2421 Sch. 7A (as inserted) by S.I. 2017/540 Sch. 2 para. 10
- s. 258(5)(d) and word inserted by S.I. 2018/1244 art. 7(b)
- s. 263I(1)(ab) inserted by S.I. 2019/146 Sch. para. 31(2)(a)
- s. 263I(5) inserted by S.I. 2019/146 Sch. para. 31(3)
- s. 265(1)(ab) inserted by S.I. 2019/146 Sch. para. 33(2)(a)
- s. 265(4) words substituted by S.I. 2017/702 Sch. para. 20
- s. 265(5) inserted by S.I. 2019/146 Sch. para. 33(3)
- s. 288(2A) inserted by 2015 c. 20 Sch. 6 para. 15(3)
- s. 291A inserted by 2015 c. 26 s. 133(1)
- s. 328(3A) inserted by S.I. 2018/1244 art. 8(2)
- s. 328(4)(a)(b) s. 328(4)(a)(b) substituted for words in s. 328(4) by S.I. 2018/1244 art. 8(3)
- s. 379ZA379ZB modified by SI 1994/2421 Sch. 7A (as inserted) by S.I. 2017/540 Sch. 2 para. 10
- s. 387A applied (with modifications) by 2009 (c. 1), s. 103 Table (as amended) by S.I. 2018/1244 art. 14(2)
- s. 387A inserted by S.I. 2018/1244 art. 11
- s. 390(5)(a) words inserted by S.I. 2016/1034 Sch. 1 para. 4(8)
- s. 391A-391T applied (modifications) by 2009 c. 1, s. 103 (as amended) by S.I. 2017/400 reg. 5(4)
- s. 391A-391T applied (modifications) by 2009 c. 1, s. 145 Table 2 (as amended) by S.I. 2017/400 reg. 5(10)
- s. 422A inserted by S.I. 2019/146 Sch. para. 41
- Sch. A1 para. 31(5)(d) and word inserted by S.I. 2018/1244 art. 12(2)(b)
- Sch. B1 para. 84(1A)(1B) inserted by S.I. 2017/702 Sch. para. 30(2)(a)
- Sch. B1 para. 84(6A)(6B) inserted by S.I. 2017/702 Sch. para. 30(4)

- Sch. B1 para. 73(1)(e) and word inserted by S.I. 2018/1244 art. 13(3)(c)
- Sch. B1 para. 84(1A)(1B) omitted by S.I. 2019/146 Sch. para. 44(a)(i)
- Sch. B1 para. 84(6A)(6B) omitted by S.I. 2019/146 Sch. para. 44(a)(iv)
- Sch. 6 para. 15BB(a) words substituted by S.I. 2018/1394 Sch. 2 para. 2(a)(i)
- Sch. 6 para. 15BB(a) words substituted by S.I. 2018/1394 Sch. 2 para. 2(a)(ii)
- Sch. 6 para. 15BB(b) words substituted by S.I. 2018/1394 Sch. 2 para. 2(b)

Exhibit B
(EU Regulation)

5.6.2015 EN Official Journal of the European Union L 141/19

REGULATION (EU) 2015/848 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 May 2015

on insolvency proceedings

(recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Acting in accordance with the ordinary legislative procedure ([2]),

Whereas:

(1) On 12 December 2012, the Commission adopted a report on the application of Council Regulation (EC) No 1346/2000 ([3]). The report concluded that the Regulation is functioning well in general but that it would be desirable to improve the application of certain of its provisions in order to enhance the effective administration of cross-border insolvency proceedings. Since that Regulation has been amended several times and further amendments are to be made, it should be recast in the interest of clarity.

(2) The Union has set the objective of establishing an area of freedom, security and justice.

(3) The proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively. This Regulation needs to be adopted in order to achieve that objective, which falls within the scope of judicial cooperation in civil matters within the meaning of Article 81 of the Treaty.

(4) The activities of undertakings have more and more cross-border effects and are therefore increasingly being regulated by Union law. The insolvency of such undertakings also affects the proper functioning of the internal market, and there is a need for a Union act requiring coordination of the measures to be taken regarding an insolvent debtor's assets.

(5) It is necessary for the proper functioning of the internal market to avoid incentives for parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position to the detriment of the general body of creditors (forum shopping).

(6) This Regulation should include provisions governing jurisdiction for opening insolvency proceedings and actions which are directly derived from insolvency proceedings and are closely linked with them. This Regulation should also contain provisions regarding the recognition and enforcement of judgments issued in such proceedings, and provisions regarding the law applicable to insolvency proceedings. In addition, this Regulation should lay down rules on the coordination of insolvency proceedings which relate to the same debtor or to several members of the same group of companies.

(7) Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings and actions related to such proceedings are excluded from the scope of Regulation (EU) No 1215/2012 of the European Parliament and of the Council ([4]). Those proceedings should be covered by this Regulation. The interpretation of this Regulation should as much as possible avoid regulatory loopholes between the two instruments. However, the mere fact that a national procedure is not listed in Annex A to this Regulation should not imply that it is covered by Regulation (EU) No 1215/2012.

([1]) OJ C 271, 19.9.2013, p. 55.

([2]) Position of the European Parliament of 5 February 2014 (not yet published in the Official Journal) and position of the Council at first reading of 12 March 2015 (not yet published in the Official Journal). Position of the European Parliament of 20 May 2015 (not yet published in the Official Journal).

([3]) Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p. 1).

([4]) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

(8) In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross-border effects, it is necessary, and appropriate, that the provisions on jurisdiction, recognition and applicable law in this area should be contained in a Union measure which is binding and directly applicable in Member States.

(9) This Regulation should apply to insolvency proceedings which meet the conditions set out in it, irrespective of whether the debtor is a natural person or a legal person, a trader or an individual. Those insolvency proceedings are listed exhaustively in Annex A. In respect of the national procedures contained in Annex A, this Regulation should apply without any further examination by the courts of another Member State as to whether the conditions set out in this Regulation are met. National insolvency procedures not listed in Annex A should not be covered by this Regulation.

(10) The scope of this Regulation should extend to proceedings which promote the rescue of economically viable but distressed businesses and which give a second chance to entrepreneurs. It should, in particular, extend to proceedings which provide for restructuring of a debtor at a stage where there is only a likelihood of insolvency, and to proceedings which leave the debtor fully or partially in control of its assets and affairs. It should also extend to proceedings providing for a debt discharge or a debt adjustment in relation to consumers and self-employed persons, for example by reducing the amount to be paid by the debtor or by extending the payment period granted to the debtor. Since such proceedings do not necessarily entail the appointment of an insolvency practitioner, they should be covered by this Regulation if they take place under the control or supervision of a court. In this context, the term 'control' should include situations where the court only intervenes on appeal by a creditor or other interested parties.

(11) This Regulation should also apply to procedures which grant a temporary stay on enforcement actions brought by individual creditors where such actions could adversely affect negotiations and hamper the prospects of a restructuring of the debtor's business. Such procedures should not be detrimental to the general body of creditors and, if no agreement on a restructuring plan can be reached, should be preliminary to other procedures covered by this Regulation.

(12) This Regulation should apply to proceedings the opening of which is subject to publicity in order to allow creditors to become aware of the proceedings and to lodge their claims, thereby ensuring the collective nature of the proceedings, and in order to give creditors the opportunity to challenge the jurisdiction of the court which has opened the proceedings.

(13) Accordingly, insolvency proceedings which are confidential should be excluded from the scope of this Regulation. While such proceedings may play an important role in some Member States, their confidential nature makes it impossible for a creditor or a court located in another Member State to know that such proceedings have been opened, thereby making it difficult to provide for the recognition of their effects throughout the Union.

(14) The collective proceedings which are covered by this Regulation should include all or a significant part of the creditors to whom a debtor owes all or a substantial proportion of the debtor's outstanding debts provided that the claims of those creditors who are not involved in such proceedings remain unaffected. Proceedings which involve only the financial creditors of a debtor should also be covered. Proceedings which do not include all the creditors of a debtor should be proceedings aimed at rescuing the debtor. Proceedings that lead to a definitive cessation of the debtor's activities or the liquidation of the debtor's assets should include all the debtor's creditors. Moreover, the fact that some insolvency proceedings for natural persons exclude specific categories of claims, such as maintenance claims, from the possibility of a debt-discharge should not mean that such proceedings are not collective.

(15) This Regulation should also apply to proceedings that, under the law of some Member States, are opened and conducted for a certain period of time on an interim or provisional basis before a court issues an order confirming the continuation of the proceedings on a non-interim basis. Although labelled as 'interim', such proceedings should meet all other requirements of this Regulation.

(16) This Regulation should apply to proceedings which are based on laws relating to insolvency. However, proceedings that are based on general company law not designed exclusively for insolvency situations should not be considered to be based on laws relating to insolvency. Similarly, the purpose of adjustment of debt should not include specific proceedings in which debts of a natural person of very low income and very low asset value are written off, provided that this type of proceedings never makes provision for payment to creditors.

(17) This Regulation's scope should extend to proceedings which are triggered by situations in which the debtor faces non-financial difficulties, provided that such difficulties give rise to a real and serious threat to the debtor's actual or future ability to pay its debts as they fall due. The time frame relevant for the determination of such threat may extend to a period of several months or even longer in order to account for cases in which the debtor is faced with non-financial difficulties threatening the status of its business as a going concern and, in the medium term, its liquidity. This may be the case, for example, where the debtor has lost a contract which is of key importance to it.

(18) This Regulation should be without prejudice to the rules on the recovery of State aid from insolvent companies as interpreted by the case-law of the Court of Justice of the European Union.

(19) Insolvency proceedings concerning insurance undertakings, credit institutions, investment firms and other firms, institutions or undertakings covered by Directive 2001/24/EC of the European Parliament and of the Council ([1]) and collective investment undertakings should be excluded from the scope of this Regulation, as they are all subject to special arrangements and the national supervisory authorities have wide-ranging powers of intervention.

(20) Insolvency proceedings do not necessarily involve the intervention of a judicial authority. Therefore, the term 'court' in this Regulation should, in certain provisions, be given a broad meaning and include a person or body empowered by national law to open insolvency proceedings. In order for this Regulation to apply, proceedings (comprising acts and formalities set down in law) should not only have to comply with the provisions of this Regulation, but they should also be officially recognised and legally effective in the Member State in which the insolvency proceedings are opened.

(21) Insolvency practitioners are defined in this Regulation and listed in Annex B. Insolvency practitioners who are appointed without the involvement of a judicial body should, under national law, be appropriately regulated and authorised to act in insolvency proceedings. The national regulatory framework should provide for proper arrangements to deal with potential conflicts of interest.

(22) This Regulation acknowledges the fact that as a result of widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope throughout the Union. The application without exception of the law of the State of the opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing national laws on security interests to be found in the Member States. Furthermore, the preferential rights enjoyed by some creditors in insolvency proceedings are, in some cases, completely different. At the next review of this Regulation, it will be necessary to identify further measures in order to improve the preferential rights of employees at European level. This Regulation should take account of such differing national laws in two different ways. On the one hand, provision should be made for special rules on the applicable law in the case of particularly significant rights and legal relationships (e.g. rights *in rem* and contracts of employment). On the other hand, national proceedings covering only assets situated in the State of the opening of proceedings should also be allowed alongside main insolvency proceedings with universal scope.

(23) This Regulation enables the main insolvency proceedings to be opened in the Member State where the debtor has the centre of its main interests. Those proceedings have universal scope and are aimed at encompassing all the debtor's assets. To protect the diversity of interests, this Regulation permits secondary insolvency proceedings to be opened to run in parallel with the main insolvency proceedings. Secondary insolvency proceedings may be opened in the Member State where the debtor has an establishment. The effects of secondary insolvency proceedings are limited to the assets located in that State. Mandatory rules of coordination with the main insolvency proceedings satisfy the need for unity in the Union.

(24) Where main insolvency proceedings concerning a legal person or company have been opened in a Member State other than that of its registered office, it should be possible to open secondary insolvency proceedings in the Member State of the registered office, provided that the debtor is carrying out an economic activity with human means and assets in that State, in accordance with the case-law of the Court of Justice of the European Union.

(25) This Regulation applies only to proceedings in respect of a debtor whose centre of main interests is located in the Union.

([1]) Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions (OJ L 125, 5.5.2001, p. 15).

(26) The rules of jurisdiction set out in this Regulation establish only international jurisdiction, that is to say, they designate the Member State the courts of which may open insolvency proceedings. Territorial jurisdiction within that Member State should be established by the national law of the Member State concerned.

(27) Before opening insolvency proceedings, the competent court should examine of its own motion whether the centre of the debtor's main interests or the debtor's establishment is actually located within its jurisdiction.

(28) When determining whether the centre of the debtor's main interests is ascertainable by third parties, special consideration should be given to the creditors and to their perception as to where a debtor conducts the administration of its interests. This may require, in the event of a shift of centre of main interests, informing creditors of the new location from which the debtor is carrying out its activities in due course, for example by drawing attention to the change of address in commercial correspondence, or by making the new location public through other appropriate means.

(29) This Regulation should contain a number of safeguards aimed at preventing fraudulent or abusive forum shopping.

(30) Accordingly, the presumptions that the registered office, the principal place of business and the habitual residence are the centre of main interests should be rebuttable, and the relevant court of a Member State should carefully assess whether the centre of the debtor's main interests is genuinely located in that Member State. In the case of a company, it should be possible to rebut this presumption where the company's central administration is located in a Member State other than that of its registered office, and where a comprehensive assessment of all the relevant factors establishes, in a manner that is ascertainable by third parties, that the company's actual centre of management and supervision and of the management of its interests is located in that other Member State. In the case of an individual not exercising an independent business or professional activity, it should be possible to rebut this presumption, for example where the major part of the debtor's assets is located outside the Member State of the debtor's habitual residence, or where it can be established that the principal reason for moving was to file for insolvency proceedings in the new jurisdiction and where such filing would materially impair the interests of creditors whose dealings with the debtor took place prior to the relocation.

(31) With the same objective of preventing fraudulent or abusive forum shopping, the presumption that the centre of main interests is at the place of the registered office, at the individual's principal place of business or at the individual's habitual residence should not apply where, respectively, in the case of a company, legal person or individual exercising an independent business or professional activity, the debtor has relocated its registered office or principal place of business to another Member State within the 3-month period prior to the request for opening insolvency proceedings, or, in the case of an individual not exercising an independent business or professional activity, the debtor has relocated his habitual residence to another Member State within the 6-month period prior to the request for opening insolvency proceedings.

(32) In all cases, where the circumstances of the matter give rise to doubts about the court's jurisdiction, the court should require the debtor to submit additional evidence to support its assertions and, where the law applicable to the insolvency proceedings so allows, give the debtor's creditors the opportunity to present their views on the question of jurisdiction.

(33) In the event that the court seised of the request to open insolvency proceedings finds that the centre of main interests is not located on its territory, it should not open main insolvency proceedings.

(34) In addition, any creditor of the debtor should have an effective remedy against the decision to open insolvency proceedings. The consequences of any challenge to the decision to open insolvency proceedings should be governed by national law.

(35) The courts of the Member State within the territory of which insolvency proceedings have been opened should also have jurisdiction for actions which derive directly from the insolvency proceedings and are closely linked with them. Such actions should include avoidance actions against defendants in other Member States and actions concerning obligations that arise in the course of the insolvency proceedings, such as advance payment for costs of the proceedings. In contrast, actions for the performance of the obligations under a contract concluded by the debtor prior to the opening of proceedings do not derive directly from the proceedings. Where such an action is related to another action based on general civil and commercial law, the insolvency practitioner should be able to

bring both actions in the courts of the defendant's domicile if he considers it more efficient to bring the action in that forum. This could, for example, be the case where the insolvency practitioner wishes to combine an action for director's liability on the basis of insolvency law with an action based on company law or general tort law.

(36) The court having jurisdiction to open the main insolvency proceedings should be able to order provisional and protective measures as from the time of the request to open proceedings. Preservation measures both prior to and after the commencement of the insolvency proceedings are important to guarantee the effectiveness of the insolvency proceedings. In that connection, this Regulation should provide for various possibilities. On the one hand, the court competent for the main insolvency proceedings should also be able to order provisional and protective measures covering assets situated in the territory of other Member States. On the other hand, an insolvency practitioner temporarily appointed prior to the opening of the main insolvency proceedings should be able, in the Member States in which an establishment belonging to the debtor is to be found, to apply for the preservation measures which are possible under the law of those Member States.

(37) Prior to the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in the Member State where the debtor has an establishment should be limited to local creditors and public authorities, or to cases in which main insolvency proceedings cannot be opened under the law of the Member State where the debtor has the centre of its main interests. The reason for this restriction is that cases in which territorial insolvency proceedings are requested before the main insolvency proceedings are intended to be limited to what is absolutely necessary.

(38) Following the opening of the main insolvency proceedings, this Regulation does not restrict the right to request the opening of insolvency proceedings in a Member State where the debtor has an establishment. The insolvency practitioner in the main insolvency proceedings or any other person empowered under the national law of that Member State may request the opening of secondary insolvency proceedings.

(39) This Regulation should provide for rules to determine the location of the debtor's assets, which should apply when determining which assets belong to the main or secondary insolvency proceedings, or to situations involving third parties' rights *in rem*. In particular, this Regulation should provide that European patents with unitary effect, a Community trade mark or any other similar rights, such as Community plant variety rights or Community designs, should only be included in the main insolvency proceedings.

(40) Secondary insolvency proceedings can serve different purposes, besides the protection of local interests. Cases may arise in which the insolvency estate of the debtor is too complex to administer as a unit, or the differences in the legal systems concerned are so great that difficulties may arise from the extension of effects deriving from the law of the State of the opening of proceedings to the other Member States where the assets are located. For that reason, the insolvency practitioner in the main insolvency proceedings may request the opening of secondary insolvency proceedings where the efficient administration of the insolvency estate so requires.

(41) Secondary insolvency proceedings may also hamper the efficient administration of the insolvency estate. Therefore, this Regulation sets out two specific situations in which the court seised of a request to open secondary insolvency proceedings should be able, at the request of the insolvency practitioner in the main insolvency proceedings, to postpone or refuse the opening of such proceedings.

