

**2007 No. 115**

**INSOLVENCY**

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

*Made* - - - - - *23rd February 2007*

*Coming into operation* - *12th April 2007*

*To be laid before Parliament under paragraph 7(3) of the  
Schedule to the Northern Ireland Act 2000*

The Department of Enterprise, Trade and Investment (**a**), 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(**b**):

**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 30<sup>th</sup> 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;
- (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)(**a**) prepared at the request of the United Nations Commission on International Trade Law made in May 1997.

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

### **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<sup>(b)</sup> 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<sup>(c)</sup> 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



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

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

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(a) A United Nations Publication, ISBN 92-1-133608-2.

(b) S.I. 1989/2405 (N.I.19)

(c) 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

## 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 **(a)**(air traffic services);
  - (b) a building society within the meaning of section 119 of the Building Societies Act 1986**(b)** (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**(c)** (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**(d)** 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 **(e)**(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**(f)**.
3. In paragraph 2 —
  - (a) in sub-paragraph (e) the reference to “contracts of insurance” must be construed in accordance with—

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(a) 2000 c.38  
(b) 1986 c.53  
(c) S.I.2004/1045  
(d) 2000 c.8  
(e) S.I. 2004/353, to which there are amendments not relevant to these Regulations  
(f) 1987 c.53

- (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(a);
  - (ii) Part 3 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(b); or
  - (iii) Part 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003(c);

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(d) 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(e) 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.

7. In paragraph 6—

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(a) 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)

(b) 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

(c) S.I. 2003/3226

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

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

- (a) “registered charge” and “estate” have the same meaning as in section 94 of the Land Registration Act (Northern Ireland) 1970(a); and
- (b) “purchaser” has the same meaning as in section 2 of the Conveyancing Act 1881(b).

*Article 2. Definitions*

For the purpose of this Law—

- (a) “the court” means the High Court of Justice in Northern Ireland (Chancery Division) exercising its jurisdiction in accordance with the provisions of Article 4 and in respect of administrative functions includes the Bankruptcy and Companies office;
- (b) “the EC Insolvency Regulation” means Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency Proceedings(c);
- (c) “establishment” means any place of operations where the debtor carries out a non-transitory economic activity with human means and assets or services;
- (d) “execution” means enforcement of a judgement or order under the Judgments Enforcement (Northern Ireland) Order 1981(d);
- (e) “foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;
- (f) “foreign main proceeding” means a foreign proceeding taking place in the State where the debtor has the centre of its main interests;
- (g) “foreign non-main proceeding” means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of sub-paragraph (c) of this article;
- (h) “foreign proceeding” means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceedings the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;
- (i) “foreign representative” means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor’s assets or affairs or to act as a representative of the foreign proceeding;
- (j) “hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement;
- (k) “Northern Ireland insolvency law” means provision made by or under the Insolvency (Northern Ireland) Order 1989(e) (with the exception of Part 4 of that Order) or by or under that Order as extended or applied by or under any other statutory provision (excluding these Regulations);
- (l) “Northern Ireland insolvency officeholder” means—
  - (i) the official receiver within the meaning of Article 355 of the Insolvency (Northern Ireland) Order 1989 when acting as liquidator, provisional liquidator, trustee, interim receiver or nominee or supervisor of a voluntary arrangement; and
  - (ii) a person acting as an insolvency practitioner within the meaning of Article 3(f) of that Order but shall not include a person acting as an administrative receiver
- (m) “section 426 request” means a request for assistance in accordance with section 426 of the Insolvency Act 1986(a) made to a court in any part of the United Kingdom;

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(a) 1970 c.18 (N.I.)

(b) 1881 c.41

(c) Council Regulation (EC) 1346/2000, OJ No. L160, 30.06.00 p.1

(d) S.I.1981/226 (N.I.6)

(e) S.I. 1989/2405 (N.I. 19)

(f) Article 3 was amended by Article 6 of S.I. 2002/3152 (N.I. 6), and by S.R. 2002 No. 334 and modified by S.R. 1995 No. 225, S.R. 2003 No. 550 and S.R. 2004 No. 307

- (n) “secured creditor” in relation to a debtor, means a creditor of the debtor who holds in respect of his debt a security over property of the debtor;
- (o) “security” means any mortgage, charge, lien or other security

*Article 3. International obligations of Northern Ireland under the EC Insolvency Regulation*

To the extent that this Law conflicts with an obligation of the United Kingdom under the EC Insolvency Regulation, the requirements of the EC Insolvency Regulation prevail.

*Article 4. Competent court*

The functions referred to in this Law relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by the High Court and assigned to the Chancery Division.

*Article 5. Authorisation of Northern Ireland insolvency officeholders to act in a foreign state*

A Northern Ireland insolvency officeholder is authorised to act in a foreign State on behalf of a proceeding under Northern Ireland insolvency law, as permitted by the applicable foreign law.

*Article 6. Public policy exception*

Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of Northern Ireland.

*Article 7. Additional assistance under other laws*

Nothing in this Law limits the power of the court or a Northern Ireland insolvency officeholder to provide additional assistance to a foreign representative under other laws of Northern Ireland.

*Article 8. Interpretation*

In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith

## CHAPTER II

### ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO COURTS IN NORTHERN IRELAND

*Article 9. Right of direct access*

A foreign representative is entitled to apply directly to the court in Northern Ireland.

*Article 10. Limited jurisdiction*

The sole fact that an application pursuant to this Law is made to a court in Northern Ireland by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the courts of Northern Ireland for any purpose other than the application.

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(a) 1986 c.45; section 426 was amended by paragraph 16 of Schedule 4 to the Insolvency Act 2000 (c.39)

*Article 11. Application by a foreign representative to commence a proceeding under Northern Ireland insolvency law*

A foreign representative appointed in a foreign main proceeding or foreign non-main proceeding is entitled to apply to commence a proceeding under Northern Ireland insolvency law if the conditions for commencing such a proceeding are otherwise met.

*Article 12. Participation of a foreign representative in a proceeding under Northern Ireland insolvency law*

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under Northern Ireland insolvency law.

*Article 13. Access of foreign creditors to a proceeding under Northern Ireland insolvency law*

1. Subject to paragraph 2, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under Northern Ireland insolvency law as creditors in Northern Ireland.

2. Paragraph 1 does not affect the ranking of claims in a proceeding under Northern Ireland insolvency law, except that the claim of a foreign creditor shall not be given a lower priority than that of general unsecured claims solely because the holder of such a claim is a foreign creditor.

3. A claim may not be challenged solely on the grounds that it is a claim by a foreign tax or social security authority but such a claim may be challenged—

- (a) on the ground that it is in whole or in part a penalty, or
- (b) on any other ground that a claim might be rejected in a proceeding under Northern Ireland insolvency law.

*Article 14. Notification to foreign creditors of a proceeding under Northern Ireland insolvency law*

1. Whenever under Northern Ireland insolvency law notification is to be given to creditors in Northern Ireland, such notification shall also be given to the known creditors that do not have addresses in Northern Ireland. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

2. Such notification shall be made to the foreign creditors individually, unless—

- (a) the court considers that under the circumstances some other form of notification would be more appropriate; or
- (b) the notification to creditors in Northern Ireland is to be by advertisement only, in which case the notification to the known foreign creditors may be by advertisement in such foreign newspapers as the Northern Ireland insolvency officeholder considers most appropriate for ensuring that the content of the notification comes to the notice of the known foreign creditors.

3. When notification of a right to file a claim is to be given to foreign creditors, the notification shall—

- (a) indicate a reasonable time period for filing claims and specify the place for their filing;
- (b) indicate whether secured creditors need to file their secured claims; and
- (c) contain any other information required to be included in such a notification to creditors pursuant to the law of Northern Ireland and the orders of the court.

## CHAPTER III

### RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

*Article 15. Application for recognition of a foreign proceeding*

1. A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.
2. An application for recognition shall be accompanied by—
  - (a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
  - (b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
  - (c) in the absence of evidence referred to in sub-paragraphs (a) and (b), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.
3. An application for recognition shall also be accompanied by a statement identifying all foreign proceedings, proceedings under Northern Ireland insolvency law and section 426 requests in respect of the debtor that are known to the foreign representative.
4. The foreign representative shall provide the court with a translation into English of documents supplied in support of the application for recognition.

*Article 16. Presumptions concerning recognition*

1. If the decision or certificate referred to in paragraph 2 of article 15 indicates that the foreign proceeding is a proceeding within the meaning of sub-paragraph (h) of article 2 and that the foreign representative is a person or body within the meaning of sub-paragraph (i) of article 2, the court is entitled to so presume.
2. The court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalised.
3. In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

*Article 17. Decision to recognise a foreign proceeding*

1. Subject to article 6, a foreign proceeding shall be recognised if—
  - (a) it is a foreign main proceeding within the meaning of sub-paragraph (h) of article 2;
  - (b) the foreign representative applying for recognition is a person or body within the meaning of sub-paragraph (i) of article 2; and
  - (c) the application meets the requirements of paragraphs 2 and 3 of article 15.
2. The foreign proceedings shall be recognised—
  - (a) as a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or
  - (b) as a foreign non-main proceeding if the debtor has an establishment within the meaning of sub-paragraph (c) of article 2 in the foreign State.
3. An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.
4. The provisions of articles 15 and 16, this article and article 18 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have fully or partially ceased to exist and in such as case, the court may, on the application of the foreign representative or a person affected by recognition, or of its own motion, modify or terminate recognition, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

*Article 18. Subsequent information*

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the court promptly of—

- (a) any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and
- (b) any other foreign proceeding, proceeding under Northern Ireland insolvency law or section 426 request regarding the same debtor that becomes known to the foreign representative.

*Article 19. Relief that may be granted upon application for recognition of a foreign proceeding*

1. From the time of filing an application for recognition until the application is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

- (a) staying execution against the debtor's assets;
- (b) entrusting the administration or realisation of all or part of the debtor's assets located in Northern Ireland to the foreign representative or another person designated by the court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and
- (c) any relief mentioned in paragraph 1(c), (d) or (g) of article 21.

2. Unless extended under paragraph 1(f) of article 21, the relief granted under this article terminates when the application for recognition is decided upon.

3. The court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding.

*Article 20. Effects of recognition of a foreign main proceeding*

1. Upon recognition of a foreign proceeding that is a foreign main proceeding, subject to paragraph 2—

- (a) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;
- (b) execution against the debtor's assets is stayed; and
- (c) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

2. The stay and suspension referred to in paragraph 1 shall be—

- (a) the same in scope and effect as if the debtor, in the case of an individual, had been adjudged bankrupt under the Insolvency (Northern Ireland) Order 1989, or, in the case of a debtor other than an individual, had been made the subject of a winding-up order under that Order; and
- (b) subject to the same powers of the court and the same prohibitions, limitations, exceptions and conditions as would apply under the law of Northern Ireland in such a case,

and the provisions of paragraph 1 shall be interpreted accordingly.

3. Without prejudice to paragraph 2, the stay and suspension referred to in paragraph 1, in particular, does not affect any right—

- (a) to take any steps to enforce security over the debtor's property;
- (b) to take any steps to repossess goods in the debtor's possession under a hire-purchase agreement;
- (c) exercisable under or by virtue of or in connection with the provisions referred to in article 1(4); or

(d) of a creditor to set off its claim against a claim of the debtor,

being a right which would have been exercisable if the debtor, in the case of an individual, had been adjudged bankrupt under the Insolvency (Northern Ireland) Order 1989, or, in the case of a debtor other than an individual, had been made the subject of a winding-up order under that Order.

