



Neutral Citation Number: [2017] EWCA Civ 111

Case No: A2/2015/0638

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**  
**MANCHESTER DISTRICT REGISTRY**  
**HIS HONOUR JUDGE HODGE QC**  
**M14C358**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 1 March 2017

**Before :**  
**LORD JUSTICE DAVID RICHARDS**  
**And**  
**LORD JUSTICE IRWIN**

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**Between :**

**JAMES GREEN (Supervisor of the Voluntary  
Arrangement of James Patrick Wright)**

**Appellant**

**- and -**

**JAMES PATRICK WRIGHT**  
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**Respondent**

**Paul French** (instructed by **Brethertons LLP**) for the **Appellant**  
**Ian Tucker** (instructed by **Stephensons**) for the **Respondent**

Hearing date: 15 November 2016  
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**Approved Judgment**

**Lord Justice David Richards:**

1. The issue on this appeal is whether a trust in favour of creditors constituted by an individual voluntary arrangement (IVA) survives the issue of a certificate of completion of the IVA, so that property of the debtor, that was subject to the trust but was discovered only after the issue of the certificate, remains subject to the trust once it is discovered. Resolution of this issue turns on the proper construction of the terms of the IVA, in the context of its factual background, the relevant statutory regime and applicable legal principles.
2. The issue arises because after the appellant (the supervisor) in his capacity as the supervisor of the IVA of the respondent (the debtor) had issued a certificate of completion under the terms of the IVA, he received payments from two banks in settlement of claims for the mis-selling of payment protection insurance policies (PPI policies) to the debtor. It is common ground that the mis-selling claims were property to which the IVA applied. The supervisor applied to court for directions as to whether the sums paid by the banks were subject to the trust. Deputy District Judge Langley, sitting in the County Court at Burnley determined that they were not subject to the trust. On appeal, HH Judge Hodge QC, sitting as a Judge of the High Court, affirmed the decision: [2015] EWHC 993 (Ch), [2015] BPIR 806. This second appeal is brought with permission granted by Lewison LJ.
3. A brief chronology of the material facts is as follows. In August 2007, the debtor proposed an IVA on terms that incorporated the widely-used Standard Conditions (Version 2, November 2004) published by the Association of Business Recovery Professionals (R3). It was submitted to the Burnley County Court in September 2007 and was approved at a meeting of creditors in October 2007, with some 30 modifications to the Standard Conditions. I set out in an appendix to this judgment the relevant provisions of the Standard Conditions, as modified.
4. The debtor complied with his obligations under the IVA and in January 2013 the supervisor issued a certificate of due completion. I will refer later to the certificate and its effect. In September and October 2013, the supervisor received two payments totalling some £24,500 from two banks in settlement of PPI policy mis-selling claims made by the debtor after the issue of the certificate of completion. The claims related to policies taken out before August 2007 and, as I mentioned above, it is common ground that the claims were property subject to the terms of the IVA and the trust of the debtor's assets constituted by it.
5. An IVA is a means by which an insolvent individual can make an arrangement with his creditors, binding on both debtor and creditors, and thereby avoid the formal process of bankruptcy, often to the advantage of all parties. The statutory framework is contained in Part VIII of the Insolvency Act 1986. Section 253(1) defines an IVA as “a proposal to [the debtor’s] creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs.” By section 256A, a debtor wishing to propose an IVA must submit his proposal to a qualified person who, under the proposal, will act "either as trustee or otherwise for the purpose of supervising its implementation" (section 253(2)) (the nominee), together with a statement of his affairs containing prescribed particulars of his creditors, debts and other liabilities and

assets. The nominee reports on the proposal to the creditors and, under section 257 as it was in force in 2007, summons a meeting of creditors to consider the proposal. For these purposes, the creditors are those persons who would be creditors in a bankruptcy commencing on the date on which notice of the meeting is given. Under section 258, the meeting may approve the proposal, subject to such modifications as the debtor may agree. The effect of approval is to bind every creditor who was entitled to vote at the meeting, whether or not present or represented at it. Provision is made to challenge the approval by application to the court under section 262.

