

SCHEDULE 1

Regulation 3(1)

UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY

Commencement Information

II Sch. 1 in operation at 12.4.2007, see **reg. 1**

PART 1

GENERAL PROVISIONS

Article 1. Scope of Application

1. This Law applies where—
 - (a) assistance is sought in Northern Ireland by a foreign court or a foreign representative in connection with a foreign proceeding; or
 - (b) assistance is sought in a foreign State in connection with a proceeding under Northern Ireland insolvency law; or
 - (c) a foreign proceeding and a proceeding under Northern Ireland insolvency law in respect of the same debtor are taking place concurrently; or
 - (d) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under Northern Ireland insolvency law.
2. This Law does not apply to a proceeding concerning—
 - (a) a licence company within the meaning of section 26 of the Transport Act 2000 **(1)**(air traffic services);
 - (b) a building society within the meaning of section 119 of the Building Societies Act 1986**(2)** (interpretation);
 - (c) a UK credit institution or an EEA credit institution or any branch of either such institution as those expressions are defined by regulation 2 of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004**(3)** (interpretation);
 - (d) a third country credit institution within the meaning of regulation 36 of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004 (interpretation of this Part);
 - (e) a person who has permission under or by virtue of Parts 4 or 19 of the Financial Services and Markets Act 2000**(4)** to effect or carry out contracts of insurance;
 - (f) an EEA insurer within the meaning of regulation 2 of the Insurers (Reorganisation and Winding Up) Regulations 2004 **(5)**(interpretation);
 - (g) a person (other than one included in paragraph 2(e) pursuing the activity of reinsurance who has received authorisation for that activity from a competent authority within an EEA State; or

(1) 2000 c.38

(2) 1986 c.53

(3) S.I.2004/1045

(4) 2000 c.8

(5) S.I. 2004/353, to which there are amendments not relevant to these Regulations

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- (h) any of the Concessionaires within the meaning of section 1 of the Channel Tunnel Act 1987⁽⁶⁾.
3. In paragraph 2 —
- (a) in sub-paragraph (e) the reference to “contracts of insurance” must be construed in accordance with—
- (i) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment);
 - (ii) any relevant order under that section; and
 - (iii) Schedule 2 to that Act (regulated activities);
- (b) in sub-paragraph (g) “EEA State” means a State, other than the United Kingdom, which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992.
4. The court shall not grant any relief, or modify any relief already granted, or provide any co-operation or coordination, under or by virtue of any of the provisions of this Law if and to the extent that such relief or modified relief or cooperation or coordination would—
- (a) be prohibited under or by virtue of—
- (i) Part V of the Companies (No.2) (Northern Ireland) Order 1990⁽⁷⁾;
 - (ii) Part 3 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999⁽⁸⁾; or
 - (iii) Part 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003⁽⁹⁾;
- in the case of a proceeding under Northern Ireland insolvency law; or
- (b) interfere with or be inconsistent with any rights of a collateral taker under Part 4 of the Financial Collateral Arrangements (No. 2) Regulations 2003 which could be exercised in the case of such a proceeding.
5. Where a foreign proceeding regarding a debtor who is an insured in accordance with the provisions of the Third Parties (Rights against Insurers) Act (Northern Ireland) 1930⁽¹⁰⁾ is recognised under this Law, any stay and suspension referred to in article 20(1) and any relief granted by the court under article 19 or 21 shall not apply to or affect—
- (a) any transfer of rights of the debtor under that Act; or
 - (b) any claim, action, cause or proceeding by a third party against an insurer under or in respect of rights of the debtor transferred under that Act.
6. Any suspension under this Law of the right to transfer, encumber or otherwise dispose of any of the debtor’s assets—
- (a) is subject to the right which the registered owner has under section 34 of the Land Registration Act (Northern Ireland) 1970⁽¹¹⁾ to transfer the land or any part thereof, and under paragraph (2) of Part II of Schedule 6 to that Act to have a charge entered as a burden on the title register ;

