

2009 No. 404

INSOLVENCY

The Insolvency (Amendment) Rules (Northern Ireland) 2009

Made - - - - *4th December 2009*

Coming into operation - *11th January 2010*

To be laid before Parliament

The Lord Chancellor makes the following Rules in exercise of the powers conferred by Article 359 of the Insolvency (Northern Ireland) Order 1989(a), with the concurrence of the Department of Enterprise, Trade and Investment(b), and, in relation to those rules that affect court procedure, with the concurrence of the Lord Chief Justice under Article 359(1A)(c) of that Order.

In accordance with Article 360 of that Order the Lord Chancellor has consulted the Committee appointed to review Rules.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Insolvency (Amendment) Rules (Northern Ireland) 2009 and come into operation on 11th January 2010.

(2) In these Rules—

“the current principal Rules” means the Insolvency Rules (Northern Ireland) 1991(d), inclusive of the amendments made by the Insolvency (Amendment) Rules (Northern Ireland) 2006(e); and

“the former principal Rules” means the Insolvency Rules (Northern Ireland) 1991 where, by virtue of Rule 5 of the Insolvency (Amendment) Rules (Northern Ireland) 2006, they apply without the amendments made by those Rules.

(3) References to numbered Rules are references to those Rules so numbered in the current principal Rules or in the former principal Rules as the case may be unless the context otherwise requires.

(a) S.I. 1989/2405 (N.I. 19)

(b) Formerly the Department of Economic Development, see the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I. 1))

(c) Article 359(1A) was inserted by the Constitutional Reform Act 2005 (c. 4), Schedule 5, Part 1, paragraphs 80 and 81

(d) The Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364), as amended by the Insolvency (Amendment) Rules (Northern Ireland) 1994 (S.R. 1994 No. 26), the Insolvency (Amendment) Rules (Northern Ireland) 1995 (S.R. 1995 No. 291), the Insolvency (Amendment) Rules (Northern Ireland) 2000 (S.R. 2000 No. 247), the Insolvency (Amendment) Rules (Northern Ireland) 2002 (S.R. 2002 No. 261), the Insolvency (Amendment) Rules (Northern Ireland) 2003 (S.R. 2003 No. 549), the Insolvency (Amendment) Rules (Northern Ireland) 2006 (S.R. 2006 No. 47), the Insolvency (Amendment) Rules (Northern Ireland) 2008 (S.R. 2008 No. 118) and the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2004 (S.I. 2004/355).

(e) S.R. 2006 No. 47

Transitional provisions

2.—(1) The amendments to the current and former principal Rules made by these Rules apply as follows.

(2) They apply where, in a company voluntary arrangement, a moratorium comes into force in relation to a company on or after 11th January 2010.

(3) They apply where a company enters administration on or after 11th January 2010, except where—

- (a) it enters administration by virtue of an administration order under paragraph 11 of Schedule B1 to the 1989 Order on an application made before 11th January 2010;
- (b) the administration is immediately preceded by a voluntary liquidation in respect of which the resolution to wind up was passed before 11th January 2010, or
- (c) the administration is immediately preceded by a liquidation on the making of a winding-up order on a petition which was presented before 11th January 2010.

(4) They apply where, in a receivership, a receiver or manager is appointed in respect of a company on or after 11th January 2010.

(5) They apply where a company goes into liquidation upon the passing on or after 11th January 2010 of a resolution to wind up.

(6) They apply where a company goes into voluntary liquidation under paragraph 84 of Schedule B1 to the 1989 Order, except where the preceding administration—

- (a) commenced before 11th January 2010, or
- (b) is an administration which commenced by virtue of an administration order under paragraph 11 of Schedule B1 to the 1989 Order on an application which was made before 11th January 2010.

(7) They apply where a company goes into liquidation on the making of a winding-up order on a petition presented on or after 11th January 2010, except where the liquidation is immediately preceded by—

- (a) an administration under paragraph 11 of Schedule B1 to the 1989 Order where the administration order was made on an application before 11th January 2010;
- (b) an administration in respect of which the appointment of an administrator under paragraph 15 or 23 of Schedule B1 to the 1989 Order took effect before 11th January 2010, or
- (c) a voluntary liquidation in respect of which the resolution to wind up was passed before 11th January 2010.

(8) In this Rule, “the 1989 Order” means the Insolvency (Northern Ireland) Order 1989.

