
STATUTORY INSTRUMENTS

2002 No. 1307

The Insolvency (Amendment) Rules 2002

Amendments to the Insolvency Rules 1986 in relation to Administration

- 5.—(1) In Rule 2.3(1) (contents of affidavit)—
- (a) at the end of sub-paragraph (a) omit “and”; and
 - (b) in sub-paragraph (b) after “administration order” insert—
 - “; and
 - (c) whether, in the opinion of the deponent, (i) the EC Regulation will apply and (ii) if so, whether the proceedings will be main proceedings, secondary proceedings or territorial proceedings”.
- (2) In Rule 2.6(2) (persons served with petition) after sub-paragraph (b) insert—
“(ba) if a member State liquidator has been appointed in main proceedings in relation to the company, on him;”.
- (3) In Rule 2.9(1) (appearances at hearing)—
- (a) at the end of sub-paragraph (f) omit “and”; and
 - (b) after sub-paragraph (f) insert—
 - “(fa) if a member State liquidator has been appointed in main proceedings in relation to the company, he;”.
- (4) In Rule 2.16(1) (statement to be annexed to proposals)—
- (a) at the end of sub-paragraph (f) 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, secondary proceedings or territorial proceedings; and”.
- (5) In Rule 2.22 (entitlement to vote)—
- (a) in paragraph (1)(a) for “he claims to be due to him from the company” substitute—
 - “(i) he claims to be due to him from the company, or
 - (ii) in relation to a member State liquidator, is claimed to be due to creditors in proceedings in relation to which he holds office”,
 - (b) after paragraph (5) insert—
 - “(6) No vote shall be cast by virtue of a claim more than once on any resolution put to the meeting.
 - (7) 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.

(8) 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.

(9) For the purposes of paragraph (6), the claim of a creditor and of any member State liquidator in relation to the same debt are a single claim.

(10) For the purposes of paragraphs (7) and (8), "other proceedings" means main proceedings, secondary proceedings or territorial proceedings in another member State."

(6) After Rule 2.31(5) (conduct of meetings) insert—

"(5A) Paragraph (5) does not apply where the laws of a member State and not the laws of England and Wales apply in relation to the conduct of the meeting.

(5B) Where paragraph (5A) 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 that paragraph shall apply to the conduct of the meeting."

(7) After Rule 2.53(3) (resignation of administrator) 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."

(8) After Rule 2.58 (preservation of VAT Bad Debt relief certificate) insert—

“CHAPTER 7

EC REGULATION—CONVERSION OF ADMINISTRATION INTO WINDING UP

Application for conversion into winding up

2.59.—(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 2.60 must be prepared and sworn, and filed in court in support of the application.

(2) An application under this Rule shall be by originating application.

(3) The application and the affidavit required under this Rule shall be served upon—

(a) the company; and

(b) the administrator.

Contents of affidavit

2.60.—(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

- 2.61.**—(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

- 2.62.**—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.
- (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 Rules 2.18(1) (notice of creditors' meeting), 2.19(4) (creditors' meeting), 2.21 (requisitioning of creditors' meeting), 2.22 (entitlement to vote), 2.23 (admission and rejection of claims), 2.24 (secured creditors), 2.25 (holders of negotiable instruments), 2.26 (retention of title creditors), 2.27 (hire-purchase, conditional sale and chattel leasing agreements), 2.30 (notice of result of creditors' meeting), 2.32(2) (creditors' committee), 2.39(1)(b) and (c) (termination of membership of creditors' committee), 2.41(3) (vacancies in creditors' committee), 2.49(3) (administrator's remuneration—recourse to court) and 2.50 (challenge to administrator's remuneration).
- (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 creditor's rights).
- (5) Where the administrator is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court, the registrar of companies or the official receiver, the administrator 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 cooperate and communicate information)."