STATUTORY RULES OF NORTHERN IRELAND

# 2007 No. 115

# INSOLVENCY

## The Cross-Border Insolvency Regulations (Northern Ireland) 2007

*Made - - - - 23rd February 2007*
*To be laid before Parliament under paragraph 7(3) of the Schedule to the Northern Ireland Act 2000*

*Coming into operation 12th April 2007*

The Department of Enterprise, Trade and Investment (**1**), with the agreement of the Lord Chancellor, makes the following Regulations in exercise of the powers conferred by Article 11 of the Insolvency (Northern Ireland) Order 2002(**2**):

### Citation and commencement

**1.** These Regulations may be cited as the Cross-Border Insolvency Regulations (Northern Ireland) 2007 and shall come into operation on 12 April 2007.

### Interpretation

**2.** In these Regulations "the UNCITRAL Model Law" means the Model Law on cross-border insolvency as adopted by the United Nations Commission on International Trade Law on 30th May 1997.

### UNCITRAL Model Law to have force of law

**3.**—(1) The UNCITRAL Model Law shall have the force of law in Northern Ireland in the form set out in Schedule 1 (which contains the UNCITRAL Model Law with certain modifications to adapt it for application in Northern Ireland).

(2) Without prejudice to any practice of the courts as to the matters which may be considered apart from this paragraph, the following documents may be considered in ascertaining the meaning or effect of any provision of the UNCITRAL Model Law as set out in Schedule 1—

(a) the UNCITRAL Model Law;

(**1**) Formerly the Department of Economic Development; see Article 3(5) of the Departments (Northern Ireland) Order 1999, (S.I.1999/283 (N.I.1))
(**2**) S.I. 2002/3152 (N.I.6)

(b) any documents of the United Nations Commission on International Trade Law and its working group relating to the preparation of the UNCITRAL Model Law; and

(c) the Guide to Enactment of the UNCITRAL Model Law (UNCITRAL document A/CN.9/442)(**3**) prepared at the request of the United Nations Commission on International Trade Law made in May 1997.

**Modification of Northern Ireland insolvency law**

**4.**—(1) Northern Ireland insolvency law (as defined in article 2 of the UNCITRAL Model Law as set out in Schedule 1) and Part 4 of the Insolvency (Northern Ireland) Order 1989(**4**) shall apply with such modifications as the context requires for the purpose of giving effect to the provisions of these Regulations.

(2) In the case of any conflict between any provision of Northern Ireland insolvency law or of Part 4 of the Insolvency (Northern Ireland) Order 1989 and the provisions of these Regulations, the latter shall prevail.

**Procedural matters**

**5.** Schedule 2 (which makes provision about procedural matters in connection with the application of the UNCITRAL Model Law as set out in Schedule 1) shall have effect.

**Notices delivered to the registrar of companies**

**6.** Schedule 3 (which makes provision about notices delivered to the registrar of companies under these Regulations) shall have effect.

**Disapplication of Article 3 of the Insolvency (Northern Ireland) Order 1989**

**7.** Nothing in Article 3 of the Insolvency (Northern Ireland) Order 1989(**5**) applies to anything done by a foreign representative—

(a) under or by virtue of these Regulations;

(b) in relation to relief granted or cooperation or coordination provided under these Regulations.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 23 February 2007

L.S.

*Michael J Bohill*
A senior officer of the
Department of Enterprise, Trade and Investment

(**3**) A United Nations Publication, ISBN 92-1-133608-2.
(**4**) S.I. 1989/2405 (N.I.19)
(**5**) Article 3 of the Insolvency (Northern Ireland) Order 1989 was amended by Article 6 (1) of the Insolvency (Northern Ireland) Order 2002 (2002/3152 (N.I.6)), S.R. 2002 No.334, S.R. 2003 No.550 and was modified by S.R. 1995 No.225 and S.R. 2004 No.307

I agree to the making of these Regulations
Signed by the authority of the Lord Chancellor

*Bridget Prentice*
Parliamentary Under Secretary of State,
Department for Constitutional Affairs

Dated 27 February 2007

SCHEDULE 1 Regulation 3(1)

UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY

# PART 1

## GENERAL PROVISIONS

### Article 1. Scope of Application

1. This Law applies where—
   (a) assistance is sought in Northern Ireland by a foreign court or a foreign representative in connection with a foreign proceeding; or
   (b) assistance is sought in a foreign State in connection with a proceeding under Northern Ireland insolvency law; or
   (c) a foreign proceeding and a proceeding under Northern Ireland insolvency law in respect of the same debtor are taking place concurrently; or
   (d) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under Northern Ireland insolvency law.
2. This Law does not apply to a proceeding concerning—
   (a) a licence company within the meaning of section 26 of the Transport Act 2000 (**6**)(air traffic services);
   (b) a building society within the meaning of section 119 of the Building Societies Act 1986(**7**) (interpretation);
   (c) a UK credit institution or an EEA credit institution or any branch of either such institution as those expressions are defined by regulation 2 of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004(**8**) (interpretation);
   (d) a third country credit institution within the meaning of regulation 36 of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004 (interpretation of this Part);
   (e) a person who has permission under or by virtue of Parts 4 or 19 of the Financial Services and Markets Act 2000(**9**) to effect or carry out contracts of insurance;
   (f) an EEA insurer within the meaning of regulation 2 of the Insurers (Reorganisation and Winding Up) Regulations 2004 (**10**)(interpretation);
   (g) a person (other than one included in paragraph 2(e) pursuing the activity of reinsurance who has received authorisation for that activity from a competent authority within an EEA State; or
   (h) any of the Concessionaires within the meaning of section 1 of the Channel Tunnel Act 1987(**11**).
3. In paragraph 2 —

(**6**) 2000 c.38
(**7**) 1986 c.53
(**8**) S.I.2004/1045
(**9**) 2000 c.8
(**10**) S.I. 2004/353, to which there are amendments not relevant to these Regulations
(**11**) 1987 c.53

(a) in sub-paragraph (e) the reference to "contracts of insurance" must be construed in accordance with—

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

(ii) any relevant order under that section; and

(iii) Schedule 2 to that Act (regulated activities);

(b) in sub-paragraph (g) "EEA State" means a State, other than the United Kingdom, which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992.

4. The court shall not grant any relief, or modify any relief already granted, or provide any co-operation or coordination, under or by virtue of any of the provisions of this Law if and to the extent that such relief or modified relief or cooperation or coordination would—

(a) be prohibited under or by virtue of—

(i) Part V of the Companies (No.2) (Northern Ireland) Order 1990(**12**);

(ii) Part 3 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(**13**); or

(iii) Part 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003(**14**);

in the case of a proceeding under Northern Ireland insolvency law; or

(b) interfere with or be inconsistent with any rights of a collateral taker under Part 4 of the Financial Collateral Arrangements (No. 2) Regulations 2003 which could be exercised in the case of such a proceeding.

5. Where a foreign proceeding regarding a debtor who is an insured in accordance with the provisions of the Third Parties (Rights against Insurers) Act (Northern Ireland) 1930(**15**) is recognised under this Law, any stay and suspension referred to in article 20(1) and any relief granted by the court under article 19 or 21 shall not apply to or affect—

(a) any transfer of rights of the debtor under that Act; or

(b) any claim, action, cause or proceeding by a third party against an insurer under or in respect of rights of the debtor transferred under that Act.

6. Any suspension under this Law of the right to transfer, encumber or otherwise dispose of any of the debtor's assets—

(a) is subject to the right which the registered owner has under section 34 of the Land Registration Act (Northern Ireland) 1970(**16**) to transfer the land or any part thereof, and under paragraph (2) of Part II of Schedule 6 to that Act to have a charge entered as a burden on the title register ;

(b) is subject to paragraph (5)(1) of Schedule 7 to the Land Registration Act (Northern Ireland) 1970, where the powers referred to in that paragraph are exercised by the owner of a registered charge; and

(c) in any other case, shall not bind a purchaser of an estate in good faith for money or money's worth unless the purchaser has express notice of the suspension.

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(**12**) Part V of S.I.1990 No.1504 (N.I. 10) was amended by S.R. 1991 No. 443 paragraph 49 of Schedule 5 to the Bank of England Act 1998 (c.11), S.I. 2001/3649, S.I.2001/3929, Schedule 4 to S.I. 2005/1454 (N.I.9), and paragraphs 49, 50, 51 and 52 of Schedule 2 to S.I. 2005/1455 (N.I.10)

(**13**) S.I. 1999/2979 as extended to Northern Ireland by S.I. 2006/50; relevant amendments made by S.I. 2000/2952, S.I. 2001/3929, S.I. 2002/765 and S.I. 2003/2096

(**14**) S.I. 2003/3226

(**15**) 1930 c.19 (N.I.) amended by S.I. 1989/2405 (N.I. 19) and S.R. 2004 No. 307

(**16**) 1970 c.18 (N.I.) amended by S.I. 1992/811 (N.I. 7)