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STATUTORY RULES OF NORTHERN IRELAND

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**1991 No. 364**

**The Insolvency Rules (Northern Ireland) 1991**

PARTS 1 TO 4 COMPANY INSOLVENCY; COMPANIES WINDING UP

**PART 2**

**ADMINISTRATION PROCEDURE**

**CHAPTER 1**

**APPLICATION FOR, AND MAKING OF, THE ORDER**

**Affidavit to support petition**

**2.01.**—(1) Where it is proposed to apply to the court by petition for an administration order to be made in relation to a company, an affidavit complying with Rule 2.03 must be prepared and sworn, with a view to its being filed in court in support of the petition.

(2) If the petition is to be presented by the company or by the directors, the affidavit must be made by one of the directors, or the secretary of the company, stating himself to make it on behalf of the company or, as the case may be, on behalf of the directors.

(3) If the petition is to be presented by creditors, the affidavit must be made by a person acting under the authority of them all, whether or not himself one of their number. In any case there must be stated in the affidavit the nature of his authority and the means of his knowledge of the matters to which the affidavit relates.

(4) If the petition is to be presented by the supervisor of a voluntary arrangement under Part II of the Order, it is to be treated as if it were a petition by the company.

[E.R.2.1]

**Independent report on company's affairs**

**2.02.**—(1) There may be prepared, with a view to its being exhibited to the affidavit in support of the petition, a report by an independent person to the effect that the appointment of an administrator for the company is expedient.

(2) The report may be by the person proposed as administrator, or by any other person having adequate knowledge of the company's affairs, not being a director, secretary, manager, member, or employee of the company.

(3) The report shall specify the purposes which, in the opinion of the person preparing it, may be achieved for the company by the making of an administration order, being purposes particularly specified in Article 21(3).

[E.R.2.2]

## **Contents of affidavit**

**2.03.**—(1) The affidavit shall state—

- (a) the deponent's belief that the company is, or is likely to become, unable to pay its debts and the grounds of that belief; and
- (b) which of the purposes specified in Article 21(3) is expected to be achieved by the making of an administration order.

(2) There shall in the affidavit be provided a statement of the company's financial position, specifying (to the best of the deponent's knowledge and belief) assets and liabilities, including contingent and prospective liabilities.

(3) Details shall be given of any security known or believed to be held by creditors of the company, and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver. If an administrative receiver has been appointed, that fact shall be stated.

(4) If any petition has been presented for the winding up of the company, details of it shall be given in the affidavit, so far as within the immediate knowledge of the deponent.

(5) If there are other matters which, in the opinion of those intending to present the petition for an administration order, will assist the court in deciding whether to make such an order, those matters (so far as lying within the knowledge or belief of the deponent) shall also be stated.

(6) If a report has been prepared for the company under Rule 2.02, that fact shall be stated. If not, an explanation shall be provided why not.

[E.R.2.3]

## **Form of petition**

**2.04.**—(1) If presented by the company or by the directors, the petition shall state the name of the company and its address for service, which (in the absence of special reasons to the contrary) is that of the company's registered office.

(2) If presented by a single creditor, the petition shall state his name and address for service.

(3) If the petition is presented by the directors, it shall state that it is so presented under Article 22; but from and after presentation it is to be treated for all purposes as the petition of the company.

(4) If the petition is presented by two or more creditors, it shall state that it is so presented (naming them); but from and after presentation it is to be treated for all purposes as the petition of one only of them, named in the petition as petitioning on behalf of himself and other creditors. An address for service for that one shall be specified.

(5) The petition shall specify the name and address of the person proposed to be appointed as administrator; and it shall be stated that, to the best of the petitioner's knowledge and belief, the person is qualified to act as an insolvency practitioner in relation to the company.

(6) There shall be exhibited to the affidavit in support of the petition—

- (a) a copy of the petition;
- (b) a written consent by the proposed administrator to accept appointment, if an administration order is made; and
- (c) if a report has been prepared under Rule 2.02, a copy of it.

[E.R.2.4]

## **Filing of petition**

**2.05.**—(1) The petition and affidavit shall be filed in court, with a sufficient number of copies for service and use as provided by Rule 2.06.

(2) Each of the copies delivered shall have applied to it the seal of the court and be issued to the petitioner; 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 petition and this also shall be endorsed on each copy of the petition issued under paragraph (2).

(4) After the petition is filed, it is the duty of the petitioner to notify the court in writing of any winding-up petition presented against the company, as soon as he becomes aware of it.

