

## SCHEDULE 2

### PROCEDURAL MATTERS IN ENGLAND AND WALES

#### PART 2

##### APPLICATIONS TO COURT FOR RECOGNITION OF FOREIGN PROCEEDINGS

###### **Affidavit in support of recognition application**

2. A recognition application shall be in Form ML 1 and shall be supported by an affidavit sworn by the foreign representative complying with paragraph 4.

###### **Form and content of application**

3. The application shall state the following matters—
- (a) the name of the applicant and his address for service within England and Wales;
  - (b) the name of the debtor in respect of which the foreign proceeding is taking place;
  - (c) the name or names in which the debtor carries on business in the country where the foreign proceeding is taking place and in this country, if other than the name given under subparagraph (b);
  - (d) the principal or last known place of business of the debtor in Great Britain (if any) and, in the case of an individual, his usual or last known place of residence in Great Britain (if any);
  - (e) any registered number allocated to the debtor under the Companies Act 1985;
  - (f) brief particulars of the foreign proceeding in respect of which recognition is applied for, including the country in which it is taking place and the nature of the proceeding;
  - (g) that the foreign proceeding is a proceeding within the meaning of article 2(i) of the Model Law;
  - (h) that the applicant is a foreign representative within the meaning of article 2(j) of the Model Law;
  - (i) the address of the debtor's centre of main interests and, if different, the address of its registered office or habitual residence, as appropriate; and
  - (j) if the debtor does not have its centre of main interests in the country where the foreign proceeding is taking place, whether the debtor has an establishment within the meaning of article 2(e) of the Model Law in that country, and if so, its address.

###### **Contents of affidavit in support**

4.—(1) There shall be attached to the application an affidavit in support which shall contain or have exhibited to it—

- (a) the evidence and statement required under article 15(2) and (3) respectively of the Model Law;
- (b) any other evidence which in the opinion of the applicant will assist the court in deciding whether the proceeding the subject of the application is a foreign proceeding within the meaning of article 2(i) of the Model Law and whether the applicant is a foreign representative within the meaning of article 2(j) of the Model Law;

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- (c) evidence that the debtor has its centre of main interests or an establishment, as the case may be, within the country where the foreign proceeding is taking place; and
- (d) any other matters which in the opinion of the applicant will assist the court in deciding whether to make a recognition order.

(2) The affidavit shall state whether, in the opinion of the applicant, the EC Insolvency Regulation applies to any of the proceedings identified in accordance with article 15(3) of the Model Law and, if so, whether those proceedings are main proceedings, secondary proceedings or territorial proceedings.

(3) The affidavit shall also have exhibited to it the translations required under article 15(4) of the Model Law and a translation in English of any other document exhibited to the affidavit which is in a language other than English.

(4) All translations referred to in sub-paragraph (3) must be certified by the translator as a correct translation.

### **The hearing and powers of court**

**5.**—(1) On hearing a recognition application the court may in addition to its powers under the Model Law to make a recognition order—

- (a) dismiss the application;
- (b) adjourn the hearing conditionally or unconditionally;
- (c) make any other order which the court thinks appropriate.

(2) If the court makes a recognition order, it shall be in Form ML 2.

### **Notification of subsequent information**

**6.**—(1) The foreign representative shall set out any subsequent information required to be given to the court under article 18 of the Model Law in a statement which he shall attach to Form ML 3 and file with the court.

(2) The statement shall include—

- (a) details of the information required to be given under article 18 of the Model Law; and
- (b) in the case of any proceedings required to be notified to the court under that article, a statement as to whether, in the opinion of the foreign representative, any of those proceedings are main proceedings, secondary proceedings or territorial proceedings under the EC Insolvency Regulation.

(3) The foreign representative shall send a copy of the Form ML 3 and attached statement filed with the court to the following—

- (a) the debtor; and
- (b) those persons referred to in paragraph 26(3).