4. Paragraph 1(a) does not affect the right to—

- (a) commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor; or
- (b) commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory or investigative functions of a public nature, being an action or proceedings brought in the exercise of those functions.

5. Paragraph 1 does not affect the right to request or otherwise initiate the commencement of a proceeding under Northern Ireland insolvency law or the right to file claims in such a proceeding.

6. In addition to and without prejudice to any powers of the court under or by virtue of paragraph 2, the court may, on the application of the foreign representative or a person affected by the stay and suspension referred to in paragraph 1, or of its own motion, modify or terminate such stay and suspension or any part of it, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

*Article 21. Relief that may be granted upon recognition of a foreign proceeding*

1. Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

- (a) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under paragraph 1(a) of article 20;
- (b) staying execution against the debtor's assets to the extent it has not been stayed under paragraph 1(b) of article 20;
- (c) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph 1(c) of article 20;
- (d) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
- (e) entrusting the administration or realisation of all or part of the debtor's assets located in Northern Ireland to the foreign representative or another person designated by the court;
- (f) extending relief granted under paragraph 1 of article 19; and
- (g) granting any additional relief that may be available to a Northern Ireland insolvency officeholder under the law of Northern Ireland, including any relief provided under paragraph 44 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989(a).

2. Upon recognition of a foreign proceeding, whether main or non-main, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in Northern Ireland to the foreign representative or another person designated by the court, provided that the court is satisfied that the interests of creditors in Northern Ireland are adequately protected.

3. In granting relief under this article to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of Northern Ireland, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

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(a) Schedule B1 was inserted by Article 3(2) of, and Schedule 1 to, the Insolvency (Northern Ireland) Order 2005, (S.I. 2005/1455 (N.I. 10))

4. No stay under paragraph 1(a) shall affect the right to commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory or investigative functions of a public nature, being an action or proceedings brought in the exercise of those functions.

*Article 22. Protection of creditors and other interested persons*

1. In granting or denying relief under article 19 or 21, or in modifying or terminating relief under paragraph 3 or paragraph 6 of article 20, the court must be satisfied that the interests of the creditors (including any secured creditors or parties to hire-purchase agreements) and other interested persons, including if appropriate the debtor, are adequately protected.

2. The court may subject relief granted under article 19 or 21 to conditions it considers appropriate, including the provision by the foreign representative of security for the proper performance of his functions.

3. The court may, at the request of the foreign representative or a person affected by relief granted under article 19 or 21, or of its own motion, modify or terminate such relief.

*Article 23. Actions to avoid acts detrimental to creditors*

1. Subject to paragraphs 6 and 9, upon recognition of a foreign proceeding, the foreign representative has standing to make an application to the court for an order under or in connection with Articles 202, 203, 206, 207, 312, 313, 315A, 316 and 367 of the Insolvency (Northern Ireland) Order 1989(a).

2. Where the foreign representative makes such an application (“an article 23 application”), the Articles referred to in paragraph 1 and Articles 204, 205, 314, 315, 315B, 315C, 315D, 315E, 315F, 368 and 369 of the Insolvency (Northern Ireland) Order 1989(b) shall apply—

- (a) whether or not the debtor, in the case of an individual, has been adjudged bankrupt, or, in the case of a debtor other than an individual, is being wound up or is in administration, under Northern Ireland insolvency law; and
- (b) with the modifications set out in paragraph 3.

3. The modifications referred to in paragraph 2 are as follows—

- (a) for the purposes of Articles 205(2A)(a) and 315(2A)(a) of the Insolvency (Northern Ireland) Order 1989, a person has notice of the relevant proceedings if he has notice of the opening of the relevant foreign proceeding;
- (b) for the purpose of Articles 204(1) and 207(3) of that Order, the onset of insolvency shall be the date of the opening of the relevant foreign proceeding; and
- (c) the periods referred to in Articles 206(2), 314(1)(a),(b) and (c) and 316(2) of that Order shall be periods ending with the date of the opening of the relevant foreign proceeding.

4. For the purposes of paragraph 3, the date of the opening of the foreign proceeding shall be determined in accordance with the law of the State in which the foreign proceeding is taking place, including any rule of law by virtue of which the foreign proceeding is deemed to have opened at an earlier time.

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(a) S.I. 1989/2405 (N.I.19); Articles 202, 206 and 207 were amended by paragraph 18 and by paragraphs 36, 39 and 40 of Schedule 2 to S.I. 2005/1455 (N.I. 10) respectively, and in the case of Article 207, Schedule 9; Articles 312 and 367 were amended by paragraphs 85 and 87 of Schedule 29 to the Civil Partnership Act 2004 (c.33); Article 315A was inserted by Article 15 of S.I. 1999/3147 (N.I. 11)

(b) Articles 204, 205 and 368 were amended by paragraphs 18, 37, 38 and 44 of Schedule 2 to S.I. 2005/1455 (N.I.10) and in the case of Article 204, Schedule 9; Articles 205 and 315 were amended by sections 3 and 4 of the Insolvency (No.2) Act 1994 (c.12); Articles 315A, 315B and 315C were substituted by Article 15 of S.I. 1999/3147 (N.I.11), and Articles 315D, 315E and 315F were inserted by paragraphs 53 and 54 of Schedule 9 to S.I. 1999/3147 (N.I.11)

5. When the foreign proceeding is a foreign non-main proceeding, the court must be satisfied that the article 23 application relates to assets that, under the law of Northern Ireland, should be administered in the foreign non-main proceeding.

6. At any time when a proceeding under Northern Ireland insolvency law is taking place regarding the debtor the foreign representative shall not make an article 23 application except with the permission of the court

7. On making an order on an article 23 application, the court may give such directions regarding the distribution of any proceeds of the claim by the foreign representative, as it thinks fit to ensure that the interests of creditors in Northern Ireland are adequately protected.

8. Nothing in this article affects the right of a Northern Ireland insolvency officeholder to make an application under or in connection with any of the provisions referred to in paragraph 1.

9. Nothing in paragraph 1 shall apply in respect of any preference given, floating charge created, alienation, assignment or relevant contributions (within the meaning of Article 315A(5) of the Insolvency (Northern Ireland) Order 1989) made or other transaction entered into before the date on which this Law comes into force.

*Article 24. Intervention by a foreign representative in proceedings in Northern Ireland*

Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of Northern Ireland are met, intervene in any proceedings in which the debtor is a party.

## CHAPTER IV

### COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

*Article 25. Cooperation and direct communication between the court in Northern Ireland and foreign courts or foreign representatives*

1. In matters referred to in paragraph 1 of article 1, the court may cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a Northern Ireland insolvency officeholder.

2. The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

*Article 26. Cooperation and direct communication between the Northern Ireland insolvency officeholder and foreign courts or foreign representatives*

1. In matters referred to in paragraph 1 of article 1, a Northern Ireland insolvency officeholder shall to the extent consistent with his other duties under the law of Northern Ireland, in the exercise of his functions and subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

2. The Northern Ireland insolvency officeholder is entitled, in the exercise of his functions and subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

*Article 27. Forms of cooperation*

Cooperation referred to in articles 25 and 26 may be implemented by any appropriate means, including—

- (a) appointment of a person to act at the direction of the court;
- (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) approval or implementation by courts of agreements concerning the coordination of proceedings;
- (e) coordination of concurrent proceedings regarding the same debtor.

## CHAPTER V

### CONCURRENT PROCEEDINGS

#### *Article 28. Commencement of a proceeding under Northern Ireland insolvency law after recognition of a foreign main proceeding*

After recognition of a foreign main proceeding, the effects of a proceeding under Northern Ireland insolvency law in relation to the same debtor shall, insofar as the assets of that debtor are concerned, be restricted to assets that are located in Northern Ireland and, to the extent necessary to implement cooperation and coordination under articles 25, 26 and 27, to other assets of the debtor that, under the law of Northern Ireland, should be administered in that proceeding.

#### *Article 29. Coordination of a proceeding under Northern Ireland insolvency law and a foreign proceeding*

Where a foreign proceeding and a proceeding under Northern Ireland insolvency law are taking place concurrently regarding the same debtor, the court may seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply—

- (f) when the proceeding in Northern Ireland is taking place at the time the application for recognition of the foreign proceeding is filed—
  - (i) any relief granted under article 19 or 21 must be consistent with the proceeding in Northern Ireland; and
  - (ii) if the foreign proceeding is recognised in Northern Ireland as a foreign main proceeding, article 20 does not apply;
- (g) when the proceeding in Northern Ireland commences after the filing of the application for recognition of the foreign proceeding—
  - (i) any relief in effect under article 19 or 21 shall be reviewed by the court and shall be modified or terminated if inconsistent with the proceeding in Northern Ireland;
  - (ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph 1 of article 20 shall be modified or terminated pursuant to paragraph 6 of article 20, if inconsistent with the proceeding in Northern Ireland; and
  - (iii) any proceedings brought by the foreign representative by virtue of paragraph 1 of article 23 before the proceeding in Northern Ireland commenced shall be reviewed by the court and the court may give such directions as it thinks fit regarding the continuance of those proceedings; and
- (h) in granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of Northern Ireland, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

#### *Article 30. Coordination of more than one foreign proceeding*

In matters referred to in paragraph 1 of article 1, in respect of more than one foreign proceeding regarding the same debtor, the court may seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply—

- (i) any relief granted under article 19 or 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;
- (j) if a foreign main proceeding is recognised after the filing of an application for recognition of a foreign non-main proceeding, any relief in effect under article 19 or 21 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding; and
- (k) if, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognised, the court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

*Article 31. Presumption of insolvency based on recognition of a foreign main proceeding*

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under Northern Ireland insolvency law, proof that the debtor is unable to pay its debts within the meaning given to that expression under Northern Ireland insolvency law.

*Article 32. Rule of payment in concurrent proceedings*

Without prejudice to secured claims or rights in rem, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a proceeding under Northern Ireland insolvency law regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

## SCHEDULE 2

Regulation 5

### PROCEDURAL MATTERS

#### PART 2

##### INTRODUCTORY PROVISIONS

1.—(1) In this Schedule—

“the 1989 Order” means the Insolvency (Northern Ireland) Order 1989<sup>(a)</sup>;

“article 21 relief application” means an application to the court by a foreign representative under article 21(1) or (2) of the Model Law for relief;

“business day” means any day other than a Saturday, Sunday, or public holiday in Northern Ireland;

“the Department” means the Department of Enterprise, Trade and Investment

“file in court” and “file with the court” means deliver to the court for filing;

“the Gazette” means the Belfast Gazette;

“interim relief application” means an application to the court by a foreign representative under article 19 of the Model Law for interim relief;

“main proceedings” means proceedings opened in accordance with Article 3(1) of the EC Insolvency Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Insolvency Regulation;

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(a) S.I. 1989/2405 (N.I.19)

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

“the Model Law” means the UNCITRAL Model Law as set out in Schedule 1;

“modification or termination order” means an order by the court pursuant to its powers under the Model Law modifying or terminating recognition of a foreign proceeding, the stay and suspension referred to in article 20(1) or any part of it or any relief granted under article 19 or 21 of the Model Law;

“originating application” means an application to the court which is not an application in pending proceedings before the court;

“ordinary application” means any application to the court other than an originating application;

“practice direction” means a direction as to the practice and procedure in the Chancery Division of the Northern Ireland High Court;

“recognition application” means an application to the court by a foreign representative in accordance with article 15 of the Model Law for an order recognising the foreign proceeding in which he has been appointed;

“recognition order” means an order by the court recognising a proceeding the subject of a recognition application as a foreign main proceeding or foreign non-main proceeding, as appropriate;

“relevant company” means a company within the meaning of Article 3(1) of the Companies (Northern Ireland) Order 1986(a) or an unregistered company within the meaning of Part 6 of the 1989 Order which is subject to a requirement imposed by virtue of Article 640A(b), 641(1)(c) or 667(d) of the Companies (Northern Ireland) Order 1986.

