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STATUTORY INSTRUMENTS

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**2018 No. 1082**

**The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018**

**PART 7**

**THE EU REGULATION**

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1]

**Interpretation of this Part**

**7.1.** In this Part—

“winding up proceedings” means insolvency proceedings listed in the United Kingdom entry in Annex A to the EU Regulation other than voluntary arrangements where they relate to individuals, bankruptcy or sequestration.

“conversion into winding up proceedings” refers to an order under Article 51 of the EU Regulation that winding up proceedings of one kind are converted into winding up proceedings of another kind.

**Conversion into winding up proceedings: application**

**7.2.—(1)** This rule applies where a member State liquidator in main proceedings applies to the court under Article 51 of the EU Regulation for conversion of—

- (a) a CVA or an administration into winding up proceedings of another kind; or
- (b) winding up proceedings other than a CVA or an administration into a CVA or an administration.

(2) A statement containing a statutory declaration made by or on behalf of the member State liquidator must be lodged with the court in support of the application.

(3) The statement must state—

- (a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;
- (b) the belief of the person making the statement that conversion of the winding up proceedings would be most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings;
- (c) the kind of winding up proceedings into which, in the opinion of the person making the statement, the winding up proceedings should be converted; and
- (d) all other matters that, in the opinion of the member State liquidator, would assist the court in—
  - (i) deciding whether to make an order, and
  - (ii) considering whether and, if so, what consequential provision to include.

(4) The application and the statement must be served upon the company.

(5) Where the application is for conversion of a CVA or an administration, the application and the statement must also be served upon the supervisor or the administrator, as the case may be.

#### **Conversion into winding up proceedings: court order**

**7.3.**—(1) On hearing an application for conversion of winding up proceedings under rule 7.2, the court may, subject to Article 51 of the EU Regulation, make such order as it thinks just.

(2) An order under paragraph (1) may contain such consequential provision as the court thinks just.

(3) An order for conversion of a CVA or an administration into winding up proceedings of another kind may provide that the company be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the order is made.

#### **Proceedings in another member State: duty to give notice**

**7.4.**—(1) This rule applies where the supervisor of a CVA or an administrator is required to give notice, or provide a copy of a document (including an order of the court) to the court or the registrar of companies.

(2) Where not already required to do so by Article 41 of the EU Regulation, the supervisor or administrator must also give notice or provide a copy to—

- (a) any member State liquidator; or
- (b) where the supervisor or administrator knows that an application has been made to commence insolvency proceedings in another member State but a member State liquidator has not yet been appointed, the court to which that application has been made.

#### **Member State liquidator: rules on creditors' participation in proceedings**

**7.5.**—(1) The provisions in these Rules apply to a member State liquidator's participation in proceedings in accordance with Article 45 of the EU Regulation) in the same manner as they apply to creditors' participation in those proceedings.

(2) In this rule, "creditors' participation"—

- (a) includes the following matters—
  - (i) requesting and being provided with information, including inspecting or obtaining copies of documents or files,
  - (ii) being provided with notices or other documents,
  - (iii) participating and voting in decision procedures,
  - (iv) the establishment and operation of creditor committees,
  - (v) submitting statements of claim and documentary evidence of debt in respect of debts and receipt of dividends,
  - (vi) applying to the court and appearing at hearings and
- (b) is limited to creditors' participation from the time of the opening of proceedings in accordance with Article 2(8) of the EU Regulation.

### **Main proceedings in Scotland: undertaking by office-holder in respect of assets in another member State (Article 36 of the EU Regulation)**

7.6.—(1) This rule applies where an office-holder in main proceedings proposes to give an undertaking under Article 36 of the EU Regulation in respect of assets located in another member State.

(2) In addition to the requirements as to form and content set out in Article 36 the undertaking must contain—

- (a) the heading “Proposed Undertaking under Article 36 of the EU Insolvency Regulation (2015/848)”;
- (b) identification details for the main proceedings;
- (c) identification and contact details for the office-holder; and
- (d) a description of the effect of the undertaking if approved.

(3) The proposed undertaking must be delivered to all the local creditors in the member State concerned of whose address the office-holder is aware.

(4) Where the undertaking is rejected the office-holder must inform all the creditors of the company of the rejection of the undertaking as soon as reasonably practicable.

(5) Where the undertaking is approved the office-holder must as soon as reasonably practicable—

- (a) send a copy of the undertaking to all the creditors with a notice informing them of the approval of the undertaking and of its effect (so far as they have not already been given this information under paragraph (2)(d));
- (b) where the insolvency proceedings relate to a registered company, deliver a copy of the undertaking to the registrar of companies.

