

SCHEDULE 1

Regulation 2(1)

UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY

CHAPTER I

GENERAL PROVISIONS

Article 1. Scope of Application

1. This Law applies where—
 - (a) assistance is sought in Great Britain 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 British insolvency law; or
 - (c) a foreign proceeding and a proceeding under British 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 British insolvency law.
2. This Law does not apply to a proceeding concerning—
 - (a) a company holding an appointment under Chapter 1 of Part 2 of the Water Industry Act 1991⁽¹⁾ (water and sewage undertakers) or a qualifying licensed water supplier within the meaning of section 23(6) of that Act (meaning and effect of special administration order);
 - (b) Scottish Water established under section 20 of the Water Industry (Scotland) Act 2002 (Scottish Water)⁽²⁾;
 - (c) a protected railway company within the meaning of section 59 of the Railways Act 1993⁽³⁾ (railway administration order) (including that section as it has effect by virtue of section 19 of the Channel Tunnel Rail Link Act 1996⁽⁴⁾ (administration));
 - (d) a licence company within the meaning of section 26 of the Transport Act 2000⁽⁵⁾ (air traffic services);
 - (e) a public private partnership company within the meaning of section 210 of the Greater London Authority Act 1999⁽⁶⁾ (public-private partnership agreement);
 - (f) a protected energy company within the meaning of section 154(5) of the Energy Act 2004⁽⁷⁾ (energy administration orders);
 - (g) a building society within the meaning of section 119 of the Building Societies Act 1986⁽⁸⁾ (interpretation);

(1) 1991 c. 56, section 23(6) was amended by the Water Act 2003 (c. 37), Schedule 8, paragraphs 2 and 8(1) and (6).

(2) 2002 asp 3.

(3) 1993 c. 43; relevant amendments to section 59 are made by the Railways Act 2005 (c. 14), Schedule 13, Part 1 and S.I. 2005/3050.

(4) 1996 c. 61.

(5) 2000 c. 38.

(6) 1999 c. 29.

(7) 2004 c. 20; there are amendments to section 119 which are not relevant to these Regulations.

(8) 1986 c. 53.

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- (h) 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⁽⁹⁾ (interpretation);
- (i) 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);
- (j) a person who has permission under or by virtue of Parts 4 or 19 of the Financial Services and Markets Act 2000⁽¹⁰⁾ to effect or carry out contracts of insurance;
- (k) an EEA insurer within the meaning of regulation 2 of the Insurers (Reorganisation and Winding Up) Regulations 2004⁽¹¹⁾ (interpretation);
- (l) a person (other than one included in paragraph 2(j)) pursuing the activity of reinsurance who has received authorisation for that activity from a competent authority within an EEA State; or
- (m) any of the Concessionaires within the meaning of section 1 of the Channel Tunnel Act 1987⁽¹²⁾.

3. In paragraph 2 of this article—

- (a) in sub-paragraph (j) 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 (1) “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 7 of the Companies Act 1989⁽¹³⁾;
 - (ii) Part 3 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999⁽¹⁴⁾; or
 - (iii) Part 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003⁽¹⁵⁾;in the case of a proceeding under British 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.

⁽⁹⁾ S.I. 2004/1045.

⁽¹⁰⁾ 2000 c. 8.

⁽¹¹⁾ S.I. 2004/353, to which there are amendments not relevant to these Regulations.

⁽¹²⁾ 1987 c. 53.

⁽¹³⁾ 1989 c. 40, amended by the Bank of England Act 1998 (c. 11), Schedule 5, paragraph 48, the Enterprise Act 2002 (c. 40), Schedule 17, paragraphs 44 to 47, S.I. 1991/880, 1992/1315, 1998/1748, 2001/3649 and 2001/3929.

⁽¹⁴⁾ S.I. 1999/2979, relevant amendments are made by S.I. 2000/2952, 2001/3929, 2002/765 and 2003/2096.

⁽¹⁵⁾ S.I. 2003/3226.

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 1930⁽¹⁶⁾ 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 section 26 of the Land Registration Act 2002⁽¹⁷⁾ where owner’s powers are exercised in relation to a registered estate or registered charge;
- (b) is subject to section 52 of the Land Registration Act 2002, where the powers referred to in that section are exercised by the proprietor of a registered charge; and
- (c) in any other case, shall not bind a purchaser of a legal estate in good faith for money or money’s worth unless the purchaser has express notice of the suspension.

7. In paragraph 6—

- (a) “owner’s powers” means the powers described in section 23 of the Land Registration Act 2002 and “registered charge” and “registered estate” have the same meaning as in section 132(1) of that Act; and
- (b) “legal estate” and “purchaser” have the same meaning as in section 17 of the Land Charges Act 1972⁽¹⁸⁾.

Article 2. Definitions

For the purposes of this Law—

- (a) “British insolvency law” means—
 - (i) in relation to England and Wales, provision extending to England and Wales and made by or under the Insolvency Act 1986⁽¹⁹⁾ (with the exception of Part 3 of that Act) or by or under that Act as extended or applied by or under any other enactment (excluding these Regulations); and
 - (ii) in relation to Scotland, provision extending to Scotland and made by or under the Insolvency Act 1986 (with the exception of Part 3 of that Act), the Bankruptcy (Scotland) Act 1985⁽²⁰⁾ or by or under those Acts as extended or applied by or under any other enactment (excluding these Regulations);
- (b) “British insolvency officeholder” means—
 - (i) the official receiver within the meaning of section 399 of the Insolvency Act 1986⁽²¹⁾ when acting as liquidator, provisional liquidator, trustee, interim receiver or nominee or supervisor of a voluntary arrangement;
 - (ii) a person acting as an insolvency practitioner within the meaning of section 388⁽²²⁾ of that Act but shall not include a person acting as an administrative receiver; and

⁽¹⁶⁾ 1930 c. 25.

⁽¹⁷⁾ 2002 c. 9.

⁽¹⁸⁾ 1972 c. 61; there are amendments to section 17 which are not relevant to these Regulations.

⁽¹⁹⁾ 1986 c. 45.

⁽²⁰⁾ 1985 c. 66.

⁽²¹⁾ Section 399 was amended by the Enterprise Act 2002 (c. 40), Schedule 23, paragraphs 1 and 14.

⁽²²⁾ Section 388 was amended by section 11 of the Bankruptcy (Scotland) Act 1993 (c. 6), section 4 of the Insolvency Act 2000 (c. 39), S.I. 1994/2421, 2002/2708 and 2002/1240.

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- (iii) the Accountant in Bankruptcy within the meaning of section 1 of the Bankruptcy (Scotland) Act 1985⁽²³⁾ when acting as interim or permanent trustee;
- (c) “the court” except as otherwise provided in articles 14(4) and 23(6)(b), means in relation to any matter the court which in accordance with the provisions of article 4 of this Law has jurisdiction in relation to that matter;
- (d) “the EC Insolvency Regulation” means Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency Proceedings⁽²⁴⁾;
- (e) “establishment” means any place of operations where the debtor carries out a non-transitory economic activity with human means and assets or services;
- (f) “foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;
- (g) “foreign main proceeding” means a foreign proceeding taking place in the State where the debtor has the centre of its main interests;
- (h) “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 (e) of this article;
- (i) “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 proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;
- (j) “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;
- (k) “hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement;
- (l) “section 426 request” means a request for assistance in accordance with section 426 of the Insolvency Act 1986⁽²⁵⁾ made to a court in any part of the United Kingdom;
- (m) “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;
- (n) “security” means—
 - (i) in relation to England and Wales, any mortgage, charge, lien or other security; and
 - (ii) in relation to Scotland, any security (whether heritable or moveable), any floating charge and any right of lien or preference and any right of retention (other than a right of compensation or set off);
- (o) in the application of Articles 20 and 23 to Scotland, “an individual” means any debtor within the meaning of the Bankruptcy (Scotland) Act 1985;
- (p) in the application of this Law to Scotland, references howsoever expressed to—
 - (i) “filing” an application or claim are to be construed as references to lodging an application or submitting a claim respectively;
 - (ii) “relief” and “standing” are to be construed as references to “remedy” and “title and interest” respectively; and

⁽²³⁾ Section 1 was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 22.

⁽²⁴⁾ Council Regulation (EC) 1346/2000, OJ No. L160, 30.06.00 p. 1.

⁽²⁵⁾ Relevant amendments are made to section 426 by the Insolvency Act 2000 (c. 39), Schedule 4, paragraph 16.

- (iii) a “stay” are to be construed as references to restraint, except in relation to continuation of actions or proceedings when they shall be construed as a reference to sist; and
- (q) references to the law of Great Britain include a reference to the law of either part of Great Britain (including its rules of private international law).

Article 3. International obligations of Great Britain 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

1. 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, as regards England and Wales and the Court of Session as regards Scotland.