[E.R.2.5]

### **Service of petition**

**2.06.**—(1) In paragraphs (2) and (3), references to the petition are to a copy of the petition issued by the court under Rule 2.05(2) together with the affidavit in support of it and the documents (other than the copy petition) exhibited to the affidavit.

(2) The petition shall be served—

- (a) on any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the company;
- (b) if an administrative receiver has been appointed, on him;
- (c) if there is pending a petition for the winding up of the company, on the petitioner (and also on the provisional liquidator, if any); and
- (d) on the person proposed as administrator.

(3) If the petition for the making of an administration order is presented by creditors of the company, the petition shall be served on the company.

[E.R.2.6]

### **Notice to Enforcement of Judgments Office**

**2.07.** The petitioner shall forthwith after filing the petition give notice of its presentation to—

- (a) the Enforcement of Judgments Office, and
- (b) any person who to his knowledge has distrained against the company or its property.

[E.R.2.6A]

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

**2.08.**—(1) Service of the petition in accordance with Rule 2.06 shall be effected by the petitioner, or his solicitor, or by a person instructed by him or his solicitor, not less than 5 days before the hearing date.

(2) Service shall be effected as follows—

- (a) on the company (subject to paragraph (3)), by delivering the documents to its registered office;
- (b) on any other person (subject to paragraph (4)), by delivering the documents to his proper address;
- (c) in either case, in such other manner as the court may direct.

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

(4) Subject to paragraph (5), for the purposes of paragraph (2)(b), a person's proper address is any which he has previously notified as his address for service; but if he has not notified any such address, service may be effected by delivery to his usual or last known address.

(5) In the case of a person who—

- (a) is an authorised institution or former authorised institution within the meaning of the Banking Act 1987(1),
- (b) has appointed, or is or may be entitled to appoint, an administrative receiver of the company, and
- (c) has not notified an address for service.

the proper address is the address of an office of that person where, to the knowledge of the petitioner, the company maintains a bank account or, where no such office is known to the petitioner, the registered office of that person, or, if there is no such office, his usual or last known address.

(6) Delivery of documents to any place or address may be made by leaving them there, or sending them by first class post..

[E.R.2.7]

#### **Proof of service**

**2.09.**—(1) Service of the petition shall be verified by affidavit, specifying the date on which, and the manner in which, service was effected.

(2) The affidavit, with a sealed copy of the petition exhibited to it, shall be filed in court forthwith after service, and in any event not less than one day before the hearing of the petition.

[E.R.2.8]

#### **The hearing**

**2.10.**—(1) At the hearing of the petition, any of the following may appear or be represented—

- (a) the petitioner;
- (b) the company;
- (c) any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the company;
- (d) if an administrative receiver has been appointed, he;
- (e) any person who has presented a petition for the winding up of the company;
- (f) the person proposed for appointment as administrator; and
- (g) with the leave of the court, any other person who appears to have an interest justifying his appearance.

(2) If the court makes an administration order, the costs of the petitioner, and of any person appearing whose costs are allowed by the court, are payable as an expense of the administration.

[E.R.2.9]

#### **Dismissal or withdrawal of petition**

**2.11.** If the petition is dismissed or withdrawn the court shall send notice thereof to the Enforcement of Judgments Office.

### **Notice and advertisement of administration order**

**2.12.**—(1) If the court makes an administration order, it shall forthwith give notice to the person appointed as administrator.

(2) Forthwith after the order is made, the administrator shall advertise its making once in the Gazette, and once in such newspaper as he thinks most appropriate for ensuring that the order comes to the notice of the company's creditors.

(3) The administrator shall also forthwith give notice of the making of the order—

- (a) to any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the company;
- (b) if an administrative receiver has been appointed, to him;
- (c) if there is pending a petition for the winding up of the company, to the petitioner (and also to the provisional liquidator, if any);
- (d) to the registrar; and
- (e) to the Enforcement of Judgments Office.

(4) Two sealed copies of the order shall be sent by the court to the administrator, one of which shall be sent by him to the registrar in accordance with Article 33(2).

(5) If under Article 22(4) the court makes any other order, it shall give directions as to the persons to whom, and how, notice of it is to be given.

[E.R.2.10]

### **Discharge of administration order**

**2.13.** Where an administration order is discharged, the court shall send notice of the making of the order of discharge to the Enforcement of Judgments Office.