

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⁽¹⁾;

“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;

“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⁽²⁾ or an unregistered company within the meaning of Part 6

(1) [S.I. 1989/2405 \(N.I.19\)](#)

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

Status: This is the original version (as it was originally made).

of the 1989 Order which is subject to a requirement imposed by virtue of Article 640A(3), 641(1)(4) or 667(5) 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(6) and for the purposes of this Schedule and Schedule 3, includes an assistant registrar;

“the Rules” means the Insolvency Rules (Northern Ireland) 1991(7) 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(8)

“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.

(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(9) (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—

(3) Article 640A was inserted by [S.R. 1993 No. 198](#)

(4) Article 641(1) was amended by [S.R. 2003 No.3](#)

(5) Article 667 was amended by [S.R. 2004 No.335](#)

(6) Article 653 amended by [S.I.1996/1632 \(N.I. 11\)](#)

(7) 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](#))

(8) [S.R. 1980 No. 346](#)

(9) [2000 c.8](#)

- (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 subparagraph (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;
 - (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⁽¹⁰⁾ (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.

⁽¹⁰⁾ 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 \(N.I. 10\)](#)

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.

(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⁽¹¹⁾ as authorised to represent the debtor in respect of its business in Northern Ireland;

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

- (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⁽¹²⁾;
- (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);
- (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.

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

(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⁽¹³⁾. The court shall

(13) 1970 c.25 (N.I.)

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⁽¹⁴⁾ 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—

- (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—

(14) 1970 c.18 (N.I.)

- (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⁽¹⁵⁾ 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.

(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

⁽¹⁵⁾ S.I. 1986/1032 (N.I.6)

fee chargeable under any order made under section 116 of the Judicature (Northern Ireland) Act 1978⁽¹⁶⁾.

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⁽¹⁷⁾;
- (b) due to physical affliction or disability.

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

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

⁽¹⁶⁾ 1978 c.23

⁽¹⁷⁾ S.I. 1986/595 (N.I.4)

(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.