
STATUTORY INSTRUMENTS

2002 No. 1307

The Insolvency (Amendment) Rules 2002

Amendments to the Insolvency Rules 1986 in relation to Company Voluntary Arrangements

- 4.—(1) In Rule 1.1(2)(d) (scope of this Part; interpretation) for “5 and 6” substitute—
“5, 6, 7 and 8”.
- (2) In Rule 1.3(2) (contents of proposal)—
- (a) at the end of sub-paragraph (o) omit “and”; and
 - (b) in sub-paragraph (p) after “in relation to the company” insert—
“; and
 - (q) whether the EC Regulation⁽¹⁾ will apply and, if so, whether the proceedings will be main proceedings, secondary proceedings or territorial proceedings”.
- (3) In Rule 1.24(2)(c) (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, secondary proceedings or territorial proceedings; and”.
- (4) After Rule 1.30 (false representations, etc) insert—

“CHAPTER 7

EC REGULATION—CONVERSION OF VOLUNTARY ARRANGEMENT INTO WINDING UP

Application for conversion into winding up

1.31.—(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 1.32 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 supervisor.

Contents of affidavit

1.32.—(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

1.33.—(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 8

EC REGULATION—MEMBER STATE LIQUIDATOR

Interpretation of creditor and notice to member State liquidator

1.34.—(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, the registrar of companies or the official receiver, the supervisor shall give notice or provide copies, 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 cooperate and communicate information)”.