6. Further provision is made by Part 5 of the Insolvency Rules 1986. Rule 5.23(2) provides that a proposal or a modification is approved if a majority of three quarters or more (in value) of those present and voting in person or by proxy have voted in favour of it. Rule 5.34(1) requires the supervisor, within 28 days after the final completion or termination of the IVA, to send to all creditors who are bound by it, and to the debtor, "a notice that the arrangement has been fully implemented or (as the case may be) terminated". Termination occurs where the IVA has not been implemented in accordance with the proposal as approved by the creditors: rule 5.34(2).
7. The basic provision made for creditors by the IVA in this case was twofold. First, all the debtor's assets as at the date of commencement of the IVA, other than his car and his interest in his matrimonial home, were to be held on trust for the purposes of the IVA, that is to say realising them and distributing the proceeds among the creditors. This was the combined effect of paragraphs 26 and 28 of the Conditions. Paragraph 26 provided that property other than Excluded Property belonging to or vested in the debtor at the date of the commencement of the IVA "which would form part of the Debtor's estate in a bankruptcy shall be subject to the Arrangement and be an asset thereof". Additional provision was made by paragraph 27 to extend the IVA to certain property acquired by the debtor after the commencement of the IVA. Paragraph 28 provided that all property subject to the IVA was held on trust by the debtor or the supervisor, as the case may be, "for the purposes of the Arrangement". Secondly, the debtor was to make monthly contributions from his income for a period of five years at a rate specified in the IVA, with provision for their variation in certain circumstances. A failure to pay to non-preferential creditors a minimum of 33 pence in the £ would constitute a default.
8. If implemented, the IVA would be a full and final satisfaction of the debts and liabilities of the debtors: para 4(1). Unless the IVA was terminated, no creditor had any remedy against the property or person of the debtor or could commence or continue any action or other legal proceeding against the debtor: para 4(3). Unless extended, the duration of the IVA was five years or, if later, until unsecured creditors had received 33 pence in the £: para 8(1) and the proposal put to creditors. Upon the expiration of the IVA's duration, and if the debtor had complied with his obligations under the IVA, the supervisor would issue the certification of completion required by Insolvency Rule 5.34: para 9(1). Upon issue of the certificate "the Debtor shall be released from all Debts which are subject to the Arrangement": para 9(2).
9. Completion of the IVA is to be contrasted with its termination. Condition 11(1) provided:

**"[Termination in certain circumstances]**

The Arrangement shall terminate upon:

- (a) the Supervisor issuing a Certificate of Termination under Paragraph 71;
- (b) the making of a bankruptcy order against the Debtor;
- (c) the Debtor's death."

10. Without going into details, a certificate of termination would be issued under paragraph 71 in the event of an un-remedied breach by the debtor of his obligations under the IVA.
11. The supervisor's powers continued following completion or termination of the IVA to the extent "necessary for him to fully carry out his duties, obligations and responsibilities under the IVA": para 14(1).
12. The trust of debtor's assets is constituted by paragraph 28:

**“28(1) [Assets in the possession of the Debtor]**

Property constituting an asset of the Arrangement in the possession, custody or control of the Debtor shall be held by the Debtor upon trust for the purposes of the Arrangement until realisation thereof (if so provided) in accordance with the Arrangement.

**28(2) [Assets in the possession of the Supervisor]**

Property constituting an asset of the Arrangement in the possession, custody or control of the Supervisor shall be held by the Supervisor upon trust for the purposes of the Arrangement.

**28(3) [Effect upon Trusts of termination of Arrangement]**

Upon termination of the arrangement within the meaning of paragraph 11 the trusts referred to in subparagraphs (1) and (2) shall cease save that assets already realised shall after provision for the supervisor's fees and disbursements be distributed to arrangement creditors."