2. Subject to paragraph 1 of this article, the court in either part of Great Britain shall have jurisdiction in relation to the functions referred to in that paragraph if—

- (a) the debtor has—
 - (i) a place of business; or
 - (ii) in the case of an individual, a place of residence; or
 - (iii) assets,
situated in that part of Great Britain; or
- (b) the court in that part of Great Britain considers for any other reason that it is the appropriate forum to consider the question or provide the assistance requested.

3. In considering whether it is the appropriate forum to hear an application for recognition of a foreign proceeding in relation to a debtor, the court shall take into account the location of any court in which a proceeding under British insolvency law is taking place in relation to the debtor and the likely location of any future proceedings under British insolvency law in relation to the debtor.

Article 5. Authorisation of British insolvency officeholders to act in a foreign State

A British insolvency officeholder is authorised to act in a foreign State on behalf of a proceeding under British 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 Great Britain or any part of it.

Article 7. Additional assistance under other laws

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

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 GREAT BRITAIN

Article 9. Right of direct access

A foreign representative is entitled to apply directly to a court in Great Britain.

Article 10. Limited jurisdiction

The sole fact that an application pursuant to this Law is made to a court in Great Britain 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 Great Britain or any part of it for any purpose other than the application.

Article 11. Application by a foreign representative to commence a proceeding under British 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 British insolvency law if the conditions for commencing such a proceeding are otherwise met.

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

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

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

1. Subject to paragraph 2 of this article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under British insolvency law as creditors in Great Britain.

2. Paragraph 1 of this article does not affect the ranking of claims in a proceeding under British 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 British insolvency law.

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

1. Whenever under British insolvency law notification is to be given to creditors in Great Britain, such notification shall also be given to the known creditors that do not have addresses in Great Britain. 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 Great Britain 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 British 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—
- (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 Great Britain and the orders of the court.
4. In this article “the court” means the court which has jurisdiction in relation to the particular proceeding under British insolvency law under which notification is to be given to creditors.

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 British 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 (i) of article 2 and that the foreign representative is a person or body within the meaning of sub-paragraph (j) 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.

Status: This is the original version (as it was originally made).

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 proceeding within the meaning of sub-paragraph (i) of article 2;
 - (b) the foreign representative applying for recognition is a person or body within the meaning of sub-paragraph (j) of article 2;
 - (c) the application meets the requirements of paragraphs 2 and 3 of article 15; and
 - (d) the application has been submitted to the court referred to in article 4.
2. The foreign proceeding 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
 - (b) as a foreign non-main proceeding if the debtor has an establishment within the meaning of sub-paragraph (e) 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 to 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 a 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 British 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 Great Britain 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 of this article—

- (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 of this article shall be—

- (a) the same in scope and effect as if the debtor, in the case of an individual, had been adjudged bankrupt under the Insolvency Act 1986(26) or had his estate sequestrated under the Bankruptcy (Scotland) Act 1985(27), or, in the case of a debtor other than an individual, had been made the subject of a winding-up order under the Insolvency Act 1986; 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 Great Britain in such a case,

and the provisions of paragraph 1 of this article shall be interpreted accordingly.

3. Without prejudice to paragraph 2 of this article, the stay and suspension referred to in paragraph 1 of this article, 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 Act 1986 or had his estate sequestrated under the Bankruptcy (Scotland) Act 1985, or, in the case of a debtor other than an individual, had been made the subject of a winding-up order under the Insolvency Act 1986.

4. Paragraph 1(a) of this article 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 of this article does not affect the right to request or otherwise initiate the commencement of a proceeding under British 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 of this article, the court may, on the application of the foreign representative or a person affected by the stay and suspension referred to in paragraph 1 of this article, 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.

(26) 1986 c. 45.

(27) 1985 c. 66.

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;
- (e) entrusting the administration or realisation of all or part of the debtor's assets located in Great Britain 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 British insolvency officeholder under the law of Great Britain, including any relief provided under paragraph 43 of Schedule B1 to the Insolvency Act 1986⁽²⁸⁾.

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 Great Britain to the foreign representative or another person designated by the court, provided that the court is satisfied that the interests of creditors in Great Britain 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 Great Britain, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

4. No stay under paragraph 1(a) of this article 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 of this article 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 or caution 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.

(28) Schedule B1 was inserted by the Enterprise Act 2002 (c. 40), section 248(2) and Schedule 16.

Article 23. Actions to avoid acts detrimental to creditors

1. Subject to paragraphs 6 and 9 of this article, 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 sections 238, 239, 242, 243, 244, 245, 339, 340, 342A, 343, and 423 of the Insolvency Act 1986(29) and sections 34, 35, 36, 36A and 61 of the Bankruptcy (Scotland) Act 1985(30).

2. Where the foreign representative makes such an application (“an article 23 application”), the sections referred to in paragraph 1 of this article and sections 240, 241, 341, 342, 342B to 342F, 424 and 425 of the Insolvency Act 1986(31) and sections 36B and 36C of the Bankruptcy (Scotland) Act 1985(32) shall apply—

- (a) whether or not the debtor, in the case of an individual, has been adjudged bankrupt or had his estate sequestrated, or, in the case of a debtor other than an individual, is being wound up or is in administration, under British insolvency law; and
- (b) with the modifications set out in paragraph 3 of this article.

3. The modifications referred to in paragraph 2 of this article are as follows—

- (a) for the purposes of sections 241(2A)(a) and 342(2A)(a) of the Insolvency Act 1986, a person has notice of the relevant proceedings if he has notice of the opening of the relevant foreign proceeding;
- (b) for the purposes of sections 240(1) and 245(3) of that Act, the onset of insolvency shall be the date of the opening of the relevant foreign proceeding;
- (c) the periods referred to in sections 244(2), 341(1)(a) to (c) and 343(2) of that Act shall be periods ending with the date of the opening of the relevant foreign proceeding;
- (d) for the purposes of sections 242(3)(a), (3)(b) and 243(1) of that Act, the date on which the winding up of the company commences or it enters administration shall be the date of the opening of the relevant foreign proceeding; and
- (e) for the purposes of sections 34(3)(a), (3)(b), 35(1)(c), 36(1)(a) and (1)(b) and 61(2) of the Bankruptcy (Scotland) Act 1985, the date of sequestration or granting of the trust deed shall be the date of the opening of the relevant foreign proceeding.

4. For the purposes of paragraph 3 of this article, 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 Great Britain, should be administered in the foreign non-main proceeding.

6. At any time when a proceeding under British insolvency law is taking place regarding the debtor—

(29) 1986 c. 45; sections 238 and 242–245 are amended by the Enterprise Act 2002 (c. 40), Schedule 17, paragraphs 9, 25 and 28–31 and, in the case of section 245, Schedule 26; sections 339 and 423 are amended by the Civil Partnership Act 2004 (c. 33), Schedule 27, paragraphs 119 and 121; section 342A was inserted by the Welfare Reform and Pensions Act 1999 (c. 30), section 15.

(30) 1985 c. 66; section 34 is amended by the Civil Partnerships Act 2004 (c. 33), Schedule 28, paragraph 35, section 35 is amended by the Welfare Reform and Pensions Act 1999, Schedule 12, paragraphs 67 and 68 and section 36A is substituted by the Welfare Reform and Pensions Act 1999, section 16.

(31) Sections 240, 241 and 424 are amended by the Enterprise Act 2002, Schedule 17, paragraphs 9, 26, 27 and 36 and, in the case of section 240, Schedule 26; sections 241 and 342 are amended by the Insolvency (No. 2) Act 1994 (c. 12), sections 1 and 2; sections 342B–342F were inserted by the Welfare Reform and Pensions Act 1999, section 15 and Schedule 12, paragraphs 70 and 71.

(32) Sections 36B and 36C are substituted by the Welfare Reform and Pensions Act 1999, section 16.

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- (a) the foreign representative shall not make an article 23 application except with the permission of—
 - (i) in the case of a proceeding under British insolvency law taking place in England and Wales, the High Court; or
 - (ii) in the case of a proceeding under British insolvency law taking place in Scotland, the Court of Session; and
- (b) references to “the court” in paragraphs 1, 5 and 7 of this article are references to the court in which that proceeding is taking place.

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 Great Britain are adequately protected.

8. Nothing in this article affects the right of a British insolvency officeholder to make an application under or in connection with any of the provisions referred to in paragraph 1 of this article.

9. Nothing in paragraph 1 of this article shall apply in respect of any preference given, floating charge created, alienation, assignment or relevant contributions (within the meaning of section 342A(5) of the Insolvency Act 1986) 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 Great Britain

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

CHAPTER IV

COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

Article 25. Cooperation and direct communication between a court of Great Britain 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 British 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 British insolvency officeholder and foreign courts or foreign representatives

1. In matters referred to in paragraph 1 of article 1, a British insolvency officeholder shall to the extent consistent with his other duties under the law of Great Britain, 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 British 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 British insolvency law after recognition of a foreign main proceeding

After recognition of a foreign main proceeding, the effects of a proceeding under British 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 Great Britain 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 Great Britain, should be administered in that proceeding.