Amendments to the current principal Rules

3. Subject to Rule 2, the current principal Rules shall be amended as set out in Rules 4 to 17.

Amendment of Rule 0.2

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

(2) After the definition of “Centre of main interests”, insert ““the Companies Act” means “the Companies Act 2006””.

(3) For the definition of a “Part XXIII company”, substitute—

““Part 34 company” has the same meaning as in the Companies Act 2006(a).”.

(a) 2006 (c. 46)

Amendment of Rule 1.22A

- 5.—(1) Rule 1.22A (notice of order made under Article 17A(6)) is amended as follows.
(2) In paragraph (5), for “an office copy”, substitute “a copy”.

Amendment of Rule 1.41

- 6.—(1) Rule 1.41 (notice of extension of moratorium) is amended as follows.
(2) In paragraph (2), for “an office copy”, substitute “a copy”.

Amendment of Rule 2.050

- 7.—(1) Rule 2.050 (venue and conduct of company meeting) is amended as follows.
(2) In paragraph (5)—
(a) omit “of association”; and
(b) for “Order”, substitute “Act”.

Amendments to Rules 2.052, 2.056, 3.17, 3.21, 4.161, 4.167, 8.7 and 12.05

8.—(1) Rules 2.052(2) (formalities of establishment), 2.05(2) (committee-members’ representatives), 3.17(2) (formalities of establishment), 3.21(2) (committee-members’ representatives), 4.161(3) (formalities of establishment), 4.167(2) (committee-members’ representatives), 8.7(1) (company representation) and 12.05(3) (quorum at meeting of creditors or contributories) are amended as follows.

(2) For “Article 383 of the Companies Order”, where it occurs, substitute “section 323 of the Companies Act”.

Amendment of Rule 3.36

- 9.—(1) Rule 3.36 (vacation of office) is amended as follows.
(2) In paragraph (2), for “Article 413(2) of the Companies Order (notice for the purposes of the register of charges)”, substitute “section 871(2) of the Companies Act (registration of enforcement of security)”.

Amendment of Rule 3.39

- 10.—(1) Rule 3.39 (preservation of certificate with company’s records) is amended as follows.
(2) In paragraph (1), for “Article 230 of the Companies Order”, substitute “sections 388 and 389 of the Companies Act”.

Amendment of Rule 4.002

- 11.—(1) Rule 4.002 (winding up by the court: the various forms of petition) is amended as follows.
(2) In paragraph (1), in the second indent referring to paragraph (b) of Article 102, for “Article 127 of the Companies Order”, substitute “section 761 of the Companies Act”.

Amendment of Rule 4.008

- 12.—(1) Rule 4.008 (service of petition) is amended as follows.
(2) In paragraph (2)—
(a) in subparagraph (a), for “Article 21 of the Companies Order”, substitute “section 9 of the Companies Act”; and

- (b) in subparagraph (b), for “Article 295 of that Order”, substitute “section 87 of the Companies Act”.
- (3) In paragraph (5)—
 - (a) for “Part XXIII”, substitute “overseas”; and
 - (b) for “Article 645 of the Companies Order”, substitute “section 1139(2) of the Companies Act”.

Amendment of Rule 4.011

- 13.—(1) Rule 4.011 (notice and advertisement of petition) is amended as follows.
- (2) In paragraph (5)(a)(ii), for “a Part XXIII”, substitute “an overseas”.

Amendment of Rule 4.240

- 14.—(1) Rule 4.240 (Prohibited names – third excepted case) is amended as follows.
- (2) In paragraph (b), for “Article 260(5) of the Companies Order”, substitute “section 1169(1), (2) and (3)(a) of the Companies Act”.

Amendment of Rule 6.200

- 15.—(1) Rule 6.200 (application for leave) is amended as follows.
- (2) In paragraph (4), for “Article 24 of the Companies Order”, substitute “section 15 of the Companies Act”.

Amendment of Rule 7.55

- 16.—(1) Rule 7.55 (office copies of documents) is amended as follows.
- (2) In the heading to that Rule, for “Office copies”, substitute “Copies”.
- (3) In paragraphs (1) and (3), for “an office copy”, substitute “a copy”.