13. The supervisor's case is that the sums received in settlement of the PPI claims, being (as is agreed) property to which the IVA applied, are subject to the trust for which paragraph 28 of the Conditions provides. He relies on guidance given by the Court of Appeal in *Re N T Gallagher & Son Ltd* [2002] EWCA Civ 404, [2002] 1 WLR 2380 (*Gallagher*), the absence of any provision for the termination of the trust other than paragraph 28(3) which does not apply in this case because the IVA was not terminated (as defined), and the underlying purpose of the IVA that the property of the debtor as at the date of the IVA was to be realised and distributed among the creditors, just as it would have been in a bankruptcy of the debtor.
14. The issue in *Gallagher* was whether a trust of the company's assets constituted by a company voluntary arrangement (CVA) for the creditors bound by the CVA survived the company going into liquidation as a result of its worsening financial position and

inability to meet its commitments under the CVA. Although the CVA did not use the word "trust" it was common ground that it created a trust of certain assets. This court, affirming the decision at first instance, held that it did survive the liquidation and that therefore sums recovered after the commencement of the liquidation in proceedings to enforce a claim, which was under the terms of the CVA property subject to the trust, were held on the terms of the trust and did not form part of the assets available in the liquidation.

15. Peter Gibson LJ, giving the judgment of the court, set out the submission of counsel for the liquidator at [44]:

“44 Mr Zacaroli submits that the CVA, including the trust created by it, failed and terminated on the liquidation of Gallagher. He accepts that the terms of the CVA may dictate what is to happen on liquidation to a trust created by the CVA, but he submits that where the parties have failed to state clearly what is to happen, the court must apply a default rule. That rule, he says, should be that where the liquidation causes the CVA itself to fail or terminate, any trust created over assets of the company for the purpose of the CVA also terminates. He again submits that the trust assets are held for the purpose of implementing the CVA as a whole and he says that if the CVA cannot be implemented as a whole, the trust cannot be carried into effect and, by analogy with *Quistclose Investments Ltd v Rolls Razor Ltd* [1970] AC 567, the trust fails. Alternatively, he argues that the court should lean against construing the CVA as extending the life of the trust beyond the termination of the CVA caused by the liquidation.”

16. In rejecting this submission, the court said:

“48 The real difficulty in Mr Zacaroli’s way, as it seems to us, is in showing why a fully constituted trust created by a CVA should terminate on the CVA failing or terminating in the absence of any provisions requiring the trust to terminate and specifying what is to happen to the trust assets. It is not suggested that any moneys paid to creditors pursuant to the trust can or should be recovered. The fact that Gallagher was in breach of its obligations under the statutory contract constituted by the CVA and went into liquidation, thereby rendering it impossible to fulfil any further purpose of the CVA, does not entail the consequence that the trust also failed when plainly it can still be carried into effect. Whilst the administration of the trust may not, by reason of Gallagher’s liquidation, produce the full benefit originally envisaged for the CVA creditors, that is no reason for denying those creditors such benefit as carrying the trust into effect might still provide. The *Quistclose* case [1970] AC 567 has no relevance to the present circumstances even by way of analogy. In that case money was advanced by a third party lender to enable the company to continue to pay a declared dividend. But that

purpose could not be fulfilled when the company went into liquidation and so, the House of Lords held, there was a resulting trust to the lender. In the present case the supervisors can carry the CVA trust into effect. We agree with Mr Pascoe that unless there is a provision in the CVA to the contrary, the CVA trust should continue.”

17. In his *ex tempore* judgment in the present case, and after setting out very fully the submissions made to him, Judge Hodge QC gave his reasons for rejecting the appeal by the supervisor at [73] - [81]. He said at [73] that he derived no assistance from *Gallagher*, because the Court of Appeal was there "considering the position on failure of the arrangement, and not upon its completion". He considered that the present case turned on the true meaning and effect of paragraph 9(2) of the Conditions, providing that upon the issue of the completion certificate "the Debtor shall be released from all Debts which are subject to the Arrangement". He held at [77]:

“That, in my judgment, can only mean that the creditors are no long to be treated as creditors for the purposes of the arrangement. They are no longer persons in whose favour a dividend can be declared, pursuant to the powers conferred by paragraph 49(1).”

18. At [78] the judge said:

“I fully accept that, if a dividend has been declared, but not paid, then the continuation of the supervisor’s powers, duties, obligations, responsibilities and functions effected by 14(1) would enable him to make payment of that declared dividend. However once the arrangement has been satisfactorily concluded by the issue by the supervisor of a completion certificate, the debtor, it seems to me, is released from all debts subject to the arrangement. In my judgment, that release applies for all purposes of the arrangement and brings an end to the trusts affecting the arrangement assets.”