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

Where a foreign proceeding and a proceeding under British 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—

- (a) when the proceeding in Great Britain 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 Great Britain; and
 - (ii) if the foreign proceeding is recognised in Great Britain as a foreign main proceeding, article 20 does not apply;
- (b) when the proceeding in Great Britain 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 Great Britain;
 - (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 Great Britain; and
 - (iii) any proceedings brought by the foreign representative by virtue of paragraph 1 of article 23 before the proceeding in Great Britain 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
- (c) 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

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the law of Great Britain, 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—

- (a) 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;
- (b) 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
- (c) 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 British insolvency law, proof that the debtor is unable to pay its debts or, in relation to Scotland, is apparently insolvent within the meaning given to those expressions under British insolvency law.

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 British 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.

SCHEDULE 2

Regulation 4

PROCEDURAL MATTERS IN ENGLAND AND WALES

PART 1

INTRODUCTORY PROVISIONS

Interpretation

1.—(1) In this Schedule—

“the 1986 Act” means the Insolvency Act 1986⁽³³⁾;

⁽³³⁾ 1986 c. 45.

“article 21 relief application” means an application to the court by a foreign representative under article 21(1) or (2) of the Model Law for relief;

“business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under or by virtue of the Banking and Financial Dealings Act 1971⁽³⁴⁾;

“CPR” means the Civil Procedure Rules 1998⁽³⁵⁾ and “CPR” followed by a Part or rule by number means the Part or rule with that number in those Rules;

“enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003⁽³⁶⁾;

“file in court” and “file with the court” means deliver to the court for filing;

“the Gazette” means the London Gazette;

“interim relief application” means an application to the court by a foreign representative under article 19 of the Model Law for interim relief;

“main proceedings” means proceedings opened in accordance with Article 3(1) of the EC Insolvency Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Insolvency Regulation;

“member State liquidator” means a person falling within the definition of liquidator in Article 2(b) of the EC Insolvency Regulation appointed in proceedings to which it applies in a member State other than the United Kingdom;

“the Model Law” means the UNCITRAL Model Law as set out in Schedule 1 to these Regulations;

“modification or termination order” means an order by the court pursuant to its powers under the Model Law modifying or terminating recognition of a foreign proceeding, the stay and suspension referred to in article 20(1) or any part of it or any relief granted under article 19 or 21 of the Model Law;

“originating application” means an application to the court which is not an application in pending proceedings before the court;

“ordinary application” means any application to the court other than an originating application;

“practice direction” means a direction as to the practice and procedure of any court within the scope of the CPR;

“recognition application” means an application to the court by a foreign representative in accordance with article 15 of the Model Law for an order recognising the foreign proceeding in which he has been appointed;

“recognition order” means an order by the court recognising a proceeding the subject of a recognition application as a foreign main proceeding or foreign non-main proceeding, as appropriate;

“relevant company” means a company within the meaning of section 735(1) of the Companies Act 1985⁽³⁷⁾ or an unregistered company within the meaning of Part 5 of the 1986 Act which is subject to a requirement imposed by virtue of section 690A⁽³⁸⁾, 691(1)⁽³⁹⁾ or 718⁽⁴⁰⁾ of the Companies Act 1985;

⁽³⁴⁾ 1971 c. 80.

⁽³⁵⁾ S.I. 1998/3132, relevant amendments are made by S.I. 1999/1008, 2000/221, 2000/2092, 2001/256, 2001/1769, 2001/2792, 2001/4015, 2002/2058, 2002/3219, 2003/1242, 2003/2113, 2003/3361, 2004/1306, 2004/2072, 2004/3419 and 2005/2292.

⁽³⁶⁾ 2003 c. 39.

⁽³⁷⁾ 1985 c. 6.

⁽³⁸⁾ Section 690A was inserted by S.I. 1992/3179.

⁽³⁹⁾ As amended by S.I. 2000/3373 and 2002/912.

⁽⁴⁰⁾ As amended by the Statute Law (Repeals) Act 2004 (c. 14) and S.I. 2001/1228.

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“review application” means an application to the court for a modification or termination order;

“the Rules” means the Insolvency Rules 1986⁽⁴¹⁾ and “Rule” followed by a number means the rule with that number in those Rules;

“secondary proceedings” means proceedings opened in accordance with Articles 3(2) and 3(3) of the EC Insolvency Regulation and falling within the definition of winding up proceedings in Article 2(c) of the EC Insolvency Regulation;

“territorial proceedings” means proceedings opened in accordance with Articles 3(2) and 3(4) of the EC Insolvency Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Insolvency Regulation.

(2) Expressions defined in the Model Law have the same meaning when used in this Schedule.

(3) In proceedings under these Regulations, “Registrar” means—

- (a) a Registrar in Bankruptcy of the High Court; and
- (b) where the proceedings are in a district registry, the district judge.

(4) References to the “venue” for any proceedings or attendance before the court, are to the time, date and place for the proceedings or attendance.

(5) References in this Schedule to ex parte hearings shall be construed as references to hearings without notice being served on any other party, and references to applications made ex parte as references to applications made without notice being served on any other party; and other references which include the expression “ex parte” shall be similarly construed.

(6) References in this Schedule to a debtor who is of interest to the Financial Services Authority are references to a debtor who—

- (a) is, or has been, an authorised person within the meaning of section 31 of the Financial Services and Markets Act 2000⁽⁴²⁾ (authorised persons);
- (b) is, or has been, an appointed representative within the meaning of section 39 (exemption of appointed representatives) of that Act; or
- (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

(7) In sub-paragraph (6) “the general prohibition” has the meaning given by section 19 of the Financial Services and Markets Act 2000 and the reference to a “regulated activity” must be construed in accordance with—

- (a) section 22 of that Act (classes of regulated activity and categories of investment);
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act (regulated activities).

(8) References in this Schedule to a numbered form are to the form that bears that number in Schedule 5.

⁽⁴¹⁾ S.I. 1986/1925, as amended by S.I. 1987/1919, 1989/397, 1991/495, 1993/602, 1995/586, 1999/359, 1999/1022, 2001/763, 2002/1307, 2002/2712, 2003/1730, 2004/584, 2004/1070 and 2005/527.

⁽⁴²⁾ 2000 c. 8.

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;
- (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.

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(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).

PART 3

APPLICATIONS FOR RELIEF UNDER THE MODEL LAW

Application for interim relief—affidavit in support

7.—(1) An interim relief application must be supported by an affidavit sworn by the foreign representative stating—

- (a) the grounds on which it is proposed that the interim relief applied for should be granted;
- (b) details of any proceeding under British insolvency law taking place in relation to the debtor;

- (c) whether, to the foreign representative's knowledge, an administrative receiver or receiver or manager of the debtor's property is acting in relation to the debtor;
- (d) an estimate of the value of the assets of the debtor in England and Wales in respect of which relief is applied for;
- (e) whether, to the best of the knowledge and belief of the foreign representative, the interests of the debtor's creditors (including any secured creditors or parties to hire-purchase agreements) and any other interested parties, including if appropriate the debtor, will be adequately protected;
- (f) whether, to the best of the foreign representative's knowledge and belief, the grant of any of the relief applied for would interfere with the administration of a foreign main proceeding; and
- (g) all other matters that in the opinion of the foreign representative will assist the court in deciding whether or not it is appropriate to grant the relief applied for.

Service of interim relief application not required

8. Unless the court otherwise directs, it shall not be necessary to serve the interim relief application on, or give notice of it to, any person.

The hearing and powers of court

9. On hearing an interim relief application the court may in addition to its powers under the Model Law to make an order granting interim relief under article 19 of the Model Law—

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

Application for relief under article 21 of the Model Law—affidavit in support

10. An article 21 relief application must be supported by an affidavit sworn by the foreign representative stating—

- (a) the grounds on which it is proposed that the relief applied for should be granted;
- (b) an estimate of the value of the assets of the debtor in England and Wales in respect of which relief is applied for;
- (c) in the case of an application by a foreign representative who is or believes that he is a representative of a foreign non-main proceeding, the reasons why the applicant believes that the relief relates to assets that, under the law of Great Britain, should be administered in the foreign non-main proceeding or concerns information required in that proceeding;
- (d) whether, to the best of the knowledge and belief of the foreign representative, the interests of the debtor's creditors (including any secured creditors or parties to hire-purchase agreements) and any other interested parties, including if appropriate the debtor, will be adequately protected; and
- (e) all other matters that in the opinion of the foreign representative will assist the court in deciding whether or not it is appropriate to grant the relief applied for.