(42) First, this Regulation confers on the insolvency practitioner in main insolvency proceedings the possibility of giving an undertaking to local creditors that they will be treated as if secondary insolvency proceedings had been opened. That undertaking has to meet a number of conditions set out in this Regulation, in particular that it be approved by a qualified majority of local creditors. Where such an undertaking has been given, the court seised of a request to open secondary insolvency proceedings should be able to refuse that request if it is satisfied that the undertaking adequately protects the general interests of local creditors. When assessing those interests, the court should take into account the fact that the undertaking has been approved by a qualified majority of local creditors.

(43) For the purposes of giving an undertaking to local creditors, the assets and rights located in the Member State where the debtor has an establishment should form a sub-category of the insolvency estate, and, when distributing them or the proceeds resulting from their realisation, the insolvency practitioner in the main insolvency proceedings should respect the priority rights that creditors would have had if secondary insolvency proceedings had been opened in that Member State.

(44) National law should be applicable, as appropriate, in relation to the approval of an undertaking. In particular, where under national law the voting rules for adopting a restructuring plan require the prior approval of creditors' claims, those claims should be deemed to be approved for the purpose of voting on the undertaking. Where there are different procedures for the adoption of restructuring plans under national law, Member States should designate the specific procedure which should be relevant in this context.

(45) Second, this Regulation should provide for the possibility that the court temporarily stays the opening of secondary insolvency proceedings, when a temporary stay of individual enforcement proceedings has been granted in the main insolvency proceedings, in order to preserve the efficiency of the stay granted in the main insolvency proceedings. The court should be able to grant the temporary stay if it is satisfied that suitable measures are in place to protect the general interest of local creditors. In such a case, all creditors that could be affected by the outcome of the negotiations on a restructuring plan should be informed of the negotiations and be allowed to participate in them.

(46) In order to ensure effective protection of local interests, the insolvency practitioner in the main insolvency proceedings should not be able to realise or re-locate, in an abusive manner, assets situated in the Member State where an establishment is located, in particular, with the purpose of frustrating the possibility that such interests can be effectively satisfied if secondary insolvency proceedings are opened subsequently.

(47) This Regulation should not prevent the courts of a Member State in which secondary insolvency proceedings have been opened from sanctioning a debtor's directors for violation of their duties, provided that those courts have jurisdiction to address such disputes under their national law.

(48) Main insolvency proceedings and secondary insolvency proceedings can contribute to the efficient administration of the debtor's insolvency estate or to the effective realisation of the total assets if there is proper cooperation between the actors involved in all the concurrent proceedings. Proper cooperation implies the various insolvency practitioners and the courts involved cooperating closely, in particular by exchanging a sufficient amount of information. In order to ensure the dominant role of the main insolvency proceedings, the insolvency practitioner in such proceedings should be given several possibilities for intervening in secondary insolvency proceedings which are pending at the same time. In particular, the insolvency practitioner should be able to propose a restructuring plan or composition or apply for a suspension of the realisation of the assets in the secondary insolvency proceedings. When cooperating, insolvency practitioners and courts should take into account best practices for cooperation in cross-border insolvency cases, as set out in principles and guidelines on communication and cooperation adopted by European and international organisations active in the area of insolvency law, and in particular the relevant guidelines prepared by the United Nations Commission on International Trade Law (Uncitral).

(49) In light of such cooperation, insolvency practitioners and courts should be able to enter into agreements and protocols for the purpose of facilitating cross-border cooperation of multiple insolvency proceedings in different Member States concerning the same debtor or members of the same group of companies, where this is compatible with the rules applicable to each of the proceedings. Such agreements and protocols may vary in form, in that they may be written or oral, and in scope, in that they may range from generic to specific, and may be entered into by different parties. Simple generic agreements may emphasise the need for close cooperation between the parties, without addressing specific issues, while more detailed, specific agreements may establish a framework of principles to govern multiple insolvency proceedings and may be approved by the courts involved, where the national law so requires. They may reflect an agreement between the parties to take, or to refrain from taking, certain steps or actions.

(50) Similarly, the courts of different Member States may cooperate by coordinating the appointment of insolvency practitioners. In that context, they may appoint a single insolvency practitioner for several insolvency proceedings concerning the same debtor or for different members of a group of companies, provided that this is compatible with the rules applicable to each of the proceedings, in particular with any requirements concerning the qualification and licensing of the insolvency practitioner.

(51) This Regulation should ensure the efficient administration of insolvency proceedings relating to different companies forming part of a group of companies.

(52) Where insolvency proceedings have been opened for several companies of the same group, there should be proper cooperation between the actors involved in those proceedings. The various insolvency practitioners and the courts involved should therefore be under a similar obligation to cooperate and communicate with each other as those involved in main and secondary insolvency proceedings relating to the same debtor. Cooperation between the insolvency practitioners should not run counter to the interests of the creditors in each of the proceedings, and such cooperation should be aimed at finding a solution that would leverage synergies across the group.

(53) The introduction of rules on the insolvency proceedings of groups of companies should not limit the possibility for a court to open insolvency proceedings for several companies belonging to the same group in a single jurisdiction if the court finds that the centre of main interests of those companies is located in a single Member State. In such cases, the court should also be able to appoint, if appropriate, the same insolvency practitioner in all proceedings concerned, provided that this is not incompatible with the rules applicable to them.

(54) With a view to further improving the coordination of the insolvency proceedings of members of a group of companies, and to allow for a coordinated restructuring of the group, this Regulation should introduce procedural rules on the coordination of the insolvency proceedings of members of a group of companies. Such coordination should strive to ensure the efficiency of the coordination, whilst at the same time respecting each group member's separate legal personality.

(55) An insolvency practitioner appointed in insolvency proceedings opened in relation to a member of a group of companies should be able to request the opening of group coordination proceedings. However, where the law applicable to the insolvency so requires, that insolvency practitioner should obtain the necessary authorisation before making such a request. The request should specify the essential elements of the coordination, in particular an outline of the coordination plan, a proposal as to whom should be appointed as coordinator and an outline of the estimated costs of the coordination.

(56) In order to ensure the voluntary nature of group coordination proceedings, the insolvency practitioners involved should be able to object to their participation in the proceedings within a specified time period. In order to allow the insolvency practitioners involved to take an informed decision on participation in the group coordination proceedings, they should be informed at an early stage of the essential elements of the coordination. However, any insolvency practitioner who initially objects to inclusion in the group coordination proceedings should be able to subsequently request to participate in them. In such a case, the coordinator should take a decision on the admissibility of the request. All insolvency practitioners, including the requesting insolvency practitioner, should be informed of the coordinator's decision and should have the opportunity of challenging that decision before the court which has opened the group coordination proceedings.

(57) Group coordination proceedings should always strive to facilitate the effective administration of the insolvency proceedings of the group members, and to have a generally positive impact for the creditors. This Regulation should therefore ensure that the court with which a request for group coordination proceedings has been filed makes an assessment of those criteria prior to opening group coordination proceedings.

(58) The advantages of group coordination proceedings should not be outweighed by the costs of those proceedings. Therefore, it is necessary to ensure that the costs of the coordination, and the share of those costs that each group member will bear, are adequate, proportionate and reasonable, and are determined in accordance with the national law of the Member State in which group coordination proceedings have been opened. The insolvency practitioners involved should also have the possibility of controlling those costs from an early stage of the proceedings. Where the national law so requires, controlling costs from an early stage of proceedings could involve the insolvency practitioner seeking the approval of a court or creditors' committee.

(59) Where the coordinator considers that the fulfilment of his or her tasks requires a significant increase in costs compared to the initially estimated costs and, in any case, where the costs exceed 10 % of the estimated costs, the coordinator should be authorised by the court which has opened the group coordination proceedings to exceed such costs. Before taking its decision, the court which has opened the group coordination proceedings should give the possibility to the participating insolvency practitioners to be heard before it in order to allow them to communicate their observations on the appropriateness of the coordinator's request.

(60) For members of a group of companies which are not participating in group coordination proceedings, this Regulation should also provide for an alternative mechanism to achieve a coordinated restructuring of the group. An insolvency practitioner appointed in proceedings relating to a member of a group of companies should have standing to request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to other members of the group which are not subject to group coordination proceedings. It should only be possible to request such a stay if a restructuring plan is presented for the members of the group concerned, if the plan is to the benefit of the creditors in the proceedings in respect of which the stay is requested, and if the stay is necessary to ensure that the plan can be properly implemented.

(61) This Regulation should not prevent Member States from establishing national rules which would supplement the rules on cooperation, communication and coordination with regard to the insolvency of members of groups of companies set out in this Regulation, provided that the scope of application of those national rules is limited to the national jurisdiction and that their application would not impair the efficiency of the rules laid down by this Regulation.

(62) The rules on cooperation, communication and coordination in the framework of the insolvency of members of a group of companies provided for in this Regulation should only apply to the extent that proceedings relating to different members of the same group of companies have been opened in more than one Member State.

(63) Any creditor which has its habitual residence, domicile or registered office in the Union should have the right to lodge its claims in each of the insolvency proceedings pending in the Union relating to the debtor's assets. This should also apply to tax authorities and social insurance institutions. This Regulation should not prevent the insolvency practitioner from lodging claims on behalf of certain groups of creditors, for example employees, where the national law so provides. However, in order to ensure the equal treatment of creditors, the distribution of proceeds should be coordinated. Every creditor should be able to keep what it has received in the course of insolvency proceedings, but should be entitled only to participate in the distribution of total assets in other proceedings if creditors with the same standing have obtained the same proportion of their claims.

(64) It is essential that creditors which have their habitual residence, domicile or registered office in the Union be informed about the opening of insolvency proceedings relating to their debtor's assets. In order to ensure a swift transmission of information to creditors, Regulation (EC) No 1393/2007 of the European Parliament and of the Council ([1]) should not apply where this Regulation refers to the obligation to inform creditors. The use of standard forms available in all official languages of the institutions of the Union should facilitate the task of creditors when lodging claims in proceedings opened in another Member State. The consequences of the incomplete filing of the standard forms should be a matter for national law.

(65) This Regulation should provide for the immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which fall within its scope, and of judgments handed down in direct connection with such insolvency proceedings. Automatic recognition should therefore mean that the effects attributed to the proceedings by the law of the Member State in which the proceedings were opened extend to all other Member States. The recognition of judgments delivered by the courts of the Member States should be based on the principle of mutual trust. To that end, grounds for non-recognition should be reduced to the minimum necessary. This is also the basis on which any dispute should be resolved where the courts of two Member States both claim competence to open the main insolvency proceedings. The decision of the first court to open proceedings should be recognised in the other Member States without those Member States having the power to scrutinise that court's decision.

(66) This Regulation should set out, for the matters covered by it, uniform rules on conflict of laws which replace, within their scope of application, national rules of private international law. Unless otherwise stated, the law of the Member State of the opening of proceedings should be applicable (*lex concursus*). This rule on conflict of laws should be valid both for the main insolvency proceedings and for local proceedings. The *lex concursus* determines all the effects of the insolvency proceedings, both procedural and substantive, on the persons and legal relations concerned. It governs all the conditions for the opening, conduct and closure of the insolvency proceedings.

(67) Automatic recognition of insolvency proceedings to which the law of the State of the opening of proceedings normally applies may interfere with the rules under which transactions are carried out in other Member States. To protect legitimate expectations and the certainty of transactions in Member States other than that in which proceedings are opened, provision should be made for a number of exceptions to the general rule.

([1]) Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79).

(68) There is a particular need for a special reference diverging from the law of the opening State in the case of rights *in rem*, since such rights are of considerable importance for the granting of credit. The basis, validity and extent of rights *in rem* should therefore normally be determined according to the *lex situs* and not be affected by the opening of insolvency proceedings. The proprietor of a right *in rem* should therefore be able to continue to assert its right to segregation or separate settlement of the collateral security. Where assets are subject to rights *in rem* under the *lex situs* in one Member State but the main insolvency proceedings are being carried out in another Member State, the insolvency practitioner in the main insolvency proceedings should be able to request the opening of secondary insolvency proceedings in the jurisdiction where the rights *in rem* arise if the debtor has an establishment there. If secondary insolvency proceedings are not opened, any surplus on the sale of an asset covered by rights *in rem* should be paid to the insolvency practitioner in the main insolvency proceedings.

(69) This Regulation lays down several provisions for a court to order a stay of opening proceedings or a stay of enforcement proceedings. Any such stay should not affect the rights *in rem* of creditors or third parties.

(70) If a set-off of claims is not permitted under the law of the State of the opening of proceedings, a creditor should nevertheless be entitled to the set-off if it is possible under the law applicable to the claim of the insolvent debtor. In this way, set-off would acquire a kind of guarantee function based on legal provisions on which the creditor concerned can rely at the time when the claim arises.

(71) There is also a need for special protection in the case of payment systems and financial markets, for example in relation to the position-closing agreements and netting agreements to be found in such systems, as well as the sale of securities and the guarantees provided for such transactions as governed in particular by Directive 98/26/EC of the European Parliament and of the Council ([1]). For such transactions, the only law which is relevant should be that applicable to the system or market concerned. That law is intended to prevent the possibility of mechanisms for the payment and settlement of transactions, and provided for in payment and set-off systems or on the regulated financial markets of the Member States, being altered in the case of insolvency of a business partner. Directive 98/26/EC contains special provisions which should take precedence over the general rules laid down in this Regulation.

(72) In order to protect employees and jobs, the effects of insolvency proceedings on the continuation or termination of employment and on the rights and obligations of all parties to such employment should be determined by the law applicable to the relevant employment agreement, in accordance with the general rules on conflict of laws. Moreover, in cases where the termination of employment contracts requires approval by a court or administrative authority, the Member State in which an establishment of the debtor is located should retain jurisdiction to grant such approval even if no insolvency proceedings have been opened in that Member State. Any other questions relating to the law of insolvency, such as whether the employees' claims are protected by preferential rights and the status such preferential rights may have, should be determined by the law of the Member State in which the insolvency proceedings (main or secondary) have been opened, except in cases where an undertaking to avoid secondary insolvency proceedings has been given in accordance with this Regulation.

(73) The law applicable to the effects of insolvency proceedings on any pending lawsuit or pending arbitral proceedings concerning an asset or right which forms part of the debtor's insolvency estate should be the law of the Member State where the lawsuit is pending or where the arbitration has its seat. However, this rule should not affect national rules on recognition and enforcement of arbitral awards.

(74) In order to take account of the specific procedural rules of court systems in certain Member States flexibility should be provided with regard to certain rules of this Regulation. Accordingly, references in this Regulation to notice being given by a judicial body of a Member State should include, where a Member State's procedural rules so require, an order by that judicial body directing that notice be given.

(75) For business considerations, the main content of the decision opening the proceedings should be published, at the request of the insolvency practitioner, in a Member State other than that of the court which delivered that decision. If there is an establishment in the Member State concerned, such publication should be mandatory. In neither case, however, should publication be a prior condition for recognition of the foreign proceedings.

([1]) Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

(76) In order to improve the provision of information to relevant creditors and courts and to prevent the opening of parallel insolvency proceedings, Member States should be required to publish relevant information in cross-border insolvency cases in a publicly accessible electronic register. In order to facilitate access to that information for creditors and courts domiciled or located in other Member States, this Regulation should provide for the interconnection of such insolvency registers via the European e-Justice Portal. Member States should be free to publish relevant information in several registers and it should be possible to interconnect more than one register per Member State.

(77) This Regulation should determine the minimum amount of information to be published in the insolvency registers. Member States should not be precluded from including additional information. Where the debtor is an individual, the insolvency registers should only have to indicate a registration number if the debtor is exercising an independent business or professional activity. That registration number should be understood to be the unique registration number of the debtor's independent business or professional activity published in the trade register, if any.

(78) Information on certain aspects of insolvency proceedings is essential for creditors, such as time limits for lodging claims or for challenging decisions. This Regulation should, however, not require Member States to calculate those time-limits on a case-by-case basis. Member States should be able to fulfil their obligations by adding hyperlinks to the European e-Justice Portal, where self-explanatory information on the criteria for calculating those time-limits is to be provided.

(79) In order to grant sufficient protection to information relating to individuals not exercising an independent business or professional activity, Member States should be able to make access to that information subject to supplementary search criteria such as the debtor's personal identification number, address, date of birth or the district of the competent court, or to make access conditional upon a request to a competent authority or upon the verification of a legitimate interest.

(80) Member States should also be able not to include in their insolvency registers information on individuals not exercising an independent business or professional activity. In such cases, Member States should ensure that the relevant information is given to the creditors by individual notice, and that claims of creditors who have not received the information are not affected by the proceedings.

(81) It may be the case that some of the persons concerned are not aware that insolvency proceedings have been opened, and act in good faith in a way that conflicts with the new circumstances. In order to protect such persons who, unaware that foreign proceedings have been opened, make a payment to the debtor instead of to the foreign insolvency practitioner, provision should be made for such a payment to have a debt-discharging effect.

(82) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([1]).

(83) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to promote the application of Articles 8, 17 and 47 concerning, respectively, the protection of personal data, the right to property and the right to an effective remedy and to a fair trial.

(84) Directive 95/46/EC of the European Parliament and of the Council ([2]) and Regulation (EC) No 45/2001 of the European Parliament and of the Council ([3]) apply to the processing of personal data within the framework of this Regulation.

(85) This Regulation is without prejudice to Regulation (EEC, Euratom) No 1182/71 of the Council ([4]).

([1]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

([2]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

([3]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

([4]) Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

(86) Since the objective of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the creation of a legal framework for the proper administration of cross-border insolvency proceedings, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(87) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.

(88) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(89) The European Data Protection Supervisor was consulted and delivered an opinion on 27 March 2013 [1],

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Regulation shall apply to public collective proceedings, including interim proceedings, which are based on laws relating to insolvency and in which, for the purpose of rescue, adjustment of debt, reorganisation or liquidation:

(a) a debtor is totally or partially divested of its assets and an insolvency practitioner is appointed;

(b) the assets and affairs of a debtor are subject to control or supervision by a court; or

(c) a temporary stay of individual enforcement proceedings is granted by a court or by operation of law, in order to allow for negotiations between the debtor and its creditors, provided that the proceedings in which the stay is granted provide for suitable measures to protect the general body of creditors, and, where no agreement is reached, are preliminary to one of the proceedings referred to in point (a) or (b).

Where the proceedings referred to in this paragraph may be commenced in situations where there is only a likelihood of insolvency, their purpose shall be to avoid the debtor's insolvency or the cessation of the debtor's business activities.

The proceedings referred to in this paragraph are listed in Annex A.