19. The judge also considered that paragraph 27(2) of the Conditions, although having no direct application after the conclusion of the IVA, pointed in the same direction, it being implicit that there were no obligations on the debtor after the issue of the completion certificate.

20. In conclusion at [81], he said:

“My judgment is firmly rooted upon my interpretation of the effect of paragraph 9(2) of the Standard Conditions, which, in my judgment, has operated to release the debtor from all debts, which are subject to the arrangement, and means that there are no longer any beneficiaries of any trust created by the arrangement. In short, completion of the arrangement means what it says: that the arrangement has come to an end.”

21. By way of essential background to the proper construction of the terms of the IVA, I start with the evident underlying purpose of the IVA in this case. In return for a moratorium on the enforcement by creditors of their claims, including by way of bankruptcy proceedings against the debtor, and in return for being able to retain his matrimonial home and car, the debtor agreed to make available to the creditors all the other property that would have fallen into his bankruptcy estate on a bankruptcy commencing on the same date as the IVA and to make contributions from income over a period of five years. The mis-selling claims, although unknown to the supervisor and creditors and maybe also to the debtor, were capable of being made at that date and were therefore in principle available to creditors. If the debtor had become bankrupt, they would have remained part of his bankruptcy estate until realised and distributed among creditors or until disposed of by the trustee in bankruptcy. This would not be affected by the debtor's discharge from bankruptcy.
22. This purpose of the IVA does not, of course, mean that the effect of the IVA's terms is not as the debtor contends and as the courts below have held, but it does suggest that clear terms to that effect are to be expected.
23. In this context, and unlike the judge, I do derive assistance from the Court of Appeal's judgment in *Gallagher*. As remarked in their judgment at [48], if a fully constituted trust is to terminate, there need to be provisions requiring it to do so and specifying what is to happen to the trust assets.
24. The IVA does indeed contain a provision that expressly brings the trust constituted by paragraph 28 of the Conditions to an end. Paragraph 28(3) provides that upon termination of the IVA (within the meaning of paragraph 11) the trusts referred to in sub-paragraphs (1) and (2) shall cease save as regards assets already realised. The IVA did not terminate as defined but was completed.
25. There is no comparable provision that the trust is to cease on the issue of a certificate of completion but the debtor submits, and the courts below agreed, that, properly construed, the definition of "Creditor" when read with the release in paragraph 9(2) meant that upon the issue of a certificate of completion, there ceased to be any beneficiaries of the trust and therefore necessarily the trust came to an end. It is right, of course, that if there were no longer any beneficiaries, there could no longer be a trust.
26. It is necessary therefore to look with some care at these provisions. "Creditor" is defined as "a person bound by the Arrangement to whom a Debt is owed." "Debt" is stated to have the meaning given to it in section 382 of the Insolvency Act 1986 "with the modifications necessary to refer to a voluntary arrangement". Section 382 provided, so far as relevant, that a "bankruptcy debt" means any debt or liability to which the bankrupt is subject at the commencement of the bankruptcy or any debt or liability to which may become subject after the commencement by reason of any obligation incurred before the commencement. For the purposes of the IVA the necessary modification is to substitute the commencement of the IVA for the commencement of the bankruptcy.
27. Accordingly, the Creditors are fixed by reference to whether there was a debt or liability, or other obligation, owed to them as at the commencement of the IVA in October 2007. While any established claim in respect of such debts, liabilities or

obligations remains unpaid, the claimant remains a Creditor, as defined, and can remain a beneficiary of a trust for Creditors. The rights of Creditors are set out in paragraph 49 of the Conditions: whenever the supervisor has sufficient funds in hand for the purpose, he shall declare and distribute dividends “among the Creditors in respect of those of their claims which have been admitted”.

28. The question then is whether the effect of paragraph 9(2) is that, upon the issue of a certificate of completion, the Debts were discharged, so that there ceased to be any Creditors and therefore the trusts in their favour came to an end.

29. The judge’s view, supported on this appeal by the debtor, was that the effect of the release under paragraph 9(2) was to extinguish the Debts. The judge does not put it quite like that but that must be what he meant when he said in [77]:

“It seems to me that the provision means what Mr Tucker submits that it means: that the debtor is released from all debts which are subject to the arrangement.”