The hearing and powers of court

11. On hearing an article 21 relief application the court may in addition to its powers under the Model Law to make an order granting relief under article 21 of the Model Law—

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

PART 4

REPLACEMENT OF FOREIGN REPRESENTATIVE

Application for confirmation of status of replacement foreign representative

12.—(1) This paragraph applies where following the making of a recognition order the foreign representative dies or for any other reason ceases to be the foreign representative in the foreign proceeding in relation to the debtor.

(2) In this paragraph “the former foreign representative” shall mean the foreign representative referred to in sub-paragraph (1).

(3) If a person has succeeded the former foreign representative or is otherwise holding office as foreign representative in the foreign proceeding in relation to the debtor, that person may apply to the court for an order confirming his status as replacement foreign representative for the purpose of proceedings under these Regulations.

Contents of application and affidavit in support

13.—(1) An application under paragraph 12(3) shall in addition to the matters required to be stated by paragraph 19(2) state the following matters—

- (a) the name of the replacement foreign representative and his address for service within England and Wales;
- (b) details of the circumstances in which the former foreign representative ceased to be foreign representative in the foreign proceeding in relation to the debtor (including the date on which he ceased to be the foreign representative);
- (c) details of his own appointment as replacement foreign representative in the foreign proceeding (including the date of that appointment).

(2) The application shall be accompanied by an affidavit in support sworn by the applicant which shall contain or have attached to it—

- (a) a certificate from the foreign court affirming—
 - (i) the cessation of the appointment of the former foreign representative as foreign representative; and
 - (ii) the appointment of the applicant as the foreign representative in the foreign proceeding; or
- (b) in the absence of such a certificate, any other evidence acceptable to the court of the matters referred to in paragraph (a); and
- (c) a translation in English of any document exhibited to the affidavit which is in a language other than English.

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

The hearing and powers of court

14.—(1) On hearing an application under paragraph 12(3) the court may—

- (a) make an order confirming the status of the replacement foreign representative as foreign representative for the purpose of proceedings under these Regulations;
 - (b) dismiss the application;
 - (c) adjourn the hearing conditionally or unconditionally;
 - (d) make an interim order;
 - (e) make any other order which the court thinks appropriate, including in particular an order making such provision as the court thinks fit with respect to matters arising in connection with the replacement of the foreign representative.
- (2) If the court dismisses the application, it may also if it thinks fit make an order terminating recognition of the foreign proceeding and—
- (a) such an order may include such provision as the court thinks fit with respect to matters arising in connection with the termination; and
 - (b) paragraph 15 shall not apply to such an order.

PART 5

REVIEWS OF COURT ORDERS

Reviews of court orders—where court makes order of its own motion

15.—(1) The court shall not of its own motion make a modification or termination order unless the foreign representative and the debtor have either—

- (a) had an opportunity of being heard on the question; or
- (b) consented in writing to such an order.

(2) Where the foreign representative or the debtor desires to be heard on the question of such an order, the court shall give all relevant parties notice of a venue at which the question will be considered and may give directions as to the issues on which it requires evidence.

(3) For the purposes of sub-paragraph (2), all relevant parties means the foreign representative, the debtor and any other person who appears to the court to have an interest justifying his being given notice of the hearing.

(4) If the court makes a modification or termination order, the order may include such provision as the court thinks fit with respect to matters arising in connection with the modification or termination.

Review application—affidavit in support

16. A review application must be supported by an affidavit sworn by the applicant stating—

- (a) the grounds on which it is proposed that the relief applied for should be granted;
- (b) whether, to the best of the knowledge and belief of the applicant, the interests of the debtor's creditors (including any secured creditors or parties to hire-purchase agreements) and any other interested parties, including if appropriate the debtor, will be adequately protected; and
- (c) all other matters that in the opinion of the applicant will assist the court in deciding whether or not it is appropriate to grant the relief applied for.

Hearing of review application and powers of the court

17. On hearing a review application, the court may in addition to its powers under the Model Law to make a modification or termination order—

- (a) dismiss the application;
- (b) adjourn the hearing conditionally or unconditionally;
- (c) make an interim order;
- (d) make any other order which the court thinks appropriate, including an order making such provision as the court thinks fit with respect to matters arising in connection with the modification or termination.

PART 6

COURT PROCEDURE AND PRACTICE WITH REGARD TO PRINCIPAL APPLICATIONS AND ORDERS

Preliminary and interpretation

18.—(1) This Part applies to—

- (a) any of the following applications made to the court under these Regulations—
 - (i) a recognition application;
 - (ii) an article 21 relief application;
 - (iii) an application under paragraph 12(3) for an order confirming the status of a replacement foreign representative;
 - (iv) a review application; and
- (b) any of the following orders made by the court under these Regulations—
 - (i) a recognition order;
 - (ii) an order granting interim relief under article 19 of the Model Law;
 - (iii) an order granting relief under article 21 of the Model Law;
 - (iv) an order confirming the status of a replacement foreign representative; and
 - (v) a modification or termination order.

Form and contents of application

19.—(1) Subject to sub-paragraph (4) every application to which this Part applies shall be an ordinary application and shall be in Form ML 5.

(2) Each application shall be in writing and shall state—

- (a) the names of the parties;
- (b) the nature of the relief or order applied for or the directions sought from the court;
- (c) the names and addresses of the persons (if any) on whom it is intended to serve the application;
- (d) the names and addresses of all those persons on whom these Regulations require the application to be served (so far as known to the applicant); and
- (e) the applicant's address for service.

(3) The application must be signed by the applicant if he is acting in person, or, when he is not so acting, by or on behalf of his solicitor.

(4) This paragraph does not apply to a recognition application.

Filing of application

20.—(1) The application (and all supporting documents) shall be filed with the court, with a sufficient number of copies for service and use as provided by paragraph 21(2).

(2) Each of the copies filed shall have applied to it the seal of the court and be issued to the applicant; and on each copy there shall be endorsed the date and time of filing.

(3) The court shall fix a venue for the hearing of the application and this also shall be endorsed on each copy of the application issued under sub-paragraph (2).

Service of the application

21.—(1) In sub-paragraph (2), references to the application are to a sealed copy of the application issued by the court together with any affidavit in support of it and any documents exhibited to the affidavit.

(2) Unless the court otherwise directs, the application shall be served on the following persons, unless they are the applicant—

- (a) on the foreign representative;
- (b) on the debtor;
- (c) if a British insolvency officeholder is acting in relation to the debtor, on him;
- (d) if any person has been appointed an administrative receiver of the debtor or, to the knowledge of the foreign representative, as a receiver or manager of the property of the debtor in England and Wales, on him;
- (e) if a member State liquidator has been appointed in main proceedings in relation to the debtor, on him;
- (f) if to the knowledge of the foreign representative a foreign representative has been appointed in any other foreign proceeding regarding the debtor, on him;
- (g) if there is pending in England and Wales a petition for the winding up or bankruptcy of the debtor, on the petitioner;
- (h) on any person who to the knowledge of the foreign representative is or may be entitled to appoint an administrator of the debtor under paragraph 14 of Schedule B1 to the 1986 Act⁽⁴³⁾ (appointment of administrator by holder of qualifying floating charge); and
- (i) if the debtor is a debtor who is of interest to the Financial Services Authority, on that Authority.

Manner in which service to be effected

22.—(1) Service of the application in accordance with paragraph 21(2) shall be effected by the applicant, or his solicitor, or by a person instructed by him or his solicitor, not less than 5 business days before the date fixed for the hearing.

(2) Service shall be effected by delivering the documents to a person's proper address or in such other manner as the court may direct.

⁽⁴³⁾ Schedule B1 was inserted by the Enterprise Act 2002 (c. 40), section 248(2) and Schedule 16.

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(3) A person's proper address is any which he has previously notified as his address for service within England and Wales; but if he has not notified any such address or if for any reason service at such address is not practicable, service may be effected as follows—

- (a) (subject to sub-paragraph (4)) in the case of a company incorporated in England and Wales, by delivery to its registered office;
- (b) in the case of any other person, by delivery to his usual or last known address or principal place of business in Great Britain.

(4) If delivery to a company's registered office is not practicable, service may be effected by delivery to its last known principal place of business in Great Britain.

(5) Delivery of documents to any place or address may be made by leaving them there or sending them by first class post in accordance with the provisions of paragraphs 70 and 75(1).

Proof of service

23.—(1) Service of the application shall be verified by an affidavit of service in Form ML 6, specifying the date on which, and the manner in which, service was effected.

(2) The affidavit of service, with a sealed copy of the application exhibited to it, shall be filed with the court as soon as reasonably practicable after service, and in any event not less than 1 business day before the hearing of the application.