“review application” means an application to the court for a modification or termination order;

“sealed” means sealed with the official seal of the Bankruptcy and Companies Office;

“the registrar” means the registrar of companies appointed under Article 653 of the Companies (Northern Ireland) Order 1986(e) and for the purposes of this Schedule and Schedule 3, includes an assistant registrar;

“the Rules” means the Insolvency Rules (Northern Ireland) 1991(f) and “Rule” followed by a number means the rule with that number in those Rules;

“secondary proceedings” means proceedings opened in accordance with Articles 3(2) and 3(3) of the EC Insolvency Regulation and falling within the definition of winding up proceedings in Article 2(c) of the EC Insolvency Regulation;

“Supreme Court Rules” means the Rules of the Supreme Court (Northern Ireland) 1980(g)

“territorial proceedings” means proceedings opened in accordance with Articles 3(2) and 3(4) of the EC Insolvency Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Insolvency Regulation.

(2) Expressions defined in the Model Law have the same meaning when used in this Schedule.

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(a) S.I. 1986/1032 (N.I.6)

(b) Article 640A was inserted by S.R. 1993 No. 198

(c) Article 641(1) was amended by S.R. 2003 No.3

(d) Article 667 was amended by S.R. 2004 No.335

(e) Article 653 amended by S.I.1996/1632 (N.I. 11)

(f) 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), the Insolvency (Amendment) Rules (Northern Ireland) 2002 (S.R. 2002 No.261), the Insolvency (Amendment) Rules (Northern Ireland) 2003 (S.R. 2003 No.549), the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2004 (S.I. 2004/355) and the Insolvency (Amendment) Rules (Northern Ireland) 2006 (S.R. 2006 No.47)

(g) S.R. 1980 No. 346

(3) In proceedings under these Regulations, “the Master” means the Master (Bankruptcy) and “the Judge” means the Chancery Judge or any judge of the High Court or of the Court of Appeal for the time being acting as Chancery Judge.

(4) References to the “venue” for any proceedings or attendance before the court, are to the time, date and place for the proceedings or attendance.

(5) References to ex parte hearings shall be construed as references to hearings without notice being served on any other party, and references to applications made ex parte as references to applications made without notice being served on any other party; and other references which include the expression “ex parte” shall be similarly construed.

(6) References to a debtor who is of interest to the Financial Services Authority are references to a debtor who—

- (a) is, or has been, an authorised person within the meaning of section 31 of the Financial Services and Markets Act 2000<sup>(a)</sup> (authorised persons);
- (b) is, or has been, an appointed representative within the meaning of section 39 (exemption of appointed representatives) of that Act; or
- (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

(7) In sub-paragraph (6) “the general prohibition” has the meaning given by section 19 of the Financial Services and Markets Act 2000 and the reference to a “regulated activity” must be construed in accordance with—

- (a) section 22 of that Act (classes of regulated activity and categories of investment);
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act (regulated activities).

(8) References in this Schedule to a numbered form are to the form that bears that number in Schedule 4.

## PART 3

### APPLICATIONS TO COURT FOR RECOGNITION OF FOREIGN PROCEEDINGS

#### **Affidavit in support of recognition application**

2. A recognition application shall be in Form ML 1 and shall be supported by an affidavit sworn by the foreign representative complying with paragraph 4.

#### **Form and content of application**

3. The application shall state the following matters—

- (a) the name of the applicant and his address for service within Northern Ireland;
- (b) the name of the debtor in respect of which the foreign proceeding is taking place;
- (c) the name or names in which the debtor carries on business in the country where the foreign proceeding is taking place and in this country, if other than the name given under sub-paragraph (b);
- (d) the principal or last known place of business of the debtor in Northern Ireland (if any) and, in the case of an individual, his usual or last known place of residence in Northern Ireland (if any);
- (e) any registered number allocated to the debtor under the Companies (Northern Ireland) Order 1986;

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(a) 2000 c.8

- (f) brief particulars of the foreign proceeding in respect of which recognition is applied for, including the country in which it is taking place and the nature of the proceeding;
- (g) that the foreign proceeding is a proceeding within the meaning of article 2(h) of the Model Law;
- (h) that the applicant is a foreign representative within the meaning of article 2(i) of the Model Law;
- (i) the address of the debtor's centre of main interests and, if different, the address of its registered office or habitual residence, as appropriate; and
- (j) if the debtor does not have its centre of main interests in the country where the foreign proceeding is taking place, whether the debtor has an establishment within the meaning of article 2(c) of the Model Law in that country, and if so, its address.

#### **Contents of affidavit in support**

4.—(1) There shall be attached to the application an affidavit in support which shall contain or have exhibited to it—

- (a) the evidence and statement required under article 15(2) and (3) respectively of the Model Law;
- (b) any other evidence which in the opinion of the applicant will assist the court in deciding whether the proceeding the subject of the application is a foreign proceeding within the meaning of article 2(h) of the Model Law and whether the applicant is a foreign representative within the meaning of article 2(i) of the Model Law;
- (c) evidence that the debtor has its centre of main interests or an establishment, as the case may be, within the country where the foreign proceeding is taking place; and
- (d) any other matters which in the opinion of the applicant will assist the court in deciding whether to make a recognition order.

(2) The affidavit shall state whether, in the opinion of the applicant, the EC Insolvency Regulation applies to any of the proceedings identified in accordance with article 15(3) of the Model Law and, if so, whether those proceedings are main proceedings, secondary proceedings or territorial proceedings.

(3) The affidavit shall also have exhibited to it the translations required under article 15(4) of the Model Law and a translation in English of any other document exhibited to the affidavit which is in a language other than English.

(4) All translations referred to in sub-paragraph (3) must be certified by the translator as a correct translation.

#### **The hearing and powers of court**

5.—(1) On hearing a recognition application the court may in addition to its powers under the Model Law to make a recognition order—

- (a) dismiss the application;
- (b) adjourn the hearing conditionally or unconditionally;
- (c) make any other order which the court thinks appropriate.

(2) If the court makes a recognition order, it shall be in Form ML 2.

#### **Notification of subsequent information**

6.—(1) The foreign representative shall set out any subsequent information required to be given to the court under article 18 of the Model Law in a statement which he shall attach to Form ML 3 and file with the court.

(2) The statement shall include—

- (a) details of the information required to be given under article 18 of the Model Law; and

- (b) in the case of any proceedings required to be notified to the court under that article, a statement as to whether, in the opinion of the foreign representative, any of those proceedings are main proceedings, secondary proceedings or territorial proceedings under the EC Insolvency Regulation.

(3) The foreign representative shall send a copy of the Form ML 3 and attached statement filed with the court to the following—

- (a) the debtor; and
- (b) those persons referred to in paragraph 26(3).

## PART 4

### APPLICATION FOR RELIEF UNDER THE MODEL LAW

#### **Application for interim relief—affidavit in support**

7.—(1) An interim relief application must be supported by an affidavit sworn by the foreign representative stating—

- (a) the grounds on which it is proposed that the interim relief applied for should be granted;
- (b) details of any proceeding under Northern Ireland insolvency law taking place in relation to the debtor;
- (c) whether, to the foreign representative’s knowledge, an administrative receiver or receiver or manager of the debtor’s property is acting in relation to the debtor;
- (d) an estimate of the value of the assets of the debtor in Northern Ireland in respect of which relief is applied for;
- (e) whether, to the best of the knowledge and belief of the foreign representative, the interests of the debtor’s creditors (including any secured creditors or parties to hire-purchase agreements) and any other interested parties, including if appropriate the debtor, will be adequately protected;
- (f) whether, to the best of the foreign representative’s knowledge and belief, the grant of any of the relief applied for would interfere with the administration of a foreign main proceeding; and
- (g) all other matters that in the opinion of the foreign representative will assist the court in deciding whether or not it is appropriate to grant the relief applied for.

#### **Service of interim relief application not required**

8. Unless the court otherwise directs, it shall not be necessary to serve the interim relief application on, or give notice of it to, any person.

#### **The hearing and powers of court**

9. On hearing an interim relief application the court may in addition to its powers under the Model Law to make an order granting interim relief under article 19 of the Model Law—

- (a) dismiss the application;
- (b) adjourn the hearing conditionally or unconditionally;
- (c) make any other order which the court thinks appropriate.

#### **Application for relief under article 21 of the Model Law—affidavit in support**

10. An article 21 relief application must be supported by an affidavit sworn by the foreign representative stating—

- (a) the grounds on which it is proposed that the relief applied for should be granted;

- (b) an estimate of the value of the assets of the debtor in Northern Ireland in respect of which relief is applied for;
- (c) in the case of an application by a foreign representative who is or believes that he is a representative of a foreign non-main proceeding, the reasons why the applicant believes that the relief relates to assets that, under the law of Northern Ireland, should be administered in the foreign non-main proceeding or concerns information required in that proceeding;
- (d) whether, to the best of the knowledge and belief of the foreign representative, the interests of the debtor's creditors (including any secured creditors or parties to hire-purchase agreements) and any other interested parties, including if appropriate the debtor, will be adequately protected; and
- (e) all other matters that in the opinion of the foreign representative will assist the court in deciding whether or not it is appropriate to grant the relief applied for.

### **The hearing and powers of court**

**11.** On hearing an article 21 relief application the court may in addition to its powers under the Model Law to make an order granting relief under article 21 of the Model Law—

- (a) dismiss the application;
- (b) adjourn the hearing conditionally or unconditionally;
- (c) make any other order which the court thinks appropriate.

## **PART 5**

### **REPLACEMENT OF FOREIGN REPRESENTATIVE**

#### **Application for confirmation of status of replacement foreign representative**

**12.—(1)** This paragraph applies where following the making of a recognition order the foreign representative dies or for any other reason ceases to be the foreign representative in the foreign proceeding in relation to the debtor.

(2) In this paragraph “the former foreign representative” shall mean the foreign representative referred to in sub-paragraph (1).

(3) If a person has succeeded the former representative or is otherwise holding office as foreign representative in the foreign proceeding in relation to the debtor, that person may apply to the court for an order confirming his status as replacement foreign representative for the purpose of proceedings under these Regulations.

#### **Contents of application and affidavit in support**

**13.—(1)** An application under paragraph 12(3) shall in addition to the matters required to be stated by paragraph 19(2) state the following matters—

- (a) the name of the replacement foreign representative and his address for service within Northern Ireland;
- (b) details of the circumstances in which the former foreign representative ceased to be foreign representative in the foreign proceeding in relation to the debtor (including the date on which he ceased to be the foreign representative);
- (c) details of his own appointment as replacement foreign representative in the foreign proceeding (including the date of that appointment).