⁽⁶⁾ 1987 c.53

⁽⁷⁾ Part V of S.I.1990 No.1504 (N.I. 10) was amended by S.R. 1991 No. 443 paragraph 49 of Schedule 5 to the Bank of England Act 1998 (c.11), S.I. 2001/3649, S.I.2001/3929, Schedule 4 to S.I. 2005/1454 (N.I.9), and paragraphs 49, 50, 51 and 52 of Schedule 2 to S.I. 2005/1455 (N.I.10)

⁽⁸⁾ S.I. 1999/2979 as extended to Northern Ireland by S.I. 2006/50; relevant amendments made by S.I. 2000/2952, S.I. 2001/3929, S.I. 2002/765 and S.I. 2003/2096

⁽⁹⁾ S.I. 2003/3226

⁽¹⁰⁾ 1930 c.19 (N.I.) amended by S.I. 1989/2405 (N.I. 19) and S.R. 2004 No. 307

⁽¹¹⁾ 1970 c.18 (N.I.) amended by S.I. 1992/811 (N.I. 7)

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- (b) is subject to paragraph (5)(1) of Schedule 7 to the Land Registration Act (Northern Ireland) 1970, where the powers referred to in that paragraph are exercised by the owner of a registered charge; and
 - (c) in any other case, shall not bind a purchaser of an estate in good faith for money or money's worth unless the purchaser has express notice of the suspension.
7. In paragraph 6—
- (a) “registered charge” and “estate” have the same meaning as in section 94 of the Land Registration Act (Northern Ireland) 1970⁽¹²⁾; and
 - (b) “purchaser” has the same meaning as in section 2 of the Conveyancing Act 1881⁽¹³⁾.

Article 2. Definitions

For the purpose of this Law—

- (a) “the court” means the High Court of Justice in Northern Ireland (Chancery Division) exercising its jurisdiction in accordance with the provisions of Article 4 and in respect of administrative functions includes the Bankruptcy and Companies office;
- (b) “the EC Insolvency Regulation” means Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency Proceedings⁽¹⁴⁾;
- (c) “establishment” means any place of operations where the debtor carries out a non-transitory economic activity with human means and assets or services;
- (d) “execution” means enforcement of a judgement or order under the Judgments Enforcement (Northern Ireland) Order 1981⁽¹⁵⁾;
- (e) “foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;
- (f) “foreign main proceeding” means a foreign proceeding taking place in the State where the debtor has the centre of its main interests;
- (g) “foreign non-main proceeding” means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of sub-paragraph (c) of this article;
- (h) “foreign proceeding” means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceedings the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;
- (i) “foreign representative” means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;
- (j) “hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement;
- (k) “Northern Ireland insolvency law” means provision made by or under the Insolvency (Northern Ireland) Order 1989⁽¹⁶⁾ (with the exception of Part 4 of that Order) or by or under that Order as extended or applied by or under any other statutory provision (excluding these Regulations);

⁽¹²⁾ 1970 c.18 (N.I.)

⁽¹³⁾ 1881 c.41

⁽¹⁴⁾ Council Regulation (EC) 1346/2000, OJ No. L160, 30.06.00 p.1

⁽¹⁵⁾ S.I.1981/226 (N.I.6)

⁽¹⁶⁾ S.I. 1989/2405 (N.I. 19)

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- (l) “Northern Ireland insolvency officeholder” means—
 - (i) the official receiver within the meaning of Article 355 of the Insolvency (Northern Ireland) Order 1989 when acting as liquidator, provisional liquidator, trustee, interim receiver or nominee or supervisor of a voluntary arrangement; and
 - (ii) a person acting as an insolvency practitioner within the meaning of Article 3(17) of that Order but shall not include a person acting as an administrative receiver
- (m) “section 426 request” means a request for assistance in accordance with section 426 of the Insolvency Act 1986(18) made to a court in any part of the United Kingdom;
- (n) “secured creditor” in relation to a debtor, means a creditor of the debtor who holds in respect of his debt a security over property of the debtor;
- (o) “security” means any mortgage, charge, lien or other security

Article 3. International obligations of Northern Ireland under the EC Insolvency Regulation

To the extent that this Law conflicts with an obligation of the United Kingdom under the EC Insolvency Regulation, the requirements of the EC Insolvency Regulation prevail.

