
STATUTORY INSTRUMENTS

2003 No. 2109

The Insolvency (Scotland) Regulations 2003

PART II

COMPANIES

Interpretation of Part II

22. In this Part of these Regulations, references to “the principal Rules” are references to the Insolvency (Scotland) Rules 1986 ^{MI} and a Rule referred to by number alone means the Rule so numbered in the principal Rules.

Marginal Citations

M1 [S.I. 1986/1915](#), amended by [S.I. 1987/1921](#) and [S.I. 2002/2709](#).

Amendments to the principal Rules

23.—(1) The principal Rules are amended as provided in this Part of these Regulations.

(2) Anything done before 8th September 2003 under or for the purposes of any provision of the principal Rules is not invalidated by the amendment of that provision by these Regulations, but it has effect as if done under or for the purposes of the provision as amended.

Amendments to the principal Rules in relation to Introductory Provisions

24.—(1) Rule 0.2 (interpretation) is amended as follows.

(2) The following expressions are inserted in paragraph (1) in the appropriate alphabetical order:—

“centre of main interests” has the same meaning as in the EC Regulation;

“EC Regulation” means Council Regulation ([EC](#)) [No. 1346/2000](#) of 29th May 2000 on insolvency proceedings;

“establishment” has the meaning given by Article 2(h) of the EC Regulation;

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

(a) in relation to England and Wales and Scotland set out in Annex A to the EC Regulation under the heading “United Kingdom”; and

(b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State;

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

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Changes to legislation: There are currently no known outstanding effects for the The Insolvency (Scotland) Regulations 2003, PART II. (See end of Document for details)

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

- (a) in relation to England and Wales and Scotland, set out in Annex B to the EC Regulation under the heading “United Kingdom”; and
- (b) in relation to another member State, set out in Annex B to the EC Regulation under the heading relating to that member State;

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

- (a) in relation to England and Wales and Scotland, set out in Annex A to the EC Regulation under the heading “United Kingdom”; and
- (b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State.

Amendments to principal Rules in relation to Company Voluntary Arrangements

25.—(1) In Rule 1.1(2)(d) (scope of this Part; interpretation) ^{M2} for “5 and 6” substitute— “ 5, 6, and 8 ”.

(2) In Rule 1.3(2) (contents of proposal) ^{M3}, at the end of sub-paragraph (o), for “; and.” substitute— “; and

(p) whether the EC Regulation will apply and, if so, whether the proceedings will be main proceedings or territorial proceedings.”.

(3) In Rule 1.17(2) (report of meetings)—

- (a) at the end of sub-paragraph (c) omit “and”; and
- (b) after sub-paragraph (c) insert—

“(ca) state whether, in the opinion of the supervisor—

- (i) the EC Regulation applies to the voluntary arrangement; and
- (ii) if so, whether the proceedings are main proceedings or territorial proceedings; and”.

(4) After Rule 1.45 (implementation of the arrangement) ^{M4} insert—

“CHAPTER 8

EC REGULATION - CONVERSION OF VOLUNTARY ARRANGEMENT INTO WINDING UP

Application for conversion into winding up

1.46.—(1) Where a member State liquidator proposes to apply to the court for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of a voluntary arrangement into a winding up, an affidavit complying with Rule 1.47 must be prepared and sworn, and lodged in court in support of the application.

- (2) The application and the affidavit required under this Rule shall be served upon—
 - (a) the company; and
 - (b) the supervisor.

Contents of affidavit

1.47.—(1) The affidavit shall state—

- (a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;
- (b) the deponent’s belief that the conversion of the voluntary arrangement into a winding up would prove to be in the interests of the creditors in the main proceedings;
- (c) the deponent’s opinion as to whether the company ought to enter voluntary winding up or be wound up by the court; and
- (d) all other matters that, in the opinion of the member State liquidator, would assist the court—
 - (i) in deciding whether to make such an order, and
 - (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) An affidavit under this Rule shall be sworn by, or on behalf of, the member State liquidator.

Power of court

1.48.—(1) On hearing the application for conversion into winding up, the court may make such order as it thinks fit.

(2) If the court makes an order for conversion into winding up, the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Without prejudice to the generality of paragraph (1), an order under that paragraph 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.