(6) The office-holder may advertise details of the undertaking in the other member State in such manner as the office-holder thinks fit.

### **Main proceedings in another member State: approval of undertaking offered by the member State liquidator to local creditors in the UK**

7.7.—(1) This rule applies where a member State liquidator proposes an undertaking under Article 36 of the EU Regulation and the secondary proceedings which the undertaking is intended to avoid would be insolvency proceedings to which these Rules apply.

(2) The decision by the local creditors whether to approve the undertaking must be made by a decision procedure subject to the rules which apply to the approval of a proposed CVA under section 4A of the Act.

(3) In Part 5, the rules in Chapters 1 to 9 apply to the decision procedure (with any necessary modifications) except for the following—5.7, 5.12, 5.14, 5.16 to 5.18 and 5.27.

(4) Where the main proceedings relate to a registered company, the member State liquidator must deliver a copy of the approved undertaking to the registrar of companies.

### **Powers of an office-holder or member State liquidator in proceedings concerning members of a group of companies (Article 60 of the EU Regulation)**

7.8. Where an office-holder or a member State liquidator makes an application in accordance with paragraph (1)(b) of Article 60 of the EU Regulation the application must state with reasons why the applicant thinks the matters set out in points (i) to (iv) of that paragraph apply.

**Group coordination proceedings (section 2 of Chapter 5 of the EU Regulation)**

7.9.—(1) This rule applies to an application to open group coordination proceedings by an office-holder.

(2) The application must be headed “Application under Article 61 of Regulation (EU) 2015/848 to open group coordination proceedings”

(3) The application must (in addition to the requirements in Article 61 of the EU Regulation) contain—

- (a) identification and contact details for the office-holder making the application;
- (b) identification details for the company and the insolvency proceedings by virtue of which the office-holder is making the application;
- (c) identification details for the company and the insolvency proceedings in respect of each company which is a member of the group;
- (d) contact details for the office-holders and member State liquidators appointed in those proceedings;
- (e) identification details for any insolvency proceedings in respect of a member of the group which are not to be subject to the coordination because of an objection to being included; and
- (f) if relevant, a copy of any such agreement as is mentioned in Article 66 of the EU Regulation.

(4) An “office-holder” in paragraph (3)(d) includes a person holding office in insolvency proceedings in relation to the company in England and Wales or Northern Ireland, and a member State liquidator.

**Group coordination order (Article 68 of the EU Regulation)**

7.10.—(1) An order opening group coordination proceedings must contain—

- (a) details of the matters set out in Article 68(1)(a) to (c) of the EU Regulation;
- (b) identification details for the insolvency proceedings by virtue of which the office-holder is making the application;
- (c) identification and contact details for the office-holder making the application;
- (d) identification details for the insolvency proceedings which are subject to the coordination; and
- (e) identification details for any insolvency proceedings for a member of the group which are not subject to the coordination because of an objection to being included.

(2) The office-holder who made the application must deliver a copy of the order to the coordinator and to any person who is, in respect of proceedings subject to the coordination—

- (a) an office-holder;
- (b) a person holding office in insolvency proceedings in relation to the company in England and Wales or Northern Ireland; and
- (c) a member State liquidator.

**Delivery of group coordination order to registrar of companies**

7.11. An office-holder in respect of insolvency proceedings subject to coordination must deliver a copy of the group coordination order to the registrar of companies.

### **Office-holder's report**

**7.12.**—(1) This rule applies where, under the second paragraph of Article 70(2) of the EU Regulation, an office-holder is required to give reasons for not following the coordinator's recommendations or the group coordination plan.

(2) Those reasons must be given as soon as reasonably practicable by a notice to all the creditors.

(3) In an administration, those reasons may be given in the next progress report where doing so satisfies the requirement to give the reasons as soon as reasonably practicable.

### **Publication of opening of proceedings by a member State liquidator**

**7.13.**—(1) This rule applies where—

- (a) a company subject to insolvency proceedings has an establishment in Scotland; and
- (b) a member State liquidator is required or authorised under Article 28 of the EU Regulation to publish a notice.

(2) The notice must be gazetted.

### **Statement by member State liquidator that insolvency proceedings in another member State are closed etc.**

**7.14.** A statement by a member State liquidator under paragraph 84 of Schedule B1 informing the registrar of companies that a member State liquidator in insolvency proceedings open in another member State consents to the dissolution must contain—

- (a) identification details for the company; and
- (b) identification details for the member State liquidator.