Amendments to Schedule 2 – forms

- 17.—(1) In the forms in Schedule 2 to the current principal Rules listed below, the contents are amended as follows—
 - (a) in Form 3.10, for “An office copy”, substitute “A copy”;
 - (b) in Form 4.02, for “memorandum of association of the company”, substitute “the company’s articles”;
 - (c) in Form 4.05—
 - (i) in the heading, for “Part XXIII”, substitute “overseas”; and
 - (ii) in the note, for “oversea”, substitute “overseas”; and
 - (d) in Form 4.14, for “memorandum of association of the company”, substitute “the company’s articles”.
- (2) For Form 5.2, substitute the new Form 5.2 in Part 1 of the Schedule to these Rules.

Amendments to the former principal Rules

- 18. Subject to Rule 2, the former principal Rules shall be amended as set out in Rules 19 to 24.

Amendment of former Rule 2.34

- 19.—(1) Former Rule 2.34 is amended as follows.
- (2) In paragraph (5), for “Companies Order”, substitute “Companies Act”.

Amendment of former Rule 2.36

20.—(1) Former Rule 2.36 is amended as follows.

(2) In paragraph (2), for “Article 383 of the Companies Order”, substitute “section 323 of the Companies Act”.

Amendment of former Rule 2.40

21.—(1) Former Rule 2.40 is amended as follows.

(2) In paragraph (2), for “Article 383 of the Companies Order”, substitute “section 323 of the Companies Act”.

Amendment of former Rule 2.62

22.—(1) Former Rule 2.62 (preservation of certification with company’s records) is amended as follows.

(2) In paragraph (1), for “Article 230 of the Companies Order”, substitute “sections 388 and 389 of the Companies Act”.

Amendments to Schedule 2 to the former principal Rules

23. In the index to forms in Schedule 2 to the former principal Rules, for the entry for Form 2.01, substitute—

“2.01 (SAR) Petition for administration order (Special Administration Regimes)”.

24. For Form 2.01, substitute the new Form 2.01 (SAR) in Part 2 of the Schedule to these Rules.

Signed by authority of the Lord Chancellor

Bridget Prentice
Parliamentary Under-Secretary of State
Ministry of Justice

Dated 4th December 2009

I concur

Declan Morgan
Lord Chief Justice of Northern Ireland

Dated 9th December 2009

The Department of Enterprise, Trade and Investment hereby concurs with the foregoing Rules

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 11th December 2009



Michael J Bohill
A senior officer of the Department of Enterprise, Trade and Investment

SCHEDULE

Rules 17(2) and 24

PART 1

Rule 5.10

Form 5.2

Interim Order of Court under Article 226 of the Insolvency (Northern Ireland) Order 1989

No.

IN THE HIGH OF JUSTICE IN NORTHERN IRELAND CHANCERY DIVISION (BANKRUPTCY)

Insert Title Re

(a) Insert full name and address of applicant Upon the application of (a)

And upon hearing And upon reading the evidence

(b) Delete as applicable (b) [And upon the application of, the nominee, for an extension of the period for which the interim order shall have effect pursuant to Article 230(4) of the Insolvency (Northern Ireland) Order 1989.]

(c) 15 days unless an extension is granted on the application of the nominee It is ordered that during the period of (c)..... days beginning with and including the date on which this order was made and during any extended period for which this interim order has effect:

- (d) Insert the name of the debtor (i) no bankruptcy petition relating to the above-named (d) (the debtor) may be presented or proceeded with; and (ii) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with leave of the court, and (iii) no other proceedings, and no execution or other legal process, may be commenced or continued and no distress may be levied against the debtor or his property except with the leave of the court.

(e) Date to be 2 business days before the day on which the report is to be considered And it is ordered that the report of the nominee be submitted and delivered by him to the court not later than (e)

(f) Insert details of any orders made under Article 229(3) and (4) of the Insolvency (Northern Ireland) Order 1989 [And it is ordered that (f)

And it is ordered that

(g) Delete if debtor is not a bankrupt or if he is a bankrupt but the applicant is the official receiver (g)[And it is ordered that the applicant forthwith serve a copy of this order on the official receiver.]

Form 5.2 contd.

Date

Time hours

Place

be appointed for consideration of the nominee's report.

Dated

PART 2

Rule 2.01

Form 2.01(SAR)

Petition for Administration Order – (Special Administration Regimes)

No.
IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION (COMPANY INSOLVENCY)

* Insert name of company

IN THE MATTER OF *
AND IN THE MATTER OF THE INSOLVENCY (NORTHERN IRELAND) ORDER 1989

To The High Court of Justice in Northern Ireland

(a) Insert full name(s) and address(es) of petitioner(s)

The petition of (a)

(b) Delete if petition not presented by the company's directors

(b) [presented by the directors under Article 22 of the Insolvency (Northern Ireland) Order 1989].