2. This Regulation shall not apply to proceedings referred to in paragraph 1 that concern:

(a) insurance undertakings;

(b) credit institutions;

(c) investment firms and other firms, institutions and undertakings to the extent that they are covered by Directive 2001/24/EC; or

(d) collective investment undertakings.

Article 2

Definitions

For the purposes of this Regulation:

(1) 'collective proceedings' means proceedings which include all or a significant part of a debtor's creditors, provided that, in the latter case, the proceedings do not affect the claims of creditors which are not involved in them;

[1] OJ C 358, 7.12.2013, p. 15.

(2) 'collective investment undertakings' means undertakings for collective investment in transferable securities (UCITS) as defined in Directive 2009/65/EC of the European Parliament and of the Council ([1]) and alternative investment funds (AIFs) as defined in Directive 2011/61/EU of the European Parliament and of the Council ([2]);

(3) 'debtor in possession' means a debtor in respect of which insolvency proceedings have been opened which do not necessarily involve the appointment of an insolvency practitioner or the complete transfer of the rights and duties to administer the debtor's assets to an insolvency practitioner and where, therefore, the debtor remains totally or at least partially in control of its assets and affairs;

(4) 'insolvency proceedings' means the proceedings listed in Annex A;

(5) 'insolvency practitioner' means any person or body whose function, including on an interim basis, is to:

(i) verify and admit claims submitted in insolvency proceedings;

(ii) represent the collective interest of the creditors;

(iii) administer, either in full or in part, assets of which the debtor has been divested;

(iv) liquidate the assets referred to in point (iii); or

(v) supervise the administration of the debtor's affairs.

The persons and bodies referred to in the first subparagraph are listed in Annex B;

(6) 'court' means:

(i) in points (b) and (c) of Article 1(1), Article 4(2), Articles 5 and 6, Article 21(3), point (j) of Article 24(2), Articles 36 and 39, and Articles 61 to 77, the judicial body of a Member State;

(ii) in all other articles, the judicial body or any other competent body of a Member State empowered to open insolvency proceedings, to confirm such opening or to take decisions in the course of such proceedings;

(7) 'judgment opening insolvency proceedings' includes:

(i) the decision of any court to open insolvency proceedings or to confirm the opening of such proceedings; and

(ii) the decision of a court to appoint an insolvency practitioner;

(8) 'the time of the opening of proceedings' means the time at which the judgment opening insolvency proceedings becomes effective, regardless of whether the judgment is final or not;

(9) 'the Member State in which assets are situated' means, in the case of:

(i) registered shares in companies other than those referred to in point (ii), the Member State within the territory of which the company having issued the shares has its registered office;

(ii) financial instruments, the title to which is evidenced by entries in a register or account maintained by or on behalf of an intermediary ('book entry securities'), the Member State in which the register or account in which the entries are made is maintained;

(iii) cash held in accounts with a credit institution, the Member State indicated in the account's IBAN, or, for cash held in accounts with a credit institution which does not have an IBAN, the Member State in which the credit institution holding the account has its central administration or, where the account is held with a branch, agency or other establishment, the Member State in which the branch, agency or other establishment is located;

(iv) property and rights, ownership of or entitlement to which is entered in a public register other than those referred to in point (i), the Member State under the authority of which the register is kept;

(v) European patents, the Member State for which the European patent is granted;

([1]) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

([2]) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

(vi) copyright and related rights, the Member State within the territory of which the owner of such rights has its habitual residence or registered office;

(vii) tangible property, other than that referred to in points (i) to (iv), the Member State within the territory of which the property is situated;

(viii) claims against third parties, other than those relating to assets referred to in point (iii), the Member State within the territory of which the third party required to meet the claims has the centre of its main interests, as determined in accordance with Article 3(1);

(10) 'establishment' means any place of operations where a debtor carries out or has carried out in the 3-month period prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets;

(11) 'local creditor' means a creditor whose claims against a debtor arose from or in connection with the operation of an establishment situated in a Member State other than the Member State in which the centre of the debtor's main interests is located;

(12) 'foreign creditor' means a creditor which has its habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, including the tax authorities and social security authorities of Member States;

(13) 'group of companies' means a parent undertaking and all its subsidiary undertakings;

(14) 'parent undertaking' means an undertaking which controls, either directly or indirectly, one or more subsidiary undertakings. An undertaking which prepares consolidated financial statements in accordance with Directive 2013/34/EU of the European Parliament and of the Council [1] shall be deemed to be a parent undertaking.

Article 3

International jurisdiction

1. The courts of the Member State within the territory of which the centre of the debtor's main interests is situated shall have jurisdiction to open insolvency proceedings ('main insolvency proceedings'). The centre of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.

In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary. That presumption shall only apply if the registered office has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.

In the case of an individual exercising an independent business or professional activity, the centre of main interests shall be presumed to be that individual's principal place of business in the absence of proof to the contrary. That presumption shall only apply if the individual's principal place of business has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.

In the case of any other individual, the centre of main interests shall be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary. This presumption shall only apply if the habitual residence has not been moved to another Member State within the 6-month period prior to the request for the opening of insolvency proceedings.

2. Where the centre of the debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if it possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.

3. Where insolvency proceedings have been opened in accordance with paragraph 1, any proceedings opened subsequently in accordance with paragraph 2 shall be secondary insolvency proceedings.

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[1] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertaking, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

4. The territorial insolvency proceedings referred to in paragraph 2 may only be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 where

(a) insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the centre of the debtor's main interests is situated; or

(b) the opening of territorial insolvency proceedings is requested by:

(i) a creditor whose claim arises from or is in connection with the operation of an establishment situated within the territory of the Member State where the opening of territorial proceedings is requested; or

(ii) a public authority which, under the law of the Member State within the territory of which the establishment is situated, has the right to request the opening of insolvency proceedings.

When main insolvency proceedings are opened, the territorial insolvency proceedings shall become secondary insolvency proceedings.

Article 4

Examination as to jurisdiction

1. A court seised of a request to open insolvency proceedings shall of its own motion examine whether it has jurisdiction pursuant to Article 3. The judgment opening insolvency proceedings shall specify the grounds on which the jurisdiction of the court is based, and, in particular, whether jurisdiction is based on Article 3(1) or (2).

2. Notwithstanding paragraph 1, where insolvency proceedings are opened in accordance with national law without a decision by a court, Member States may entrust the insolvency practitioner appointed in such proceedings to examine whether the Member State in which a request for the opening of proceedings is pending has jurisdiction pursuant to Article 3. Where this is the case, the insolvency practitioner shall specify in the decision opening the proceedings the grounds on which jurisdiction is based and, in particular, whether jurisdiction is based on Article 3(1) or (2).

Article 5

Judicial review of the decision to open main insolvency proceedings

1. The debtor or any creditor may challenge before a court the decision opening main insolvency proceedings on grounds of international jurisdiction.

2. The decision opening main insolvency proceedings may be challenged by parties other than those referred to in paragraph 1 or on grounds other than a lack of international jurisdiction where national law so provides.

Article 6

Jurisdiction for actions deriving directly from insolvency proceedings and closely linked with them

1. The courts of the Member State within the territory of which insolvency proceedings have been opened in accordance with Article 3 shall have jurisdiction for any action which derives directly from the insolvency proceedings and is closely linked with them, such as avoidance actions.

2. Where an action referred to in paragraph 1 is related to an action in civil and commercial matters against the same defendant, the insolvency practitioner may bring both actions before the courts of the Member State within the territory of which the defendant is domiciled, or, where the action is brought against several defendants, before the courts of the Member State within the territory of which any of them is domiciled, provided that those courts have jurisdiction pursuant to Regulation (EU) No 1215/2012.

The first subparagraph shall apply to the debtor in possession, provided that national law allows the debtor in possession to bring actions on behalf of the insolvency estate.

3. For the purpose of paragraph 2, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 7

Applicable law

1. Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened (the 'State of the opening of proceedings').

2. The law of the State of the opening of proceedings shall determine the conditions for the opening of those proceedings, their conduct and their closure. In particular, it shall determine the following:

(a) the debtors against which insolvency proceedings may be brought on account of their capacity;

(b) the assets which form part of the insolvency estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings;

(c) the respective powers of the debtor and the insolvency practitioner;

(d) the conditions under which set-offs may be invoked;

(e) the effects of insolvency proceedings on current contracts to which the debtor is party;

(f) the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of pending lawsuits;

(g) the claims which are to be lodged against the debtor's insolvency estate and the treatment of claims arising after the opening of insolvency proceedings;

(h) the rules governing the lodging, verification and admission of claims;

(i) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right *in rem* or through a set-off;

(j) the conditions for, and the effects of closure of, insolvency proceedings, in particular by composition;

(k) creditors' rights after the closure of insolvency proceedings;

(l) who is to bear the costs and expenses incurred in the insolvency proceedings;

(m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors.

Article 8

Third parties' rights *in rem*

1. The opening of insolvency proceedings shall not affect the rights *in rem* of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets, both specific assets and collections of indefinite assets as a whole which change from time to time, belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.

2. The rights referred to in paragraph 1 shall, in particular, mean:

(a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;

(b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

(c) the right to demand assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;

(d) a right *in rem* to the beneficial use of assets.

3. The right, recorded in a public register and enforceable against third parties, based on which a right *in rem* within the meaning of paragraph 1 may be obtained shall be considered to be a right *in rem*.

4. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

Article 9

Set-off

1. The opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of a debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.

2. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

Article 10

Reservation of title

1. The opening of insolvency proceedings against the purchaser of an asset shall not affect sellers' rights that are based on a reservation of title where at the time of the opening of proceedings the asset is situated within the territory of a Member State other than the State of the opening of proceedings.

2. The opening of insolvency proceedings against the seller of an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of proceedings the asset sold is situated within the territory of a Member State other than the State of the opening of proceedings.

3. Paragraphs 1 and 2 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

Article 11

Contracts relating to immoveable property

1. The effects of insolvency proceedings on a contract conferring the right to acquire or make use of immoveable property shall be governed solely by the law of the Member State within the territory of which the immoveable property is situated.

2. The court which opened main insolvency proceedings shall have jurisdiction to approve the termination or modification of the contracts referred to in this Article where:

(a) the law of the Member State applicable to those contracts requires that such a contract may only be terminated or modified with the approval of the court opening insolvency proceedings; and

(b) no insolvency proceedings have been opened in that Member State.

Article 12

Payment systems and financial markets

1. Without prejudice to Article 8, the effects of insolvency proceedings on the rights and obligations of the parties to a payment or settlement system or to a financial market shall be governed solely by the law of the Member State applicable to that system or market.

2. Paragraph 1 shall not preclude any action for voidness, voidability or unenforceability which may be taken to set aside payments or transactions under the law applicable to the relevant payment system or financial market.

Article 13

Contracts of employment

1. The effects of insolvency proceedings on employment contracts and relationships shall be governed solely by the law of the Member State applicable to the contract of employment.

2. The courts of the Member State in which secondary insolvency proceedings may be opened shall retain jurisdiction to approve the termination or modification of the contracts referred to in this Article even if no insolvency proceedings have been opened in that Member State.

The first subparagraph shall also apply to an authority competent under national law to approve the termination or modification of the contracts referred to in this Article.

Article 14

Effects on rights subject to registration

The effects of insolvency proceedings on the rights of a debtor in immoveable property, a ship or an aircraft subject to registration in a public register shall be determined by the law of the Member State under the authority of which the register is kept.

Article 15

European patents with unitary effect and Community trade marks

For the purposes of this Regulation, a European patent with unitary effect, a Community trade mark or any other similar right established by Union law may be included only in the proceedings referred to in Article 3(1).

Article 16

Detrimental acts

Point (m) of Article 7(2) shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that:

(a) the act is subject to the law of a Member State other than that of the State of the opening of proceedings; and

(b) the law of that Member State does not allow any means of challenging that act in the relevant case.

Article 17

Protection of third-party purchasers

Where, by an act concluded after the opening of insolvency proceedings, a debtor disposes, for consideration, of:

(a) an immoveable asset;

(b) a ship or an aircraft subject to registration in a public register; or

(c) securities the existence of which requires registration in a register laid down by law;

the validity of that act shall be governed by the law of the State within the territory of which the immoveable asset is situated or under the authority of which the register is kept.

Article 18

Effects of insolvency proceedings on pending lawsuits or arbitral proceedings

The effects of insolvency proceedings on a pending lawsuit or pending arbitral proceedings concerning an asset or a right which forms part of a debtor's insolvency estate shall be governed solely by the law of the Member State in which that lawsuit is pending or in which the arbitral tribunal has its seat.

CHAPTER II

RECOGNITION OF INSOLVENCY PROCEEDINGS

Article 19

Principle

1. Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all other Member States from the moment that it becomes effective in the State of the opening of proceedings.

The rule laid down in the first subparagraph shall also apply where, on account of a debtor's capacity, insolvency proceedings cannot be brought against that debtor in other Member States.

2. Recognition of the proceedings referred to in Article 3(1) shall not preclude the opening of the proceedings referred to in Article 3(2) by a court in another Member State. The latter proceedings shall be secondary insolvency proceedings within the meaning of Chapter III.

Article 20

Effects of recognition

1. The judgment opening insolvency proceedings as referred to in Article 3(1) shall, with no further formalities, produce the same effects in any other Member State as under the law of the State of the opening of proceedings, unless this Regulation provides otherwise and as long as no proceedings referred to in Article 3(2) are opened in that other Member State.

2. The effects of the proceedings referred to in Article 3(2) may not be challenged in other Member States. Any restriction of creditors' rights, in particular a stay or discharge, shall produce effects vis-à-vis assets situated within the territory of another Member State only in the case of those creditors who have given their consent.

Article 21

Powers of the insolvency practitioner

1. The insolvency practitioner appointed by a court which has jurisdiction pursuant to Article 3(1) may exercise all the powers conferred on it, by the law of the State of the opening of proceedings, in another Member State, as long as no other insolvency proceedings have been opened there and no preservation measure to the contrary has been taken there further to a request for the opening of insolvency proceedings in that State. Subject to Articles 8 and 10, the insolvency practitioner may, in particular, remove the debtor's assets from the territory of the Member State in which they are situated.

2. The insolvency practitioner appointed by a court which has jurisdiction pursuant to Article 3(2) may in any other Member State claim through the courts or out of court that moveable property was removed from the territory of the State of the opening of proceedings to the territory of that other Member State after the opening of the insolvency proceedings. The insolvency practitioner may also bring any action to set aside which is in the interests of the creditors.

3. In exercising its powers, the insolvency practitioner shall comply with the law of the Member State within the territory of which it intends to take action, in particular with regard to procedures for the realisation of assets. Those powers may not include coercive measures, unless ordered by a court of that Member State, or the right to rule on legal proceedings or disputes.

Article 22

Proof of the insolvency practitioner's appointment

The insolvency practitioner's appointment shall be evidenced by a certified copy of the original decision appointing it or by any other certificate issued by the court which has jurisdiction.

A translation into the official language or one of the official languages of the Member State within the territory of which it intends to act may be required. No legalisation or other similar formality shall be required.

Article 23

Return and imputation

1. A creditor which, after the opening of the proceedings referred to in Article 3(1), obtains by any means, in particular through enforcement, total or partial satisfaction of its claim on the assets belonging to a debtor situated within the territory of another Member State, shall return what it has obtained to the insolvency practitioner, subject to Articles 8 and 10.

2. In order to ensure the equal treatment of creditors, a creditor which has, in the course of insolvency proceedings, obtained a dividend on its claim shall share in distributions made in other proceedings only where creditors of the same ranking or category have, in those other proceedings, obtained an equivalent dividend.

Article 24

Establishment of insolvency registers

1. Member States shall establish and maintain in their territory one or several registers in which information concerning insolvency proceedings is published ('insolvency registers'). That information shall be published as soon as possible after the opening of such proceedings.

2. The information referred to in paragraph 1 shall be made publicly available, subject to the conditions laid down in Article 27, and shall include the following ('mandatory information'):

(a) the date of the opening of insolvency proceedings;

(b) the court opening insolvency proceedings and the case reference number, if any;

(c) the type of insolvency proceedings referred to in Annex A that were opened and, where applicable, any relevant subtype of such proceedings opened in accordance with national law;

(d) whether jurisdiction for opening proceedings is based on Article 3(1), 3(2) or 3(4);

(e) if the debtor is a company or a legal person, the debtor's name, registration number, registered office or, if different, postal address;

(f) if the debtor is an individual whether or not exercising an independent business or professional activity, the debtor's name, registration number, if any, and postal address or, where the address is protected, the debtor's place and date of birth;

(g) the name, postal address or e-mail address of the insolvency practitioner, if any, appointed in the proceedings;

(h) the time limit for lodging claims, if any, or a reference to the criteria for calculating that time limit;

(i) the date of closing main insolvency proceedings, if any;

(j) the court before which and, where applicable, the time limit within which a challenge of the decision opening insolvency proceedings is to be lodged in accordance with Article 5, or a reference to the criteria for calculating that time limit.

3. Paragraph 2 shall not preclude Member States from including documents or additional information in their national insolvency registers, such as directors' disqualifications related to insolvency.

4. Member States shall not be obliged to include in the insolvency registers the information referred to in paragraph 1 of this Article in relation to individuals not exercising an independent business or professional activity, or to make such information publicly available through the system of interconnection of those registers, provided that known foreign creditors are informed, pursuant to Article 54, of the elements referred to under point (j) of paragraph 2 of this Article.

Where a Member State makes use of the possibility referred to in the first subparagraph, the insolvency proceedings shall not affect the claims of foreign creditors who have not received the information referred to in the first subparagraph.

5. The publication of information in the registers under this Regulation shall not have any legal effects other than those set out in national law and in Article 55(6).

Article 25

Interconnection of insolvency registers

1. The Commission shall establish a decentralised system for the interconnection of insolvency registers by means of implementing acts. That system shall be composed of the insolvency registers and the European e-Justice Portal, which shall serve as a central public electronic access point to information in the system. The system shall provide a search service in all the official languages of the institutions of the Union in order to make available the mandatory information and any other documents or information included in the insolvency registers which the Member States choose to make available through the European e-Justice Portal.