(2) The application shall be accompanied by an affidavit in support sworn by the applicant which shall contain or have attached to it—

- (a) a certificate from the foreign court affirming—

- (i) the cessation of the appointment of the former foreign representative as foreign representative; and
  - (ii) the appointment of the applicant as the foreign representative in the foreign proceeding; or
  - (b) in the absence of such a certificate, any other evidence acceptable to the court of the matters referred to in paragraph (a); and
  - (c) a translation in English of any document exhibited to the affidavit which is in a language other than English.
- (3) All translations referred to in paragraph (c) must be certified by the translator as a correct translation.

### **The hearing and powers of court**

- 14.**—(1) On hearing an application under paragraph 12(3) the court may—
- (a) make an order confirming the status of the replacement foreign representative as foreign representative for the purpose of proceedings under these Regulations;
  - (b) dismiss the application;
  - (c) adjourn the hearing conditionally or unconditionally;
  - (d) make an interim order;
  - (e) make any other order which the court thinks appropriate, including in particular an order making such provision as the court thinks fit with respect to matters arising in connection with the replacement of the foreign representative.
- (2) If the court dismisses the application, it may also if it thinks fit make an order terminating recognition of the foreign proceeding and—
- (a) such an order may include such provision as the court thinks fit with respect to matters arising in connection with the termination; and
  - (b) paragraph 15 shall not apply to such an order.

## **PART 6**

### **REVIEWS OF COURT ORDERS**

#### **Reviews of court orders—where court makes order of its own motion**

- 15.**—(1) The court shall not of its own motion make a modification or termination order unless the foreign representative and the debtor have either—
- (a) had an opportunity of being heard on the question; or
  - (b) consented in writing to such an order.
- (2) Where the foreign representative or the debtor desires to be heard on the question of such an order, the court shall give all relevant parties notice of a venue at which the question will be considered and may give directions as to the issues on which it requires evidence.
- (3) For the purposes of sub-paragraph (2), all relevant parties means the foreign representative, the debtor and any other person who appears to the court to have an interest justifying his being given notice of the hearing.
- (4) If the court makes a modification or termination order, the order may include such provision as the court thinks fit with respect to matters arising in connection with the modification or termination.

#### **Review application—affidavit in support**

- 16.** A review application must be supported by an affidavit sworn by the applicant stating—

- (a) the grounds on which it is proposed that the relief applied for should be granted;
- (b) whether, to the best of the knowledge and belief of the applicant, the interests of the debtor's creditors (including any secured creditors or parties to hire-purchase agreements) and any other interested parties, including if appropriate the debtor, will be adequately protected; and
- (c) all other matters that in the opinion of the applicant will assist the court in deciding whether or not it is appropriate to grant the relief applied for.

**Hearing of review application and powers of the court**

17. On hearing a review application, the court may in addition to its powers under the Model Law to make a modification or termination order—

- (a) dismiss the application;
- (b) adjourn the hearing conditionally or unconditionally;
- (c) make an interim order;
- (d) make any other order which the court thinks appropriate, including an order making such provision as the court thinks fit with respect to matters arising in connection with the modification or termination.

**PART 7**

**COURT PROCEDURE AND PRACTICE WITH REGARD TO PRINCIPAL APPLICATION AND ORDERS**

**Preliminary and interpretation**

18.—(1) This Part applies to—

- (a) any of the following applications made to the court under these Regulations—
  - (i) a recognition application;
  - (ii) an article 21 relief application;
  - (iii) an application under paragraph 12(3) for an order confirming the status of a replacement foreign representative;
  - (iv) a review application; and
- (b) any of the following orders made by the court under these Regulations—
  - (i) a recognition order;
  - (ii) an order granting interim relief under article 19 of the Model Law;
  - (iii) an order granting relief under article 21 of the Model Law;
  - (iv) an order confirming the status of a replacement foreign representative; and
  - (v) a modification or termination order.

**Form and contents of application**

19.—(1) Subject to sub-paragraph (4) every application to which this Part applies shall be an ordinary application and shall be in Form ML 5.

(2) Each application shall be in writing and shall state—

- (a) the names of the parties;
- (b) the nature of the relief or order applied for or the directions sought from the court;
- (c) the names and addresses of the persons (if any) on whom it is intended to serve the application;

- (d) the names and addresses of all those persons on whom these Regulations require the application to be served (so far as known to the applicant); and
  - (e) the applicant's address for service.
- (3) The application must be signed by the applicant if he is acting in person, or, when he is not so acting, by or on behalf of his solicitor.
- (4) This paragraph does not apply to a recognition application.

### **Filing of application**

**20.**—(1) The application (and all supporting documents) shall be filed with the court, with a sufficient number of copies for service and use as provided by paragraph 21(2).

(2) Each of the copies filed shall have applied to it the seal of the court and be issued to the applicant; and on each copy there shall be endorsed the date and time of filing.

(3) The court shall fix a venue for the hearing of the application and this also shall be endorsed on each copy of the application issued under sub-paragraph (2).

### **Service of the application**

**21.**—(1) In sub-paragraph (2), references to the application are to a sealed copy of the application issued by the court together with any affidavit in support of it and any documents exhibited to the affidavit.

(2) Unless the court otherwise directs, the application shall be served on the following persons, unless they are the applicant—

- (a) on the foreign representative;
- (b) on the debtor;
- (c) if a Northern Ireland insolvency officeholder is acting in relation to the debtor, on him;
- (d) if any person has been appointed an administrative receiver of the debtor or, to the knowledge of the foreign representative, as a receiver or manager of the property of the debtor in Northern Ireland, on him;
- (e) if a member State liquidator has been appointed in main proceedings in relation to the debtor, on him;
- (f) if to the knowledge of the foreign representative a foreign representative has been appointed in any other foreign proceeding regarding the debtor, on him;
- (g) if there is pending in Northern Ireland a petition for the winding up or bankruptcy of the debtor, on the petitioner;
- (h) on any person who to the knowledge of the foreign representative is or may be entitled to appoint an administrator of the debtor under paragraph 15 of Schedule B1 to the 1989 Order<sup>(a)</sup> (appointment of administrator by holder of qualifying floating charge); and
- (i) if the debtor is a debtor who is of interest to the Financial Services Authority, on that Authority.

### **Manner in which service to be effected**

**22.**—(1) Service of the application in accordance with paragraph 21(2) shall be effected by the applicant, or his solicitor, or by a person instructed by him or his solicitor, not less than 5 business days before the date fixed for the hearing.

(2) Service shall be effected by delivering the documents to a person's proper address or in such other manner as the court may direct.

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(a) Schedule B1 was inserted into S.I. 1989/2405 (N.I. 19) by Article 3(2) of and Schedule 1 to S.I. 2005/1455 (N.I. 10)

(3) A person's proper address is any which he has previously notified as his address for service within Northern Ireland; but if he has not notified any such address or if for any reason service at such address is not practicable, service may be effected as follows—

- (a) (subject to sub-paragraph (4)) in the case of a company incorporated in Northern Ireland, by delivery to its registered office;
- (b) In the case of any other person, by delivery to his usual or last known address or principal place of business in Northern Ireland.

(4) If delivery to a company's registered office is not practicable, service may be effected by delivery to its last known principal place of business in Northern Ireland.

(5) Delivery of documents to any place or address may be made by leaving them there or sending them by first class post in accordance with the provisions of paragraphs 65 and 70(1).

### **Proof of service**

**23.**—(1) Service of the application shall be verified by an affidavit of service in Form ML 6, specifying the date on which, and the manner in which, service was effected.

(2) The affidavit of service, with a sealed copy of the application exhibited to it, shall be filed with the court as soon as reasonably practicable after service, and in any event not less than 1 business day before the hearing of the application.

### **In case of urgency**

**24.** Where the case is one of urgency, the court may (without prejudice to its general power to extend or abridge time limits)—

- (a) hear the application immediately, either with or without notice to, or the attendance of, other parties; or
- (b) authorise a shorter period of service than that provided for by paragraph 22(1),

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the court thinks fit.

### **The hearing**

**25.**—(1) At the hearing of the application, the applicant and any of the following persons (not being the applicant) may appear or be represented—

- (a) the foreign representative;
- (b) the debtor and, in the case of any debtor other than an individual, any one or more directors or other officers of the debtor, including—
  - (i) where applicable, any person registered under Part 23 of the Companies (Northern Ireland) Order 1986(a) as authorised to represent the debtor in respect of its business in Northern Ireland;
  - (ii) in the case of a debtor which is a partnership, any person who is an officer of the partnership within the meaning of Article 2 of the Insolvent Partnerships Order (Northern Ireland) 1995(b);
- (c) if a Northern Ireland insolvency officeholder is acting in relation to the debtor, that person;
- (d) if any person has been appointed an administrative receiver of the debtor or as a receiver or manager of the property of the debtor in Northern Ireland, that person;
- (e) if a member State liquidator has been appointed in main proceedings in relation to the debtor, that person;

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(a) S.I. 1986/1032 (N.I.6)

(b) S.R. 1995 No.225, to which there are amendments not relevant to these Regulations

- (f) if a foreign representative has been appointed in any other foreign proceeding regarding the debtor, that person;
- (g) any person who has presented a petition for the winding up or bankruptcy of the debtor in Northern Ireland;
- (h) any person who is or may be entitled to appoint an administrator of the debtor under paragraph 15 of Schedule B1 to the 1989 Order (appointment of administrator by holder of qualifying floating charge);
- (i) if the debtor is a debtor who is of interest to the Financial Services Authority, that Authority; and
- (j) with the permission of the court, any other person who appears to have an interest justifying his appearance.

**Notification and advertisement of order**

**26.**—(1) If the court makes any of the orders referred to in paragraph 18(1)(b), it shall as soon as reasonably practicable send two sealed copies of the order to the foreign representative.

(2) The foreign representative shall send a sealed copy of the order as soon as reasonably practicable to the debtor.

(3) The foreign representative shall, as soon as reasonably practicable after the date of the order give notice of the making of the order—

- (a) if a Northern Ireland insolvency officeholder is acting in relation to the debtor, to him;
- (b) if any person has been appointed an administrative receiver of the debtor or, to the knowledge of the foreign representative, as a receiver or manager of the property of the debtor, to him;
- (c) if a member State liquidator has been appointed in main proceedings in relation to the debtor, to him;
- (d) if to his knowledge a foreign representative has been appointed in any other foreign proceeding regarding the debtor, that person;
- (e) if there is pending in Northern Ireland a petition for the winding up or bankruptcy of the debtor, to the petitioner;
- (f) to any person who to his knowledge is or may be entitled to appoint an administrator of the debtor under paragraph 15 of Schedule B1 to the 1989 Order (appointment of administrator by holder of qualifying floating charge);
- (g) if the debtor is a debtor who is of interest to the Financial Services Authority, to that Authority;
- (h) to such other persons as the court may direct.

(4) In the case of an order recognising a foreign proceeding in relation to the debtor as a foreign main proceeding, or an order under article 19 or 21 of the Model Law staying execution, distress or other legal process against the debtor’s assets, the foreign representative shall also, as soon as reasonably practicable after the date of the order give notice of the making of the order—

- (a) to the Enforcement of Judgements Office; and
- (b) to any person who to his knowledge is distraining against the debtor or its property.

