STATUTORY RULES OF NORTHERN IRELAND

2003 No. 549

INSOLVENCY

The Insolvency (Amendment) Rules (Northern Ireland) 2003

Made - - - - 23rd December 2003

To be laid before Parliament

Coming into operation 2nd February 2004

The Lord Chancellor, in exercise of the powers conferred on him by Article 359 of the Insolvency (Northern Ireland) Order 1989(**1**) and of all other powers enabling him in that behalf, with the concurrence of the Department of Enterprise, Trade and Investment(**2**), and after consulting the committee existing for that purpose under Article 360 of the said Order, hereby makes the following Rules:–

Citation and commencement

1. These Rules may be cited as the Insolvency (Amendment) Rules (Northern Ireland) 2003 and shall come into operation on 2nd February 2004.

Interpretation

2. In these Rules –

"the commencement date" means the date referred to in Rule 1 of these Rules;

"the principal Rules" means the Insolvency Rules (Northern Ireland) 1991(**3**) and a reference to a rule, Schedule or form by number is a reference to the rule, Schedule or form so numbered in the principal Rules; and

"the Order" means the Insolvency (Northern Ireland) Order 1989.

(**1**) The Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)); to which the most recent relevant amendments were made by the Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) 2002 (S.R. 2002 No. 223)

(**2**) Formerly the Department of Economic Development; *see* the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I. 1))

(**3**) The Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364), as amended by the Insolvency (Amendment) Rules (Northern Ireland) 1994 (S. R. 1994 No. 26), the Insolvency (Amendment) Rules (Northern Ireland) 1995 (S.R. 1995 No. 291), the Insolvency (Amendment) Rules (Northern Ireland) 2000 (S.R. 2000 No. 247) and the Insolvency (Amendment) Rules (Northern Ireland) 2002 (S.R. 2002 No. 261)

Amendment to Rule 0.6

3. In Rule 0.6 after paragraph (2), there shall be inserted the following paragraph –

"(3) A reference to an "authorised person" is a reference to a person who is authorised pursuant to Article 348A(**4**) of the Order to act as nominee or supervisor of a voluntary arrangement proposed or approved under Part II or Part VIII of the Order.".

Amendment to Rule 1.26

4. In paragraph (2)(d) of Rule 1.26 (supervisor's accounts and reports) there shall be substituted for the words "paragraph (5)" the words "paragraph (6)".

Amendments to Part 1 of the principal Rules

5.—(1) Subject to paragraph (2), Part 1 of the principal Rules shall have effect subject to the amendments set out in Part 1 of Schedule 1 to these Rules.

(2) The amendments to Part 1 of the principal Rules set out in Part 1 of Schedule 1 to these Rules shall not apply in relation to a voluntary arrangement under Part II of the Order where –

(a) a proposal is made by the directors of a company and, before the commencement date, the intended nominee has endorsed a copy of the written notice of the proposal under Rule 1.04(3);

(b) a proposal is made by the liquidator or the administrator (acting as the nominee) and, before the commencement date, the liquidator or administrator (as the case may be) has sent out a notice summoning the meetings under Article 16 of the Order as required by Rule 1.11; or

(c) a proposal is made by the liquidator or the administrator of a company (not acting as the nominee) and, before the commencement date, the intended nominee has endorsed a copy of the written notice of the proposal under Rule 1.12(2);

and, in such cases, Part 1 of the principal Rules as it stood before the commencement date shall continue to apply.

Amendments to Part 4 of the principal Rules

6.—(1) Subject to paragraph (2), Part 4 of the principal Rules shall have effect subject to the amendments set out in Part 2 of Schedule 1 to these Rules.

(2) The amendments to Part 4 of the principal Rules set out in Part 2 of Schedule 1 to these Rules shall not apply in relation to –

(a) a winding up by the court where the petition on which the winding-up order was made was presented prior to the commencement date; or

(b) a voluntary winding up where the resolution for winding up was passed prior to the commencement date;

and, in such cases, Part 4 of the principal Rules as it stood before the commencement date shall continue to apply.

Amendments to Part 5 of the principal Rules

7.—(1) Subject to paragraph (2), there shall be substituted for Chapter 2 of Part 5 of the principal Rules the provisions set out in Part 3 of Schedule 1 to these Rules.

(**4**) Article 348A was inserted by Article 6(3) of the Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152 (N.I. 6))

(2) The provisions set out in Part 3 of Schedule 1 to these Rules shall not apply in relation to a voluntary arrangement under Part VIII of the Order where a proposal is made by a debtor and, before the commencement date, the intended nominee has endorsed a copy of the written notice of the proposal under Rule 5.05(3) and, in such a case, Chapter 2 of Part 5 of the principal Rules as it stood before the commencement date shall continue to apply.