2. By means of implementing acts in accordance with the procedure referred to in Article 87, the Commission shall adopt the following by 26 June 2019:

(a) the technical specification defining the methods of communication and information exchange by electronic means on the basis of the established interface specification for the system of interconnection of insolvency registers;

(b) the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of insolvency registers;

(c) minimum criteria for the search service provided by the European e-Justice Portal based on the information set out in Article 24;

(d) minimum criteria for the presentation of the results of such searches based on the information set out in Article 24;

(e) the means and the technical conditions of availability of services provided by the system of interconnection; and

(f) a glossary containing a basic explanation of the national insolvency proceedings listed in Annex A.

Article 26

Costs of establishing and interconnecting insolvency registers

1. The establishment, maintenance and future development of the system of interconnection of insolvency registers shall be financed from the general budget of the Union.

2. Each Member State shall bear the costs of establishing and adjusting its national insolvency registers to make them interoperable with the European e-Justice Portal, as well as the costs of administering, operating and maintaining those registers. This shall be without prejudice to the possibility to apply for grants to support such activities under the Union's financial programmes.

Article 27

Conditions of access to information via the system of interconnection

1. Member States shall ensure that the mandatory information referred to in points (a) to (j) of Article 24(2) is available free of charge via the system of interconnection of insolvency registers.

2. This Regulation shall not preclude Member States from charging a reasonable fee for access to the documents or additional information referred to in Article 24(3) via the system of interconnection of insolvency registers.

3. Member States may make access to mandatory information concerning individuals who are not exercising an independent business or professional activity, and concerning individuals exercising an independent business or professional activity when the insolvency proceedings are not related to that activity, subject to supplementary search criteria relating to the debtor in addition to the minimum criteria referred to in point (c) of Article 25(2).

4. Member States may require that access to the information referred to in paragraph 3 be made conditional upon a request to the competent authority. Member States may make access conditional upon the verification of the existence of a legitimate interest for accessing such information. The requesting person shall be able to submit the request for information electronically by means of a standard form via the European e-Justice Portal. Where a legitimate interest is required, it shall be permissible for the requesting person to justify his request by electronic copies of relevant documents. The requesting person shall be provided with an answer by the competent authority within 3 working days.

The requesting person shall not be obliged to provide translations of the documents justifying his request, or to bear any costs of translation which the competent authority may incur.

Article 28

Publication in another Member State

1. The insolvency practitioner or the debtor in possession shall request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing the insolvency practitioner be published in any other Member State where an establishment of the debtor is located in accordance with the publication procedures provided for in that Member State. Such publication shall specify, where appropriate, the insolvency practitioner appointed and whether the jurisdiction rule applied is that pursuant to Article 3(1) or (2).

2. The insolvency practitioner or the debtor in possession may request that the information referred to in paragraph 1 be published in any other Member State where the insolvency practitioner or the debtor in possession deems it necessary in accordance with the publication procedures provided for in that Member State.

Article 29

Registration in public registers of another Member State

1. Where the law of a Member State in which an establishment of the debtor is located and this establishment has been entered into a public register of that Member State, or the law of a Member State in which immovable property belonging to the debtor is located, requires information on the opening of insolvency proceedings referred to in Article 28 to be published in the land register, company register or any other public register, the insolvency practitioner or the debtor in possession shall take all the necessary measures to ensure such a registration.

2. The insolvency practitioner or the debtor in possession may request such registration in any other Member State, provided that the law of the Member State where the register is kept allows such registration.

Article 30

Costs

The costs of the publication and registration provided for in Articles 28 and 29 shall be regarded as costs and expenses incurred in the proceedings.

Article 31

Honouring of an obligation to a debtor

1. Where an obligation has been honoured in a Member State for the benefit of a debtor who is subject to insolvency proceedings opened in another Member State, when it should have been honoured for the benefit of the insolvency practitioner in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of the proceedings.

2. Where such an obligation is honoured before the publication provided for in Article 28 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of insolvency proceedings. Where the obligation is honoured after such publication has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.

Article 32

Recognition and enforceability of other judgments

1. Judgments handed down by a court whose judgment concerning the opening of proceedings is recognised in accordance with Article 19 and which concern the course and closure of insolvency proceedings, and compositions approved by that court, shall also be recognised with no further formalities. Such judgments shall be enforced in accordance with Articles 39 to 44 and 47 to 57 of Regulation (EU) No 1215/2012.

The first subparagraph shall also apply to judgments deriving directly from the insolvency proceedings and which are closely linked with them, even if they were handed down by another court.

The first subparagraph shall also apply to judgments relating to preservation measures taken after the request for the opening of insolvency proceedings or in connection with it.

2. The recognition and enforcement of judgments other than those referred to in paragraph 1 of this Article shall be governed by Regulation (EU) No 1215/2012 provided that that Regulation is applicable.

Article 33

Public policy

Any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual.

CHAPTER III

SECONDARY INSOLVENCY PROCEEDINGS

Article 34

Opening of proceedings

Where main insolvency proceedings have been opened by a court of a Member State and recognised in another Member State, a court of that other Member State which has jurisdiction pursuant to Article 3(2) may open secondary insolvency proceedings in accordance with the provisions set out in this Chapter. Where the main insolvency proceedings required that the debtor be insolvent, the debtor's insolvency shall not be re-examined in the Member State in which secondary insolvency proceedings may be opened. The effects of secondary insolvency proceedings shall be restricted to the assets of the debtor situated within the territory of the Member State in which those proceedings have been opened.

Article 35

Applicable law

Save as otherwise provided for in this Regulation, the law applicable to secondary insolvency proceedings shall be that of the Member State within the territory of which the secondary insolvency proceedings are opened.

Article 36

Right to give an undertaking in order to avoid secondary insolvency proceedings

1. In order to avoid the opening of secondary insolvency proceedings, the insolvency practitioner in the main insolvency proceedings may give a unilateral undertaking (the 'undertaking') in respect of the assets located in the Member State in which secondary insolvency proceedings could be opened, that when distributing those assets or the proceeds received as a result of their realisation, it will comply with the distribution and priority rights under national law that creditors would have if secondary insolvency proceedings were opened in that Member State. The undertaking shall specify the factual assumptions on which it is based, in particular in respect of the value of the assets located in the Member State concerned and the options available to realise such assets.

2. Where an undertaking has been given in accordance with this Article, the law applicable to the distribution of proceeds from the realisation of assets referred to in paragraph 1, to the ranking of creditors' claims, and to the rights of creditors in relation to the assets referred to in paragraph 1 shall be the law of the Member State in which secondary insolvency proceedings could have been opened. The relevant point in time for determining the assets referred to in paragraph 1 shall be the moment at which the undertaking is given.

3. The undertaking shall be made in the official language or one of the official languages of the Member State where secondary insolvency proceedings could have been opened, or, where there are several official languages in that Member State, the official language or one of the official languages of the place in which secondary insolvency proceedings could have been opened.

4. The undertaking shall be made in writing. It shall be subject to any other requirements relating to form and approval requirements as to distributions, if any, of the State of the opening of the main insolvency proceedings.

5. The undertaking shall be approved by the known local creditors. The rules on qualified majority and voting that apply to the adoption of restructuring plans under the law of the Member State where secondary insolvency proceedings could have been opened shall also apply to the approval of the undertaking. Creditors shall be able to participate in the vote by distance means of communication, where national law so permits. The insolvency practitioner shall inform the known local creditors of the undertaking, of the rules and procedures for its approval, and of the approval or rejection of the undertaking.

6. An undertaking given and approved in accordance with this Article shall be binding on the estate. If secondary insolvency proceedings are opened in accordance with Articles 37 and 38, the insolvency practitioner in the main insolvency proceedings shall transfer any assets which it removed from the territory of that Member State after the undertaking was given or, where those assets have already been realised, their proceeds, to the insolvency practitioner in the secondary insolvency proceedings.

7. Where the insolvency practitioner has given an undertaking, it shall inform local creditors about the intended distributions prior to distributing the assets and proceeds referred to in paragraph 1. If that information does not comply with the terms of the undertaking or the applicable law, any local creditor may challenge such distribution before the courts of the Member State in which main insolvency proceedings have been opened in order to obtain a distribution in accordance with the terms of the undertaking and the applicable law. In such cases, no distribution shall take place until the court has taken a decision on the challenge.

8. Local creditors may apply to the courts of the Member State in which main insolvency proceedings have been opened, in order to require the insolvency practitioner in the main insolvency proceedings to take any suitable measures necessary to ensure compliance with the terms of the undertaking available under the law of the State of the opening of main insolvency proceedings.

9. Local creditors may also apply to the courts of the Member State in which secondary insolvency proceedings could have been opened in order to require the court to take provisional or protective measures to ensure compliance by the insolvency practitioner with the terms of the undertaking.

10. The insolvency practitioner shall be liable for any damage caused to local creditors as a result of its non-compliance with the obligations and requirements set out in this Article.

11. For the purpose of this Article, an authority which is established in the Member State where secondary insolvency proceedings could have been opened and which is obliged under Directive 2008/94/EC of the European Parliament and of the Council [1] to guarantee the payment of employees' outstanding claims resulting from contracts of employment or employment relationships shall be considered to be a local creditor, where the national law so provides.

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[1] Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.2008, p. 36).

Article 37

Right to request the opening of secondary insolvency proceedings

1. The opening of secondary insolvency proceedings may be requested by:

(a) the insolvency practitioner in the main insolvency proceedings;

(b) any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary insolvency proceedings is requested.

2. Where an undertaking has become binding in accordance with Article 36, the request for opening secondary insolvency proceedings shall be lodged within 30 days of having received notice of the approval of the undertaking.

Article 38

Decision to open secondary insolvency proceedings

1. A court seised of a request to open secondary insolvency proceedings shall immediately give notice to the insolvency practitioner or the debtor in possession in the main insolvency proceedings and give it an opportunity to be heard on the request.

2. Where the insolvency practitioner in the main insolvency proceedings has given an undertaking in accordance with Article 36, the court referred to in paragraph 1 of this Article shall, at the request of the insolvency practitioner, not open secondary insolvency proceedings if it is satisfied that the undertaking adequately protects the general interests of local creditors.

3. Where a temporary stay of individual enforcement proceedings has been granted in order to allow for negotiations between the debtor and its creditors, the court, at the request of the insolvency practitioner or the debtor in possession, may stay the opening of secondary insolvency proceedings for a period not exceeding 3 months, provided that suitable measures are in place to protect the interests of local creditors.

The court referred to in paragraph 1 may order protective measures to protect the interests of local creditors by requiring the insolvency practitioner or the debtor in possession not to remove or dispose of any assets which are located in the Member State where its establishment is located unless this is done in the ordinary course of business. The court may also order other measures to protect the interest of local creditors during a stay, unless this is incompatible with the national rules on civil procedure.

The stay of the opening of secondary insolvency proceedings shall be lifted by the court of its own motion or at the request of any creditor if, during the stay, an agreement in the negotiations referred to in the first subparagraph has been concluded.

The stay may be lifted by the court of its own motion or at the request of any creditor if the continuation of the stay is detrimental to the creditor's rights, in particular if the negotiations have been disrupted or it has become evident that they are unlikely to be concluded, or if the insolvency practitioner or the debtor in possession has infringed the prohibition on disposal of its assets or on removal of them from the territory of the Member State where the establishment is located.

4. At the request of the insolvency practitioner in the main insolvency proceedings, the court referred to in paragraph 1 may open a type of insolvency proceedings as listed in Annex A other than the type initially requested, provided that the conditions for opening that type of proceedings under national law are fulfilled and that that type of proceedings is the most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings. The second sentence of Article 34 shall apply.

Article 39

Judicial review of the decision to open secondary insolvency proceedings

The insolvency practitioner in the main insolvency proceedings may challenge the decision to open secondary insolvency proceedings before the courts of the Member State in which secondary insolvency proceedings have been opened on the ground that the court did not comply with the conditions and requirements of Article 38.

Article 40

Advance payment of costs and expenses

Where the law of the Member State in which the opening of secondary insolvency proceedings is requested requires that the debtor's assets be sufficient to cover in whole or in part the costs and expenses of the proceedings, the court may, when it receives such a request, require the applicant to make an advance payment of costs or to provide appropriate security.

Article 41

Cooperation and communication between insolvency practitioners

1. The insolvency practitioner in the main insolvency proceedings and the insolvency practitioner or practitioners in secondary insolvency proceedings concerning the same debtor shall cooperate with each other to the extent such cooperation is not incompatible with the rules applicable to the respective proceedings. Such cooperation may take any form, including the conclusion of agreements or protocols.

2. In implementing the cooperation set out in paragraph 1, the insolvency practitioners shall:

(a) as soon as possible communicate to each other any information which may be relevant to the other proceedings, in particular any progress made in lodging and verifying claims and all measures aimed at rescuing or restructuring the debtor, or at terminating the proceedings, provided appropriate arrangements are made to protect confidential information;

(b) explore the possibility of restructuring the debtor and, where such a possibility exists, coordinate the elaboration and implementation of a restructuring plan;

(c) coordinate the administration of the realisation or use of the debtor's assets and affairs; the insolvency practitioner in the secondary insolvency proceedings shall give the insolvency practitioner in the main insolvency proceedings an early opportunity to submit proposals on the realisation or use of the assets in the secondary insolvency proceedings.

3. Paragraphs 1 and 2 shall apply mutatis mutandis to situations where, in the main or in the secondary insolvency proceedings or in any territorial insolvency proceedings concerning the same debtor and open at the same time, the debtor remains in possession of its assets.

Article 42

Cooperation and communication between courts

1. In order to facilitate the coordination of main, territorial and secondary insolvency proceedings concerning the same debtor, a court before which a request to open insolvency proceedings is pending, or which has opened such proceedings, shall cooperate with any other court before which a request to open insolvency proceedings is pending, or which has opened such proceedings, to the extent that such cooperation is not incompatible with the rules applicable to each of the proceedings. For that purpose, the courts may, where appropriate, appoint an independent person or body acting on its instructions, provided that it is not incompatible with the rules applicable to them.

2. In implementing the cooperation set out in paragraph 1, the courts, or any appointed person or body acting on their behalf, as referred to in paragraph 1, may communicate directly with, or request information or assistance directly from, each other provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.

3. The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern:

(a) coordination in the appointment of the insolvency practitioners;

(b) communication of information by any means considered appropriate by the court;

(c) coordination of the administration and supervision of the debtor's assets and affairs;

(d) coordination of the conduct of hearings;

(e) coordination in the approval of protocols, where necessary.

Article 43

Cooperation and communication between insolvency practitioners and courts

1. In order to facilitate the coordination of main, territorial and secondary insolvency proceedings opened in respect of the same debtor:

(a) an insolvency practitioner in main insolvency proceedings shall cooperate and communicate with any court before which a request to open secondary insolvency proceedings is pending or which has opened such proceedings;

(b) an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate and communicate with the court before which a request to open main insolvency proceedings is pending or which has opened such proceedings; and

(c) an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate and communicate with the court before which a request to open other territorial or secondary insolvency proceedings is pending or which has opened such proceedings;

to the extent that such cooperation and communication are not incompatible with the rules applicable to each of the proceedings and do not entail any conflict of interest.

2. The cooperation referred to in paragraph 1 may be implemented by any appropriate means, such as those set out in Article 42(3).

Article 44

Costs of cooperation and communication

The requirements laid down in Articles 42 and 43 shall not result in courts charging costs to each other for cooperation and communication.

Article 45

Exercise of creditors' rights

1. Any creditor may lodge its claim in the main insolvency proceedings and in any secondary insolvency proceedings.

2. The insolvency practitioners in the main and any secondary insolvency proceedings shall lodge in other proceedings claims which have already been lodged in the proceedings for which they were appointed, provided that the interests of creditors in the latter proceedings are served by doing so, subject to the right of creditors to oppose such lodgement or to withdraw the lodgement of their claims where the law applicable so provides.

3. The insolvency practitioner in the main or secondary insolvency proceedings shall be entitled to participate in other proceedings on the same basis as a creditor, in particular by attending creditors' meetings.

Article 46

Stay of the process of realisation of assets

1. The court which opened the secondary insolvency proceedings shall stay the process of realisation of assets in whole or in part on receipt of a request from the insolvency practitioner in the main insolvency proceedings. In such a case, it may require the insolvency practitioner in the main insolvency proceedings to take any suitable measure to guarantee the interests of the creditors in the secondary insolvency proceedings and of individual classes of creditors. Such a request from the insolvency practitioner may be rejected only if it is manifestly of no interest to the creditors in the main insolvency proceedings. Such a stay of the process of realisation of assets may be ordered for up to 3 months. It may be continued or renewed for similar periods.

2. The court referred to in paragraph 1 shall terminate the stay of the process of realisation of assets:

(a) at the request of the insolvency practitioner in the main insolvency proceedings;

(b) of its own motion, at the request of a creditor or at the request of the insolvency practitioner in the secondary insolvency proceedings if that measure no longer appears justified, in particular, by the interests of creditors in the main insolvency proceedings or in the secondary insolvency proceedings.

Article 47

Power of the insolvency practitioner to propose restructuring plans

1. Where the law of the Member State where secondary insolvency proceedings have been opened allows for such proceedings to be closed without liquidation by a restructuring plan, a composition or a comparable measure, the insolvency practitioner in the main insolvency proceedings shall be empowered to propose such a measure in accordance with the procedure of that Member State.

2. Any restriction of creditors' rights arising from a measure referred to in paragraph 1 which is proposed in secondary insolvency proceedings, such as a stay of payment or discharge of debt, shall have no effect in respect of assets of a debtor that are not covered by those proceedings, without the consent of all the creditors having an interest.

Article 48

Impact of closure of insolvency proceedings

1. Without prejudice to Article 49, the closure of insolvency proceedings shall not prevent the continuation of other insolvency proceedings concerning the same debtor which are still open at that point in time.

2. Where insolvency proceedings concerning a legal person or a company in the Member State of that person's or company's registered office would entail the dissolution of the legal person or of the company, that legal person or company shall not cease to exist until any other insolvency proceedings concerning the same debtor have been closed, or the insolvency practitioner or practitioners in such proceedings have given consent to the dissolution.

Article 49

Assets remaining in the secondary insolvency proceedings

If, by the liquidation of assets in the secondary insolvency proceedings, it is possible to meet all claims allowed under those proceedings, the insolvency practitioner appointed in those proceedings shall immediately transfer any assets remaining to the insolvency practitioner in the main insolvency proceedings.

Article 50

Subsequent opening of the main insolvency proceedings

Where the proceedings referred to in Article 3(1) are opened following the opening of the proceedings referred to in Article 3(2) in another Member State, Articles 41, 45, 46, 47 and 49 shall apply to those opened first, in so far as the progress of those proceedings so permits.