(4) Where the court makes an order for conversion into winding up under paragraph (1), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the company’s assets.

CHAPTER 9

EC REGULATION - MEMBER STATE LIQUIDATOR

Notice to member State liquidator

1.49.—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

(2) Where the supervisor is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the registrar of companies, the supervisor shall give notice or provide a copy, as appropriate, to the member State liquidator.

(3) Paragraph (2) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co operate and communicate information).”

Marginal Citations

M2 Rule 1.1(2)(d) was substituted by [S.I. 2002/2709](#).

M3 Rule 1.3(2)(o) was substituted by [S.I. 2002/2709](#).

M4 Rule 1.45 was inserted by [S.I. 2002/2709](#).

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Amendments to the principal Rules in relation to Administration

26.—(1) In Rule 2.7(1) (statement to be annexed to proposals)—

(a) at the end of sub-paragraph (f) ^{M5} omit “and”; and

(b) after sub-paragraph (f) insert—

“(fa) whether—

(i) the EC Regulation applies; and

(ii) if so, whether the proceedings are main proceedings or territorial proceedings; and”.

(2) After Rule 2.9 (general) insert—

“Applicable law

2.9A.—(1) Rule 2.9 does not apply where the laws of a member State (and not the law of Scotland) apply in relation to the conduct of the meeting.

(2) Where this Rule applies, subject as above, the meeting shall be summoned and conducted in accordance with the constitution of the company and the laws of the member State referred to in paragraph (1) above shall apply to the conduct of the meeting.

Entitlement to vote

2.9B.—(1) No vote shall be cast by virtue of a claim more than once on any resolution put to the meeting.

(2) Where—

(a) a creditor is entitled to vote under this Rule,

(b) has lodged his claim in one or more sets of other proceedings; and

(c) votes (either in person or by proxy) on a resolution put to the meeting,

only the creditor’s vote shall be counted.

(3) Where—

(a) a creditor has lodged his claim in more than one set of other proceedings, and

(b) more than one member State liquidator seeks to vote by virtue of that claim,

the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.

(4) For the purposes of paragraph (1), the claim of a creditor and of any member State liquidator in relation to the same debt are a single claim.

(5) For the purposes of paragraphs (2) and (3), “other proceedings mean main proceedings or territorial proceedings in another member State.”.

(3) In Rule 2.18 (resignation from office), after paragraph (3) insert—

“(4) Where the administrator gives notice under paragraph (3), he must also give notice to a member State liquidator, if such a person has been appointed in relation to the company.”.

(4) After Rule 2.21 (VAT Bad Debt relief—application of provisions in Part 3 (Receivers)) insert—

“CHAPTER 7

EC REGULATION - CONVERSION OF ADMINISTRATION INTO WINDING UP

Application for conversion into winding up

2.22.—(1) Where a member State liquidator proposes to apply to the court for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of an administration into a winding up, an affidavit complying with Rule 2.23 must be prepared and sworn, and lodged in court in support of the application.

- (2) The application and the affidavit required under this Rule shall be served upon—
- (a) the company; and
 - (b) the administrator.

Contents of affidavit

2.23.—(1) The affidavit shall state—

- (a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;
- (b) the deponent’s belief that the conversion of the administration into a winding up would prove to be in the interests of the creditors in the main proceedings;
- (c) the deponent’s opinion as to whether the company ought to enter voluntary winding up or be wound up by the court; and
- (d) all other matters that, in the opinion of the member State liquidator, would assist the court—
 - (i) in deciding whether to make such an order, and
 - (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) An affidavit under this Rule shall be sworn by, or on behalf of, the member State liquidator.

Power of court

2.24.—(1) On hearing the application for conversion into winding up, the court may make such order as it thinks fit.

(2) If the court makes an order for conversion into winding up, the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Without prejudice to the generality of paragraph (1), an order under that paragraph 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.

CHAPTER 8

EC REGULATION - MEMBER STATE LIQUIDATOR

Interpretation of creditor and notice to member State liquidator

2.25.—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

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(2) For the purposes of the Rules referred to in paragraph (3) the member State liquidator is deemed to be a creditor.

(3) The Rules referred to in paragraph (2) are—

- (a) Rule 2.10(1);
- (b) Rule 2.11;
- (c) Rule 2.12; and
- (d) Rule 2.14.