(c) Insert full name and registered no. of company subject to petition

1.(c)

(hereinafter called "the company") was incorporated on (d) _____
under (e)

(d) Insert date of Incorporation
(e) Insert title of Companies Act or Order under which company was incorporated

2. The registered office of the company is at (f) _____

(f) Insert address of registered office

(g) delete if inapplicable

3. The nominal capital of the company is £_____ divided into _____ shares of £_____ each. The amount of the capital paid up or credited as paid up is £_____ (g)

4. The principal objects for which the company was established are as follows:

and other objects stated in the memorandum of association thereof.

(h) Delete such as are inapplicable

5. The petitioner(s) believe(s) that the company is or is likely to become unable to pay its debts and that an administration order would be likely to achieve

- (h) (i) the survival of the company and the whole or some part of its undertaking as a going concern
(ii) the approval of a voluntary arrangement with its creditors under Part II of the Insolvency (Northern Ireland) Order 1989
(iii) the sanctioning of a compromise or arrangement between the company and such persons as are mentioned in Section 895 of the Companies Act 2006
(iv) a more advantageous realisation of the company's assets than would be effected on a winding up

for the reasons stated in the affidavit of _____ filed in support hereof.

(j) Delete as applicable

6. The company (j) is a licence company within the meaning of section 26 of the Transport Act 2000 (c. 38) (air traffic services) or a building society within the meaning of section 119 of the Building Societies Act 1986 (c. 53) (interpretation).

7. EC Regulation No. 1346/2000 does not apply to these proceedings.

(k) Insert full name(s) and addresses of proposed administrator(s)

8. The petitioner(s) propose(s) that during the period for which the order is in force the affairs, business and property of the company be managed by (k)

who is (are) to the best of the petitioner's knowledge and belief qualified to act as (an) insolvency practitioner(s) in relation to the company. The petitioner(s) therefore pray(s) as follows:-

(l) Insert full name of company

(1) that the court make an administration order in relation to (l) _____

(m) Insert names(s) of proposed administrators(s)

(2) that (m) _____
be appointed to be the administrator(s) of the said company

(n) Insert details of any ancillary orders sought

(3) (n) _____

or

(4) that such other order may be made in the premises as shall be just.

Note: It is intended to serve this petition on

(o) Insert here name, address, telephone number, fax number (if any) and reference (if any) of a solicitor acting for the petitioner

This petition was issued by (o) _____

(solicitor for) the petitioner(s) whose address for service is:

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364) (“the principal Rules”), of which there are two versions.

The principal Rules as amended by the Insolvency (Amendment) Rules (Northern Ireland) 2006 (“the 2006 Rules”) apply to all insolvency proceedings other than special administration regimes. These are referred to in this note as the “current principal Rules”.

However, rule 5 of the 2006 Rules provides that, in cases where Part III of the Insolvency (Northern Ireland) Order 1989 applies without amendments made by the Insolvency (Northern Ireland) Order 2005, the principal Rules continue to apply without the amendments made by the 2006 Rules.

Article 4 of the Insolvency (Northern Ireland) Order 2005 provides for Part III of the Insolvency (Northern Ireland) Order 1989 to continue to apply as prior to amendment by the Insolvency (Northern Ireland) Order 2005 in two special administration regimes, namely—

- (a) licence companies within the meaning of section 26 of the Transport Act 2000 (c. 38) (air traffic services), or
- (b) building societies within the meaning of section 119 of the Building Societies Act 1986 (c. 53) (interpretation).

The version of the principal Rules applying to special administration regimes is referred to in this note as the “former principal Rules”.

These Rules make amendments to both the current and former principal Rules consequent on the coming into force on 1 October 2009 of the Companies Act 2006. Rules 4 to 17 amend the current principal Rules and rules 19 to 24 amend the former principal Rules.

Part 1 of the Schedule substitutes in Schedule 2 to the current principal Rules new form 5.2, which is needed because the previous form incorrectly stated that an interim order of Court under Article 226 of the Insolvency (Northern Ireland) Order 1989 took effect on the day after the date on which the order was made.

Part 2 of the Schedule substitutes in Schedule 2 to the former principal Rules new form 2.01(SAR), which is needed due to the coming into force of the Companies Act 2006.

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