(5) In the application of sub-paragraph (3) and (4) the references to property shall be taken as references to property situated within Northern Ireland.

(6) Where the debtor is a relevant company, the foreign representative shall send notice of the making of the order to the registrar before the end of the period of 5 business days beginning with the date of the order. The notice to the registrar shall be in Form ML 7.

(7) The foreign representative shall advertise the making of the following orders once in the Gazette and once in such newspaper as he thinks most appropriate for ensuring that the making of the order comes to the notice of the debtor’s creditors—

- (a) a recognition order;
- (b) an order confirming the status of a replacement foreign representative; and
- (c) a modification or termination order which modifies or terminates recognition of a foreign proceeding,

and the advertisement shall be in Form ML 8.

### **Adjournment of hearing; directions**

**27.**—(1) This paragraph applies in any case where the court exercises its powers to adjourn the hearing of the application.

(2) The court may at any time give such directions as it thinks fit as to—

- (a) service or notice of the application on or to any person, whether in connection with the venue of a resumed hearing or for any other purpose;
- (b) the procedure on the application;
- (c) the manner in which any evidence is to be adduced at a resumed hearing and in particular as to—
  - (i) the taking of evidence wholly or in part by affidavit or orally;
  - (ii) the cross-examination on the hearing in court or in chambers, of any deponents to affidavits;
- (d) the matters to be dealt with in evidence.

## **PART 8**

### **UNREGISTERED AND REGISTERED LAND**

#### **Registration of court order**

**28.**—(1) Where the court makes a recognition order in respect of a foreign main proceeding or an order suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor being unregistered land, the Master shall certify one copy of the order in fulfilment of the requirement under section 2(3)(a) of the Registration of Deeds Act (Northern Ireland) 1970(**a**). The court shall forthwith send the certified copy of the order along with one uncertified copy to the Registry of Deeds to be registered under section 2(3) of the Registration of Deeds Act (Northern Ireland) 1970.

(2) Where the court makes a modification or termination order the Master shall certify one copy of the order in fulfilment of the requirement under section 2(3)(a) of the Registration of Deeds Act (Northern Ireland) 1970. The court shall forthwith send the certified copy of the order along with one uncertified copy to the Registry of Deeds to be registered under section 2(3) of the Registration of Deeds Act (Northern Ireland) 1970.

(3) Registration of a recognition order in respect of a foreign main proceeding or an order suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor being unregistered land shall be vacated on registration of a termination order.

(4) Where the court makes any order in proceedings under these regulations which is capable of giving rise to an application under the Land Registration Act (Northern Ireland) 1970(**b**) and the debtor is the registered owner of, or has a registered charge over, any land, the foreign representative may make the appropriate application or applications to the Registrar of Titles.

(5) In sub-paragraph (4) an appropriate application is—

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(a) 1970 c.25 (N.I.)  
(b) 1970 c.18 (N.I.)

- (a) where the order is a recognition order in respect of a foreign main proceeding or an order suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor, an application under section 67(1) of the Land Registration Act (Northern Ireland) 1970 for an entry to be made inhibiting any dealing with the land; and
- (b) in any other case, an application under section 9(1) of the Land Registration Act (Northern Ireland) 1970 for such entry in the individual register or registers in which title to the land is registered as shall be necessary to reflect the effect of the court order under these Regulations.

## PART 9

### MISFEASANCE

#### **Misfeasance by foreign representative**

- 29.**—(1) The court may examine the conduct of a person who—
- (a) is or purports to be the foreign representative in relation to a debtor; or
  - (b) has been or has purported to be the foreign representative in relation to a debtor.
- (2) An examination under this paragraph may be held only on the application of—
- (a) a Northern Ireland insolvency officeholder acting in relation to the debtor;
  - (b) a creditor of the debtor; or
  - (c) with the permission of the court, any other person who appears to have an interest justifying an application.
- (3) An application under sub-paragraph (2) must allege that the foreign representative—
- (a) has misapplied or retained money or other property of the debtor;
  - (b) has become accountable for money or other property of the debtor;
  - (c) has breached a fiduciary or other duty in relation to the debtor; 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 debtor’s property by way of compensation for breach of duty or misfeasance.
- (5) In sub-paragraph (3) “foreign representative” includes a person who purports or has purported to be a foreign representative in relation to a debtor.

## PART 10

### GENERAL PROVISION AS TO COURT PROCEDURE AND PRACTICE

#### **Principal court rules and practice to apply with modifications**

**30.** The Supreme Court Rules and the practice of the High Court shall apply to proceedings under these Regulations with such modifications as may be necessary for the purpose of giving effect to the provisions of these Regulations.

#### **Applications other than the principal applications—preliminary**

**31.** Paragraphs 32 to 37 apply to any application made to the court under these Regulations, except any of the applications referred to in paragraph 18(1)(a).

### **Form and contents of application**

**32.**—(1) Every application shall be in the form appropriate to the application concerned. Forms ML 4 and ML 5 shall be used for an originating application and an ordinary application respectively under these Regulations.

(2) Each application shall be in writing and shall state—

- (a) the names of the parties;
- (b) the nature of the relief or order applied for or the directions sought from the court;
- (c) the names and addresses of the persons (if any) on whom it is intended to serve the application or that no person is intended to be served;
- (d) where these Regulations require that notice of the application is to be given to specified persons, the names and addresses of all those persons (so far as known to the applicant); and
- (e) the applicant's address for service.

(3) An originating application shall set out the grounds on which the applicant claims to be entitled to the relief or order sought.

(4) The application must be signed by the applicant if he is acting in person or, when he is not so acting, by or on behalf of his solicitor.

### **Filing and service of application**

**33.**—(1) The application shall be filed in court, accompanied by one copy and a number of additional copies equal to the number of persons who are to be served with the application.

(2) Subject to sub-paragraph (6) and paragraph 34, or unless the court otherwise orders, upon the presentation of the documents mentioned in sub-paragraph (1), the court shall fix a venue for the application to be heard.

(3) Unless the court otherwise directs, the applicant shall serve a sealed copy of the application, endorsed with the venue of the hearing, on the respondent named in the application (or on each respondent if more than one).

(4) The court may give any of the following directions—

- (a) that the application be served upon persons other than those specified by the relevant provision of these Regulations;
- (b) that the giving of notice to any person may be dispensed with;
- (c) that notice be given in some way other than that specified in sub-paragraph (3).

(5) Subject to sub-paragraph (6), the application must be served at least 10 business days before the date fixed for the hearing.

(6) Where the case is one of urgency, the court may (without prejudice to its general power to extend or abridge time limits)—

- (a) hear the application immediately, either with or without notice to, or the attendance of, other parties; or
- (b) authorise a shorter period of service than that provided for by sub-paragraph (5);

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the court thinks fit.

### **Other hearings *ex parte***

**34.**—(1) Where the relevant provisions of these Regulations do not require service of the application on, or notice of it to be given to, any person, the court may hear the application *ex parte*.

(2) Where the application is properly made *ex parte*, the court may hear it forthwith, without fixing a venue as required by paragraph 33(2).

(3) Alternatively, the court may fix a venue for the application to be heard, in which case paragraph 33 applies (so far as relevant).

#### **Use of affidavit evidence**

**35.**—(1) In any proceedings evidence may be given by affidavit unless the court otherwise directs; but the court may, on the application of any party, order the attendance for cross-examination of the person making the affidavit.

(2) Where, after such an order has been made, the person in question does not attend, his affidavit shall not be used in evidence without the permission of the court.

#### **Filing and service of affidavits**

**36.**—(1) Unless the court otherwise allows—

- (a) if the applicant intends to rely at the first hearing on affidavit evidence, he shall file the affidavit or affidavits (if more than one) in court and serve a copy or copies on the respondent, not less than 10 business days before the date fixed for the hearing; and
- (b) where a respondent to an application intends to oppose it and to rely for that purpose on affidavit evidence, he shall file the affidavit or affidavits (if more than one) in court and serve a copy or copies on the applicant, not less than 5 business days before the date fixed for the hearing.

#### **Adjournment of hearings; directions**

**37.** The court may adjourn the hearing of an application on such terms (if any) as it thinks fit and in the case of such an adjournment paragraph 27(2) shall apply.

#### **Shorthand writers**

**38.**—(1) The Judge may in writing nominate one or more persons to be official shorthand writers to the court.

(2) The court may, at any time in the course of proceedings under these Regulations, appoint a shorthand writer to take down the evidence of a person examined in pursuance of a court order under article 19 or 21 of the Model Law.

(3) The remuneration of a shorthand writer appointed in proceedings under these Regulations shall be paid by the party at whose instance the appointment was made or otherwise as the court may direct, at the rates payable for taking a note of evidence and making a transcript for use in the Court of Appeal.

(4) Any question arising as to the rates of remuneration payable under this paragraph shall be determined by the court in its discretion.

#### **Enforcement procedures**

**39.** In any proceedings under these Regulations, orders of the court may be enforced in the same manner as a judgment to the same effect.

#### **Title of proceedings**

**40.**—(1) Every proceeding under these Regulations shall be headed and, with any necessary additions, be intitled,

“IN THE HIGH COURT OF JUSTICE CHANCERY DIVISION IN THE MATTER OF—  
———(name of debtor to which the proceedings relate) AND IN THE MATTER  
OF THE CROSS-BORDER INSOLVENCY REGULATIONS (NORTHERN IRELAND)  
2007”.

(2) Sub-paragraph (1) shall not apply in respect of any form prescribed under these Regulations.

### **Court records**

**41.** The court shall keep records of all proceedings under these Regulations, and shall cause to be entered in the records the taking of any step in the proceedings, and such decisions of the court in relation thereto, as the court thinks fit.

### **Inspection of records**

**42.—**(1) Subject to sub-paragraph (2), the court's records of proceedings under these Regulations shall be open to inspection by any person.

(2) If in the case of a person applying to inspect the records the Master is not satisfied, as to the propriety of the purpose for which inspection is required, he may refuse to allow it. That person may then apply forthwith and *ex parte* to the Judge, who may refuse the inspection or allow it on such terms as he thinks fit.

(3) The decision of the Judge under sub-paragraph (2) is final.

### **File of court proceedings**

**43.—**(1) In respect of all proceedings under these Regulations, the court shall open and maintain a file for each case; and (subject to directions of the Master) all documents relating to such proceedings shall be placed on the relevant file.

(2) No proceedings under these Regulations shall be filed in the Central Office of the Supreme Court.

### **Right to inspect the file**

**44.—**(1) In the case of any proceedings under these Regulations, the following have the right, at all reasonable times, to inspect the court's file of the proceedings—

- (a) the Department;
- (b) the person who is the foreign representative in relation to the proceedings;
- (c) if a foreign representative has been appointed in any other foreign proceeding regarding the debtor to which the proceedings under these Regulations relate, that person;
- (d) if a Northern Ireland insolvency officeholder is acting in relation to the debtor to which the proceedings under these Regulations relate, that person;
- (e) any person stating himself in writing to be a creditor of the debtor to which the proceedings under these Regulations relate;
- (f) if a member State liquidator has been appointed in relation to the debtor to which the proceedings under these Regulations relate, that person; and
- (g) the debtor to which the proceedings under these Regulations relate, or, if that debtor is a company, corporation or partnership, every person who is, or at any time has been—
  - (i) a director or officer of the debtor;
  - (ii) a member of the debtor; or
  - (iii) where applicable, a person registered under Part 23 of the Companies (Northern Ireland) Order 1986<sup>(a)</sup> as authorised to represent the debtor in respect of its business in Northern Ireland.