Article 51

Conversion of secondary insolvency proceedings

1. At the request of the insolvency practitioner in the main insolvency proceedings, the court of the Member State in which secondary insolvency proceedings have been opened may order the conversion of the secondary insolvency proceedings into another type of insolvency proceedings listed in Annex A, provided that the conditions for opening that type of proceedings under national law are fulfilled and that that type of proceedings is the most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings.

2. When considering the request referred to in paragraph 1, the court may seek information from the insolvency practitioners involved in both proceedings.

Article 52

Preservation measures

Where the court of a Member State which has jurisdiction pursuant to Article 3(1) appoints a temporary administrator in order to ensure the preservation of a debtor's assets, that temporary administrator shall be empowered to request any measures to secure and preserve any of the debtor's assets situated in another Member State, provided for under the law of that Member State, for the period between the request for the opening of insolvency proceedings and the judgment opening the proceedings.

CHAPTER IV

PROVISION OF INFORMATION FOR CREDITORS AND LODGEMENT OF THEIR CLAIMS

Article 53

Right to lodge claims

Any foreign creditor may lodge claims in insolvency proceedings by any means of communication, which are accepted by the law of the State of the opening of proceedings. Representation by a lawyer or another legal professional shall not be mandatory for the sole purpose of lodging of claims.

Article 54

Duty to inform creditors

1. As soon as insolvency proceedings are opened in a Member State, the court of that State having jurisdiction or the insolvency practitioner appointed by that court shall immediately inform the known foreign creditors.

2. The information referred to in paragraph 1, provided by an individual notice, shall in particular include time limits, the penalties laid down with regard to those time limits, the body or authority empowered to accept the lodgement of claims and any other measures laid down. Such notice shall also indicate whether creditors whose claims are preferential or secured *in rem* need to lodge their claims. The notice shall also include a copy of the standard form for lodging of claims referred to in Article 55 or information on where that form is available.

3. The information referred to in paragraphs 1 and 2 of this Article shall be provided using the standard notice form to be established in accordance with Article 88. The form shall be published in the European e-Justice Portal and shall bear the heading 'Notice of insolvency proceedings' in all the official languages of the institutions of the Union. It shall be transmitted in the official language of the State of the opening of proceedings or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where insolvency proceedings have been opened, or in another language which that State has indicated it can accept, in accordance with Article 55(5), if it can be assumed that that language is easier to understand for the foreign creditors.

4. In insolvency proceedings relating to an individual not exercising a business or professional activity, the use of the standard form referred to in this Article shall not be obligatory if creditors are not required to lodge their claims in order to have their claims taken into account in the proceedings.

Article 55

Procedure for lodging claims

1. Any foreign creditor may lodge its claim using the standard claims form to be established in accordance with Article 88. The form shall bear the heading 'Lodgement of claims' in all the official languages of the institutions of the Union.

2. The standard claims form referred to in paragraph 1 shall include the following information:

(a) the name, postal address, e-mail address, if any, personal identification number, if any, and bank details of the foreign creditor referred to in paragraph 1;

(b) the amount of the claim, specifying the principal and, where applicable, interest and the date on which it arose and the date on which it became due, if different;

(c) if interest is claimed, the interest rate, whether the interest is of a legal or contractual nature, the period of time for which the interest is claimed and the capitalised amount of interest;

(d) if costs incurred in asserting the claim prior to the opening of proceedings are claimed, the amount and the details of those costs;

(e) the nature of the claim;

(f) whether any preferential creditor status is claimed and the basis of such a claim;

(g) whether security *in rem* or a reservation of title is alleged in respect of the claim and if so, what assets are covered by the security interest being invoked, the date on which the security was granted and, where the security has been registered, the registration number; and

(h) whether any set-off is claimed and, if so, the amounts of the mutual claims existing on the date when insolvency proceedings were opened, the date on which they arose and the amount net of set-off claimed.

The standard claims form shall be accompanied by copies of any supporting documents.

3. The standard claims form shall indicate that the provision of information concerning the bank details and the personal identification number of the creditor referred to in point (a) of paragraph 2 is not compulsory.

4. When a creditor lodges its claim by means other than the standard form referred to in paragraph 1, the claim shall contain the information referred to in paragraph 2.

5. Claims may be lodged in any official language of the institutions of the Union. The court, the insolvency practitioner or the debtor in possession may require the creditor to provide a translation in the official language of the State of the opening of proceedings or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where insolvency proceedings have been opened, or in another language which that Member State has indicated it can accept. Each Member State shall indicate whether it accepts any official language of the institutions of the Union other than its own for the purpose of the lodging of claims.

6. Claims shall be lodged within the period stipulated by the law of the State of the opening of proceedings. In the case of a foreign creditor, that period shall not be less than 30 days following the publication of the opening of insolvency proceedings in the insolvency register of the State of the opening of proceedings. Where a Member State relies on Article 24(4), that period shall not be less than 30 days following a creditor having been informed pursuant to Article 54.

7. Where the court, the insolvency practitioner or the debtor in possession has doubts in relation to a claim lodged in accordance with this Article, it shall give the creditor the opportunity to provide additional evidence on the existence and the amount of the claim.

CHAPTER V

INSOLVENCY PROCEEDINGS OF MEMBERS OF A GROUP OF COMPANIES

SECTION 1

Cooperation and communication

Article 56

Cooperation and communication between insolvency practitioners

1. Where insolvency proceedings relate to two or more members of a group of companies, an insolvency practitioner appointed in proceedings concerning a member of the group shall cooperate with any insolvency practitioner appointed in proceedings concerning another member of the same group to the extent that such cooperation is appropriate to

facilitate the effective administration of those proceedings, is not incompatible with the rules applicable to such proceedings and does not entail any conflict of interest. That cooperation may take any form, including the conclusion of agreements or protocols.

2. In implementing the cooperation set out in paragraph 1, insolvency practitioners shall:

(a) as soon as possible communicate to each other any information which may be relevant to the other proceedings, provided appropriate arrangements are made to protect confidential information;

(b) consider whether possibilities exist for coordinating the administration and supervision of the affairs of the group members which are subject to insolvency proceedings, and if so, coordinate such administration and supervision;

(c) consider whether possibilities exist for restructuring group members which are subject to insolvency proceedings and, if so, coordinate with regard to the proposal and negotiation of a coordinated restructuring plan.

For the purposes of points (b) and (c), all or some of the insolvency practitioners referred to in paragraph 1 may agree to grant additional powers to an insolvency practitioner appointed in one of the proceedings where such an agreement is permitted by the rules applicable to each of the proceedings. They may also agree on the allocation of certain tasks amongst them, where such allocation of tasks is permitted by the rules applicable to each of the proceedings.

Article 57

Cooperation and communication between courts

1. Where insolvency proceedings relate to two or more members of a group of companies, a court which has opened such proceedings shall cooperate with any other court before which a request to open proceedings concerning another member of the same group is pending or which has opened such proceedings to the extent that such cooperation is appropriate to facilitate the effective administration of the proceedings, is not incompatible with the rules applicable to them and does not entail any conflict of interest. For that purpose, the courts may, where appropriate, appoint an independent person or body to act on its instructions, provided that this is not incompatible with the rules applicable to them.

2. In implementing the cooperation set out in paragraph 1, courts, or any appointed person or body acting on their behalf, as referred to in paragraph 1, may communicate directly with each other, or request information or assistance directly from each other, provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.

3. The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern:

(a) coordination in the appointment of insolvency practitioners;

(b) communication of information by any means considered appropriate by the court;

(c) coordination of the administration and supervision of the assets and affairs of the members of the group;

(d) coordination of the conduct of hearings;

(e) coordination in the approval of protocols where necessary.

Article 58

Cooperation and communication between insolvency practitioners and courts

An insolvency practitioner appointed in insolvency proceedings concerning a member of a group of companies:

(a) shall cooperate and communicate with any court before which a request for the opening of proceedings in respect of another member of the same group of companies is pending or which has opened such proceedings; and

(b) may request information from that court concerning the proceedings regarding the other member of the group or request assistance concerning the proceedings in which he has been appointed;

to the extent that such cooperation and communication are appropriate to facilitate the effective administration of the proceedings, do not entail any conflict of interest and are not incompatible with the rules applicable to them.

Article 59

Costs of cooperation and communication in proceedings concerning members of a group of companies

The costs of the cooperation and communication provided for in Articles 56 to 60 incurred by an insolvency practitioner or a court shall be regarded as costs and expenses incurred in the respective proceedings.

Article 60

Powers of the insolvency practitioner in proceedings concerning members of a group of companies

1. An insolvency practitioner appointed in insolvency proceedings opened in respect of a member of a group of companies may, to the extent appropriate to facilitate the effective administration of the proceedings:

(a) be heard in any of the proceedings opened in respect of any other member of the same group;

(b) request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to any other member of the same group, provided that:

(i) a restructuring plan for all or some members of the group for which insolvency proceedings have been opened has been proposed under point (c) of Article 56(2) and presents a reasonable chance of success;

(ii) such a stay is necessary in order to ensure the proper implementation of the restructuring plan;

(iii) the restructuring plan would be to the benefit of the creditors in the proceedings for which the stay is requested; and

(iv) neither the insolvency proceedings in which the insolvency practitioner referred to in paragraph 1 of this Article has been appointed nor the proceedings in respect of which the stay is requested are subject to coordination under Section 2 of this Chapter;

(c) apply for the opening of group coordination proceedings in accordance with Article 61.

2. The court having opened proceedings referred to in point (b) of paragraph 1 shall stay any measure related to the realisation of the assets in the proceedings in whole or in part if it is satisfied that the conditions referred to in point (b) of paragraph 1 are fulfilled.

Before ordering the stay, the court shall hear the insolvency practitioner appointed in the proceedings for which the stay is requested. Such a stay may be ordered for any period, not exceeding 3 months, which the court considers appropriate and which is compatible with the rules applicable to the proceedings.

The court ordering the stay may require the insolvency practitioner referred to in paragraph 1 to take any suitable measure available under national law to guarantee the interests of the creditors in the proceedings.

The court may extend the duration of the stay by such further period or periods as it considers appropriate and which are compatible with the rules applicable to the proceedings, provided that the conditions referred to in points (b)(ii) to (iv) of paragraph 1 continue to be fulfilled and that the total duration of the stay (the initial period together with any such extensions) does not exceed 6 months.

SECTION 2

Coordination

Subsection 1

Procedure

Article 61

Request to open group coordination proceedings

1. Group coordination proceedings may be requested before any court having jurisdiction over the insolvency proceedings of a member of the group, by an insolvency practitioner appointed in insolvency proceedings opened in relation to a member of the group.

2. The request referred to in paragraph 1 shall be made in accordance with the conditions provided for by the law applicable to the proceedings in which the insolvency practitioner has been appointed.

3. The request referred to in paragraph 1 shall be accompanied by:

(a) a proposal as to the person to be nominated as the group coordinator ('the coordinator'), details of his or her eligibility pursuant to Article 71, details of his or her qualifications and his or her written agreement to act as coordinator;

(b) an outline of the proposed group coordination, and in particular the reasons why the conditions set out in Article 63(1) are fulfilled;

(c) a list of the insolvency practitioners appointed in relation to the members of the group and, where relevant, the courts and competent authorities involved in the insolvency proceedings of the members of the group;

(d) an outline of the estimated costs of the proposed group coordination and the estimation of the share of those costs to be paid by each member of the group.

Article 62

Priority rule

Without prejudice to Article 66, where the opening of group coordination proceedings is requested before courts of different Member States, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 63

Notice by the court seised

1. The court seised of a request to open group coordination proceedings shall give notice as soon as possible of the request for the opening of group coordination proceedings and of the proposed coordinator to the insolvency practitioners appointed in relation to the members of the group as indicated in the request referred to in point (c) of Article 61(3), if it is satisfied that:

(a) the opening of such proceedings is appropriate to facilitate the effective administration of the insolvency proceedings relating to the different group members;

(b) no creditor of any group member expected to participate in the proceedings is likely to be financially disadvantaged by the inclusion of that member in such proceedings; and

(c) the proposed coordinator fulfils the requirements laid down in Article 71.

2. The notice referred to in paragraph 1 of this Article shall list the elements referred to in points (a) to (d) of Article 61(3).

3. The notice referred to in paragraph 1 shall be sent by registered letter, attested by an acknowledgment of receipt.

4. The court seised shall give the insolvency practitioners involved the opportunity to be heard.

Article 64

Objections by insolvency practitioners

1. An insolvency practitioner appointed in respect of any group member may object to:

(a) the inclusion within group coordination proceedings of the insolvency proceedings in respect of which it has been appointed; or

(b) the person proposed as a coordinator.

2. Objections pursuant to paragraph 1 of this Article shall be lodged with the court referred to in Article 63 within 30 days of receipt of notice of the request for the opening of group coordination proceedings by the insolvency practitioner referred to in paragraph 1 of this Article.

The objection may be made by means of the standard form established in accordance with Article 88.

3. Prior to taking the decision to participate or not to participate in the coordination in accordance with point (a) of paragraph 1, an insolvency practitioner shall obtain any approval which may be required under the law of the State of the opening of proceedings for which it has been appointed.

Article 65

Consequences of objection to the inclusion in group coordination

1. Where an insolvency practitioner has objected to the inclusion of the proceedings in respect of which it has been appointed in group coordination proceedings, those proceedings shall not be included in the group coordination proceedings.

2. The powers of the court referred to in Article 68 or of the coordinator arising from those proceedings shall have no effect as regards that member, and shall entail no costs for that member.

Article 66

Choice of court for group coordination proceedings

1. Where at least two-thirds of all insolvency practitioners appointed in insolvency proceedings of the members of the group have agreed that a court of another Member State having jurisdiction is the most appropriate court for the opening of group coordination proceedings, that court shall have exclusive jurisdiction.

2. The choice of court shall be made by joint agreement in writing or evidenced in writing. It may be made until such time as group coordination proceedings have been opened in accordance with Article 68.

3. Any court other than the court seised under paragraph 1 shall decline jurisdiction in favour of that court.

4. The request for the opening of group coordination proceedings shall be submitted to the court agreed in accordance with Article 61.

Article 67

Consequences of objections to the proposed coordinator

Where objections to the person proposed as coordinator have been received from an insolvency practitioner which does not also object to the inclusion in the group coordination proceedings of the member in respect of which it has been appointed, the court may refrain from appointing that person and invite the objecting insolvency practitioner to submit a new request in accordance with Article 61(3).

Article 68

Decision to open group coordination proceedings

1. After the period referred to in Article 64(2) has elapsed, the court may open group coordination proceedings where it is satisfied that the conditions of Article 63(1) are met. In such a case, the court shall:

(a) appoint a coordinator;

(b) decide on the outline of the coordination; and

(c) decide on the estimation of costs and the share to be paid by the group members.

2. The decision opening group coordination proceedings shall be brought to the notice of the participating insolvency practitioners and of the coordinator.

Article 69

Subsequent opt-in by insolvency practitioners

1. In accordance with its national law, any insolvency practitioner may request, after the court decision referred to in Article 68, the inclusion of the proceedings in respect of which it has been appointed, where:

(a) there has been an objection to the inclusion of the insolvency proceedings within the group coordination proceedings; or

(b) insolvency proceedings with respect to a member of the group have been opened after the court has opened group coordination proceedings.

2. Without prejudice to paragraph 4, the coordinator may accede to such a request, after consulting the insolvency practitioners involved, where

(a) he or she is satisfied that, taking into account the stage that the group coordination proceedings has reached at the time of the request, the criteria set out in points (a) and (b) of Article 63(1) are met; or

(b) all insolvency practitioners involved agree, subject to the conditions in their national law.

3. The coordinator shall inform the court and the participating insolvency practitioners of his or her decision pursuant to paragraph 2 and of the reasons on which it is based.

4. Any participating insolvency practitioner or any insolvency practitioner whose request for inclusion in the group coordination proceedings has been rejected may challenge the decision referred to in paragraph 2 in accordance with the procedure set out under the law of the Member State in which the group coordination proceedings have been opened.

Article 70

Recommendations and group coordination plan

1. When conducting their insolvency proceedings, insolvency practitioners shall consider the recommendations of the coordinator and the content of the group coordination plan referred to in Article 72(1).

2. An insolvency practitioner shall not be obliged to follow in whole or in part the coordinator's recommendations or the group coordination plan.

If it does not follow the coordinator's recommendations or the group coordination plan, it shall give reasons for not doing so to the persons or bodies that it is to report to under its national law, and to the coordinator.

Subsection 2

General provisions

Article 71

The coordinator

1. The coordinator shall be a person eligible under the law of a Member State to act as an insolvency practitioner.

2. The coordinator shall not be one of the insolvency practitioners appointed to act in respect of any of the group members, and shall have no conflict of interest in respect of the group members, their creditors and the insolvency practitioners appointed in respect of any of the group members.

Article 72

Tasks and rights of the coordinator

1. The coordinator shall:

(a) identify and outline recommendations for the coordinated conduct of the insolvency proceedings;

(b) propose a group coordination plan that identifies, describes and recommends a comprehensive set of measures appropriate to an integrated approach to the resolution of the group members' insolvencies. In particular, the plan may contain proposals for:

(i) the measures to be taken in order to re-establish the economic performance and the financial soundness of the group or any part of it;

(ii) the settlement of intra-group disputes as regards intra-group transactions and avoidance actions;

(iii) agreements between the insolvency practitioners of the insolvent group members.

2. The coordinator may also:

(a) be heard and participate, in particular by attending creditors' meetings, in any of the proceedings opened in respect of any member of the group;

(b) mediate any dispute arising between two or more insolvency practitioners of group members;

(c) present and explain his or her group coordination plan to the persons or bodies that he or she is to report to under his or her national law;

(d) request information from any insolvency practitioner in respect of any member of the group where that information is or might be of use when identifying and outlining strategies and measures in order to coordinate the proceedings; and

(e) request a stay for a period of up to 6 months of the proceedings opened in respect of any member of the group, provided that such a stay is necessary in order to ensure the proper implementation of the plan and would be to the benefit of the creditors in the proceedings for which the stay is requested; or request the lifting of any existing stay. Such a request shall be made to the court that opened the proceedings for which a stay is requested.

