

SCHEDULE 2

PROCEDURAL MATTERS

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⁽¹⁾ (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.

(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.

(1) 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 \(N.I. 10\)](#)

(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⁽²⁾ 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⁽³⁾;
- (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;
- (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);

(2) [S.I. 1986/1032 \(N.I.6\)](#)

(3) [S.R. 1995 No.225](#), to which there are amendments not relevant to these Regulations

- (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.