Article 4. Competent court

The functions referred to in this Law relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by the High Court and assigned to the Chancery Division.

Article 5. Authorisation of Northern Ireland insolvency officeholders to act in a foreign state

A Northern Ireland insolvency officeholder is authorised to act in a foreign State on behalf of a proceeding under Northern Ireland insolvency law, as permitted by the applicable foreign law.

Article 6. Public policy exception

Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of Northern Ireland.

Article 7. Additional assistance under other laws

Nothing in this Law limits the power of the court or a Northern Ireland insolvency officeholder to provide additional assistance to a foreign representative under other laws of Northern Ireland.

Article 8. Interpretation

In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith

CHAPTER II

ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO COURTS IN NORTHERN IRELAND

Article 9. Right of direct access

A foreign representative is entitled to apply directly to the court in Northern Ireland.

(17) Article 3 was amended by Article 6 of S.I. 2002/3152 (N.I. 6), and by S.R. 2002 No. 334 and modified by S.R. 1995 No. 225, S.R. 2003 No. 550 and S.R. 2004 No. 307

(18) 1986 c.45; section 426 was amended by paragraph 16 of Schedule 4 to the Insolvency Act 2000 (c.39)

Article 10. Limited jurisdiction

The sole fact that an application pursuant to this Law is made to a court in Northern Ireland by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the courts of Northern Ireland for any purpose other than the application.

Article 11. Application by a foreign representative to commence a proceeding under Northern Ireland insolvency law

A foreign representative appointed in a foreign main proceeding or foreign non-main proceeding is entitled to apply to commence a proceeding under Northern Ireland insolvency law if the conditions for commencing such a proceeding are otherwise met.

Article 12. Participation of a foreign representative in a proceeding under Northern Ireland insolvency law

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under Northern Ireland insolvency law.

Article 13. Access of foreign creditors to a proceeding under Northern Ireland insolvency law

1. Subject to paragraph 2, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under Northern Ireland insolvency law as creditors in Northern Ireland.

2. Paragraph 1 does not affect the ranking of claims in a proceeding under Northern Ireland insolvency law, except that the claim of a foreign creditor shall not be given a lower priority than that of general unsecured claims solely because the holder of such a claim is a foreign creditor.

3. A claim may not be challenged solely on the grounds that it is a claim by a foreign tax or social security authority but such a claim may be challenged—

- (a) on the ground that it is in whole or in part a penalty, or
- (b) on any other ground that a claim might be rejected in a proceeding under Northern Ireland insolvency law.

Article 14. Notification to foreign creditors of a proceeding under Northern Ireland insolvency law

1. Whenever under Northern Ireland insolvency law notification is to be given to creditors in Northern Ireland, such notification shall also be given to the known creditors that do not have addresses in Northern Ireland. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

2. Such notification shall be made to the foreign creditors individually, unless—

- (a) the court considers that under the circumstances some other form of notification would be more appropriate; or
- (b) the notification to creditors in Northern Ireland is to be by advertisement only, in which case the notification to the known foreign creditors may be by advertisement in such foreign newspapers as the Northern Ireland insolvency officeholder considers most appropriate for ensuring that the content of the notification comes to the notice of the known foreign creditors.

3. When notification of a right to file a claim is to be given to foreign creditors, the notification shall—

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- (a) indicate a reasonable time period for filing claims and specify the place for their filing;
- (b) indicate whether secured creditors need to file their secured claims; and
- (c) contain any other information required to be included in such a notification to creditors pursuant to the law of Northern Ireland and the orders of the court.

CHAPTER III

RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

Article 15. Application for recognition of a foreign proceeding

1. A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.
2. An application for recognition shall be accompanied by—
 - (a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
 - (b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
 - (c) in the absence of evidence referred to in sub-paragraphs (a) and (b), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.
3. An application for recognition shall also be accompanied by a statement identifying all foreign proceedings, proceedings under Northern Ireland insolvency law and section 426 requests in respect of the debtor that are known to the foreign representative.
4. The foreign representative shall provide the court with a translation into English of documents supplied in support of the application for recognition.