In case of urgency

24. Where the case is one of urgency, the court may (without prejudice to its general power to extend or abridge time limits)—

- (a) hear the application immediately, either with or without notice to, or the attendance of, other parties; or
- (b) authorise a shorter period of service than that provided for by paragraph 22(1),

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the court thinks fit.

The hearing

25.—(1) At the hearing of the application, the applicant and any of the following persons (not being the applicant) may appear or be represented—

- (a) the foreign representative;
- (b) the debtor and, in the case of any debtor other than an individual, any one or more directors or other officers of the debtor, including—
 - (i) where applicable, any person registered under Part 23 of the Companies Act 1985⁽⁴⁴⁾ as authorised to represent the debtor in respect of its business in England and Wales;
 - (ii) in the case of a debtor which is a partnership, any person who is an officer of the partnership within the meaning of article 2 of the Insolvent Partnerships Order 1994⁽⁴⁵⁾;
- (c) if a British insolvency officeholder is acting in relation to the debtor, that person;
- (d) if any person has been appointed an administrative receiver of the debtor or as a receiver or manager of the property of the debtor in England and Wales, that person;

⁽⁴⁴⁾ 1985 c. 6.

⁽⁴⁵⁾ S.I. 1994/2421, to which there are amendments not relevant to these Regulations.

- (e) if a member State liquidator has been appointed in main proceedings in relation to the debtor, that person;
- (f) if a foreign representative has been appointed in any other foreign proceeding regarding the debtor, that person;
- (g) any person who has presented a petition for the winding up or bankruptcy of the debtor in England and Wales;
- (h) any person who is or may be entitled to appoint an administrator of the debtor under paragraph 14 of Schedule B1 to the 1986 Act (appointment of administrator by holder of qualifying floating charge);
- (i) if the debtor is a debtor who is of interest to the Financial Services Authority, that Authority; and
- (j) with the permission of the court, any other person who appears to have an interest justifying his appearance.

Notification and advertisement of order

26.—(1) If the court makes any of the orders referred to in paragraph 18(1)(b), it shall as soon as reasonably practicable send two sealed copies of the order to the foreign representative.

(2) The foreign representative shall send a sealed copy of the order as soon as reasonably practicable to the debtor.

(3) The foreign representative shall, as soon as reasonably practicable after the date of the order give notice of the making of the order—

- (a) if a British insolvency officeholder is acting in relation to the debtor, to him;
- (b) if any person has been appointed an administrative receiver of the debtor or, to the knowledge of the foreign representative, as a receiver or manager of the property of the debtor, to him;
- (c) if a member State liquidator has been appointed in main proceedings in relation to the debtor, to him;
- (d) if to his knowledge a foreign representative has been appointed in any other foreign proceeding regarding the debtor, that person;
- (e) if there is pending in England and Wales a petition for the winding up or bankruptcy of the debtor, to the petitioner;
- (f) to any person who to his knowledge is or may be entitled to appoint an administrator of the debtor under paragraph 14 of Schedule B1 to the 1986 Act (appointment of administrator by holder of qualifying floating charge);
- (g) if the debtor is a debtor who is of interest to the Financial Services Authority, to that Authority;
- (h) to such other persons as the court may direct.

(4) In the case of an order recognising a foreign proceeding in relation to the debtor as a foreign main proceeding, or an order under article 19 or 21 of the Model Law staying execution, distress or other legal process against the debtor's assets, the foreign representative shall also, as soon as reasonably practicable after the date of the order give notice of the making of the order—

- (a) to any enforcement officer or other officer who to his knowledge is charged with an execution or other legal process against the debtor or its property; and
- (b) to any person who to his knowledge is distraining against the debtor or its property.

(5) In the application of sub-paragraphs (3) and (4) the references to property shall be taken as references to property situated within England and Wales.

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(6) Where the debtor is a relevant company, the foreign representative shall send notice of the making of the order to the registrar of companies before the end of the period of 5 business days beginning with the date of the order. The notice to the registrar of companies shall be in Form ML 7.

(7) The foreign representative shall advertise the making of the following orders once in the Gazette and once in such newspaper as he thinks most appropriate for ensuring that the making of the order comes to the notice of the debtor's creditors—

- (a) a recognition order;
- (b) an order confirming the status of a replacement foreign representative; and
- (c) a modification or termination order which modifies or terminates recognition of a foreign proceeding,

and the advertisement shall be in Form ML 8.

Adjournment of hearing; directions

27.—(1) This paragraph applies in any case where the court exercises its power to adjourn the hearing of the application.

(2) The court may at any time give such directions as it thinks fit as to—

- (a) service or notice of the application on or to any person, whether in connection with the venue of a resumed hearing or for any other purpose;
- (b) the procedure on the application;
- (c) the manner in which any evidence is to be adduced at a resumed hearing and in particular as to—
 - (i) the taking of evidence wholly or in part by affidavit or orally;
 - (ii) the cross-examination on the hearing in court or in chambers, of any deponents to affidavits;
- (d) the matters to be dealt with in evidence.

PART 7

APPLICATIONS TO THE CHIEF LAND REGISTRAR

Applications to Chief Land Registrar following court orders

28.—(1) Where the court makes any order in proceedings under these Regulations which is capable of giving rise to an application or applications under the Land Registration Act 2002⁽⁴⁶⁾, the foreign representative shall, as soon as reasonably practicable after the making of the order or at the appropriate time, make the appropriate application or applications to the Chief Land Registrar.

(2) In sub-paragraph (1) an appropriate application is—

- (a) in any case where—
 - (i) a recognition order in respect of a foreign main proceeding or an order suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor is made, and
 - (ii) the debtor is the registered proprietor of a registered estate or registered charge and holds it for his sole benefit,

(46) 2002 c. 9.

an application under section 43 of the Land Registration Act 2002 for a restriction of the kind referred to in sub-paragraph (3) to be entered in the relevant registered title; and

- (b) in any other case, an application under the Land Registration Act 2002 for such an entry in the register as shall be necessary to reflect the effect of the court order under these Regulations.

(3) The restriction referred to in sub-paragraph (2)(a) is a restriction to the effect that no disposition of the registered estate or registered charge (as appropriate) by the registered proprietor of that estate or charge is to be completed by registration within the meaning of section 27 of the Land Registration Act 2002 except under a further order of the court.

PART 8

MISFEASANCE

Misfeasance by foreign representative

29.—(1) The court may examine the conduct of a person who—

- (a) is or purports to be the foreign representative in relation to a debtor; or
- (b) has been or has purported to be the foreign representative in relation to a debtor.

(2) An examination under this paragraph may be held only on the application of—

- (a) a British insolvency officeholder acting in relation to the debtor;
- (b) a creditor of the debtor; or
- (c) with the permission of the court, any other person who appears to have an interest justifying an application.

(3) An application under sub-paragraph (2) must allege that the foreign representative—

- (a) has misapplied or retained money or other property of the debtor;
- (b) has become accountable for money or other property of the debtor;
- (c) has breached a fiduciary or other duty in relation to the debtor; or
- (d) has been guilty of misfeasance.

(4) On an examination under this paragraph into a person's conduct the court may order him—

- (a) to repay, restore or account for money or property;
- (b) to pay interest;
- (c) to contribute a sum to the debtor's property by way of compensation for breach of duty or misfeasance.

(5) In sub-paragraph (3) "foreign representative" includes a person who purports or has purported to be a foreign representative in relation to a debtor.

PART 9

GENERAL PROVISION AS TO COURT PROCEDURE AND PRACTICE

Principal court rules and practice to apply with modifications

30.—(1) The CPR and the practice and procedure of the High Court (including any practice direction) shall apply to proceedings under these Regulations in the High Court with such

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modifications as may be necessary for the purpose of giving effect to the provisions of these Regulations and in the case of any conflict between any provision of the CPR and the provisions of these Regulations, the latter shall prevail.

(2) All proceedings under these Regulations shall be allocated to the multi-track for which CPR Part 29 (the multi-track) makes provision, and accordingly those provisions of the CPR which provide for allocation questionnaires and track allocation shall not apply.

Applications other than the principal applications—preliminary

31. Paragraphs 32 to 37 of this Part apply to any application made to the court under these Regulations, except any of the applications referred to in paragraph 18(1)(a).

Form and contents of application

32.—(1) Every application shall be in the form appropriate to the application concerned. Forms ML 4 and ML 5 shall be used for an originating application and an ordinary application respectively under these Regulations.

(2) Each application shall be in writing and shall state—

- (a) the names of the parties;
- (b) the nature of the relief or order applied for or the directions sought from the court;
- (c) the names and addresses of the persons (if any) on whom it is intended to serve the application or that no person is intended to be served;
- (d) where these Regulations require that notice of the application is to be given to specified persons, the names and addresses of all those persons (so far as known to the applicant); and
- (e) the applicant's address for service.