Amendments to Part 6 of the principal Rules

8.—(1) Subject to paragraph (2), Part 6 of the principal Rules shall have effect subject to the amendments set out in Part 4 of Schedule 1 to these Rules.

(2) The amendments to Part 6 of the principal Rules set out in Part 4 of Schedule 1 to these Rules shall not apply in relation to a bankruptcy where the petition was presented prior to the commencement date and, in such a case, Part 6 of the principal Rules as it stood before the commencement date shall continue to apply.

Amendment to Rule 12.01

9. In paragraph (2)(f) of Rule 12.01 (power of Department to regulate certain matters) the words ", in the case of a liquidator," shall be omitted.

Amendments to Schedule 2

10.—(1) In the index to forms in Schedule 2 –

(a) for the entries relating to Forms 1.1 to 1.4 there shall be substituted the entries set out in Part I of Schedule 2 to these Rules; and

(b) after the entry relating to Form 5.4 there shall be inserted the following new entry –

"**5.5.** Documents to be submitted to court under Rule 5.14 of the Insolvency Rules (Northern Ireland) 1991".

(2) Subject to paragraphs (3) and (4), in Schedule 2 –

(a) for Forms 1.1 to 1.4 there shall be substituted the new Forms 1.01 to 1.19 set out in Part II of Schedule 2 to these Rules;

(b) for Forms 5.2 and 5.3 there shall be substituted the new Forms 5.2 and 5.3 set out in Part II of Schedule 2 to these Rules; and

(c) after Form 5.4 there shall be inserted Form 5.5 set out in Part II of Schedule 2 to these Rules.

(3) Sub-paragraph (a) of paragraph (2) of this Rule shall not apply in any case to which paragraph (2) of Rule 5 of these Rules applies and, in such a case, the forms prescribed for use in relation to voluntary arrangements under Part II of the Order as they stood before the commencement date shall continue to be used.

(4) Sub-paragraph (b) of paragraph (2) of this Rule shall not apply in any case to which paragraph (2) of Rule 7 of these Rules applies and, in such a case, the forms prescribed for use in relation to voluntary arrangements under Part VIII of the Order as they stood before the commencement date shall continue to be used.

Amendments to Schedule 3

11. In Schedule 3 the entries relating to Rule 1.30 and Rule 5.33 shall be omitted.

Signed by the authority of the Lord Chancellor

Department for Constitutional Affairs
Dated 18th December 2003

Lord Filkin
Parliamentary Under Secretary of State,

The Department of Enterprise, Trade and Investment hereby concurs with the foregoing Rules. Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 23rd December 2004.

Michael J. Bohill
A Senior Officer of the
Department of Enterprise, Trade and Investment

SCHEDULE 1 Rules 5(1), 6(1), 7(1), and 8(1)

PART I

Amendments to Part I of the Principal Rules

Rule 1.01

1. In Rule 1.01 –

(a) for sub-paragraph (a) of paragraph (2) there shall be substituted the following sub-paragraph –

"(a) Chapter 2 applies where the proposal for the voluntary arrangement is made by the directors of the company and

(i) the company is neither in liquidation nor is an administration order (under Part III of the Order) in force in relation to it; and

(ii) no steps have been taken to obtain a moratorium under Schedule Al to the Order(**5**) in connection with the proposal;";

(b) for sub-paragraphs (c) and (d) of paragraph (2) there shall be substituted the following sub-paragraphs –

"(c) Chapter 4 applies in the same case as Chapter 3, but where the nominee is not the liquidator or administrator;

(d) Chapter 5 applies in all the 3 cases mentioned in sub-paragraphs (a) to (c);

(e) Chapters 7 and 8 apply to all voluntary arrangements with or without a moratorium; and

(f) Chapter 9 applies where the proposal is made by the directors of an eligible company with a view to obtaining a moratorium."; and

(c) after paragraph (3) there shall be inserted the following paragraph –

"(4) In this Part, a reference to an "eligible company" is a reference to a company that is eligible for a moratorium in accordance with paragraph 2 of Schedule Al to the Order.".

Rule 1.03

2. In Rule 1.03 –

(a) after sub-paragraph (f) of paragraph (2) there shall be inserted the following sub-paragraph –

"(fa) how it is proposed to deal with the claim of any person who is bound by the arrangement by virtue of Article 18(2)(b)(ii)(**6**);"; and

(b) for sub-paragraph (p) of paragraph (2) there shall be substituted the following sub-paragraph –

"(p) the name, address and qualification of the person proposed as supervisor of the voluntary arrangement, and confirmation that he is either qualified to

(**5**) Schedule Al was inserted into S.I. 1989/2405 (N.I. 19) by Article 3 of, and paragraph 5 of Schedule 1 to, the Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152 (N.I. 6))

(**6**) Article 18(2)(b) was amended by Article 4 of, and paragraph 6(c) of Schedule 2 to, the Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152 (N.I. 6))