

## SCHEDULE

### PART 2

#### Amendments to the Insolvency (England and Wales) Rules 2016

##### Amendments to the Insolvency Rules 2016

**32.** The Insolvency (England and Wales) Rules 2016(1) are amended as follows.

##### Rule 1.2 (defined terms)

[Note: The note appearing after the definition of “document” should be replaced by: “[Note: EU Regulation is defined for the purposes of these Rules by section 436 of the Act as Regulation (EU) 2015/848 of the European Parliament and of the Council].

**33.** In rule 1.2(2)—

- (a) in the definition of “Article 1.2 undertaking” for “Council Regulation (EC) No. 1346/2000 (“the EC Regulations”)” substitute “Regulation (EU) 2015/848 of the European Parliament and of the Council” (“the EU Regulations”)” and for footnote “(a)” substitute “OJEU L141/19, 5.6.2015;”;
- (b) for the definition of “main proceedings” substitute—
  - ““main proceedings” means proceedings opened in accordance with Article 3(1) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of that Regulation and which—
  - (a) in relation to England and Wales, are set out in Annex A to that Regulation under the heading “United Kingdom”; and
  - (b) in relation to another member State, are set out under the heading relating to that member State;”
- (c) in the definition of “member State liquidator” for “a person falling within the definition of liquidator in Article 2(b)” substitute “a person falling within the definition of “insolvency practitioner” in Article 2(5)” and for the two references to the “EC Regulation” substitute the “EU Regulation”;
- (d) in the definition of “non-EC proceedings” for that term substitute “non-EU proceedings”;
- (e) for the definition of “secondary proceedings” substitute—
  - ““secondary proceedings” means proceedings opened in accordance with Article 3(2) and (3) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of that Regulation and which—
  - (a) in relation to England and Wales, are set out are set out in Annex A to that Regulation under the heading "United Kingdom";
  - (b) and in relation to another member State are set out under the heading relating to that member State”;
- (f) for the definition of “territorial proceedings” substitute—
  - ““territorial proceedings” means proceedings opened in accordance with Article 3(2) and (4) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of that Regulation and which—

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(1) [S.I. 2016/1024](#).

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

**34.**—(1) Rule 1.20 (registrar of companies: covering notices) is amended as follows.

(2) After paragraph (1)(n) insert—

- “(o) an undertaking given under Article 36 of the EU Regulation.”.

**Rule 2.14 (documents filed with the court to obtain a moratorium (paragraph 7(1) of Schedule A1))**

**35.** Rule 2.14 is amended by inserting after paragraph (2)—

“(2A) A statement from the nominee whether the proceedings will be main, secondary, territorial or non-EC proceedings with the reasons for so stating must also be filed with the court.”.

**Rule 2.25 (CVA: consideration of proposal: common requirements (section 3))**

**36.**—(1) Rule 2.25 is amended as follows.

(2) After paragraph (2) insert—

“(2A) The nominee must examine whether there is jurisdiction to open the proceedings and must specify in the nominee’s comments on the proposal required by paragraphs (3)(d)(iii) and (5)(a)(iii) whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating”;

(3) Paragraph (3)(d)(iii) is amended by inserting after the words “administrator or liquidator” the words “in which case the comments required are limited to stating whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating”.

**Rule 3.51 (order of priority)**

**37.** In rule 3.51(2)(g) after “(including any” insert “costs referred to in Articles 30 or 59 of the EU Regulation and”.

**Rule 6.42 (general rule as to priority)**

**38.** In rule 6.42(4)(f) after “(including any” insert “costs referred to in Articles 30 or 59 of the EU Regulation and”.

**Rule 7.33 (application for the appointment of provisional liquidator (section 135))**

**39.** In rule 7.33(2) after sub-paragraph (e) insert—

- “(f) a statement whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating.”.

**Rule 7.108 (general rule as to priority)**

**40.** In rule 7.108(4)(m) after “(including any” insert “costs referred to in Articles 30 or 59 of the EU Regulation and”.

**Rule 8.19 (IVA: Nominee’s report (section 256A))**

41.—(1) Rule 8.19 is amended as follows.

(2) After paragraph (1) insert—

“(1A) The nominee must examine whether there is jurisdiction to open the proceedings and must specify in the nominee’s report whether the proceedings will be main, secondary, territorial on non-EU proceedings with the reasons for so stating.”.

**Rule 10.49 (application for the appointment of interim receiver (section 286))**

42. In rule 10.49—

(a) in paragraph (1)(d) for “Article 29 of the EC Regulation” substitute “Article 37 of the EU Regulation”; and

(b) in paragraph (2) after sub-paragraph (e) insert—

“(f) a statement whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating.”.

**Rule 10.149 (general rule as to priority)**

43. In rule 10.149(n) after “(including any” insert “costs referred to in Article 30 of the EU Regulation and”.

**Rule 15.11 (Notice of decision procedures or of seeking deemed consent: when and to whom delivered)**

44. In the table in rule 15.11 (Notice of decision procedures or of seeking deemed consent: when and to whom delivered) at the end of the table insert—

**Table 1**

<i>Proceedings</i>	<i>Decision</i>	<i>Persons to whom notice must be delivered</i>	<i>Minimum notice required</i>
Main proceedings in another member State	Approval under Article 36(5) of the EU Regulation of proposed undertaking offered by a member State liquidator	all the local creditors in the United Kingdom	14 days

**Part 21**

45. For the heading to Part 21 substitute “The EU Regulation”.

**Interpretation for Part 21**

46. In rule 21.1—

(a) for the definition of “winding-up proceedings” substitute—

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

- (b) in the definition of “conversion into winding-up proceedings”—
  - (i) for the words “Article 37 of the EC Regulation (conversion of earlier proceedings)” substitute “Article 51 of the EU Regulation (conversion of secondary insolvency proceedings)”; and
  - (ii) for “that—” to the end of sub-paragraph (c) substitute “that winding-up proceedings of one kind are converted into winding-up proceedings of another kind.”.