Article 16. Presumptions concerning recognition

1. If the decision or certificate referred to in paragraph 2 of article 15 indicates that the foreign proceeding is a proceeding within the meaning of sub-paragraph (h) of article 2 and that the foreign representative is a person or body within the meaning of sub-paragraph (i) of article 2, the court is entitled to so presume.
2. The court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalised.
3. In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

Article 17. Decision to recognise a foreign proceeding

1. Subject to article 6, a foreign proceeding shall be recognised if—
 - (a) it is a foreign main proceeding within the meaning of sub-paragraph (h) of article 2;
 - (b) the foreign representative applying for recognition is a person or body within the meaning of sub-paragraph (i) of article 2; and
 - (c) the application meets the requirements of paragraphs 2 and 3 of article 15.
2. The foreign proceedings shall be recognised—
 - (a) as a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or

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- (b) as a foreign non-main proceeding if the debtor has an establishment within the meaning of sub-paragraph (c) of article 2 in the foreign State.

3. An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.

4. The provisions of articles 15 and 16, this article and article 18 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have fully or partially ceased to exist and in such as case, the court may, on the application of the foreign representative or a person affected by recognition, or of its own motion, modify or terminate recognition, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

Article 18. Subsequent information

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the court promptly of—

- (a) any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and
- (b) any other foreign proceeding, proceeding under Northern Ireland insolvency law or section 426 request regarding the same debtor that becomes known to the foreign representative.

Article 19. Relief that may be granted upon application for recognition of a foreign proceeding

1. From the time of filing an application for recognition until the application is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

- (a) staying execution against the debtor's assets;
- (b) entrusting the administration or realisation of all or part of the debtor's assets located in Northern Ireland to the foreign representative or another person designated by the court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and
- (c) any relief mentioned in paragraph 1(c), (d) or (g) of article 21.

2. Unless extended under paragraph 1(f) of article 21, the relief granted under this article terminates when the application for recognition is decided upon.

3. The court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding.

Article 20. Effects of recognition of a foreign main proceeding

1. Upon recognition of a foreign proceeding that is a foreign main proceeding, subject to paragraph 2—

- (a) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;
- (b) execution against the debtor's assets is stayed; and
- (c) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

2. The stay and suspension referred to in paragraph 1 shall be—

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- (a) the same in scope and effect as if the debtor, in the case of an individual, had been adjudged bankrupt under the Insolvency (Northern Ireland) Order 1989, or, in the case of a debtor other than an individual, had been made the subject of a winding-up order under that Order; and
- (b) subject to the same powers of the court and the same prohibitions, limitations, exceptions and conditions as would apply under the law of Northern Ireland in such a case,

and the provisions of paragraph 1 shall be interpreted accordingly.

3. Without prejudice to paragraph 2, the stay and suspension referred to in paragraph 1, in particular, does not affect any right—

- (a) to take any steps to enforce security over the debtor's property;
- (b) to take any steps to repossess goods in the debtor's possession under a hire-purchase agreement;
- (c) exercisable under or by virtue of or in connection with the provisions referred to in article 1(4); or
- (d) of a creditor to set off its claim against a claim of the debtor,

being a right which would have been exercisable if the debtor, in the case of an individual, had been adjudged bankrupt under the Insolvency (Northern Ireland) Order 1989, or, in the case of a debtor other than an individual, had been made the subject of a winding-up order under that Order.

4. Paragraph 1(a) does not affect the right to—

- (a) commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor; or
- (b) commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory or investigative functions of a public nature, being an action or proceedings brought in the exercise of those functions.

5. Paragraph 1 does not affect the right to request or otherwise initiate the commencement of a proceeding under Northern Ireland insolvency law or the right to file claims in such a proceeding.