(2) The right of inspection conferred by sub-paragraph (1) on any person may be exercised on his behalf by a person properly authorised by him.

(3) Any person may, by leave of the court, inspect the file.

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(a) S.I. 1986/1032 (N.I.6)

(4) The right of inspection conferred by this paragraph is not exercisable in the case of documents, or parts of documents, as to which the court directs (either generally or specially) that they are not to be made open to inspection without the court's permission.

(5) An application for a direction of the court under sub-paragraph (4) may be made by the foreign representative or by any party appearing to the court to have an interest.

(6) If, for the purpose of powers conferred by the 1989 Order or the Rules, the Department or the official receiver wishes to inspect the file of any proceedings under these Regulations, and requests the transmission of the file, the court shall comply with such request (unless the file is for the time being in use for the court's purposes).

(7) Paragraph 42(2) and (3) apply in respect of the court's file of any proceedings under these Regulations as they apply in respect of court records.

(8) Where these Regulations confer a right for any person to inspect documents on the court's file of proceedings, the right includes that of taking copies of those documents on payment of the fee chargeable under any order made under section 116 of the Judicature (Northern Ireland) Act 1978(a).

### **Copies of court orders**

**45.**—(1) In any proceedings under these Regulations, any person who under paragraph 44 has a right to inspect documents on the court file also has the right to require the foreign representative in relation to those proceedings to furnish him with a copy of any court order in the proceedings.

(2) Sub-paragraph (1) does not apply if a copy of the court order has been served on that person or notice of the making of the order has been given to that person under other provisions of these Regulations.

### **Filing of Gazette notices and advertisements**

**46.**—(1) Where there appears in an advertisement relating to proceedings under these Regulations, the person inserting the advertisement shall file a copy of it in the court and the copy shall be accompanied by, or have endorsed on it, such particulars as are necessary to identify the proceedings and the date of the advertisement's appearance.

(2) An officer of the court shall from time to time file a memorandum giving dates of, and other particulars relating to, any notice published in the Gazette, and any newspaper advertisements, which relate to proceedings under these Regulations.

(3) The Officer's memorandum is prima facie evidence that any notice or advertisement mentioned in it was duly inserted in the issue of the newspaper or the Gazette which is specified in the memorandum.

### **Persons incapable of managing their affairs—introductory**

**47.**—(1) Paragraphs 48 to 50 apply where in proceedings under these Regulations it appears to the court that a person affected by the proceedings is one who is incapable of managing and administering his property and affairs either—

(a) by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986(b);

(b) due to physical affliction or disability.

(2) The person concerned is referred to as "the incapacitated person".

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(a) 1978 c.23

(b) S.I. 1986/595 (N.I.4)

### **Appointment of another person to act**

48.—(1) The court may appoint such person as it thinks fit to appear for, represent or act for the incapacitated person.

(2) The appointment may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the incapacitated person might have exercised but for his incapacity.

(3) The court may make the appointment either of its own motion or on application by—

- (a) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the incapacitated person; or
- (b) any relative or friend of the incapacitated person who appears to the court to be a proper person to make the application; or
- (c) in any case where the incapacitated person is the debtor, the foreign representative.

(4) Application under sub-paragraph (3) may be made *ex parte*; but the court may require such notice of the application as it thinks necessary to be given to the person alleged to be incapacitated, or any other person, and may adjourn the hearing of the application to enable the notice to be given.

### **Affidavit in support of application**

49.—(1) An application under paragraph 48(3) shall subject to paragraph (2), be supported by an affidavit of a registered medical practitioner as to the mental or physical condition of the incapacitated person.

(2) The affidavit of a registered medical practitioner shall not be required where the incapacitated person is a patient within the meaning of the Mental Health (Northern Ireland) Order 1986.

### **Service of notices following appointment**

50. Any notice served on, or sent to, a person appointed under paragraph 48 has the same effect as if it had been served on, or given to, the incapacitated person.

### **Rights of audience**

51. Rights of audience in proceedings under these Regulations are the same as obtain in proceedings under Northern Ireland insolvency law.

### **Right of attendance**

52.—(1) Subject to sub-paragraphs (2) to (7), in proceedings under these Regulations, any person stating himself in writing, in records kept by the court for that purpose, to be a creditor of the debtor to which the proceedings relate, is entitled at his own cost, to attend in court or in chambers at any stage of the proceedings.

(2) Attendance may be by the person himself, or his solicitor.

(3) A person so entitled may request the court in writing to give him notice of any step in the proceedings; and, subject to his paying the costs involved and keeping the court informed as to his address, the court shall comply with the request.

(4) If the court is satisfied that the exercise by a person of his rights under this paragraph has given rise to costs for the estate of the debtor which would not otherwise have been incurred and ought not, in the circumstances, to fall on that estate, it may direct that the costs be paid by the person concerned, to an amount specified.

(5) The rights of that person under this paragraph shall be in abeyance so long as those costs are not paid.

(6) The court may appoint one or more persons to represent the creditors of the debtor to have the rights conferred by this paragraph, instead of the rights being exercised by any or all of them individually.

(7) If two or more persons are appointed under sub-paragraph (6) to represent the same interest, they must (if at all) instruct the same solicitor.

#### **Right of attendance for member State liquidator**

**53.** For the purposes of paragraph 52(1), a member State liquidator appointed in relation to a debtor subject to proceedings under these Regulations shall be deemed to be a creditor.

#### **Northern Ireland insolvency officeholder's solicitor**

**54.** Where in any proceedings the attendance of the Northern Ireland insolvency officeholder's solicitor is required, whether in court or in chambers, the Northern Ireland insolvency officeholder himself need not attend, unless directed by the court.

#### **Formal defects**

**55.** No proceedings under these Regulations shall be invalidated by any formal defect or by any irregularity, unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

#### **Restriction on concurrent proceedings and remedies**

**56.** Where in proceedings under these Regulations the court makes an order staying any action, execution or other legal process against the property of a debtor, service of the order may be effected by sending a sealed copy of the order to whatever is the address for service of the claimant or other party having the carriage of the proceedings to be stayed.

#### **Affidavits**

**57.—(1)** Where in proceedings under these Regulations, an affidavit is made by any Northern Ireland insolvency officeholder acting in relation to the debtor, he shall state the capacity in which he makes it, the position which he holds and the address at which he works.

(2) Any officer of the court duly authorised in that behalf, may take affidavits and declarations.

#### **Security in court**

**58.—(1)** Subject to sub-paragraph (3), where security has to be given to the court (otherwise than in relation to costs) it shall be given by bond.

(2) The bond shall be taken in a penal sum, which, except with the consent of the opposite party, shall be not less than the sum for which security is to be given and probable costs.

(3) A person required to give security may, in lieu thereof, lodge in court a sum equal to the sum for which security is to be given and probable costs together with a memorandum approved by the Master and signed by such person or his solicitor stating the conditions on which the money is deposited.

(4) Upon the lodgement the Master shall forthwith notify the persons for whose protection the security is given that the money has been lodged in court.

#### **Further information and disclosure**

**59.—(1)** Any party to proceedings under these Regulations may, with the leave of the court, administer interrogatories to, or obtain discovery from any other party to those proceedings.

(2) Applications under this paragraph may be made without notice being served on any other party.

### **Office copies of documents**

**60.**—(1) Any person who has under these Regulations the right to inspect the court file of proceedings may require the court to provide him with an office copy of any document from the file.

(2) A person's right under this paragraph may be exercised on his behalf by his solicitor.

(3) An office copy provided by the court under this paragraph shall be in such form as the Master thinks appropriate, and shall bear the court's seal.

## **PART 11**

### **COSTS AND DETAILED ASSESSMENT**

#### **Requirement to assess costs by the detailed procedure**

**61.** In any proceedings before the court, the court may order costs to be taxed.

## **PART 12**

### **APPEALS IN PROCEEDINGS UNDER THESE REGULATIONS**

#### **Appeals from court orders**

**62.**—(1) An order or decision of the Master in proceedings under these Regulations may be reviewed by an appeal to the Judge and an appeal from the decision of the Judge on such an appeal lies, with the permission of the Court of Appeal, to the Court of Appeal.

(2) An appeal from the decision of the Judge in proceedings under these Regulations which is not a decision on an appeal made to him under sub-paragraph (1) lies, with the permission of the Judge or the Court of Appeal, to the Court of Appeal.

#### **Procedure on appeals**

**63.**—(1) Order 58, rule 1(2) to (4) of the Supreme Court Rules applies to an appeal to the Judge under paragraph 62(1), with the substitution in paragraph (3) of the words "28 days" for the words "5 days" and the words "7 days" for the words "2 clear days".

(2) The following Rules in Order 59 of the Supreme Court Rules shall apply to an appeal to the Court of Appeal under sub-paragraph (1) or sub-paragraph (2) of paragraph 62:—

Rule 1;

Rule 3;

Rule 4 with the insertion in paragraph (b) after the words "Insolvency (Northern Ireland) Order 1989" of "The Cross-Border Insolvency Regulations (Northern Ireland) 2007";

Rule 5;

Rule 6;

Rule 7;

Rule 8;

Rule 9, with exception of paragraph (1)(g);

Rule 10;

Rule 12;

Rule 13;  
Rule 14;  
Rule 15.

## PART 13

### GENERAL

#### **Notices**

**64.**—(1) All notices required or authorised by or under these Regulations to be given must be in writing, unless it is otherwise provided, or the court allows the notice to be given in some other way.

(2) Where in proceedings under these Regulations a notice is required to be sent or given by any person, the sending or giving of it may be proved by means of a certificate by that person that he posted the notice, or instructed another person (naming him) to do so.

(3) A certificate under this paragraph may be endorsed on a copy or specimen of the notice to which it relates.

#### **“Give notice” etc**

**65.**—(1) A reference in these Regulations to giving notice, or to delivering, sending or serving any document, means that the notice or document may be sent by post.

(2) Subject to paragraph 70, any form of post may be used.

(3) Personal service of a document is permissible in all cases.

(4) Notice of the venue fixed for an application may be given by service of the sealed copy of the application under paragraph 33(3).

#### **Notice, etc. to solicitors**

**66.** Where in proceedings under these Regulations a notice or other document is required or authorised to be given to a person, it may, if he has indicated that his solicitor is authorised to accept service on his behalf, be given instead to the solicitor.

#### **Notice to joint Northern Ireland insolvency officeholders**

**67.** Where two or more persons are acting jointly as the Northern Ireland insolvency officeholder in proceedings under Northern Ireland insolvency law, delivery of a document to one of them is to be treated as delivery to them all.

#### **Forms for use in proceedings under these Regulations**

**68.**—(1) The forms contained in Schedule 4 shall be used in, and in connection with, proceedings under these Regulations.

(2) The forms shall be used with such variations, if any, as the circumstances may require.

#### **Time**

**69.** The provisions of Order 3 of the Supreme Court Rules, except rules 3 and 6, apply as regards computation, extension and abridgement of time in respect of anything required or authorised to be done in respect of these Regulations.

### **Service by post**

**70.**—(1) For a document to be properly served by post, it must be contained in an envelope addressed to the person on whom service is to be effected, and pre-paid for first class post.

(2) A document to be served by post may be sent to the last known address of the person to be served.

