STATUTORY RULES OF NORTHERN IRELAND

2002 No. 261

INSOLVENCY

The Insolvency (Amendment) Rules (Northern Ireland) 2002

Made - - - -	*5th August 2002*
To be laid before Parliament	
Coming into operation	*5th September 2002*

The Lord Chancellor, in exercise of the powers conferred on him by Article 359 of the Insolvency (Northern Ireland) Order 1989(**1**), 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 that Order, hereby makes the following Rules:

Citation and commencement

1. These Rules may be cited as the Insolvency (Amendment) Rules (Northern Ireland) 2002 and shall come into operation on 5th September 2002.

Interpretation

2. In these Rules, references to "the principal Rules" are references to the Insolvency Rules (Northern Ireland) 1991(**3**) and a rule, Schedule or form referred to by number means the Rule, Schedule or form so numbered in the principal Rules.

Amendments to the Insolvency Rules (Northern Ireland) 1991

3.—(1) The principal Rules are amended as provided in these Rules.

(2) Anything done before 5th September 2002 under or for the purposes of any provision of the principal Rules is not invalidated by the amendment of that provision by these Rules, but it has effect as if done under or for the purposes of the provision as amended.

Amendments to the Insolvency Rules (Northern Ireland) 1991 in relation to the Introductory Provisions

4. In Rule 0.2 (interpretation) insert – after the definition of "business day" –

(**1**) S.I. 1989/2405 (N.I. 19); to which recent relevant amendments were made by S.R. 2002 No. 223
(**2**) S.I. 1999/283 (N.I. 1); which renamed the Department of Economic Development as the Department of Enterprise, Trade and Investment
(**3**) S.R. 1991 No. 364, amended by S.R. 1994 No. 26, S.R. 1995 No. 291 and S.R. 2000 No. 247

""Centre of main interests" has the same meaning as in the EC Regulation;";

after the definition of "the court" –

""Establishment" has the meaning given by Article 2(h) of the EC Regulation;";

after the definition of "the Judge" –

""Main proceedings" means proceedings opened in accordance with Article 3(1) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation, and

(a) in relation to Northern Ireland, set out in Annex A to the EC Regulation under the heading "United Kingdom", and

(b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State;";

after the definition of "Master" –

""Member State liquidator" means a person falling within the definition of liquidator in Article 2(b) of the EC Regulation appointed in proceedings to which it applies in a member State other than the United Kingdom.;";

after the definition of "sealed" –

""Secondary proceedings" means proceedings opened in accordance with Articles 3(2) and 3(3) of the EC Regulation and falling within the definition of winding-up proceedings in Article 2(c) of the EC Regulation, and

(a) in relation to Northern Ireland, set out in Annex B to the EC Regulation under the heading "United Kingdom", and

(b) in relation to another member State, set out in Annex B to the EC Regulation under the heading relating to that member State;";

after the definition of "Taxing Master" –

""Temporary administrator" means a temporary administrator referred to by Article 38 of the EC Regulation;";

""Territorial proceedings" means proceedings opened in accordance with Articles 3(2) and 3(4) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation, and

(a) in relation to Northern Ireland, set out in Annex A to the EC Regulation under the heading "United Kingdom", and

(b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State.".

[*E.R. 10(7)*]

Amendments to the Insolvency Rules (Northern Ireland) 1991 in relation to Company Voluntary Arrangements

5.—(1) In Rule 1.01(2)(d) (scope of this Part; interpretation) for "5 and 6" substitute –

"5, 6, 7 and 8".

(2) In Rule 1.03(2) (contents of proposal) –

(a) at the end of sub-paragraph (o) omit "and"; and

(b) in sub-paragraph (p) after "in relation to the company" insert –

"; and

(q) whether the EC Regulation(**4**) will apply and, if so, whether the proceedings will be main proceedings, secondary proceedings or territorial proceedings".

(3) In Rule 1.24(2)(c) (report of meetings) –

(a) at the end of sub-paragraph (c) omit "and"; and

(b) after sub-paragraph (c) insert –

"(ca) state whether, in the opinion of the supervisor, (i) the EC Regulation applies to the voluntary arrangement and (ii) if so, whether the proceedings are main proceedings, secondary proceedings or territorial proceedings; and".

(4) After Rule 1.30 (false representations, etc) insert –

"CHAPTER 7

EC REGULATION – CONVERSION OF VOLUNTARY ARRANGEMENT INTO WINDING UP

Application for conversion into winding up

1.31.—(1) Where a member State liquidator proposes to apply to the court for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of a voluntary arrangement into a winding up, an affidavit complying with Rule 1.32 must be prepared and sworn, and filed in court in support of the application.