3. The plan referred to in point (b) of paragraph 1 shall not include recommendations as to any consolidation of proceedings or insolvency estates.

4. The coordinator's tasks and rights as defined under this Article shall not extend to any member of the group not participating in group coordination proceedings.

5. The coordinator shall perform his or her duties impartially and with due care.

6. Where the coordinator considers that the fulfilment of his or her tasks requires a significant increase in the costs compared to the cost estimate referred to in point (d) of Article 61(3), and in any case, where the costs exceed 10 % of the estimated costs, the coordinator shall:

(a) inform without delay the participating insolvency practitioners; and

(b) seek the prior approval of the court opening group coordination proceedings.

Article 73

Languages

1. The coordinator shall communicate with the insolvency practitioner of a participating group member in the language agreed with the insolvency practitioner or, in the absence of an agreement, in the official language or one of the official languages of the institutions of the Union, and of the court which opened the proceedings in respect of that group member.

2. The coordinator shall communicate with a court in the official language applicable to that court.

Article 74

Cooperation between insolvency practitioners and the coordinator

1. Insolvency practitioners appointed in relation to members of a group and the coordinator shall cooperate with each other to the extent that such cooperation is not incompatible with the rules applicable to the respective proceedings.

2. In particular, insolvency practitioners shall communicate any information that is relevant for the coordinator to perform his or her tasks.

Article 75

Revocation of the appointment of the coordinator

The court shall revoke the appointment of the coordinator of its own motion or at the request of the insolvency practitioner of a participating group member where:

(a) the coordinator acts to the detriment of the creditors of a participating group member; or

(b) the coordinator fails to comply with his or her obligations under this Chapter.

Article 76

Debtor in possession

The provisions applicable, under this Chapter, to the insolvency practitioner shall also apply, where appropriate, to the debtor in possession.

Article 77

Costs and distribution

1. The remuneration for the coordinator shall be adequate, proportionate to the tasks fulfilled and reflect reasonable expenses.

2. On having completed his or her tasks, the coordinator shall establish the final statement of costs and the share to be paid by each member, and submit this statement to each participating insolvency practitioner and to the court opening coordination proceedings.

3. In the absence of objections by the insolvency practitioners within 30 days of receipt of the statement referred to in paragraph 2, the costs and the share to be paid by each member shall be deemed to be agreed. The statement shall be submitted to the court opening coordination proceedings for confirmation.

4. In the event of an objection, the court that opened the group coordination proceedings shall, upon the application of the coordinator or any participating insolvency practitioner, decide on the costs and the share to be paid by each member in accordance with the criteria set out in paragraph 1 of this Article, and taking into account the estimation of costs referred to in Article 68(1) and, where applicable, Article 72(6).

5. Any participating insolvency practitioner may challenge the decision referred to in paragraph 4 in accordance with the procedure set out under the law of the Member State where group coordination proceedings have been opened.

CHAPTER VI

DATA PROTECTION

Article 78

Data protection

1. National rules implementing Directive 95/46/EC shall apply to the processing of personal data carried out in the Member States pursuant to this Regulation, provided that processing operations referred to in Article 3(2) of Directive 95/46/EC are not concerned.

2. Regulation (EC) No 45/2001 shall apply to the processing of personal data carried out by the Commission pursuant to this Regulation.

Article 79

Responsibilities of Member States regarding the processing of personal data in national insolvency registers

1. Each Member State shall communicate to the Commission the name of the natural or legal person, public authority, agency or any other body designated by national law to exercise the functions of controller in accordance with point (d) of Article 2 of Directive 95/46/EC, with a view to its publication on the European e-Justice Portal.

2. Member States shall ensure that the technical measures for ensuring the security of personal data processed in their national insolvency registers referred to in Article 24 are implemented.

3. Member States shall be responsible for verifying that the controller, designated by national law in accordance with point (d) of Article 2 of Directive 95/46/EC, ensures compliance with the principles of data quality, in particular the accuracy and the updating of data stored in national insolvency registers.

4. Member States shall be responsible, in accordance with Directive 95/46/EC, for the collection and storage of data in national databases and for decisions taken to make such data available in the interconnected register that can be consulted via the European e-Justice Portal.

5. As part of the information that should be provided to data subjects to enable them to exercise their rights, and in particular the right to the erasure of data, Member States shall inform data subjects of the accessibility period set for personal data stored in insolvency registers.

Article 80

Responsibilities of the Commission in connection with the processing of personal data

1. The Commission shall exercise the responsibilities of controller pursuant to Article 2(d) of Regulation (EC) No 45/2001 in accordance with its respective responsibilities defined in this Article.

2. The Commission shall define the necessary policies and apply the necessary technical solutions to fulfil its responsibilities within the scope of the function of controller.

3. The Commission shall implement the technical measures required to ensure the security of personal data while in transit, in particular the confidentiality and integrity of any transmission to and from the European e-Justice Portal.

4. The obligations of the Commission shall not affect the responsibilities of the Member States and other bodies for the content and operation of the interconnected national databases run by them.

Article 81

Information obligations

Without prejudice to the information to be given to data subjects in accordance with Articles 11 and 12 of Regulation (EC) No 45/2001, the Commission shall inform data subjects, by means of publication through the European e-Justice Portal, about its role in the processing of data and the purposes for which those data will be processed.

Article 82

Storage of personal data

As regards information from interconnected national databases, no personal data relating to data subjects shall be stored in the European e-Justice Portal. All such data shall be stored in the national databases operated by the Member States or other bodies.

Article 83

Access to personal data via the European e-Justice Portal

Personal data stored in the national insolvency registers referred to in Article 24 shall be accessible via the European e-Justice Portal for as long as they remain accessible under national law.

CHAPTER VII

TRANSITIONAL AND FINAL PROVISIONS

Article 84

Applicability in time

1. The provisions of this Regulation shall apply only to insolvency proceedings opened after 26 June 2017. Acts committed by a debtor before that date shall continue to be governed by the law which was applicable to them at the time they were committed.

2. Notwithstanding Article 91 of this Regulation, Regulation (EC) No 1346/2000 shall continue to apply to insolvency proceedings which fall within the scope of that Regulation and which have been opened before 26 June 2017.

Article 85

Relationship to Conventions

1. This Regulation replaces, in respect of the matters referred to therein, and as regards relations between Member States, the Conventions concluded between two or more Member States, in particular:

(a) the Convention between Belgium and France on Jurisdiction and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Paris on 8 July 1899;

(b) the Convention between Belgium and Austria on Bankruptcy, Winding-up, Arrangements, Compositions and Suspension of Payments (with Additional Protocol of 13 June 1973), signed at Brussels on 16 July 1969;

(c) the Convention between Belgium and the Netherlands on Territorial Jurisdiction, Bankruptcy and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 28 March 1925;

(d) the Treaty between Germany and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Vienna on 25 May 1979;

(e) the Convention between France and Austria on Jurisdiction, Recognition and Enforcement of Judgments on Bankruptcy, signed at Vienna on 27 February 1979;

(f) the Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930;

(g) the Convention between Italy and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Rome on 12 July 1977;

(h) the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the Mutual Recognition and Enforcement of Judgments and other Enforceable Instruments in Civil and Commercial Matters, signed at The Hague on 30 August 1962;

(i) the Convention between the United Kingdom and the Kingdom of Belgium providing for the Reciprocal Enforcement of Judgments in Civil and Commercial Matters, with Protocol, signed at Brussels on 2 May 1934;

(j) the Convention between Denmark, Finland, Norway, Sweden and Iceland on Bankruptcy, signed at Copenhagen on 7 November 1933;

(k) the European Convention on Certain International Aspects of Bankruptcy, signed at Istanbul on 5 June 1990;

(l) the Convention between the Federative People's Republic of Yugoslavia and the Kingdom of Greece on the Mutual Recognition and Enforcement of Judgments, signed at Athens on 18 June 1959;

(m) the Agreement between the Federative People's Republic of Yugoslavia and the Republic of Austria on the Mutual Recognition and Enforcement of Arbitral Awards and Arbitral Settlements in Commercial Matters, signed at Belgrade on 18 March 1960;

(n) the Convention between the Federative People's Republic of Yugoslavia and the Italian Republic on Mutual Judicial Cooperation in Civil and Administrative Matters, signed at Rome on 3 December 1960;

(o) the Agreement between the Socialist Federative Republic of Yugoslavia and the Kingdom of Belgium on Judicial Cooperation in Civil and Commercial Matters, signed at Belgrade on 24 September 1971;

(p) the Convention between the Governments of Yugoslavia and France on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Paris on 18 May 1971;

(q) the Agreement between the Czechoslovak Socialist Republic and the Hellenic Republic on Legal Aid in Civil and Criminal Matters, signed at Athens on 22 October 1980, still in force between the Czech Republic and Greece;

(r) the Agreement between the Czechoslovak Socialist Republic and the Republic of Cyprus on Legal Aid in Civil and Criminal Matters, signed at Nicosia on 23 April 1982, still in force between the Czech Republic and Cyprus;

(s) the Treaty between the Government of the Czechoslovak Socialist Republic and the Government of the Republic of France on Legal Aid and the Recognition and Enforcement of Judgments in Civil, Family and Commercial Matters, signed at Paris on 10 May 1984, still in force between the Czech Republic and France;

(t) the Treaty between the Czechoslovak Socialist Republic and the Italian Republic on Legal Aid in Civil and Criminal Matters, signed at Prague on 6 December 1985, still in force between the Czech Republic and Italy;

(u) the Agreement between the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania on Legal Assistance and Legal Relationships, signed at Tallinn on 11 November 1992;

(v) the Agreement between Estonia and Poland on Granting Legal Aid and Legal Relations on Civil, Labour and Criminal Matters, signed at Tallinn on 27 November 1998;

(w) the Agreement between the Republic of Lithuania and the Republic of Poland on Legal Assistance and Legal Relations in Civil, Family, Labour and Criminal Matters, signed at Warsaw on 26 January 1993;

(x) the Convention between the Socialist Republic of Romania and the Hellenic Republic on legal assistance in civil and criminal matters and its Protocol, signed at Bucharest on 19 October 1972;

(y) the Convention between the Socialist Republic of Romania and the French Republic on legal assistance in civil and commercial matters, signed at Paris on 5 November 1974;

(z) the Agreement between the People's Republic of Bulgaria and the Hellenic Republic on Legal Assistance in Civil and Criminal Matters, signed at Athens on 10 April 1976;

(aa) the Agreement between the People's Republic of Bulgaria and the Republic of Cyprus on Legal Assistance in Civil and Criminal Matters, signed at Nicosia on 29 April 1983;

(ab) the Agreement between the Government of the People's Republic of Bulgaria and the Government of the French Republic on Mutual Legal Assistance in Civil Matters, signed at Sofia on 18 January 1989;

(ac) the Treaty between Romania and the Czech Republic on judicial assistance in civil matters, signed at Bucharest on 11 July 1994;

(ad) the Treaty between Romania and the Republic of Poland on legal assistance and legal relations in civil cases, signed at Bucharest on 15 May 1999.

2. The Conventions referred to in paragraph 1 shall continue to have effect with regard to proceedings opened before the entry into force of Regulation (EC) No 1346/2000.

3. This Regulation shall not apply:

(a) in any Member State, to the extent that it is irreconcilable with the obligations arising in relation to bankruptcy from a convention concluded by that Member State with one or more third countries before the entry into force of Regulation (EC) No 1346/2000;

(b) in the United Kingdom of Great Britain and Northern Ireland, to the extent that is irreconcilable with the obligations arising in relation to bankruptcy and the winding-up of insolvent companies from any arrangements with the Commonwealth existing at the time Regulation (EC) No 1346/2000 entered into force.

Article 86

Information on national and Union insolvency law

1. The Member States shall provide, within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC ([1]), and with a view to making the information available to the public, a short description of their national legislation and procedures relating to insolvency, in particular relating to the matters listed in Article 7(2).

2. The Member States shall update the information referred to in paragraph 1 regularly.

3. The Commission shall make information concerning this Regulation available to the public.

Article 87

Establishment of the interconnection of registers

The Commission shall adopt implementing acts establishing the interconnection of insolvency registers as referred to in Article 25. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 89(3).

Article 88

Establishment and subsequent amendment of standard forms

The Commission shall adopt implementing acts establishing and, where necessary, amending the forms referred to in Article 27(4), Articles 54 and 55 and Article 64(2). Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 89(2).

Article 89

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 90

Review clause

1. No later than 27 June 2027, and every 5 years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied where necessary by a proposal for adaptation of this Regulation.

2. No later than 27 June 2022, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of the group coordination proceedings. The report shall be accompanied where necessary by a proposal for adaptation of this Regulation.

3. No later than 1 January 2016, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the cross-border issues in the area of directors' liability and disqualifications.

4. No later than 27 June 2020, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the issue of abusive forum shopping.

([1]) Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174, 27.6.2001, p. 25).

Article 91

Repeal

Regulation (EC) No 1346/2000 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex D to this Regulation.

Article 92

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 26 June 2017, with the exception of:

(a) Article 86, which shall apply from 26 June 2016;

(b) Article 24(1), which shall apply from 26 June 2018; and

(c) Article 25, which shall apply from 26 June 2019.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 20 May 2015.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	Z. KALNIŅA-LUKAŠEVICA

ANNEX A

Insolvency proceedings referred to in point (4) of Article 2

BELGIQUE/BELGIË

— Het faillissement/La faillite,

— De gerechtelijke reorganisatie door een collectief akkoord/La réorganisation judiciaire par accord collectif,

— De gerechtelijke reorganisatie door een minnelijk akkoord/La réorganisation judiciaire par accord amiable,

— De gerechtelijke reorganisatie door overdracht onder gerechtelijk gezag/La réorganisation judiciaire par transfert sous autorité de justice,

— De collectieve schuldenregeling/Le règlement collectif de dettes,

— De vrijwillige vereffening/La liquidation volontaire,

— De gerechtelijke vereffening/La liquidation judiciaire,

— De voorlopige ontneming van beheer, bepaald in artikel 8 van de faillissementswet/Le dessaisissement provisoire, visé à l'article 8 de la loi sur les faillites,

БЪЛГАРИЯ

— Производство по несъстоятелност,

ČESKÁ REPUBLIKA

— Konkurs,

— Reorganizace,

— Oddlužení,

DEUTSCHLAND

— Das Konkursverfahren,

— Das gerichtliche Vergleichsverfahren,

— Das Gesamtvollstreckungsverfahren,

— Das Insolvenzverfahren,

EESTI

— Pankrotimenetlus,

— Võlgade ümberkujundamise menetlus,

ÉIRE/IRELAND

— Compulsory winding-up by the court,

— Bankruptcy,

— The administration in bankruptcy of the estate of persons dying insolvent,

— Winding-up in bankruptcy of partnerships,

— Creditors' voluntary winding-up (with confirmation of a court),

— Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution,

— Examinership,

— Debt Relief Notice,

— Debt Settlement Arrangement,

— Personal Insolvency Arrangement,

ΕΛΛΑΔΑ

— Η πτώχευση,

— Η ειδική εκκαθάριση εν λειτουργία,

— Σχέδιο αναδιοργάνωσης,

— Απλοποιημένη διαδικασία επί πτωχεύσεων μικρού αντικειμένου,

— Διαδικασία Εξυγίανσης,

ESPAÑA

— Concurso,

— Procedimiento de homologación de acuerdos de refinanciación,

— Procedimiento de acuerdos extrajudiciales de pago,

— Procedimiento de negociación pública para la consecución de acuerdos de refinanciación colectivos, acuerdos de refinanciación homologados y propuestas anticipadas de convenio,

FRANCE

— Sauvegarde,

— Sauvegarde accélérée,

— Sauvegarde financière accélérée,

— Redressement judiciaire,

— Liquidation judiciaire,

HRVATSKA

— Stečajni postupak,

ITALIA

— Fallimento,

— Concordato preventivo,

— Liquidazione coatta amministrativa,

— Amministrazione straordinaria,

— Accordi di ristrutturazione,

— Procedure di composizione della crisi da sovraindebitamento del consumatore (accordo o piano),

— Liquidazione dei beni,

ΚΥΠΡΟΣ

— Υποχρεωτική εκκαθάριση από το Δικαστήριο,

— Εκούσια εκκαθάριση από μέλη,

— Εκούσια εκκαθάριση από πιστωτές

— Εκκαθάριση με την εποπτεία του Δικαστηρίου,

— Διάταγμα Παραλαβής και πτώχευσης κατόπιν Δικαστικού Διατάγματος,

— Διαχείριση της περιουσίας προσώπων που απεβίωσαν αφερέγγυα,

LATVIJA

— Tiesiskās aizsardzības process,

— Juridiskās personas maksātnespējas process,

— Fiziskās personas maksātnespējas process,

LIETUVA

— Įmonės restruktūrizavimo byla,

— Įmonės bankroto byla,

— Įmonės bankroto procesas ne teismo tvarka,

— Fizinio asmens bankroto procesas,

LUXEMBOURG

— Faillite,

— Gestion contrôlée,

— Concordat préventif de faillite (par abandon d'actif),

— Régime spécial de liquidation du notariat,

— Procédure de règlement collectif des dettes dans le cadre du surendettement,

MAGYARORSZÁG

— Csődeljárás,

— Felszámolási eljárás,

MALTA

— Xoljiment,

— Amministrazzjoni,

— Stralċ volontarju mill-membri jew mill-kredituri,

— Stralċ mill-Qorti,

— Falliment f'każ ta' kummerċjant,

— Proċedura biex kumpanija tirkupra,

NEDERLAND

— Het faillissement,

— De surséance van betaling,

— De schuldsaneringsregeling natuurlijke personen,

ÖSTERREICH

— Das Konkursverfahren (Insolvenzverfahren),

— Das Sanierungsverfahren ohne Eigenverwaltung (Insolvenzverfahren),

— Das Sanierungsverfahren mit Eigenverwaltung (Insolvenzverfahren),

— Das Schuldenregulierungsverfahren,

— Das Abschöpfungsverfahren,

— Das Ausgleichsverfahren,

POLSKA

— Postępowanie naprawcze,

— Upadłość obejmująca likwidację,

— Upadłość z możliwością zawarcia układu,

PORTUGAL

— Processo de insolvência,

— Processo especial de revitalização,

ROMÂNIA

— Procedura insolvenței,

— Reorganizarea judiciară,

— Procedura falimentului,

— Concordatul preventiv,

SLOVENIJA

— Postopek preventivnega prestrukturiranja,

— Postopek prisilne poravnave,

— Postopek poenostavljene prisilne poravnave,

— Stečajni postopek: stečajni postopek nad pravno osebo, postopek osebnega stečaja and postopek stečaja zapuščine,

SLOVENSKO

— Konkurzné konanie,

— Reštrukturalizačné konanie,

— Oddlženie,

SUOMI/FINLAND

— Konkurssi/konkurs,

— Yrityssaneeraus/företagssanering,

— Yksityishenkilön velkajärjestely/skuldsanering för privatpersoner,

SVERIGE

— Konkurs,

— Företagsrekonstruktion,

— Skuldsanering,

UNITED KINGDOM

— Winding-up by or subject to the supervision of the court,

— Creditors' voluntary winding-up (with confirmation by the court),

— Administration, including appointments made by filing prescribed documents with the court,

— Voluntary arrangements under insolvency legislation,

— Bankruptcy or sequestration.