(3) Where first class post is used, the document is treated as served on the second business day after the date of posting, unless the contrary is shown.

(4) The date of posting is presumed, unless the contrary is shown, to be the date shown in the post-mark on the envelope in which the document is contained.

### **General provisions as to service and notice**

**71.**—(1) Subject to paragraphs 22, 70 and 72 and sub-paragraphs (2) and (3), Order 65 of the Supreme Court Rules applies as regards any matter relating to the service of documents and the giving of notice in proceedings under these Regulations.

(2) In Order 65, rule 7, the expression “other originating process” does not include any application in insolvency proceedings.

(3) Order 65, rule 9 does not apply.

### **Service outside the jurisdiction**

**72.**—(1) Order 11 of the Supreme Court Rules does not apply in proceedings under these Regulations.

(2) Where for the purposes of proceedings under these Regulations any process or order of the court, or other document, is required to be served on a person who is not in Northern Ireland, the court may order service to be effected within such time, on such person, at such place and in such manner as it thinks fit, and may also require such proof of service as it thinks fit.

(3) An application under this paragraph shall be supported by an affidavit stating—

(a) the grounds on which the application is made; and;

(b) in what place or country the person to be served is, or probably may be found.

### **False claim of status as creditor**

**73.**—(1) Rule 12.20 (false claim of status as creditor, etc) shall apply with any necessary modifications in any case where a person falsely claims the status of a creditor of a debtor, with the intention of obtaining a sight of documents whether on the court’s file or in the hands of the foreign representative or other person, which he has not under these Regulations any right to inspect.

(2) Rule 12.22 and Schedule 3 to the Rules shall apply to an offence under Rule 12.20 as applied by sub-paragraph (1) as they apply to an offence under Rule 12.20.

### **The Gazette**

**74.**—(1) A copy of the Gazette containing any notice required by these Regulations to be gazetted is evidence of any fact stated in the notice.

(2) In the case of an order of the court notice of which is required by these Regulations to be gazetted, a copy of the Gazette containing the notice may in any proceedings be produced as conclusive evidence that the order was made on the date specified in the notice.

## NOTICES DELIVERED TO THE REGISTRAR

**Interpretation**

1.—(1) In this Schedule—

“the 1986 Order” means the Companies (Northern Ireland) Order 1986(a);

“electronic communication” means the same as in the Electronic Communications Act (Northern Ireland) 2001(b);

“Model Law notice” means a notice delivered to the registrar under paragraph 26(6) of Schedule 2.

(2) Expressions defined in the Model Law or Schedule 2, as appropriate, have the same meaning when used in this Schedule.

(3) References in this Schedule to delivering a notice include sending, forwarding, producing or giving it.

**Functions of the registrar**

2.—(1) Where a Model Law notice is delivered to the registrar in respect of a relevant company, the registrar shall enter a note in the register relating to that company.

(2) The note referred to in sub-paragraph (1) shall contain the following particulars, in each case as stated in the notice delivered to the registrar—

- (a) brief details of the court order made;
- (b) the date of the court order; and
- (c) the name and address for service of the person who is the foreign representative in relation to the company.

**Delivery to registrar of notices**

3.—(1) Electronic communications may be used for the delivery of any Model Law notice, provided that such delivery is in such form and manner as is directed by the registrar.

(2) Where the Model Law notice is required to be signed, it shall instead be authenticated in such manner as is directed by the registrar.

(3) If a Model Law notice is delivered to the registrar which does not comply with the requirements of these Regulations, he may serve on the person by whom the notice was delivered (or, if there are two or more such persons, on any of them) a notice (a non-compliance notice) indicating the respect in which the Model Law notices does not comply.

(4) Where the registrar serves a non-compliance notice, then, unless a replacement Model Law notice—

- (a) is delivered to him within 14 days after the service of the non-compliance notice, and
- (b) complies with the requirements of these Regulations or is not rejected by him for failure to comply with those requirements,

the original Model Law notice shall be deemed not to have been delivered to him.

---

(a) S.I.1986/1032 (N.I.6)  
(b) 2001 c.9 (N.I.)

#### **Enforcement of foreign representative's duty to give notice to registrar**

4.—(1) If a foreign representative, having made default in complying with paragraph 26(6) of Schedule 2 fails to make good the default within 14 days after the service of a notice on the foreign representative requiring him to do so, the court may, on an application made to it by any creditor, member, director or other officer of the debtor or by the registrar, make an order directing the foreign representative to make good the default within such time as may be specified in the order.

(2) The court's order may provide that all costs of and incidental to the application shall be borne by the foreign representative.

#### **Rectification of the register under court order**

5.—(1) The registrar shall remove from the register any note, or part of a note—

- (a) that relates to or is derived from a court order that the court has declared to be invalid or ineffective, or
- (b) that the court declares to be factually inaccurate or derived from something that is factually inaccurate or forged,

and that the court directs should be removed from the register.

(2) The court order must specify what is to be removed from the register and indicate where on the register it is and the registrar shall carry out his duty under sub-paragraph (1) within a reasonable time of receipt by him of the relevant court order.

Forms

Schedule 2,  
paragraph 2

Form ML 1

**Recognition application**

No.

IN THE HIGH COURT OF JUSTICE IN NORTHERN  
IRELAND CHANCERY DIVISION

\*Insert name of debtor  
(a) where applicable

IN THE MATTER OF \* COMPANY No. (a)

AND IN THE MATTER OF THE CROSS-BORDER  
INSOLVENCY REGULATIONS (NORTHERN IRELAND) 2007

(b) Insert full name(s) of  
applicant(s)

1. The application of(b)

being the foreign representative(s) appointed in relation to the above named debtor in a foreign proceeding, in reliance on article 15 of the UNCITRAL Model Law on cross-border insolvency as set out in Schedule 1 to the Cross-Border Insolvency Regulations (Northern Ireland 2007 ("the Model Law").

(c) Insert full name of the  
debtor

2. The application is in respect of a foreign proceeding in relation to(c)

(d) Insert name of country  
where the foreign proceeding  
the subject of the application  
is taking place

("the debtor") [[lately] carrying on business in(d)

(e) Insert any trading name of  
the debtor if different from  
the full name given above  
and any former trading names  
in respect of any business in  
respect of which the debtor  
may have incurred debts or  
other liabilities still  
unsatisfied

as(e)

]

(f) Insert any trading name of the debtor in Northern Ireland if different from the full name given above and any former trading names in respect of any business in Northern Ireland in respect of which the debtor may have incurred debts or other liabilities still unsatisfied [and [lately] carrying on business in Northern Ireland as(f) ]

(g) Delete any statements in paragraph 3 which do not apply and insert full address details, where applicable \* Delete as applicable 3. (g)[The debtor's principal/last known\* place of business in Northern Ireland is ]

\* Delete as applicable [The debtor's usual/last known\* place of residence in Northern Ireland is \_\_\_\_\_ ]

[The debtor has no place of business in Northern Ireland]

[The debtor has no place of residence in Northern Ireland]

[The debtor has assets situated within Northern Ireland]

(h) Insert date of incorporation 4. The debtor was incorporated on(h)  
(i) Insert title of Companies Act or Order under which Company was incorporated under the (i) Companies , and the registered number of the debtor is(j)  
(j) Insert registered number

**OR**

**Form ML 1 continued**

(k) If the debtor has a registered branch or place of business include applicable statement(s) and insert required details

(k) [The debtor has one or more branches registered under Schedule 20A to the Companies (Northern Ireland) Order 1986. The registered numbers of the branch(es) are

.]

[The debtor has delivered to the registrar of companies for documents in respect of one or more places of business established by it in Northern Ireland.]

**OR**

The debtor is not registered under the Companies (Northern Ireland) Order 1986, or any Order or Act antecedent thereto, nor does it have any branches registered under these Orders or Acts or places of business of which particulars have been delivered to the registrar of companies.

(l) Give details of any business carried on by the debtor in respect of which the debtor may have incurred debts or other liabilities still unsatisfied

5. (l) The principal business [lately] carried on by the debtor in Northern Ireland is

**OR**

The debtor does not carry on business in Northern Ireland.

(m) Insert name of country where the foreign proceeding is taking place

6. The foreign proceeding in respect of which recognition is applied for is taking place in(m)

(n) Insert brief details of the foreign proceeding

The foreign proceeding is(n)

**Form ML 1 continued**

7. The foreign proceeding in respect of which recognition is applied for is a proceeding within the meaning of article 2(h) of the Model Law,

and the applicant is the foreign representative of the debtor within the meaning of article 2(i) of the Model Law in relation to that proceeding,

and the evidence referred to in article 15(2) of the Model Law is contained in or exhibited to the affidavit in support attached to this application.

8. The address of the debtor's centre of main interests is

and

(o) Delete whichever of the two statements does not apply and insert address details, where applicable

(o) **EITHER**

\* Delete as applicable

that is the address of the debtor's registered office/habitual residence\*

**OR**

the address of the debtor's registered office/habitual residence\* is

(p) If the application is for recognition of a foreign non-main proceeding include this statement, giving the name of the country where the foreign proceeding the subject of this application is taking place and the address of the establishment in that country (p)[and the debtor has an establishment within the meaning of article 2(c) of the Model Law in and the address of that establishment is ]

Note: The terms centre of main interests, habitual residence and establishment have the meaning given to them under the Model Law.

9. The debtor is not a person falling within any of the exceptions set out in article 1(2) of the Model Law.

10. An affidavit in support of this application is attached.

11. The statement referred to in article 15(3) of the Model Law is exhibited to the affidavit in support attached to this application.

(q) Insert address for service \* Delete as applicable 12. The applicant's/applicant's solicitor's\* address for service is(q)

13. The applicant(s) therefore request(s) as follows:

\* Delete as applicable (a) that the court make an order recognising the foreign proceeding the subject of this application as a foreign main/non main\* proceeding

(r) Insert details of any ancillary orders sought

(b) (r)

**OR**

(c) that such other order may be made as the court thinks appropriate.

\* Delete as applicable

Signed Applicant/Applicant's solicitor\*  
(If signing on behalf of firm or company state position or office held)

Dated

**Endorsement to be completed by the court**

This application having been presented to the court on \_\_\_\_\_ will  
be heard at Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF

on (date)

at (time) \_\_\_\_\_ hours  
(or as soon thereafter as the application can be held)

The solicitor to the applicant is:

Name

Address

Telephone number

Fax Number (if any) \_\_\_\_\_

Reference

	<b>Recognition Order</b>
	No.
	IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND CHANCERY DIVISION
*Insert name of debtor (a) where applicable	IN THE MATTER OF* _____ Company No. (a) _____
	AND IN THE MATTER OF THE CROSS-BORDER INSOLVENCY REGULATIONS (NORTHERN IRELAND) 2007

(b) Insert full name(s) and address(es) for service of applicant(s) UPON THE APPLICATION OF (b)

(c) Insert date presented to the court on (c)

(d) Insert full name and address for service of the debtor in respect of (d)

and upon hearing

(e) Insert details of any other parties (including the debtor) appearing and by whom represented and for (e)

and upon reading the evidence

(f) Insert details of foreign proceeding IT IS ORDERED that (f)

\* Delete as applicable be recognised as a foreign main proceeding/foreign non-main proceeding\* in accordance with the UNCITRAL Model Law on cross-border insolvency as set out in Schedule 1 to the Cross-Border Insolvency Regulations (Northern Ireland) 2007

(g) Insert particulars of any further order made by the court AND it is ordered that (g)

(h) Insert terms of order for costs AND it is ordered that the costs of the said application (h)

(i) Insert date and time This order shall take effect from (i)

	<b>Statement of Subsequent Information</b>
	No.
	IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND CHANCERY DIVISION
*Insert name of debtor (a) where applicable	IN THE MATTER OF* _____ Company No. (a) _____
	AND IN THE MATTER OF THE CROSS-BORDER INSOLVENCY REGULATIONS (NORTHERN IRELAND) 2007

(b) Insert full name(s) and address(es) of foreign representative(s) I/We(b)

attach a statement providing information in accordance with article 18 of the UNCITRAL Model Law on cross-border insolvency, as set out in Schedule 1 to the Cross-Border Insolvency Regulations (Northern Ireland) 2007, and paragraph 6(2)(b) of Schedule 2 to those Regulations.