6. In addition to and without prejudice to any powers of the court under or by virtue of paragraph 2, the court may, on the application of the foreign representative or a person affected by the stay and suspension referred to in paragraph 1, or of its own motion, modify or terminate such stay and suspension or any part of it, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

Article 21. Relief that may be granted upon recognition of a foreign proceeding

1. Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

- (a) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under paragraph 1(a) of article 20;
- (b) staying execution against the debtor's assets to the extent it has not been stayed under paragraph 1(b) of article 20;
- (c) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph 1(c) of article 20;
- (d) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

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- (e) entrusting the administration or realisation of all or part of the debtor’s assets located in Northern Ireland to the foreign representative or another person designated by the court;
- (f) extending relief granted under paragraph 1 of article 19; and
- (g) granting any additional relief that may be available to a Northern Ireland insolvency officeholder under the law of Northern Ireland, including any relief provided under paragraph 44 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989(19).

2. Upon recognition of a foreign proceeding, whether main or non-main, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor’s assets located in Northern Ireland to the foreign representative or another person designated by the court, provided that the court is satisfied that the interests of creditors in Northern Ireland are adequately protected.

3. In granting relief under this article to a representative of a foreign non-main proceeding, the court must be satisfied 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.

4. No stay under paragraph 1(a) shall affect the right to commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory or investigative functions of a public nature, being an action or proceedings brought in the exercise of those functions.

Article 22. Protection of creditors and other interested persons

1. In granting or denying relief under article 19 or 21, or in modifying or terminating relief under paragraph 3 or paragraph 6 of article 20, the court must be satisfied that the interests of the creditors (including any secured creditors or parties to hire-purchase agreements) and other interested persons, including if appropriate the debtor, are adequately protected.

2. The court may subject relief granted under article 19 or 21 to conditions it considers appropriate, including the provision by the foreign representative of security for the proper performance of his functions.

3. The court may, at the request of the foreign representative or a person affected by relief granted under article 19 or 21, or of its own motion, modify or terminate such relief.

Article 23. Actions to avoid acts detrimental to creditors

1. Subject to paragraphs 6 and 9, upon recognition of a foreign proceeding, the foreign representative has standing to make an application to the court for an order under or in connection with Articles 202, 203, 206, 207, 312, 313, 315A, 316 and 367 of the Insolvency (Northern Ireland) Order 1989(20).

2. Where the foreign representative makes such an application (“an article 23 application”), the Articles referred to in paragraph 1 and Articles 204, 205, 314, 315, 315B, 315C, 315D, 315E, 315F, 368 and 369 of the Insolvency (Northern Ireland) Order 1989(21) shall apply—

(19) Schedule B1 was inserted by Article 3(2) of, and Schedule 1 to, the Insolvency (Northern Ireland) Order 2005, (S.I. 2005/1455 (N.I. 10))

(20) S.I. 1989/2405 (N.I.19); Articles 202, 206 and 207 were amended by paragraph 18 and by paragraphs 36, 39 and 40 of Schedule 2 to S.I. 2005/1455 (N.I. 10) respectively, and in the case of Article 207, Schedule 9; Articles 312 and 367 were amended by paragraphs 85 and 87 of Schedule 29 to the Civil Partnership Act 2004 (c.33); Article 315A was inserted by Article 15 of S.I. 1999/3147 (N.I. 11)

(21) Articles 204, 205 and 368 were amended by paragraphs 18, 37, 38 and 44 of Schedule 2 to S.I. 2005/1455 (N.I.10) and in the case of Article 204, Schedule 9; Articles 205 and 315 were amended by sections 3 and 4 of the Insolvency (No.2) Act 1994