ANNEX B

Insolvency practitioners referred to in point (5) of Article 2

BELGIQUE/BELGIË

— De curator/Le curateur,

— De gedelegeerd rechter/Le juge-délégué,

— De gerechtsmandataris/Le mandataire de justice,

— De schuldbemiddelaar/Le médiateur de dettes,

— De vereffenaar/Le liquidateur,

— De voorlopige bewindvoerder/L'administrateur provisoire,

БЪЛГАРИЯ

— Назначен предварително временен синдик,

— Временен синдик,

— (Постоянен) синдик,

— Служебен синдик,

ČESKÁ REPUBLIKA

— Insolvenční správce,

— Předběžný insolvenční správce,

— Oddělený insolvenční správce,

— Zvláštní insolvenční správce,

— Zástupce insolvenčního správce,

DEUTSCHLAND

— Konkursverwalter,

— Vergleichsverwalter,

— Sachwalter (nach der Vergleichsordnung),

— Verwalter,

— Insolvenzverwalter,

— Sachwalter (nach der Insolvenzordnung),

— Treuhänder,

— Vorläufiger Insolvenzverwalter,

— Vorläufiger Sachwalter,

EESTI

— Pankrotihaldur,

— Ajutine pankrotihaldur,

— Usaldusisik,

ÉIRE/IRELAND

— Liquidator,

— Official Assignee,

— Trustee in bankruptcy,

— Provisional Liquidator,

— Examiner,

— Personal Insolvency Practitioner,

— Insolvency Service,

ΕΛΛΑΔΑ

— Ο σύνδικος,

— Ο εισηγητής,

— Η επιτροπή των πιστωτών,

— Ο ειδικός εκκαθαριστής,

ESPAÑA

— Administrador concursal,

— Mediador concursal,

FRANCE

— Mandataire judiciaire,

— Liquidateur,

— Administrateur judiciaire,

— Commissaire à l'exécution du plan,

HRVATSKA

— Stečajni upravitelj,

— Privremeni stečajni upravitelj,

— Stečajni povjerenik,

— Povjerenik,

ITALIA

— Curatore,

— Commissario giudiziale,

— Commissario straordinario,

— Commissario liquidatore,

— Liquidatore giudiziale,

— Professionista nominato dal Tribunale,

— Organismo di composizione della crisi nella procedura di composizione della crisi da sovraindebitamento del consumatore,

— Liquidatore,

ΚΥΠΡΟΣ

— Εκκαθαριστής και Προσωρινός Εκκαθαριστής,

— Επίσημος Παραλήπτης,

— Διαχειριστής της Πτώχευσης,

LATVIJA

— Maksātnespējas procesa administrators,

LIETUVA

— Bankroto administratorius,

— Restruktūrizavimo administratorius,

LUXEMBOURG

— Le curateur,

— Le commissaire,

— Le liquidateur,

— Le conseil de gérance de la section d'assainissement du notariat,

— Le liquidateur dans le cadre du surendettement,

MAGYARORSZÁG

— Vagyonfelügyelő,

— Felszámoló,

MALTA

— Amministratur Proviżorju,

— Riċevitur Uffiċjali,

— Stralċjarju,

— Manager Speċjali,

— Kuraturi f'każ ta' proċeduri ta' falliment,

— Kontrolur Speċjali,

NEDERLAND

— De curator in het faillissement,

— De bewindvoerder in de surséance van betaling,

— De bewindvoerder in de schuldsaneringsregeling natuurlijke personen,

ÖSTERREICH

— Masseverwalter,

— Sanierungsverwalter,

— Ausgleichsverwalter,

— Besonderer Verwalter,

— Einstweiliger Verwalter,

— Sachwalter,

— Treuhänder,

— Insolvenzgericht,

— Konkursgericht,

POLSKA

— Syndyk,

— Nadzorca sądowy,

— Zarządca,

PORTUGAL

— Administrador da insolvência,

— Administrador judicial provisório,

ROMÂNIA

— Practician în insolvență,

— Administrator concordatar,

— Administrator judiciar,

— Lichidator judiciar,

SLOVENIJA

— Upravitelj,

SLOVENSKO

— Predbežný správca,

— Správca,

SUOMI/FINLAND

— Pesänhoitaja/boförvaltare,

— Selvittäjä/utredare,

SVERIGE

— Förvaltare,

— Rekonstruktör,

UNITED KINGDOM

— Liquidator,

— Supervisor of a voluntary arrangement,

— Administrator,

— Official Receiver,

— Trustee,

— Provisional Liquidator,

— Interim Receiver,

— Judicial factor.

ANNEX C

Repealed Regulation with list of the successive amendments thereto

Council Regulation (EC) No 1346/2000

(OJ L 160, 30.6.2000, p. 1)

Council Regulation (EC) No 603/2005

(OJ L 100, 20.4.2005, p. 1)

Council Regulation (EC) No 694/2006

(OJ L 121, 6.5.2006, p. 1)

Council Regulation (EC) No 1791/2006

(OJ L 363, 20.12.2006, p. 1)

Council Regulation (EC) No 681/2007

(OJ L 159, 20.6.2007, p. 1)

Council Regulation (EC) No 788/2008

(OJ L 213, 8.8.2008, p. 1)

Implementing Regulation of the Council (EU) No 210/2010

(OJ L 65, 13.3.2010, p. 1)

Council Implementing Regulation (EU) No 583/2011

(OJ L 160, 18.6.2011, p. 52)

Council Regulation (EU) No 517/2013

(OJ L 158, 10.6.2013, p. 1)

Council Implementing Regulation (EU) No 663/2014

(OJ L 179, 19.6.2014, p. 4)

Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded

(OJ L 236, 23.9.2003, p. 33)

ANNEX D

Correlation table

Regulation (EC) No 1346/2000	This Regulation
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2, point (a)	Article 2, point (4)
Article 2, point (b)	Article 2, point (5)
Article 2, point (c)	—
Article 2, point (d)	Article 2, point (6)
Article 2, point (e)	Article 2, point (7)
Article 2, point (f)	Article 2, point (8)
Article 2, point (g), introductory words	Article 2, point (9), introductory words
Article 2, point (g), first indent	Article 2, point (9)(vii)
Article 2, point (g), second indent	Article 2, point (9)(iv)
Article 2, point (g), third indent	Article 2, point (9)(viii)
Article 2, point (h)	Article 2, point 10
—	Article 2, points (1) to (3) and (11) to (13)
—	Article 2, point (9)(i) to (iii), (v), (vi)
Article 3	Article 3
—	Article 4
—	Article 5
—	Article 6
Article 4	Article 7
Article 5	Article 8
Article 6	Article 9
Article 7	Article 10
Article 8	Article 11(1)
—	Article 11(2)
Article 9	Article 12
Article 10	Article 13(1)
—	Article 13(2)
Article 11	Article 14
Article 12	Article 15
Article 13, first indent	Article 16, point (a)
Article 13, second indent	Article 16, point (b)
Article 14, first indent	Article 17, point (a)
Article 14, second indent	Article 17, point (b)

Regulation (EC) No 1346/2000	This Regulation
Article 14, third indent	Article 17, point (c)
Article 15	Article 18
Article 16	Article 19
Article 17	Article 20
Article 18	Article 21
Article 19	Article 22
Article 20	Article 23
—	Article 24
—	Article 25
—	Article 26
—	Article 27
Article 21(1)	Article 28(2)
Article 21(2)	Article 28(1)
Article 22	Article 29
Article 23	Article 30
Article 24	Article 31
Article 25	Article 32
Article 26	Article 33
Article 27	Article 34
Article 28	Article 35
—	Article 36
Article 29	Article 37(1)
—	Article 37(2)
—	Article 38
—	Article 39
Article 30	Article 40
Article 31	Article 41
—	Article 42
—	Article 43
—	Article 44
Article 32	Article 45
Article 33	Article 46
Article 34(1)	Article 47(1)
Article 34(2)	Article 47(2)
Article 34(3)	—
—	Article 48
Article 35	Article 49
Article 36	Article 50
Article 37	Article 51

Regulation (EC) No 1346/2000	This Regulation
Article 38	Article 52
Article 39	Article 53
Article 40	Article 54
Article 41	Article 55
Article 42	—
—	Article 56
—	Article 57
—	Article 58
—	Article 59
—	Article 60
—	Article 61
—	Article 62
—	Article 63
—	Article 64
—	Article 65
—	Article 66
—	Article 67
—	Article 68
—	Article 69
—	Article 70
—	Article 71
—	Article 72
—	Article 73
—	Article 74
—	Article 75
—	Article 76
—	Article 77
—	Article 78
—	Article 79
—	Article 80
—	Article 81
—	Article 82
—	Article 83
Article 43	Article 84(1)
—	Article 84(2)
Article 44	Article 85
—	Article 86
Article 45	—
—	Article 87
—	Article 88

Regulation (EC) No 1346/2000	This Regulation
—	Article 89
Article 46	Article 90(1)
—	Article 90(2) to (4)
—	Article 91
Article 47	Article 92
Annex A	Annex A
Annex B	—
Annex C	Annex B
—	Annex C
—	Annex D

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I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2018/946 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 4 July 2018

replacing Annexes A and B to Regulation (EU) 2015/848 on insolvency proceedings

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ([1]),

Whereas:

(1) Annexes A and B to Regulation (EU) 2015/848 of the European Parliament and of the Council ([2]) list the designations given in the national law of the Member States to the insolvency proceedings and to the insolvency practitioners to which that Regulation applies. Annex A lists the insolvency proceedings referred to in point (4) of Article 2 of Regulation (EU) 2015/848 and Annex B lists the insolvency practitioners referred to in point (5) of that Article.

(2) On 3 January 2017, the Republic of Croatia notified the Commission of recent changes in its domestic insolvency law that introduce new types of insolvency proceedings. Those new types of insolvency proceedings are consistent with the definition of insolvency proceedings under Regulation (EU) 2015/848.

(3) After the Commission presented its proposal, it received further notifications from the Republic of Bulgaria, the Republic of Croatia, the Republic of Latvia and the Portuguese Republic relating to recent changes to their domestic law that introduce new types of insolvency proceedings or insolvency practitioners. Furthermore, the Kingdom of Belgium notified the Commission of the adoption of a new law that introduces changes to its domestic insolvency law. That new law entered into force on 1 May 2018. Those new types of insolvency proceedings and insolvency practitioners comply with the requirements set out in Regulation (EU) 2015/848 and make it necessary to amend Annexes A and B to that Regulation.

(4) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified, by letter of 15 November 2017, its wish to take part in the adoption and application of this Regulation.

(5) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

([1]) Position of the European Parliament of 13 June 2018 (not yet published in the Official Journal) and decision of the Council of 26 June 2018.

([2]) Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p. 19).

(6) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(7) Annexes A and B to Regulation (EU) 2015/848 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Annexes A and B to Regulation (EU) 2015/848 are replaced by the text set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 4 July 2018.

For the European Parliament	*For the Council*
The President	*The President*
A. TAJANI	K. EDTSTADLER

ANNEX

'ANNEX A

Insolvency proceedings referred to in point (4) of Article 2

BELGIQUE/BELGIË

— Het faillissement/La faillite,

— De gerechtelijke reorganisatie door een collectief akkoord/La réorganisation judiciaire par accord collectif,

— De gerechtelijke reorganisatie door een minnelijk akkoord/La réorganisation judiciaire par accord amiable,

— De gerechtelijke reorganisatie door overdracht onder gerechtelijk gezag/La réorganisation judiciaire par transfert sous autorité de justice,

— De collectieve schuldenregeling/Le règlement collectif de dettes,

— De vrijwillige vereffening/La liquidation volontaire,

— De gerechtelijke vereffening/La liquidation judiciaire,

— De voorlopige ontneming van het beheer, als bedoeld in artikel XX.32 van het Wetboek van economisch recht/Le dessaisissement provisoire de la gestion, visé à l'article XX.32 du Code de droit économique,

БЪЛГАРИЯ

— Производство по несъстоятелност,

— Производство по стабилизация на търговеца,

ČESKÁ REPUBLIKA

— Konkurs,

— Reorganizace,

— Oddlužení,

DEUTSCHLAND

— Das Konkursverfahren,

— Das gerichtliche Vergleichsverfahren,

— Das Gesamtvollstreckungsverfahren,

— Das Insolvenzverfahren,

EESTI

— Pankrotimenetlus,

— Võlgade ümberkujundamise menetlus,

ÉIRE/IRELAND

— Compulsory winding-up by the court,

— Bankruptcy,

— The administration in bankruptcy of the estate of persons dying insolvent,

— Winding-up in bankruptcy of partnerships,

— Creditors' voluntary winding-up (with confirmation of a court),

— Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution,

— Examinership,

— Debt Relief Notice,

— Debt Settlement Arrangement,

— Personal Insolvency Arrangement,

ΕΛΛΑΔΑ

— Η πτώχευση,

— Η ειδική εκκαθάριση εν λειτουργία,

— Σχέδιο αναδιοργάνωσης,

— Απλοποιημένη διαδικασία επί πτωχεύσεων μικρού αντικειμένου,

— Διαδικασία εξυγίανσης,

ESPAÑA

— Concurso,

— Procedimiento de homologación de acuerdos de refinanciación,

— Procedimiento de acuerdos extrajudiciales de pago,

— Procedimiento de negociación pública para la consecución de acuerdos de refinanciación colectivos, acuerdos de refinanciación homologados y propuestas anticipadas de convenio,

FRANCE

— Sauvegarde,

— Sauvegarde accélérée,

— Sauvegarde financière accélérée,

— Redressement judiciaire,

— Liquidation judiciaire,

HRVATSKA

— Stečajni postupak,

— Predstečajni postupak,

— Postupak stečaja potrošača,

— Postupak izvanredne uprave u trgovačkim društvima od sistemskog značaja za Republiku Hrvatsku,

ITALIA

— Fallimento,

— Concordato preventivo,

— Liquidazione coatta amministrativa,

— Amministrazione straordinaria,

— Accordi di ristrutturazione,

— Procedure di composizione della crisi da sovraindebitamento del consumatore (accordo o piano),

— Liquidazione dei beni,

ΚΥΠΡΟΣ

— Υποχρεωτική εκκαθάριση από το Δικαστήριο,

— Εκούσια εκκαθάριση από μέλη,

— Εκούσια εκκαθάριση από πιστωτές

— Εκκαθάριση με την εποπτεία του Δικαστηρίου,

— Διάταγμα παραλαβής και πτώχευσης κατόπιν Δικαστικού Διατάγματος,

— Διαχείριση της περιουσίας προσώπων που απεβίωσαν αφερέγγυα,

LATVIJA

— Tiesiskās aizsardzības process,

— Juridiskās personas maksātnespējas process,

— Fiziskās personas maksātnespējas process,

LIETUVA

— Įmonės restruktūrizavimo byla,

— Įmonės bankroto byla,

— Įmonės bankroto procesas ne teismo tvarka,

— Fizinio asmens bankroto procesas,

LUXEMBOURG

— Faillite,

— Gestion contrôlée,

— Concordat préventif de faillite (par abandon d'actif),

— Régime spécial de liquidation du notariat,

— Procédure de règlement collectif des dettes dans le cadre du surendettement,

MAGYARORSZÁG

— Csődeljárás,

— Felszámolási eljárás,

MALTA

— Xoljiment,

— Amministrazzjoni,

— Stralċ volontarju mill-membri jew mill-kredituri,

— Stralċ mill-Qorti,

— Falliment f'każ ta' kummerċjant,

— Proċedura biex kumpanija tirkupra,

NEDERLAND

— Het faillissement,

— De surséance van betaling,

— De schuldsaneringsregeling natuurlijke personen,

ÖSTERREICH

— Das Konkursverfahren (Insolvenzverfahren),

— Das Sanierungsverfahren ohne Eigenverwaltung (Insolvenzverfahren),

— Das Sanierungsverfahren mit Eigenverwaltung (Insolvenzverfahren),

— Das Schuldenregulierungsverfahren,

— Das Abschöpfungsverfahren,

— Das Ausgleichsverfahren,

POLSKA

— Upadłość,

— Postępowanie o zatwierdzenie układu,

— Przyspieszone postępowanie układowe,

— Postępowanie układowe,

— Postępowanie sanacyjne,

PORTUGAL

— Processo de insolvência,

— Processo especial de revitalização,

— Processo especial para acordo de pagamento,

ROMÂNIA

— Procedura insolvenței,

— Reorganizarea judiciară,

— Procedura falimentului,

— Concordatul preventiv,

SLOVENIJA

— Postopek preventivnega prestrukturiranja,

— Postopek prisilne poravnave,

— Postopek poenostavljene prisilne poravnave,

— Stečajni postopek: stečajni postopek nad pravno osebo, postopek osebnega stečaja in postopek stečaja zapuščine,

SLOVENSKO

— Konkurzné konanie,

— Reštrukturalizačné konanie,

— Oddlženie,

SUOMI/FINLAND

— Konkurssi/konkurs,

— Yrityssaneeraus/företagssanering,

— Yksityishenkilön velkajärjestely/skuldsanering för privatpersoner,

SVERIGE

— Konkurs,

— Företagsrekonstruktion,

— Skuldsanering,

UNITED KINGDOM

— Winding-up by or subject to the supervision of the court,

— Creditors' voluntary winding-up (with confirmation by the court),

— Administration, including appointments made by filing prescribed documents with the court,

— Voluntary arrangements under insolvency legislation,

— Bankruptcy or sequestration.