(4) For the purposes of the application by Rule 2.15 of Rule 3.4 with regard to a creditors' committee in an administration, the member State liquidator is deemed to be a creditor.

(5) For the purposes of the application by Rule 2.9 of Rule 7.9(3) insofar as—

- (a) Rule 7.9(3) applies Rules 4.15 and 4.16; and
- (b) by virtue of its application by Rule 7.9(3), Rule 4.16 applies section 49 of the Bankruptcy Act,

the member State liquidator is deemed to be a creditor.

(6) For the purposes of the application by Rule 2.15 of Chapter 3 of Part 3 and the application by Rule 3.6 of Rules 4.50(b) and 4.52(3), the member State liquidator is deemed to be a creditor.

(7) For the purposes of the application by Rule 2.16 of Rule 4.34(3), the member State liquidator is deemed to be a creditor.

(8) Paragraphs (2) to (7) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditors' rights).

(9) Where the administrator is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the registrar of companies, the administrator shall give notice or provide copies, as the case may be, to the member State liquidator.

(10) Paragraph (9) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co operate and communicate information).”.

Marginal Citations

M5 Sub-paragraph (f) was substituted by [S.I. 1987/1921](#).

Amendments to the principal Rules in relation to Companies Winding up

27.—(1) In Rule 4.15 (submission of claims)—

(a) for paragraph (5) substitute—

“(5) Votes are calculated according to the amount of—

- (a) a creditor’s debt as at the date of the commencement of the winding up within the meaning of section 129, deducting any amount paid in respect of that debt after that date; or
- (b) in relation to a member State liquidator, the debt claimed to be due to creditors in proceedings in relation to which he holds office.”; and

(b) after paragraph (5) insert—

“(5A) No vote shall be cast by virtue of a debt more than once on any resolution put to the meeting.

(5B) Where a creditor—

- (a) is entitled to vote under this Rule (as read with Rule 7.9);
 - (b) has lodged his claim in one or more sets of other proceedings; and
 - (c) votes (either in person or by proxy) on a resolution put to the meeting,
- only the creditor's vote shall be counted.

(5C) Where—

- (a) a creditor has lodged his claim in more than one set of other proceedings; and
 - (b) more than one member State liquidator seeks to vote by virtue of that claim,
- the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.

(5D) For the purposes of paragraphs (5B) and (5C), “other proceedings” means main proceedings, secondary proceedings or territorial proceedings in another member State.”.

(2) In Rule 4.68 (application of the Bankruptcy Act)—

- (a) in paragraph (2), delete “and” at the end of sub-paragraph (b); and
- (b) at the end of paragraph (2)(c) insert— “; and
- (d) for subsection (11) substitute—

“(“ Subject to any notification by the person entitled to a dividend given to the liquidator that he wishes the dividend to be paid to another person, or that he has assigned his entitlement to another person, where both a creditor and a member State liquidator have had a claim accepted in relation to the same debt, payment shall only be made to the creditor.”.

(3) After Rule 4.82 (leave to act as director – third excepted case) insert—

“CHAPTER 14

EC REGULATION - MEMBER STATE LIQUIDATOR

Interpretation of creditor and notice to member State liquidator

4.83.—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

(2) For the purposes of the provisions referred to in paragraph (3) the member State liquidator is deemed to be a creditor.

(3) The provisions referred to in paragraph (2) are—

- (a) Rules 4.10(1) (report to creditors and contributories), 4.10(3) (summary of statement of affairs), 4.13 (other meetings of creditors), 4.15 (submission of claims), 4.17 (claims in foreign currency), 4.18(4) (appointment of liquidator by court), 4.23(2) and (4) (summoning of meeting for removal of liquidator), 4.31 (final meeting), 4.35 (creditors' claim that remuneration is excessive), 4.41(1), (2) and (3) (membership of liquidation committee), 4.52(3) (vacancy (creditor members)), 4.62(1) (membership of committee), 4.74 (notice of order for public examination), 7.3 (notice of meeting) (insofar as it applies to a notice of meeting of creditors under section 138(3) or (4) for the purposes of rule 4.12 and to a meeting requisitioned under rule 7.6 insofar as it applies in a winding up by the court), 7.6(2) (meetings requisitioned) (insofar as it applies in a winding up by the court) and 7.9 (entitlement to vote (creditors)) (insofar as it applies in a winding up by the court); and
- (b) sections 48(5), (6) and (8) and 49 of the Bankruptcy Act as applied by Rule 4.16 and section 52(3) of that Act as applied by rule 4.68(1).