30. The release of a debtor from a debt is not necessarily the same as the extinction or discharge of the debt, particularly in a bankruptcy context. The release of the debtor means that he ceases to be under any liability in respect of the debt and neither he nor his property can be proceeded against in respect of it. That is, in my judgment, the effect of the release under paragraph 9(2) and that was indeed what the certificate of completion issued by the supervisor stated: “the arrangement is now completed and the debtor is released from all liabilities to creditors bound by the arrangement.”

31. It was submitted that this interpretation was inconsistent with paragraph 4(3) imposing a moratorium on remedies or proceedings against the debtor or his property. But paragraph 4(3) says nothing about a release of the debtor. That paragraph 4(3) does not release the debtor is clear from the effect of a termination of the IVA. A termination would bring the moratorium in paragraph 4(3) to an end. The likely result of termination for breach of the debtor’s obligations would be his bankruptcy and the creditors would be entitled to prove for their debts. Alternatively, in the absence of a bankruptcy, creditors would be entitled to bring proceedings against him and enforce any judgment obtained. By contrast, once a certificate of completion is issued, the debtor is released from the debts and *he* ceases to be under any liability in respect of them.

32. The position, in my judgment, is directly analogous to the position in a bankruptcy, and deliberately so, given that an IVA is an alternative to bankruptcy. On the making of a bankruptcy order, a statutory moratorium on proceedings against the debtor or his property comes into force under section 285(3). The bankrupt is not thereby released from his debts. That occurs on his discharge. Unless extended, a bankrupt is automatically discharged from bankruptcy after one year. Section 281(1) provides that “where a bankrupt is discharged, the discharge releases him from all the bankruptcy debts but has no effect” on the trustee’s functions or the operation of the Act as regards those functions, including in particular the right of any creditor to prove in the bankruptcy. The debts continue to exist for the purposes of proof in the bankruptcy and payment out of the realisation proceeds of the assets subject to the bankruptcy. The effect is to separate the debtor from his bankruptcy estate which continues to be administered for the benefit of his creditors as at the date of bankruptcy. The debts



continue to exist as the means of defining the rights and interests of creditors in the bankruptcy but they cease to be the debtor's personal obligations.

33. In my judgment, this is likewise the effect of the provisions of the IVA. The "Property" subject to the IVA continues to be held on the trusts constituted by paragraph 28 and the Debts continue to exist for the purposes of defining the rights of Creditors under those trusts. Completion of the IVA means that the debtor has fully performed all his obligations under the IVA and the minimum distribution has been made to creditors. It does not mean that the trusts come to an end. There is no good reason why they should and, in view of the purpose of the IVA being in part to apply the debtor's property as at the commencement of the IVA (other than his home and car) in or towards payment of the Debts, there is every reason why they should not come to an end on issue of the certificate of completion. As in *Gallagher*, the difficulty facing the debtor is to show why a fully constituted trust created by the IVA should come to an end in these circumstances. In my view, there being no express provision to that effect, the debtor has failed to show any reason.
34. The debtor placed some reliance on paragraph 27(3) of the Conditions (as modified). While the judge acknowledged that it had no direct effect, he accepted the submission for the debtor that it pointed in the right direction. In my view, it does not assist the debtor, even indirectly. It is concerned only to confirm that the realisation of "After-acquired assets" (which the PPI claims were not) does not affect any of the debtor's obligations under the IVA prior to the issue of a certificate of completion. It is not addressing the effect of a certificate of completion.
35. Both parties placed reliance on a Guidance Note on PPI Mis-selling Claims issued in April 2013, and revised in February 2014, by all the principal professional bodies involved in insolvency, including R3, the Insolvency Practitioners Association, the Law Society and the Institutes of Chartered Accountants. I have not found it of assistance. It does not directly address the issue in this case, and the passages relied on have to be read not for what they say but for what they imply.
36. We were referred by counsel to two decisions in Scotland. Mr French placed some reliance on the decision of the Sherriff Court in *Donnelly v Royal Bank of Scotland* [2106] SC GLA 13, [2016] BPIR 606, while Mr Tucker relied on the decision of the Outer House of the Court of Session in *Dooneen Ltd v Mond* [2016] CSOH 23. Both cases were concerned with the effect of the termination of a trust for the benefit of creditors under Scots insolvency law. In my view, neither is of assistance to the determination of the issue in this case.
37. There has been adverse comment on the decision under appeal. The authors of *Muir Hunter on Personal Insolvency* at 3-202.1 suggest that "the correctness of this decision is questionable" on grounds that include that the judge gave "too little consideration to the fact that the whole basis of the IVA was that the debtor contracted to give assets belonging to him at the date of the IVA (therefore including potential PPI claims) to creditors in consideration for the release of his debts".
38. For the reasons given above, I would allow the appeal.