(3) An originating application shall set out the grounds on which the applicant claims to be entitled to the relief or order sought.

(4) The application must be signed by the applicant if he is acting in person or, when he is not so acting, by or on behalf of his solicitor.

Filing and service of application

33.—(1) The application shall be filed in court, accompanied by one copy and a number of additional copies equal to the number of persons who are to be served with the application.

(2) Subject as follows in this paragraph and in paragraph 34, or unless the court otherwise orders, upon the presentation of the documents mentioned in sub-paragraph (1), the court shall fix a venue for the application to be heard.

(3) Unless the court otherwise directs, the applicant shall serve a sealed copy of the application, endorsed with the venue of the hearing, on the respondent named in the application (or on each respondent if more than one).

(4) The court may give any of the following directions—

- (a) that the application be served upon persons other than those specified by the relevant provision of these Regulations;
- (b) that the giving of notice to any person may be dispensed with;
- (c) that notice be given in some way other than that specified in sub-paragraph (3).

(5) Subject to sub-paragraph (6), the application must be served at least 10 business days before the date fixed for the hearing.

(6) Where the case is one of urgency, the court may (without prejudice to its general power to extend or abridge time limits)—

- (a) hear the application immediately, either with or without notice to, or the attendance of, other parties; or
- (b) authorise a shorter period of service than that provided for by sub-paragraph (5);

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the court thinks fit.

Other hearings *ex parte*

34.—(1) Where the relevant provisions of these Regulations do not require service of the application on, or notice of it to be given to, any person, the court may hear the application *ex parte*.

(2) Where the application is properly made *ex parte*, the court may hear it forthwith, without fixing a venue as required by paragraph 33(2).

(3) Alternatively, the court may fix a venue for the application to be heard, in which case paragraph 33 applies (so far as relevant).

Use of affidavit evidence

35.—(1) In any proceedings evidence may be given by affidavit unless the court otherwise directs; but the court may, on the application of any party, order the attendance for cross-examination of the person making the affidavit.

(2) Where, after such an order has been made, the person in question does not attend, his affidavit shall not be used in evidence without the permission of the court.

Filing and service of affidavits

36.—(1) Unless the court otherwise allows—

- (a) if the applicant intends to rely at the first hearing on affidavit evidence, he shall file the affidavit or affidavits (if more than one) in court and serve a copy or copies on the respondent, not less than 10 business days before the date fixed for the hearing; and
- (b) where a respondent to an application intends to oppose it and to rely for that purpose on affidavit evidence, he shall file the affidavit or affidavits (if more than one) in court and serve a copy or copies on the applicant, not less than 5 business days before the date fixed for the hearing.

(2) Any affidavit may be sworn by the applicant or by the respondent or by some other person possessing direct knowledge of the subject matter of the application.

Adjournment of hearings; directions

37. The court may adjourn the hearing of an application on such terms (if any) as it thinks fit and in the case of such an adjournment paragraph 27(2) shall apply.

Transfer of proceedings within the High Court

38.—(1) The High Court may, having regard to the criteria in CPR rule 30.3(2), order proceedings in the Royal Courts of Justice or a district registry, or any part of such proceedings (such as an application made in the proceedings), to be transferred—

- (a) from the Royal Courts of Justice to a district registry; or
- (b) from a district registry to the Royal Courts of Justice or to another district registry.

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(2) The High Court may order proceedings before a district registry for the detailed assessment of costs to be transferred to another district registry if it is satisfied that the proceedings could be more conveniently or fairly taken in that other district registry.

(3) An application for an order under sub-paragraph (1) or (2) must, if the claim is proceeding in a district registry, be made to that registry.

(4) A transfer of proceedings under this paragraph may be ordered—

(a) by the court of its own motion; or

(b) on the application of a person appearing to the court to have an interest in the proceedings.

(5) Where the court orders proceedings to be transferred, the court from which they are to be transferred must give notice of the transfer to all the parties.

(6) An order made before the transfer of the proceedings shall not be affected by the order to transfer.

Transfer of proceedings—actions to avoid acts detrimental to creditors

39.—(1) If—

(a) in accordance with article 23(6) of the Model Law, the court grants a foreign representative permission to make an application in accordance with paragraph 1 of that article; and

(b) the relevant proceedings under British insolvency law taking place regarding the debtor are taking place in the county court,

the court may also order those proceedings to be transferred to the High Court.

(2) Where the court makes an order transferring proceedings under sub-paragraph (1)—

(a) it shall send sealed copies of the order to the county court from which the proceedings are to be transferred, and to the official receivers attached to that court and the High Court respectively; and

(b) the county court shall send the file of the proceedings to the High Court.

(3) Following compliance with this paragraph, if the official receiver attached to the court to which the proceedings are transferred is not already, by virtue of directions given by the Secretary of State under section 399(6)(a) of the 1986 Act, the official receiver in relation to those proceedings, he becomes, in relation to those proceedings, the official receiver in place of the official receiver attached to the other court concerned.

Shorthand writers

40.—(1) The judge may in writing nominate one or more persons to be official shorthand writers to the court.

(2) The court may, at any time in the course of proceedings under these Regulations, appoint a shorthand writer to take down the evidence of a person examined in pursuance of a court order under article 19 or 21 of the Model Law.

(3) The remuneration of a shorthand writer appointed in proceedings under these Regulations shall be paid by the party at whose instance the appointment was made or otherwise as the court may direct.

(4) Any question arising as to the rates of remuneration payable under this paragraph shall be determined by the court in its discretion.

Enforcement procedures

41. In any proceedings under these Regulations, orders of the court may be enforced in the same manner as a judgment to the same effect.

Title of proceedings

42.—(1) Every proceeding under these Regulations shall, with any necessary additions, be intitled “IN THE MATTER OF . . . (naming the debtor to which the proceedings relate) AND IN THE MATTER OF THE CROSS-BORDER INSOLVENCY REGULATIONS 2006”.

(2) Sub-paragraph (1) shall not apply in respect of any form prescribed under these Regulations.

Court records

43. The court shall keep records of all proceedings under these Regulations, and shall cause to be entered in the records the taking of any step in the proceedings, and such decisions of the court in relation thereto, as the court thinks fit.

Inspection of records

44.—(1) Subject as follows, the court’s records of proceedings under these Regulations shall be open to inspection by any person.

(2) If in the case of a person applying to inspect the records the Registrar is not satisfied as to the propriety of the purpose for which inspection is required, he may refuse to allow it. That person may then apply forthwith and *ex parte* to the judge, who may refuse the inspection or allow it on such terms as he thinks fit.

(3) The decision of the judge under sub-paragraph (2) is final.

File of court proceedings

45.—(1) In respect of all proceedings under these Regulations, the court shall open and maintain a file for each case; and (subject to directions of the Registrar) all documents relating to such proceedings shall be placed on the relevant file.

(2) No proceedings under these Regulations shall be filed in the Central Office of the High Court.

Right to inspect the file

46.—(1) In the case of any proceedings under these Regulations, the following have the right, at all reasonable times, to inspect the court’s file of the proceedings—

- (a) the Secretary of State;
- (b) the person who is the foreign representative in relation to the proceedings;
- (c) if a foreign representative has been appointed in any other foreign proceeding regarding the debtor to which the proceedings under these Regulations relate, that person;
- (d) if a British insolvency officeholder is acting in relation to the debtor to which the proceedings under these Regulations relate, that person;
- (e) any person stating himself in writing to be a creditor of the debtor to which the proceedings under these Regulations relate;
- (f) if a member State liquidator has been appointed in relation to the debtor to which the proceedings under these Regulations relate, that person; and

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- (g) the debtor to which the proceedings under these Regulations relate, or, if that debtor is a company, corporation or partnership, every person who is, or at any time has been—
- (i) a director or officer of the debtor;
 - (ii) a member of the debtor; or
 - (iii) where applicable, a person registered under Part 23 of the Companies Act 1985⁽⁴⁷⁾ as authorised to represent the debtor in respect of its business in England and Wales.
- (2) The right of inspection conferred as above on any person may be exercised on his behalf by a person properly authorised by him.
- (3) Any person may, by leave of the court, inspect the file.
- (4) The right of inspection conferred by this paragraph is not exercisable in the case of documents, or parts of documents, as to which the court directs (either generally or specially) that they are not to be made open to inspection without the court's permission.
- An application for a direction of the court under this sub-paragraph may be made by the foreign representative or by any party appearing to the court to have an interest.
- (5) If, for the purpose of powers conferred by the 1986 Act or the Rules, the Secretary of State or the official receiver wishes to inspect the file of any proceedings under these Regulations, and requests the transmission of the file, the court shall comply with such request (unless the file is for the time being in use for the court's purposes).
- (6) Paragraph 44(2) and (3) apply in respect of the court's file of any proceedings under these Regulations as they apply in respect of court records.
- (7) Where these Regulations confer a right for any person to inspect documents on the court's file of proceedings, the right includes that of taking copies of those documents on payment of the fee chargeable under any order made under section 92 of the Courts Act 2003⁽⁴⁸⁾.