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(4) Paragraphs (2) and (3) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditors' rights).

(5) Where the liquidator is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the registrar of companies, the liquidator shall give notice or provide copies, as the case may be, to the member State liquidator.

(6) Paragraph (5) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co operate and communicate information).

CHAPTER 15

EC REGULATION - CREDITORS' VOLUNTARY WINDING UP - CONFIRMATION BY THE COURT

Application for confirmation

4.84.—(1) Where a company has passed a resolution for voluntary winding up, and no declaration under section 89 has been made, the liquidator may apply to the court for an order confirming the creditors' voluntary winding up for the purposes of the EC Regulation.

(2) The application shall be in writing in the form required by Rule 7.30 and Schedule 5 and verified by affidavit by the liquidator (using the same form) and shall state—

- (a) the name of the applicant;
- (b) the name of the company and its registered number;
- (c) the date on which the resolution for voluntary winding up was passed;
- (d) that the application is accompanied by all of the documents required under paragraph (3) which are true copies of the documents required; and
- (e) that the EC Regulation will apply to the company and whether the proceedings will be main proceedings, territorial proceedings or secondary proceedings.

(3) The liquidator shall lodge in court two copies of the application, together with one copy of the following:—

- (a) the resolution for voluntary winding up referred to by section 84(3);
- (b) evidence of his appointment as liquidator of the company; and
- (c) the statement of affairs required under section 99.

(4) It shall not be necessary to serve the application on, or give notice of it to, any person.

(5) On an application under this Rule the court may confirm the creditors' voluntary winding up.

(6) If the court confirms the creditor's voluntary winding up it may do so without a hearing.

(7) This Rule applies in relation to a UK insurer (within the meaning of the Insurers (Reorganisation and Winding Up) Regulations 2003 ^{M6}) with the modification specified in paragraph (8) below.

(8) For the purposes of paragraph (7), this Rule has effect as if there were substituted for paragraph (1) above—

“(1) Where a UK Insurer (within the meaning of the Insurers (Reorganisation and Winding Up) Regulations 2003) has passed a resolution for voluntary winding up, and no declaration under section 89 has been made, the liquidator may apply to court for an order confirming the creditors' voluntary winding up for the purposes of Articles 9 and 27 of Directive [2001/17/EC](#) of the European Parliament and of the Council of 19th March 2001 on the reorganisation and winding up of insurance undertakings ^{M7}.”

Notice to member State liquidator and creditors in member States

4.85. Where the court has confirmed the creditors' voluntary winding up, the liquidator shall forthwith give notice—

- (a) if there is a member State liquidator in relation to the company, to the member State liquidator;
- (b) in accordance with Article 40 of the EC Regulation (duty to inform creditors).”.

Marginal Citations

M6 S.I. 2003/1102.

M7 O.J. No. L 110, 20.4.2001, p.28.

Amendment to the principal Rules in relation to Part 7 (provisions of general application)

28.—(1) After Rule 7.20 (representation of corporations) insert—

“Interpretation of creditor

7.20A.—(1) This Rule applies where a member State liquidator has been appointed in relation to a person subject to insolvency proceedings.

(2) For the purposes of the Rule 7.18(1) (right of inspection of proxies) a member State liquidator appointed in main proceedings is deemed to be a creditor.

(3) Paragraph (2) is without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditors' rights).”.

(2) After rule 7.26(2) (right to have list of creditors) insert—

“(2A) For the purpose of this Rule a member State liquidator appointed in main proceedings in relation to a person is deemed to be a creditor.”.

Forms

29.—(1) The form 4.7 (Scot) (Statement of Claim by Creditor) contained in Part I of Schedule 2 to these Regulations shall be substituted for the form bearing that number in Schedule 5 to the principal Rules (Forms).

(2) The form contained in Part II of Schedule 2 to these Regulations shall be added to Schedule 5 to the principal Rules as Form 4.30 (Scot).

Status:

Point in time view as at 08/09/2003.

Changes to legislation:

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