### **Standard contents of applications to court under the EU Regulation**

**47.** After rule 21.1 insert—

“**21.1A.** Where an application is made to the court under the EU Regulation the standard contents set out in rule 1.35 apply to the application with any necessary adaptations except in so far as these Rules make specific provision for such an application.”

### **Conversion into winding-up proceedings or bankruptcy: application**

[Insert the following after the heading to Rule 21.2: “Note: “Local creditor” is defined in Article 2(11) of the EU Regulation.”]

**48.** Rule 21.2 is amended as follows—

- (a) in paragraph (1) for “Article 37 of the EC Regulation” substitute “Article 51 of the EU Regulation”;
- (b) for paragraph (1)(a) and (b) substitute—
  - “(a) conversion of winding-up proceedings of one kind into winding-up proceedings of another kind; or
  - (b) conversion of an IVA into bankruptcy or of bankruptcy into an IVA;”
- (c) in paragraph (3)(b) for the words “would prove to be in the interests of the creditors in the main proceedings” substitute “would be most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings”.

### **Confirmation of creditors’ voluntary winding up: application**

**49.** In rule 21.4(3) at the end of sub-paragraph (e) insert “and the reasons for so stating”.

### **Member state liquidator: duty to give notice**

**50.** In rule 21.7—

- (a) for the heading substitute “Proceedings in another member State: duty to give notice”;
- (b) in paragraph (1)(a) after “liquidator” insert “, provisional liquidator, interim receiver” and delete sub-paragraph (b) and the “and” preceding it;”;
  - (c) in paragraph (2)—
    - (i) for “Article 31 of the EC Regulation” substitute “Article 41 of the EU Regulation”;
    - (ii) after “liquidator” insert “, provisional liquidator, interim receiver”;
    - (iii) and for “the member State liquidator” substitute—
      - “(a) any member State liquidator; or
      - (b) where the supervisor, administrator, liquidator, provisional liquidator, interim receiver or trustee knows that an application has been made to commence insolvency proceedings in another member State but a

member State liquidator has not yet been appointed to the court to which that application has been made.”

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

**51.** In rule 21.8—

- (a) in paragraph (1) for “Article 32(3) of the EC Regulation” substitute “Article 45 of the EU Regulation”; and
- (b) in paragraph (2)(b) for “Article 2(f) of the EC Regulation” substitute “Article 2(8) of the EU Regulation”.

**52.** After rule 21.8 insert the following—

**“Main proceedings in England and Wales: undertaking by office-holder in respect of assets in another member State (Article 36 of the EU Regulation)”**

[Note: “local creditor” is defined in Article 2(11) of the EU Regulation.]

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

(2) The following requirements apply in respect of the proposed undertaking.

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

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

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

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

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

- (a) send a copy of the undertaking to all the creditors with a notice informing them of the approval of the undertaking and of its effect (so far as they have not already been given this information under paragraph (3)(d));
- (b) in the case of a bankruptcy file the undertaking on the court file or the bankruptcy file as the case may be;
- (c) where the insolvency proceedings relate to a registered company deliver a copy of the undertaking to the registrar of companies.

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

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

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

(2) The decision by the local creditors whether to approve the undertaking must be made by a decision procedure subject to the rules which apply to the approval of a CVA (with any necessary modifications) and subject as follows.

(3) In Part 15 the rules in Chapters 1 to 9 and 11 apply to the decision procedure (with any necessary modifications) except for the following—

15.7, 15.12, 15.14, 15.16-15.19, 15.24, 15.29 to 15.30.

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

(5) Where the main proceedings relate to an individual the member State liquidator must gazette a notice of the undertaking containing—

- (a) the fact that the undertaking was approved;
- (b) the date the undertaking was approved; and
- (c) a description of the effect of the undertaking.

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

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

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

**21.12.**—(1) An application to open group coordination proceedings must be headed “Application under Article 61 of Regulation (EU) 2015/848 to open group coordination proceedings” and must, in addition to the requirements in Article 61 contain—

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

(2) “office-holder” in this rule includes a person holding office in insolvency proceedings in relation to the company in Scotland or Northern Ireland, and a member State liquidator.

### **Group coordination order (Article 68 EU Regulation)**

[Note: an order opening group coordination proceedings must also contain the matters set out in Article 68(1)(a) to (c).]

**21.13.—**(1) An order opening group coordination proceedings must also contain—

- (a) identification details for the insolvency proceedings by virtue of which the office-holder is making the application;
- (b) identification and contact details for the office-holder making the application;
- (c) identification details for the insolvency proceedings which are subject to the coordination;
- (d) identification details for any insolvency proceedings for a member of the group which are not subject to the coordination because of an objection to being included.

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

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

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

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

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

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

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

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

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

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

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

(2) The notice must be published in the Gazette.

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

**21.17.** A statement by a member State liquidator under any of sections 201, 202, 205 or paragraph 84 of Schedule B1 informing the registrar of companies that the insolvency

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proceedings in another member State are closed or that the member State liquidator consents to the dissolution must contain—

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