Copies of court orders

- 47.**—(1) In any proceedings under these Regulations, any person who under paragraph 46 has a right to inspect documents on the court file also has the right to require the foreign representative in relation to those proceedings to furnish him with a copy of any court order in the proceedings.
- (2) Sub-paragraph (1) does not apply if a copy of the court order has been served on that person or notice of the making of the order has been given to that person under other provisions of these Regulations.

Filing of Gazette notices and advertisements

- 48.**—(1) In any court in which proceedings under these Regulations are pending, an officer of the court shall file a copy of every issue of the Gazette which contains an advertisement relating to those proceedings.
- (2) Where there appears in a newspaper an advertisement relating to proceedings under these Regulations pending in any court, the person inserting the advertisement shall file a copy of it in that court.
- The copy of the advertisement shall be accompanied by, or have endorsed on it, such particulars as are necessary to identify the proceedings and the date of the advertisement's appearance.

⁽⁴⁷⁾ 1985 c. 6.

⁽⁴⁸⁾ 2003 c. 39; section 92 is amended by the Constitutional Reform Act 2005 (c. 4), Schedule 11, paragraph 4 (from a day to be appointed) and Schedule 4, paragraphs 308 and 345.

(3) An officer of any court in which proceedings under these Regulations are pending shall from time to time file a memorandum giving the dates of, and other particulars relating to, any notice published in the Gazette, and any newspaper advertisements, which relate to proceedings so pending.

The officer's memorandum is prima facie evidence that any notice or advertisement mentioned in it was duly inserted in the issue of the newspaper or the Gazette which is specified in the memorandum.

Persons incapable of managing their affairs—introductory

49.—(1) Paragraphs 50 to 52 apply where in proceedings under these Regulations it appears to the court that a person affected by the proceedings is one who is incapable of managing and administering his property and affairs either—

- (a) by reason of mental disorder within the meaning of the Mental Health Act 1983⁽⁴⁹⁾; or
- (b) due to physical affliction or disability.

(2) The person concerned is referred to as “the incapacitated person”.

Appointment of another person to act

50.—(1) The court may appoint such person as it thinks fit to appear for, represent or act for the incapacitated person.

(2) The appointment may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the incapacitated person might have exercised but for his incapacity.

(3) The court may make the appointment either of its own motion or on application by—

- (a) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the incapacitated person; or
- (b) any relative or friend of the incapacitated person who appears to the court to be a proper person to make the application; or
- (c) in any case where the incapacitated person is the debtor, the foreign representative.

(4) Application under sub-paragraph (3) may be made *ex parte*; but the court may require such notice of the application as it thinks necessary to be given to the person alleged to be incapacitated, or any other person, and may adjourn the hearing of the application to enable the notice to be given.

Affidavit in support of application

51. An application under paragraph 50(3) shall be supported by an affidavit of a registered medical practitioner as to the mental or physical condition of the incapacitated person.

Service of notices following appointment

52. Any notice served on, or sent to, a person appointed under paragraph 50 has the same effect as if it had been served on, or given to, the incapacitated person.

Rights of audience

53. Rights of audience in proceedings under these Regulations are the same as obtain in proceedings under British insolvency law.

(49) 1983 c. 20.

Right of attendance

54.—(1) Subject as follows, in proceedings under these Regulations, any person stating himself in writing, in records kept by the court for that purpose, to be a creditor of the debtor to which the proceedings relate, is entitled at his own cost, to attend in court or in chambers at any stage of the proceedings.

(2) Attendance may be by the person himself, or his solicitor.

(3) A person so entitled may request the court in writing to give him notice of any step in the proceedings; and, subject to his paying the costs involved and keeping the court informed as to his address, the court shall comply with the request.

(4) If the court is satisfied that the exercise by a person of his rights under this paragraph has given rise to costs for the estate of the debtor which would not otherwise have been incurred and ought not, in the circumstances, to fall on that estate, it may direct that the costs be paid by the person concerned, to an amount specified.

The rights of that person under this paragraph shall be in abeyance so long as those costs are not paid.

(5) The court may appoint one or more persons to represent the creditors of the debtor to have the rights conferred by this paragraph, instead of the rights being exercised by any or all of them individually.

If two or more persons are appointed under this paragraph to represent the same interest, they must (if at all) instruct the same solicitor.

Right of attendance for member State liquidator

55. For the purposes of paragraph 54(1), a member State liquidator appointed in relation to a debtor subject to proceedings under these Regulations shall be deemed to be a creditor.

British insolvency officeholder's solicitor

56. Where in any proceedings the attendance of the British insolvency officeholder's solicitor is required, whether in court or in chambers, the British insolvency officeholder himself need not attend, unless directed by the court.

Formal defects

57. No proceedings under these Regulations shall be invalidated by any formal defect or by any irregularity, unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

Restriction on concurrent proceedings and remedies

58. Where in proceedings under these Regulations the court makes an order staying any action, execution or other legal process against the property of a debtor, service of the order may be effected by sending a sealed copy of the order to whatever is the address for service of the claimant or other party having the carriage of the proceedings to be stayed.

Affidavits

59.—(1) Where in proceedings under these Regulations, an affidavit is made by any British insolvency officeholder acting in relation to the debtor, he shall state the capacity in which he makes it, the position which he holds and the address at which he works.

(2) Any officer of the court duly authorised in that behalf, may take affidavits and declarations.

(3) Subject to sub-paragraph (4), where these Regulations provide for the use of an affidavit, a witness statement verified by a statement of truth may be used as an alternative.

(4) Sub-paragraph (3) does not apply to paragraphs 4 (affidavit in support of recognition application), 7 (affidavit in support of interim relief application), 10 (affidavit in support of article 21 relief application), 13 (affidavit in support of application regarding status of replacement foreign representative) and 16 (affidavit in support of review application).

Security in court

60.—(1) Where security has to be given to the court (otherwise than in relation to costs), it may be given by guarantee, bond or the payment of money into court.

(2) A person proposing to give a bond as security shall give notice to the party in whose favour the security is required, and to the court, naming those who are to be sureties to the bond.

(3) The court shall forthwith give notice to the parties concerned of a venue for the execution of the bond and the making of any objection to the sureties.

(4) The sureties shall make an affidavit of their sufficiency (unless dispensed with by the party in whose favour the security is required) and shall, if required by the court, attend the court to be cross-examined.

Further information and disclosure

61.—(1) Any party to proceedings under these Regulations may apply to the court for an order—

(a) that any other party—

(i) clarify any matter which is in dispute in the proceedings; or

(ii) give additional information in relation to any such matter,
in accordance with CPR Part 18 (further information); or

(b) to obtain disclosure from any other party in accordance with CPR Part 31 (disclosure and inspection of documents).

(2) An application under this paragraph may be made without notice being served on any other party.

Office copies of documents

62.—(1) Any person who has under these Regulations the right to inspect the court file of proceedings may require the court to provide him with an office copy of any document from the file.

(2) A person's right under this paragraph may be exercised on his behalf by his solicitor.

(3) An office copy provided by the court under this paragraph shall be in such form as the Registrar thinks appropriate, and shall bear the court's seal.

“The court”

63.—(1) Anything to be done in proceedings under these Regulations by, to or before the court may be done by, to or before a judge of the High Court or a Registrar.

(2) Where these Regulations require or permit the court to perform an act of a formal or administrative character, that act may be performed by a court officer.

PART 10

COSTS AND DETAILED ASSESSMENT

Requirement to assess costs by the detailed procedure

64. In any proceedings before the court, the court may order costs to be decided by detailed assessment.

Costs of officers charged with execution of writs or other process

65.—(1) Where by virtue of article 20 of the Model Law or a court order under article 19 or 21 of the Model Law an enforcement officer, or other officer, charged with execution of the writ or other process—

(a) is required to deliver up goods or money; or

(b) has deducted costs from the proceeds of an execution or money paid to him,

the foreign representative may require in writing that the amount of the enforcement officer's or other officer's bill of costs be decided by detailed assessment.

(2) Where such a requirement is made, if the enforcement officer or other officer does not commence detailed assessment proceedings within 3 months of the requirement under subparagraph (1), or within such further time as the court, on application, may permit, any claim by the enforcement officer or other officer in respect of his costs is forfeited by such failure to commence proceedings.

(3) Where, in the case of a deduction of costs by the enforcement officer or other officer, any amount deducted is disallowed at the conclusion of the detailed assessment proceedings, the enforcement officer or other officer shall forthwith pay a sum equal to that disallowed to the foreign representative for the benefit of the debtor.