**Lord Justice Irwin:**

39. I agree.

## APPENDIX

### “1 Miscellaneous definitions

- 1 In the Arrangement, except where the context otherwise demands:
- (a) “the Act” means the Insolvency Act 1986 as amended; ...
  - (f) “Creditor” is a person bound by the Arrangement to whom a Debt is owed;
  - (g) “Debt” has the meaning given to it in section 382 of the Act with the modifications necessary to refer to a voluntary arrangement;
  - (h) “the Debtor” means the person who makes the Proposal;
  - (i) “Dividend” means a distribution to Creditors.

### 4 Nature and effect of the Arrangement

- 4(1) [Nature of Arrangement]** The Arrangement is a proposal under Part VIII of the Act for a scheme of arrangement of the Debtor’s affairs or a composition in full and final satisfaction of the Debtor’s Debts.
- 4(2) [Claims against third parties]** Unless the proposal indicates to the contrary, nothing in the Arrangement shall be construed as effecting a composition or satisfaction of any Debt owed by a person other than the debtor, whether that debt is owed jointly by the Debtor or otherwise.
- 4(3) [Restriction on Creditor’s rights]** After the commencement of the Arrangement, no Creditor shall, in respect of any Debt which is subject to the Arrangement:
- (a) have a remedy against the property or person of the Debtor;
  - (b) commence or continue any action or other legal proceeding against the Debtor.

### 8 Duration of Arrangement

- 8(1) [General rule]** Unless extended under the provisions of these Conditions, the Arrangement shall continue until the end of the period stated in the proposal.
- 8(2) [Extension of duration by Supervisor]** The Supervisor may, if he thinks fit for the purposes of finalising the administration of the Arrangement, extend the duration of the Arrangement by sending a notice to this effect (“an Extension Notice”) to the Debtor and all Creditors. This may be done on up to 2 occasions: for a period of up to 6 months in the first instance and for a period of up to 3 months in the second instance.
- 8(3) [Extension Notice]** An extension Notice shall be sent not less than 7 days prior to the date upon which the Arrangement is otherwise due to complete and must state the reason or reasons for the extension.
- 8(4) [Effect of extension]** In the event of the Extension Notice being sent, the Arrangement shall continue for the period specified therein, or for the maximum allowable period for that extension (being 6 months for a first extension and 3 months for a second extension) commencing on

the date immediately after that on which the Arrangement would otherwise have been completed, whichever is the sooner.

- 8(5) [Supervising notice calling a meeting of Creditors]** In the event that a meeting of Creditors has been called by the Supervisor for a time after the Arrangement would otherwise have expired, the duration of the Arrangement shall be extended to the date of that meeting and of any adjournment thereof.
- 8(6) [Further extension]** Any extension for a period longer than that provided for under Paragraph 8(2) shall require approval as a variation in accordance with Paragraph 81.

## **9 Completion of Arrangement**

### **9(1) [The Completion Certificate]**

Upon the expiration of the Arrangement, the Supervisor shall, if the Debtor has complied with his obligations under the Arrangement, issue a certificate (“the Completion Certificate”) stating that the Proposal has been fully implemented.

### **9(2) [Effect of Completion Certificate]**

Save to the extent provided in Paragraph 4(4), upon the issue by the Supervisor of a Completion Certificate, the Debtor shall be released from all Debts which are subject to the Arrangement.