Signed  
Joint/Foreign Representative(s)

Dated

	<b>Originating Application</b>
	No.
	IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND CHANCERY DIVISION
*Insert name of debtor	IN THE MATTER OF* _____
	AND IN THE MATTER OF THE CROSS-BORDER INSOLVENCY REGULATIONS (NORTHERN IRELAND) 2007

**Between**  
**Applicant**  
**and**  
**Respondent**

(a) Insert full name and address of respondent      Let(a)

attend before the Judge/Master on:

Date

Time

hours

Place

(b) Insert name of applicant      On the hearing of an application by(b)

(c) State the terms of the order to which the applicant claims to be entitled      the applicant for an order in the following terms:(c)

(d) Set out grounds or refer to an affidavit in support      The grounds on which the applicant claims to be entitled to the order are:(d)

**Form ML 4 continued**

(e) State the name(s) and address(es) of the person(s) intended to be served      The names and addresses of the persons upon whom it is intended to serve this application are:(e)

**OR**

It is not intended to serve any person with this application.

(f) State the applicant's address for service      The applicant's address for service is:(f)

Dated

Signed  
(Solicitor for the) Applicant

**If you do not attend, the court may make such order as it thinks fit.**

	<b>Ordinary Application</b>
	No. _____
	IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND CHANCERY DIVISION
*Insert name of debtor	IN THE MATTER OF* _____
	AND IN THE MATTER OF THE CROSS-BORDER INSOLVENCY REGULATIONS (NORTHERN IRELAND) 2007

Between

Applicant \_\_\_\_\_

and

Respondent \_\_\_\_\_

Take notice that I intend to apply to the Judge/Master on:

Date \_\_\_\_\_

Time \_\_\_\_\_ hours

Place \_\_\_\_\_

(a) State nature and grounds of application

for(a) \_\_\_\_\_

Signed \_\_\_\_\_  
(SOLICITOR FOR THE) APPLICANT

My/Our address for service is: \_\_\_\_\_

(b) Give the name(s) and address(es) of the person(s) (including the respondent) on whom it is intended to serve the application

To:(b) \_\_\_\_\_

**OR**

It is not intended to serve any person with this application.

If you do not attend, the court may make such order as it thinks fit.

	<b>Affidavit of Service of Application Under the Cross-Border Insolvency Regulations (Northern Ireland) 2007</b>
	No.
	IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND CHANCERY DIVISION
*Insert name of debtor (a) where applicable	IN THE MATTER OF* _____ Company No. (a) _____
	AND IN THE MATTER OF THE CROSS-BORDER INSOLVENCY REGULATIONS (NORTHERN IRELAND) 2007

(b) Insert full name and address of person making affidavit

I,(b)

\* Delete as applicable the applicant/acting on behalf of the applicant\* state on oath:

1. That I did on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ 20

(c) Insert details of application serve the above-named debtor with a copy of an application for (c)

("the application") duly sealed with the seal of the court and its supporting documents by leaving

(d) Insert address where served the same at the debtor's proper address at(d)

OR by posting the same on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ 20

by ordinary post first class mail in an envelope duly pre-paid and properly addressed to the said debtor at(d)

2. That I did on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ 20

(e) Insert name serve(e)

the foreign representative in relation to the said debtor with a copy of the application duly sealed with the seal of the court and its supporting documents by leaving the same at his proper address at(d)



**Form ML 6 continued**

OR by posting the same on      day the      day of      20  
by ordinary post first class mail in an envelope duly prepaid and properly addressed to the said(e)  
  
at(d)

5. That I did on      day the      day of      20  
serve(e)  
the member State liquidator of the said debtor with a copy of the application duly sealed with the  
seal of the court and its supporting documents by leaving the same at his proper address at(d)

OR by posting the same on      day the      day of      20  
by ordinary post first class mail in an envelope duly pre-paid and properly addressed to the  
said(e)  
  
at(d)

6. That I did on      day the      day of      20  
serve(e)  
a foreign representative of the said debtor appointed in another foreign proceeding regarding the  
said debtor with a copy of the application duly sealed with the seal of the court and its supporting  
documents by leaving the same at his proper address at(d)

OR by posting the same on      day the      day of      20  
by ordinary post first class mail in an envelope duly pre-paid and properly addressed to the  
said(e)  
  
at(d)

7. That I did on            day the            day of            20  
serve(e)

\* Delete as applicable    who has presented a petition to wind up the said debtor/for a bankruptcy order to be made against  
the said debtor\* with a copy of the application duly sealed with the seal of the court and its  
supporting documents by leaving the same at his proper address at(d)

OR by posting the same on    day the            day of            20  
by ordinary post first class mail in an envelope duly pre-paid and properly addressed to the  
said(e)  
at(d)

8. That I did on            day the            day of            20  
serve(e)

a person who is or may be entitled to appoint an administrator of the said debtor under  
paragraph 15 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989 with a copy of the  
application duly sealed with the seal of the court and its supporting documents by leaving the  
same at his proper address at(d)

OR by posting the same on    day the            day of            20  
by ordinary post first class mail in an envelope duly pre-paid and properly addressed to the  
said(e)  
at(d)

9. That I did on            day the            day of            20

serve the Financial Services Authority with a copy of the application duly sealed with the seal of  
the court and its supporting documents by leaving the same at its proper address at(d)

**Form ML 6 continued**

OR by posting the same on      day the      day of      20  
by ordinary post first class mail in an envelope duly pre-paid and properly addressed to the  
Financial Services Authority at(d)

A sealed copy of the application and its supporting documents are now produced to me marked  
"A".

SWORN



Form ML 7 continued

Registration number	Branch name

---

---

**Contact Details:**

You do not have to give any contact information in the box opposite but if you do, it will help Companies Registry to contact you if there is a query on the form. The contact number that you give will be visible to searchers of the public record.

	Tel

When you have completed and signed this form please send it to the Registrar of Companies at the Companies Registry for Northern Ireland

The Cross-Border Insolvency Regulations (Northern Ireland) 2007

**Notification of order under the Cross-Border Regulations  
(Northern Ireland) 2007 (for newspaper and Belfast  
Gazette)**

	IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND CHANCERY DIVISION
*Insert name of debtor (a) where applicable	IN THE MATTER OF* _____ Company No. (a) _____

Nature of business (where applicable)

(b) Insert any trading names used by the debtor in Northern Ireland within the last 12 months, if different from the full name given above

Trading name(s) (b)

(c) Insert address of principal/last known place of business of debtor, or alternatively, in the case of a debtor who is an individual, the usual/last known place of residence of the debtor

Address of debtor (c)

The following order has been made in relation to the above debtor under the Cross-Border

(d) Insert brief details of order

Insolvency Regulations (Northern Ireland) 2007 (d)

(e) Insert date

Order made on (e)

(f) Insert address for service

Name(s) and address(es) of foreign representative(s) (f)

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

On 30<sup>th</sup> May 1997 the United Nations Commission on International Trade Law (“UNCITRAL”) adopted the text of a model law on cross-border insolvency, which was approved by a resolution of the United Nations General Assembly on 15<sup>th</sup> December 1997. These Regulations give effect to the model law in Northern Ireland.

Regulation 3 of the Regulations provides that the UNCITRAL model law shall have the force of law in Northern Ireland in the form set out in Schedule 1 to the Regulations (the Model Law) and provides that in interpreting the Model Law the courts can have regard to other documents including the Guide to Enactment of the Model Law published by UNCITRAL (ISBN 92-1-133608-2). The model law and Guide may be accessed at [http://www.uncitral.org/uncitral/en/uncitral\\_texts/insolvency/1997Model.html](http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model.html).

Chapter 1 of the Model Law contains General Provisions (articles 1 to 8). Article 1 sets out the scope of application of the Model Law, which may apply in a number of cross-border situations, and also lists certain bodies to which the Model Law does not apply. Article 3 of the Model Law clarifies that Council Regulation (EC) No. 1346/2000 of 29<sup>th</sup> May 2000 on Insolvency Proceedings prevails over the Model Law.

Chapter II (articles 9 to 14) relates to the access of foreign representatives and creditors to courts in Northern Ireland and their rights to participate in an insolvency proceeding in Northern Ireland.

Chapter III of the Model Law deals with recognition of foreign proceedings and relief. Articles 15 to 17 set out criteria for determining whether a foreign proceeding is to be recognised and, if so whether as a foreign main proceeding or as a foreign non-main proceeding (see articles 16, 17 and definitions in article 2).

Articles 19 to 21 set out the effects of recognition and the relief available to a foreign representative. The relief accorded upon recognition of a foreign main proceeding is listed in article 20(1). Article 21 of the Model Law provides for the court to grant discretionary relief for the benefit of any recognised foreign proceeding, whether main or non-main. Urgently needed relief may be granted by the court on an interim basis pending a decision on recognition (article 19).

Chapter IV of the Model Law provides for the Northern Ireland courts and Northern Ireland insolvency officeholders to cooperate with foreign courts or foreign representatives in the areas covered by the Model Law (articles 25 to 27).

Chapter V of the Model Law (articles 28 to 32) provides for the coordination of a Northern Ireland insolvency proceeding and a foreign proceeding concerning the same debtor and facilities coordination between two or more foreign proceedings concerning the same debtor.

Schedule 2 to the Regulations sets out procedural matters in relation to proceedings under the Model Law in Northern Ireland. Parts 2 to 5 of the Schedule contain details of the form and content of specified applications under the Model Law and Part 6 sets out more detailed procedural requirements in respect of those applications. Part 7 of Schedule 2 provides for the registration of court orders under the Regulations with the Registry of Deeds, and for applications to be made in appropriate cases to the Registrar of Titles at the Land Registry. Part 8 provides for a summary remedy against foreign representatives guilty of misfeasance. Parts 9 to 12 contain general provision as to court procedure and practice and appeals in connection with proceedings under the Regulations, costs and other general matters.

Schedule 3 makes provision in relation to notices delivered to the registrar of companies under the Regulations.

Schedule 4 contains forms prescribed for use in connection with proceedings under the Regulations.

A full regulatory impact assessment has not been produced for this instrument as it has a negligible impact on the costs of business.

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Published and printed in the UK by The  
Stationery Office Limited  
under the authority and  
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Her Majesty's Stationery  
Office being the Government  
Printer for Northern Ireland and  
the Officer appointed to print the  
Acts of the Northern Ireland Assembly

Dd. N3109. C3. 3/07. Gp. 130. 14567.

£9.00