(2) An application under this Rule shall be by originating application.

(3) The application and the affidavit required under this Rule shall be served upon –

(a) the company; and

(b) the supervisor.

Contents of affidavit

1.32.—(1) The affidavit shall state –

(a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;

(b) the deponent's belief that the conversion of the voluntary arrangement into a winding up would prove to be in the interests of the creditors in the main proceedings;

(c) the deponent's opinion as to whether the company ought to enter voluntary winding up or be wound up by the court; and

(d) all other matters that, in the opinion of the member State liquidator, would assist the court –

(i) in deciding whether to make such an order, and

(ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) An affidavit under this Rule shall be sworn by, or on behalf of, the member State liquidator.

(**4**) Council Regulations (EC) 1346/2000, O.J. No. L160, 30.06.00 p. 1

Power of court

1.33.—(1) On hearing the application for conversion into winding up the court may make such order as it thinks fit.

(2) If the court makes an order for conversion into winding up the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Without prejudice to the generality of paragraph (1), an order under that paragraph may provide that the company be wound up as if a resolution for voluntary winding up under Article 70 were passed on the day on which the order is made.

(4) Where the court makes an order for conversion into winding up under paragraph (1), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the company's assets.

CHAPTER 8

EC REGULATION – MEMBER STATE LIQUIDATOR

Interpretation of creditor and notice to member State liquidator

1.34.—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

(2) Where the supervisor is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court, the registrar or the official receiver, the supervisor shall give notice or provide copies, as appropriate, to the member State liquidator.

(3) Paragraph (2) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to cooperate and communicate information)".

[*E.R. 4*]

Amendments to the Insolvency Rules (Northern Ireland) 1991 in relation to Administration

6.—(1) In Rule 2.03(1) (contents of affidavit) –

(a) at the end of sub-paragraph (a) omit "and"; and

(b) in sub-paragraph (b) after "administration order" insert –

"; and

(c) whether, in the opinion of the deponent, (i) the EC Regulation will apply and (ii) if so, whether the proceedings will be main proceedings, secondary proceedings or territorial proceedings".

(2) In Rule 2.06(2) (persons served with petition) after sub-paragraph (b) insert –

"(ba) if a member State liquidator has been appointed in main proceedings in relation to the company, on him;".

(3) In Rule 2.10(1) (appearances at hearing) –

(a) at the end of sub-paragraph (f) omit "and"; and

(b) after sub-paragraph (f) insert –

"(fa) if a member State liquidator has been appointed in main proceedings in relation to the company, he;".

(4) In Rule 2.19(1) (statement to be annexed to proposals) –

(a) at the end of sub-paragraph (f) omit "and"; and

(b) after sub-paragraph (f) insert –

"(fa) whether (i) the EC Regulation applies and (ii) if so, whether the proceedings are main proceedings, secondary proceedings or territorial proceedings; and".

(5) In Rule 2.25 (entitlement to vote) –

(a) in paragraph (1)(a) for "he claims to be due to him from the company" substitute –

"(i) he claims to be due to him from the company, or

(ii) in relation to a member State liquidator, is claimed to be due to creditors in proceedings in relation to which he holds office",

(b) after paragraph (6) insert –

"(7) No vote shall be cast by virtue of a claim more than once on any resolution put to the meeting.

(8) Where –

(a) a creditor is entitled to vote under this Rule,

(b) has lodged his claim in one or more sets of other proceedings, and

(c) votes (either in person or by proxy) on a resolution put to the meeting,

only the creditor's vote shall be counted.

(9) Where –

(a) a creditor has lodged his claim in more than one set of other proceedings, and

(b) more than one member State liquidator seeks to vote by virtue of that claim,

the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.

(10) For the purposes of paragraph (7), the claim of a creditor and of any member State liquidator in relation to the same debt are a single claim.

(11) For the purposes of paragraphs (8) and (9), "other proceedings" means main proceedings, secondary proceedings or territorial proceedings in another member State.".

(6) After Rule 2.34(5) (conduct of meetings) insert –

"(5A) Paragraph (5) does not apply where the laws of a member State and not the laws of Northern Ireland apply in relation to the conduct of the meeting.

(5B) Where paragraph (5A) applies, subject as above, the meeting shall be summoned and conducted in accordance with the constitution of the company and the laws of the member State referred to in that paragraph shall apply to the conduct of the meeting.".

(7) After Rule 2.57(3) (resignation of administrator) insert –

"(4) Where the administrator gives notice under paragraph (3), he must also give notice to a member State liquidator, if such a person has been appointed in relation to the company.".

(8) After Rule 2.62 (preservation of VAT Bad Debt relief certificate) insert –