### **9(3) [Notification of issue of Completion Certificate]**

Copies of the Completion Certificate issued under this Paragraph shall be sent by the Supervisor to the Debtor, the Creditors, the Secretary of State for Trade and Industry and the Court together with the Supervisor’s report under Rule 5.34 (completion or termination of Arrangement).

## **11 Termination of Arrangement**

### **11(1) [Termination in certain circumstances]**

The Arrangement shall terminate upon:

- (a) the Supervisor issuing a Certificate of Termination under Paragraph 71;
- (b) the making of a bankruptcy order against the Debtor;
- (c) the Debtor’s death.

## **12 Supervisor’s functions**

**12(1) [Primary function]** The Supervisor’s primary function is to supervise the Debtor’s performance of his obligations under the Arrangement and to administer the Arrangement.

**12(2) [Other functions]** The Supervisor shall also undertake such functions as are given to him in the Proposal, Act and Rules.

### **13 Supervisor's Powers**

**13** Subject to those powers more particularly given to him in the Arrangement, Act and Rules, the Supervisor shall have the following powers:

(1) [*Getting in assets*] power to take possession of, collect, get in and hold any or all of the assets which, under the terms of the Arrangement, he is to hold as trustee;

(2) [*Realisation of assets*] power to sell or otherwise dispose of any asset referred to in Sub-paragraph (1) in such manner as may seem to him expedient.

### **14 Supervisor's powers upon completion/termination**

#### **14(1) [Exercise of powers after completion/termination]**

Completion and/or termination of the Arrangement shall not affect the Supervisor's power to carry out such of his functions and to exercise such of his powers as are necessary for him to fully carry out his duties, obligations and responsibilities under the Arrangement, Act and Rules and to resolve such matters as may have arisen during the course of the Arrangement.

### **26 Arrangement assets**

**26** Property other than Excluded Assets belonging to or vested in the Debtor at the date of commencement of the Arrangement which would form part of the Debtor's estate in a bankruptcy shall be subject to the Arrangement and be an asset thereof.

### **27 After-acquired assets**

#### **27(1) [After-acquired assets subject to arrangement]**

Should the debtor inherit any property, or receive or become entitled to any property which had not been foreseen in the proposal then such property shall become an asset of the arrangement upon the debtor's becoming entitled to it ('After-Acquired Assets').

#### **27(2) [After-Acquired Assets to be supplementary]**

After-Acquired Assets shall be sold or realised to the extent necessary to effect full repayment of the creditors together with interest, if any, to which the creditors are entitled pursuant to the arrangement as such will be supplementary to any other contribution or property which the debtor is to include in the arrangement.

#### **27(3) [Continuance of debtor's obligations]**

Until the issue of a completion certificate all the debtor's obligations under the arrangement, including any obligations to make contributions or realise property, continue notwithstanding the realisation of any After-Acquired Assets.

## **28 Trust of Arrangement assets**

### **28(1) [Assets in the possession of the Debtor]**

Property constituting an asset of the Arrangement in the possession, custody or control of the Debtor shall be held by the Debtor upon trust for the purposes of the Arrangement until realisation thereof (if so provided) in accordance with the Arrangement.

### **28(2) [Assets in the possession of the Supervisor]**

Property constituting an asset of the Arrangement in the possession, custody or control of the Supervisor shall be held by the Supervisor upon trust for the purposes of the Arrangement.

### **28(3) [Effect upon Trusts of termination of Arrangement]**

Upon termination of the arrangement [within the meaning of paragraph 11] the trusts referred to in subparagraphs (1) and (2) shall cease save that assets already realised shall [after provision for the supervisor's fees and disbursements] be distributed to arrangement creditors.

## **49 Distribution by Dividend**

### **49(1) [Duty to declare and distribute Dividends]**

At the time or times specified in the Proposal or, if none, whenever the Supervisor has sufficient funds in hand for the purpose, the Supervisor shall, subject to the retention of such sums as he considers necessary for payment of the expenses of the Arrangement, declare and distribute Dividends among the Creditors in respect of those of their claims which have been admitted.

### **49(2) [Calculation and distribution of Dividend]**

In the calculation and distribution of a Dividend the Supervisor shall make provision:

- (a) for any Debts which are the subject of claims which have not yet been determined; and
- (b) for disputed claims.”