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- (a) whether or not the debtor, in the case of an individual, has been adjudged bankrupt, or, in the case of a debtor other than an individual, is being wound up or is in administration, under Northern Ireland insolvency law; and
 - (b) with the modifications set out in paragraph 3.
3. The modifications referred to in paragraph 2 are as follows—
 - (a) for the purposes of Articles 205(2A)(a) and 315(2A)(a) of the Insolvency (Northern Ireland) Order 1989, a person has notice of the relevant proceedings if he has notice of the opening of the relevant foreign proceeding;
 - (b) for the purpose of Articles 204(1) and 207(3) of that Order, the onset of insolvency shall be the date of the opening of the relevant foreign proceeding; and
 - (c) the periods referred to in Articles 206(2), 314(1)(a),(b) and (c) and 316(2) of that Order shall be periods ending with the date of the opening of the relevant foreign proceeding.
4. For the purposes of paragraph 3, the date of the opening of the foreign proceeding shall be determined in accordance with the law of the State in which the foreign proceeding is taking place, including any rule of law by virtue of which the foreign proceeding is deemed to have opened at an earlier time.
5. When the foreign proceeding is a foreign non-main proceeding, the court must be satisfied that the article 23 application relates to assets that, under the law of Northern Ireland, should be administered in the foreign non-main proceeding.
6. At any time when a proceeding under Northern Ireland insolvency law is taking place regarding the debtor the foreign representative shall not make an article 23 application except with the permission of the court
7. On making an order on an article 23 application, the court may give such directions regarding the distribution of any proceeds of the claim by the foreign representative, as it thinks fit to ensure that the interests of creditors in Northern Ireland are adequately protected.
8. Nothing in this article affects the right of a Northern Ireland insolvency officeholder to make an application under or in connection with any of the provisions referred to in paragraph 1.
9. Nothing in paragraph 1 shall apply in respect of any preference given, floating charge created, alienation, assignment or relevant contributions (within the meaning of Article 315A(5) of the Insolvency (Northern Ireland) Order 1989) made or other transaction entered into before the date on which this Law comes into force.

Article 24. Intervention by a foreign representative in proceedings in Northern Ireland

Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of Northern Ireland are met, intervene in any proceedings in which the debtor is a party.

(c.12); Articles 315A, 315B and 315C were substituted by Article 15 of S.I. 1999/3147 (N.I.11), and Articles 315D, 315E and 315F were inserted by paragraphs 53 and 54 of Schedule 9 to S.I. 1999/3147 (N.I.11)

CHAPTER IV

COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

Article 25. Cooperation and direct communication between the court in Northern Ireland and foreign courts or foreign representatives

1. In matters referred to in paragraph 1 of article 1, the court may cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a Northern Ireland insolvency officeholder.

2. The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

Article 26. Cooperation and direct communication between the Northern Ireland insolvency officeholder and foreign courts or foreign representatives

1. In matters referred to in paragraph 1 of article 1, a Northern Ireland insolvency officeholder shall to the extent consistent with his other duties under the law of Northern Ireland, in the exercise of his functions and subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

2. The Northern Ireland insolvency officeholder is entitled, in the exercise of his functions and subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

Article 27. Forms of cooperation

Cooperation referred to in articles 25 and 26 may be implemented by any appropriate means, including—

- (a) appointment of a person to act at the direction of the court;
- (b) communication of information by any means considered appropriate by the court;
- (c) coordination of the administration and supervision of the debtor's assets and affairs;
- (d) approval or implementation by courts of agreements concerning the coordination of proceedings;
- (e) coordination of concurrent proceedings regarding the same debtor.

CHAPTER V

CONCURRENT PROCEEDINGS

Article 28. Commencement of a proceeding under Northern Ireland insolvency law after recognition of a foreign main proceeding

After recognition of a foreign main proceeding, the effects of a proceeding under Northern Ireland insolvency law in relation to the same debtor shall, insofar as the assets of that debtor are concerned, be restricted to assets that are located in Northern Ireland and, to the extent necessary to implement cooperation and coordination under articles 25, 26 and 27, to other assets of the debtor that, under the law of Northern Ireland, should be administered in that proceeding.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Cross-Border Insolvency Regulations (Northern Ireland) 2007. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Article 29. Coordination of a proceeding under Northern Ireland insolvency law and a foreign proceeding

Where a foreign proceeding and a proceeding under Northern Ireland insolvency law are taking place concurrently regarding the same debtor, the court may seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply—