ANNEX B

Insolvency practitioners referred to in point (5) of Article 2

BELGIQUE/BELGIË

— De curator/Le curateur,

— De gerechtsmandataris/Le mandataire de justice,

— De schuldbemiddelaar/Le médiateur de dettes,

— De vereffenaar/Le liquidateur,

— De voorlopige bewindvoerder/L'administrateur provisoire,

БЪЛГАРИЯ

— Назначен предварително временен синдик,

— Временен синдик,

— (Постоянен) синдик,

— Служебен синдик,

— Доверено лице,

ČESKÁ REPUBLIKA

— Insolvenční správce,

— Předběžný insolvenční správce,

— Oddělený insolvenční správce,

— Zvláštní insolvenční správce,

— Zástupce insolvenčního správce,

DEUTSCHLAND

— Konkursverwalter,

— Vergleichsverwalter,

— Sachwalter (nach der Vergleichsordnung),

— Verwalter,

— Insolvenzverwalter,

— Sachwalter (nach der Insolvenzordnung),

— Treuhänder,

— Vorläufiger Insolvenzverwalter,

— Vorläufiger Sachwalter,

EESTI

— Pankrotihaldur,

— Ajutine pankrotihaldur,

— Usaldusisik,

ÉIRE/IRELAND

— Liquidator,

— Official Assignee,

— Trustee in bankruptcy,

— Provisional Liquidator,

— Examiner,

— Personal Insolvency Practitioner,

— Insolvency Service,

ΕΛΛΑΔΑ

— Ο σύνδικος,

— Ο εισηγητής,

— Η επιτροπή των πιστωτών,

— Ο ειδικός εκκαθαριστής,

ESPAÑA

— Administrador concursal,

— Mediador concursal,

FRANCE

— Mandataire judiciaire,

— Liquidateur,

— Administrateur judiciaire,

— Commissaire à l'exécution du plan,

HRVATSKA

— Stečajni upravitelj,

— Privremeni stečajni upravitelj,

— Stečajni povjerenik,

— Povjerenik,

— Izvanredni povjerenik,

ITALIA

— Curatore,

— Commissario giudiziale,

— Commissario straordinario,

— Commissario liquidatore,

— Liquidatore giudiziale,

— Professionista nominato dal Tribunale,

— Organismo di composizione della crisi nella procedura di composizione della crisi da sovraindebitamento del consumatore,

— Liquidatore,

ΚΥΠΡΟΣ

— Εκκαθαριστής και Προσωρινός Εκκαθαριστής,

— Επίσημος Παραλήπτης,

— Διαχειριστής της Πτώχευσης,

LATVIJA

— Maksātnespējas procesa administrators,

— Tiesiskās aizsardzības procesa uzraugošā persona,

LIETUVA

— Bankroto administratorius,

— Restruktūrizavimo administratorius,

LUXEMBOURG

— Le curateur,

— Le commissaire,

— Le liquidateur,

— Le conseil de gérance de la section d'assainissement du notariat,

— Le liquidateur dans le cadre du surendettement,

MAGYARORSZÁG

— Vagyonfelügyelő,

— Felszámoló,

MALTA

— Amministratur Proviżorju,

— Riċevitur Uffiċjali,

— Stralċjarju,

— Manager Speċjali,

— Kuraturi f'każ ta' proċeduri ta' falliment,

— Kontrolur Speċjali,

NEDERLAND

— De curator in het faillissement,

— De bewindvoerder in de surséance van betaling,

— De bewindvoerder in de schuldsaneringsregeling natuurlijke personen,

ÖSTERREICH

— Masseverwalter,

— Sanierungsverwalter,

— Ausgleichsverwalter,

— Besonderer Verwalter,

— Einstweiliger Verwalter,

— Sachwalter,

— Treuhänder,

— Insolvenzgericht,

— Konkursgericht,

POLSKA

— Syndyk,

— Nadzorca sądowy,

— Zarządca,

— Nadzorca układu,

— Tymczasowy nadzorca sądowy,

— Tymczasowy zarządca,

— Zarządca przymusowy,

PORTUGAL

— Administrador da insolvência,

— Administrador judicial provisório,

ROMÂNIA

— Practician în insolvență,

— Administrator concordatar,

— Administrator judiciar,

— Lichidator judiciar,

SLOVENIJA

— Upravitelj,

SLOVENSKO

— Predbežný správca,

— Správca,

SUOMI/FINLAND

— Pesänhoitaja/boförvaltare,

— Selvittäjä/utredare,

SVERIGE

— Förvaltare,

— Rekonstruktör,

UNITED KINGDOM

— Liquidator,

— Supervisor of a voluntary arrangement,

— Administrator,

— Official Receiver,

— Trustee,

— Provisional Liquidator,

— Interim Receiver,

— Judicial factor.'

Exhibit C
(Schedule 1 to the Insolvency Act)

SCHEDULES

SCHEDULE 1

Sections 14, 42.

POWERS OF ADMINISTRATOR OR ADMINISTRATIVE RECEIVER

Annotations:

Modifications etc. (not altering text)

C1 Sch. 1 modified (15.7.2003) by 1999 c. 29, ss. 220(3), 425, Sch. 14 paras. 11, 19 (with Sch. 12 para. 9(1)); S.I. 2003/1920, **art. 2(b)**

C2 Sch. 1 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

1 Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.

2 Power to sell or otherwise dispose of the property of the company by public auction or private contract or, in Scotland, to sell, **[**F1feu,**]** hire out or otherwise dispose of the property of the company by public roup or private bargain.

Annotations:

Amendments (Textual)

F1 Word in Sch. 1 para. 2 repealed (S.) (28.11.2004) by 2000 asp 5, ss. 71, 76(2), 77(2), Sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

3 Power to raise or borrow money and grant security therefor over the property of the company.

4 Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.

5 Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.

6 Power to refer to arbitration any question affecting the company.

7 Power to effect and maintain insurances in respect of the business and property of the company.

8 Power to use the company's seal.

9 Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.

10 Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.

11 Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.

12 Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company.

13 Power to make any payment which is necessary or incidental to the performance of his functions.

14 Power to carry on the business of the company.

15 Power to establish subsidiaries of the company.

16 Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.

17 Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.

18 Power to make any arrangement or compromise on behalf of the company.

19 Power to call up any uncalled capital of the company.

20 Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.

21 Power to present or defend a petition for the winding up of the company.

22 Power to change the situation of the company’s registered office.

23 Power to do all other things incidental to the exercise of the foregoing powers.

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to :

- Sch. 1 amendment to earlier affecting provision SI 1994/2421 Sch. 8 by S.I. 2017/540 Sch. 2 para. 11
- First Group of Parts amendment to earlier affecting provision S.I. 2006/3107, art. 3, Sch. by S.I. 2018/208 reg. 11

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act Amendment to earlier affecting provision SI 2011/245, reg. 15 by S.I. 2017/1064 Sch. para. 36(4)
- Act amendment to earlier affecting provision S.I. 1986/1999, art. 3, Sch. 1 Pt. 2 by S.I. 2017/1119 Sch. 3 para. 1
- Act amendment to earlier affecting provision S.I. 2001/1090, Sch. 3 by S.I. 2017/1119 Sch. 1 para. 37-53
- Act amendment to earlier affecting provision S.I. 2011/245, regs. 8(7), 9, 15, 16-21, 24, 25, Schs. 1-4 by S.I. 2018/208 reg. 13
- Act amendment to earlier affecting provision S.I. 2011/245. reg. 8(7), 9, 15, 16-21, 24, 25, Schs. 1-4 by S.I. 2017/400 reg. 10
- Act amendment to earlier affecting provision S.I. 2013/1388, Sch. 2 by S.I. 2017/400 reg. 11(2)
- Act amendment to earlier affecting provision S.I. 2013/1388, Sch. 2 by S.I. 2018/208 reg. 14
- Act amendment to earlier affecting provision SI 1994/2421 Sch. 4 by S.I. 2017/540 Sch. 2 para. 8
- Act amendment to earlier affecting provision SI 1994/2421 Sch. 7 by S.I. 2017/540 Sch. 2 para. 9
- Act applied (with modifications) by S.I. 2017/1212 reg. 166(2)167(2)Sch. 23
- Act applied in part (with modifications) by 2017 c. 19 s. 6(2)(b)s. 6(3)9-12
- Act excluded by S.I. 2018/1135 rule 4.10(2)
- Act modified by 1986 c. 46 s. 22H(4)(g) (as inserted) by S.I. 2017/1212 Sch. 4 para. 3
- Act modified by S.I. 2012/3013, Sch. 2 para. 34 (as inserted) by S.I. 2018/728 reg. 3(6)Sch. 2
- Act modified in part by 2016 c. 22 Sch. 5 para. 39
- Act modified in part by S.I. 2019/138 reg. 4-6
- Act power to modify conferred by 2016 c. 22 Sch. 5 para. 45(2)
- Act power to modify or exclude conferred by 2017 c. 19 s. 6(2)(a)(3)(4)
- Act specified provisions applied (with modifications) by 2013 c. 33 Sch. 6 para. 5

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 12-19 amendment to earlier affecting provision S.I. 2001/1090, reg. 5, Schs. 3, 4 by S.I. 2017/1119 Sch. 1 Pt. 23
- Pt. 2 amendment to earlier affecting provision S.I. 2010/3023, art. 2, Sch. by S.I. 2017/400 reg. 9
- Pt. 2 amendment to earlier affecting provision S.I. 2010/3023, art. 2, Sch. by S.I. 2018/208 reg. 12
- Pt. 2 amendment to earlier affecting provision S.I. 2014/229, art. 2(2) Sch. 1 Pts. 1, 3, 4 by S.I. 2018/208 reg. 15(3)(b)
- Pt. 2 amendment to earlier affecting provision SI 1994/2421 Sch. 2 by S.I. 2017/540 Sch. 2 para. 6

- Pt. 2 words substituted by S.I. 2019/146 Sch. para. 45(2) (This amendment is to 1986 c. 45, Pt. 2 as that Part had effect immediately before the coming into force of 2002 c. 40, s. 248 and in so far as it continues to have effect)
- s. 4(4)(d) and word inserted by S.I. 2018/1244 art. 5(b)
- s. 5A applied (with modifications) by S.I. 1994/2421, art. 16, Sch. 8 (as amended) by S.I. 2017/1119 Sch. 2 para. 4
- s. 12C applied (with modifications) by S.I. 1994/2421, art. 16, Sch. 8 (as amended) by S.I. 2017/1119 Sch. 2 para. 4
- s. 13-15C applied (with modifications) by S.I. 1994/2421, art. 16, Sch. 8 (as amended) by S.I. 2017/1119 Sch. 2 para. 4
- s. 41HB(2) words substituted by 2018 c. 14 s. 1(3)(b)
- s. 51(6)(a) words substituted by S.I. 2016/1034 Sch. 1 para. 4(2)
- s. 106(4A)(4B) amendment by S.I. 2017/702, Sch. para. 3 extended to Scotland by S.I. 2019/816 reg. 6(2)
- s. 106(4A)(4B) inserted by S.I. 2017/702 Sch. para. 3
- s. 106(4A)(4B) omitted by S.I. 2019/146 Sch. para. 18
- s. 106(7)(8) inserted by S.I. 2017/702 Sch. para. 56
- s. 106(7)(8) omitted by S.I. 2019/146 Sch. para. 134
- s. 142(3A) inserted by S.S.I. 2017/209 art. 4(a)
- s. 146(6)(7) amendment by S.I. 2017/702, Sch. para. 7 extended to Scotland by S.I. 2019/816 reg. 6(2)
- s. 146(6)(7) inserted by S.I. 2017/702 Sch. para. 7
- s. 146(6)(7) omitted by S.I. 2019/146 Sch. para. 22
- s. 146A inserted by S.I. 2017/702 Sch. para. 8
- s. 146A omitted by S.I. 2019/146 Sch. para. 23
- s. 170(8) amendment to earlier affecting provision 1998 c. 46, Sch. 8 para. 23(2)-(3) by S.I. 2016/679 art. 6
- s. 172(9)(10) inserted by S.I. 2017/702 Sch. para. 57
- s. 172(9)(10) omitted by S.I. 2019/146 Sch. para. 135
- s. 176ZB amendment to earlier affecting provision 2009 c. 1, s. 145 Table 2 by S.I. 2017/400 reg. 5(10)
- s. 176ZB applied (modifications) by 2009 c. 1, s. 103 (as amended) by S.I. 2017/400 reg. 5(4)
- s. 176ZB applied (modifications) by S.I. 2014/229, art. 2A (as inserted) by S.I. 2017/400 reg. 12(2)
- s. 176AZA applied (with modifications) by 2009 (c. 1), s. 103 Table (as amended) by S.I. 2018/1244 art. 14(1)
- s. 176AZA applied (with modifications) by S.I. 1994/2421, art. 4(3)(za) (as inserted) by S.I. 2018/1244 art. 16
- s. 176AZA applied (with modifications) by S.I. 1994/2421, art. 6(5)(za) (as inserted) by S.I. 2018/1244 art. 17
- s. 176AZA and cross-heading inserted by S.I. 2018/1244 art. 6
- s. 201(2)(2A)(2B) amendments by S.I. 2017/702, Sch. para. 9 extended to Scotland by S.I. 2019/816 reg. 6(2)
- s. 201(2A)(2B) inserted by S.I. 2017/702 Sch. para. 9(3)
- s. 201(2A)(2B) inserted by S.I. 2017/702 Sch. para. 58(2)
- s. 201(2A)(2B) omitted by S.I. 2019/146 Sch. para. 136(b)
- s. 202(2A)(2B) inserted by S.I. 2017/702 Sch. para. 10(2)
- s. 202(2A)(2B) omitted by S.I. 2019/146 Sch. para. 25(2)
- s. 202(6)(7) inserted by S.I. 2017/702 Sch. para. 10(5)(b)
- s. 202(6)(7) omitted by S.I. 2019/146 Sch. para. 25(5)
- s. 202(8) words omitted by S.I. 2019/146 Sch. para. 25(6)
- s. 202(8) words renumbered by S.I. 2017/702 Sch. para. 10(6)
- s. 204(4A)-(4E) inserted by S.I. 2017/702 Sch. para. 59
- s. 204(4A)-(4E) omitted by S.I. 2019/146 Sch. para. 137
- s. 205(2)(2A)(2B) amendments by S.I. 2017/702, Sch. para. 12 extended to Scotland by S.I. 2019/816 reg. 6(2)
- s. 205(2A)(2B) inserted by S.I. 2017/702 Sch. para. 12(3)

- s. 205(2A)(2B) inserted by S.I. 2017/702 Sch. para. 60(2)
- s. 205(2A)(2B) omitted by S.I. 2019/146 Sch. para. 26(3)
- s. 205(2A)(2B) omitted by S.I. 2019/146 Sch. para. 138(b)
- s. 210(2A)(2B) omitted by S.I. 2019/146 Sch. para. 24(3)
- s. 246ZA-246ZD applied (modifications) by 2009 c. 1, s. 145 Table 2 (as amended) by S.I. 2017/400 reg. 5(10)
- s. 246ZA-246ZC applied (with modifications) by 2017 c. 19 Sch. 3
- s. 246ZA-246ZC applied (with modifications) by 2017 c. 19 Sch. 4
- s. 246ZD applied (modifications) by 2009 c. 1, s. 103 (as amended) by S.I. 2017/400 reg. 5(4)
- s. 246ZD applied (with modifications) by 2017 c. 19 Sch. 3
- s. 246ZD applied (with modifications) by 2017 c. 19 Sch. 4
- s. 246ZE246ZF modified by SI 1994/2421 Sch. 7A (as inserted) by S.I. 2017/540 Sch. 2 para. 10
- s. 258(5)(d) and word inserted by S.I. 2018/1244 art. 7(b)
- s. 263I(1)(ab) inserted by S.I. 2019/146 Sch. para. 31(2)(a)
- s. 263I(5) inserted by S.I. 2019/146 Sch. para. 31(3)
- s. 265(1)(ab) inserted by S.I. 2019/146 Sch. para. 33(2)(a)
- s. 265(4) words substituted by S.I. 2017/702 Sch. para. 20
- s. 265(5) inserted by S.I. 2019/146 Sch. para. 33(3)
- s. 288(2A) inserted by 2015 c. 20 Sch. 6 para. 15(3)
- s. 291A inserted by 2015 c. 26 s. 133(1)
- s. 328(3A) inserted by S.I. 2018/1244 art. 8(2)
- s. 328(4)(a)(b) s. 328(4)(a)(b) substituted for words in s. 328(4) by S.I. 2018/1244 art. 8(3)
- s. 379ZA379ZB modified by SI 1994/2421 Sch. 7A (as inserted) by S.I. 2017/540 Sch. 2 para. 10
- s. 387A applied (with modifications) by 2009 (c. 1), s. 103 Table (as amended) by S.I. 2018/1244 art. 14(2)
- s. 387A inserted by S.I. 2018/1244 art. 11
- s. 390(5)(a) words inserted by S.I. 2016/1034 Sch. 1 para. 4(8)
- s. 391A-391T applied (modifications) by 2009 c. 1, s. 103 (as amended) by S.I. 2017/400 reg. 5(4)
- s. 391A-391T applied (modifications) by 2009 c. 1, s. 145 Table 2 (as amended) by S.I. 2017/400 reg. 5(10)
- s. 422A inserted by S.I. 2019/146 Sch. para. 41
- Sch. A1 para. 31(5)(d) and word inserted by S.I. 2018/1244 art. 12(2)(b)
- Sch. B1 para. 84(1A)(1B) inserted by S.I. 2017/702 Sch. para. 30(2)(a)
- Sch. B1 para. 84(6A)(6B) inserted by S.I. 2017/702 Sch. para. 30(4)
- Sch. B1 para. 73(1)(e) and word inserted by S.I. 2018/1244 art. 13(3)(c)
- Sch. B1 para. 84(1A)(1B) omitted by S.I. 2019/146 Sch. para. 44(a)(i)
- Sch. B1 para. 84(6A)(6B) omitted by S.I. 2019/146 Sch. para. 44(a)(iv)
- Sch. 6 para. 15BB(a) words substituted by S.I. 2018/1394 Sch. 2 para. 2(a)(i)
- Sch. 6 para. 15BB(a) words substituted by S.I. 2018/1394 Sch. 2 para. 2(a)(ii)
- Sch. 6 para. 15BB(b) words substituted by S.I. 2018/1394 Sch. 2 para. 2(b)