- (f) when the proceeding in Northern Ireland is taking place at the time the application for recognition of the foreign proceeding is filed—
 - (i) any relief granted under article 19 or 21 must be consistent with the proceeding in Northern Ireland; and
 - (ii) if the foreign proceeding is recognised in Northern Ireland as a foreign main proceeding, article 20 does not apply;
- (g) when the proceeding in Northern Ireland commences after the filing of the application for recognition of the foreign proceeding—
 - (i) any relief in effect under article 19 or 21 shall be reviewed by the court and shall be modified or terminated if inconsistent with the proceeding in Northern Ireland;
 - (ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph 1 of article 20 shall be modified or terminated pursuant to paragraph 6 of article 20, if inconsistent with the proceeding in Northern Ireland; and
 - (iii) any proceedings brought by the foreign representative by virtue of paragraph 1 of article 23 before the proceeding in Northern Ireland commenced shall be reviewed by the court and the court may give such directions as it thinks fit regarding the continuance of those proceedings; and
- (h) in granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the court must be satisfied 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.

Article 30. Coordination of more than one foreign proceeding

In matters referred to in paragraph 1 of article 1, in respect of more than one foreign proceeding regarding the same debtor, the court may seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply—

- (i) any relief granted under article 19 or 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;
- (j) if a foreign main proceeding is recognised after the filing of an application for recognition of a foreign non-main proceeding, any relief in effect under article 19 or 21 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding; and
- (k) if, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognised, the court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

Article 31. Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under Northern Ireland insolvency law, proof that the debtor is unable to pay its debts within the meaning given to that expression under Northern Ireland insolvency law.

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Article 32. Rule of payment in concurrent proceedings

Without prejudice to secured claims or rights in rem, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a proceeding under Northern Ireland insolvency law regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Cross-Border Insolvency Regulations (Northern Ireland) 2007. Any changes that have already been made by the team appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to the whole Rule associated Parts and Chapters:

Whole provisions yet to be inserted into this Rule (including any effects on those provisions):

- Sch. 1 art. 16(2A) inserted by [S.I. 2019/146 Sch. para. 241\(a\)](#)
- Sch. 1 art. 3 omitted by [S.I. 2019/146 Sch. para. 240](#)
- Sch. 1 art. 2(b) substituted by [S.I. 2017/702 Sch. para. 144\(2\)](#)
- Sch. 1 art. 16(3) substituted by [S.I. 2019/146 Sch. para. 241\(b\)](#)
- Sch. 1 art. 2(b) words inserted by [S.I. 2019/146 Sch. para. 239\(a\)](#)
- Sch. 1 art. 2(k) words inserted by [S.I. 2019/146 Sch. para. 239\(b\)\(i\)](#)
- Sch. 1 art. 2(k) words inserted by [S.I. 2019/146 Sch. para. 239\(b\)\(ii\)](#)
- Sch. 1 art. 1(3)(b) words omitted by [S.I. 2019/146 Sch. para. 238](#)
- Sch. 2 para. 1(6)(6A) substituted for Sch. 2 para. 1(6) by [S.I. 2013/472 Sch. 2 para. 124\(a\)\(i\)](#)
- Sch. 2 para. 21(2)(i)(j) substituted for Sch. 2 para. 21(2)(i) by [S.I. 2013/472 Sch. 2 para. 124\(b\)\(ii\)](#)
- Sch. 2 para. 25(1)(i)(ia) substituted for Sch. 2 para. 25(1)(i) by [S.I. 2013/472 Sch. 2 para. 124\(c\)](#)
- Sch. 2 para. 26(3)(g)(ga) substituted for Sch. 2 para. 26(3)(g) by [S.I. 2013/472 Sch. 2 para. 124\(d\)](#)
- Sch. 2 para. (1)(1) words substituted by [S.I. 2017/702 Sch. para. 144\(3\)\(a\)](#)
- Sch. 2 para. (1)(1) words substituted by [S.I. 2017/702 Sch. para. 144\(3\)\(b\)](#)
- Sch. 4 Form ML6 words omitted by [S.I. 2019/146 Sch. para. 252](#)
- Sch. 5 para. 5 words substituted by [2010 c. 10 Sch. 2 para. 5](#)