Final costs certificate

66.—(1) A final costs certificate of the costs officer is final and conclusive as to all matters which have not been objected to in the manner provided for under the rules of the court.

(2) Where it is proved to the satisfaction of a costs officer that a final costs certificate has been lost or destroyed, he may issue a duplicate.

PART 11

APPEALS IN PROCEEDINGS UNDER THESE REGULATIONS

Appeals from court orders

67.—(1) An appeal from a decision of a Registrar of the High Court in proceedings under these Regulations lies to a single judge of the High Court; and an appeal from a decision of that judge on such an appeal lies, with the permission of the Court of Appeal, to the Court of Appeal.

(2) An appeal from a decision of a judge of the High Court in proceedings under these Regulations which is not a decision on an appeal made to him under sub-paragraph (1) lies, with the permission of that judge or the Court of Appeal, to the Court of Appeal.

Procedure on appeals

68.—(1) Subject as follows, CPR Part 52 (appeals to the Court of Appeal) and its practice direction apply to appeals in proceedings under these Regulations.

(2) The provisions of Part 4 of the practice direction on Insolvency Proceedings supporting CPR Part 49 relating to first appeals (as defined in that Part) apply in relation to any appeal to a single judge of the High Court under paragraph 67, with any necessary modifications.

(3) In proceedings under these Regulations, the procedure under CPR Part 52 is by ordinary application and not by appeal notice.

PART 12

GENERAL

Notices

69.—(1) All notices required or authorised by or under these Regulations to be given must be in writing, unless it is otherwise provided, or the court allows the notice to be given in some other way.

(2) Where in proceedings under these Regulations a notice is required to be sent or given by any person, the sending or giving of it may be proved by means of a certificate by that person that he posted the notice, or instructed another person (naming him) to do so.

(3) A certificate under this paragraph may be endorsed on a copy or specimen of the notice to which it relates.

“Give notice” etc.

70.—(1) A reference in these Regulations to giving notice, or to delivering, sending or serving any document, means that the notice or document may be sent by post.

(2) Subject to paragraph 75, any form of post may be used.

(3) Personal service of a document is permissible in all cases.

(4) Notice of the venue fixed for an application may be given by service of the sealed copy of the application under paragraph 33(3).

Notice, etc. to solicitors

71. Where in proceedings under these Regulations a notice or other document is required or authorised to be given to a person, it may, if he has indicated that his solicitor is authorised to accept service on his behalf, be given instead to the solicitor.

Notice to joint British insolvency officeholders

72. Where two or more persons are acting jointly as the British insolvency officeholder in proceedings under British insolvency law, delivery of a document to one of them is to be treated as delivery to them all.

Forms for use in proceedings under these Regulations

73.—(1) The forms contained in Schedule 5 to these Regulations shall be used in, and in connection with, proceedings under these Regulations.

(2) The forms shall be used with such variations, if any, as the circumstances may require.

Time limits

74.—(1) The provisions of CPR Rule 2.8 (time) apply, as regards computation of time, to anything required or authorised to be done by these Regulations.

(2) The provisions of CPR rule 3.1(2)(a) (the court's general powers of management) apply so as to enable the court to extend or shorten the time for compliance with anything required or authorised to be done by these Regulations.

Service by post

75.—(1) For a document to be properly served by post, it must be contained in an envelope addressed to the person on whom service is to be effected, and pre-paid for first class post.

(2) A document to be served by post may be sent to the last known address of the person to be served.

(3) Where first class post is used, the document is treated as served on the second business day after the date of posting, unless the contrary is shown.

(4) The date of posting is presumed, unless the contrary is shown, to be the date shown in the post-mark on the envelope in which the document is contained.

General provisions as to service and notice

76. Subject to paragraphs 22, 75 and 77, CPR Part 6 (service of documents) applies as regards any matter relating to the service of documents and the giving of notice in proceedings under these Regulations.

Service outside the jurisdiction

77.—(1) Sections III and IV of CPR Part 6 (service out of the jurisdiction and service of process of foreign court) do not apply in proceedings under these Regulations.

(2) Where for the purposes of proceedings under these Regulations any process or order of the court, or other document, is required to be served on a person who is not in England and Wales, the court may order service to be effected within such time, on such person, at such place and in such manner as it thinks fit, and may also require such proof of service as it thinks fit.

(3) An application under this paragraph shall be supported by an affidavit stating—

(a) the grounds on which the application is made; and

(b) in what place or country the person to be served is, or probably may be found.

False claim of status as creditor

78.—(1) Rule 12.18 (false claim of status as creditor, etc) shall apply with any necessary modifications in any case where a person falsely claims the status of a creditor of a debtor, with the intention of obtaining a sight of documents whether on the court's file or in the hands of the foreign representative or other person, which he has not under these Regulations any right to inspect.

(2) Rule 21.21 and Schedule 5 of the Rules shall apply to an offence under Rule 12.18 as applied by sub-paragraph (1) as they apply to an offence under Rule 12.18.

The Gazette

79.—(1) A copy of the Gazette containing any notice required by these Regulations to be gazetted is evidence of any fact stated in the notice.

(2) In the case of an order of the court notice of which is required by these Regulations to be gazetted, a copy of the Gazette containing the notice may in any proceedings be produced as conclusive evidence that the order was made on the date specified in the notice.

SCHEDULE 3

Regulation 5

PROCEDURAL MATTERS IN SCOTLAND

PART 1

INTERPRETATION

Interpretation

1.—(1) In this Schedule—

“the 1986 Act” means the Insolvency Act 1986⁽⁵⁰⁾;

“article 21 remedy application” means an application to the court by a foreign representative under article 21(1) or (2) of the Model Law for remedy;

“business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in Scotland under or by virtue of the Banking and Financial Dealings Act 1971⁽⁵¹⁾;

“the Gazette” means the Edinburgh Gazette;

“main proceedings” means proceedings opened in accordance with Article 3(1) of the EC Insolvency Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Insolvency Regulation;

“member State liquidator” means a person falling within the definition of liquidator in Article 2(b) of the EC Insolvency Regulation appointed in proceedings to which it applies in a member State other than the United Kingdom;

“the Model Law” means the UNCITRAL Model Law as set out in Schedule 1 to these Regulations;

“modification or termination order” means an order by the court pursuant to its powers under the Model Law modifying or terminating recognition of a foreign proceeding, the sist, restraint or suspension referred to in article 20(1) or any part of it or any remedy granted under article 19 or 21 of the Model Law;

“recognition application” means an application to the court by a foreign representative in accordance with article 15 of the Model Law for an order recognising the foreign proceeding in which he has been appointed;

“recognition order” means an order by the court recognising a proceeding the subject of a recognition application as a foreign main proceeding or foreign non-main proceeding, as appropriate;

“relevant company” means a company within the meaning of section 735(1) of the Companies Act 1985⁽⁵²⁾ or an unregistered company within the meaning of Part 5 of the 1986 Act which

⁽⁵⁰⁾ 1986 c. 45.

⁽⁵¹⁾ 1971 c. 80.

⁽⁵²⁾ 1985 c. 6.

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is subject to a requirement imposed by virtue of section 690A(53), 691(1)(54) or 718(55) of the Companies Act 1985;

“review application” means an application to the court for a modification or termination order.

(2) Expressions defined in the Model Law have the same meaning when used in this Schedule.

(3) References in this Schedule to a debtor who is of interest to the Financial Services Authority are references to a debtor who—

(a) is, or has been, an authorised person within the meaning of section 31 of the Financial Services and Markets Act 2000(56) (authorised persons);

(b) is, or has been, an appointed representative within the meaning of section 39 (exemption of appointed representatives) of that Act; or

(c) is carrying, or has carried on, a regulated activity in contravention of the general prohibition.

(4) In sub-paragraph (3) “the general prohibition” has the meaning given by section 19 of the Financial Services and Markets Act 2000 and the reference to a “regulated activity” must be construed in accordance with—

(a) section 22 of that Act (classes of regulated activity and categories of investment);

(b) any relevant order under that section; and

(c) Schedule 2 to that Act (regulated activities).

(5) References in this Schedule to a numbered form are to the form that bears that number in Schedule 5.

PART 2

THE FOREIGN REPRESENTATIVE

Application for confirmation of status of replacement foreign representative

2.—(1) This paragraph applies where following the making of a recognition order the foreign representative dies or for any other reason ceases to be the foreign representative in the foreign proceedings in relation to the debtor.

(2) In this paragraph “the former foreign representative” means the foreign representative referred to in sub-paragraph (1).

(3) If a person has succeeded the former foreign representative or is otherwise holding office as foreign representative in the foreign proceeding in relation to the debtor, that person may apply to the court for an order confirming his status as replacement foreign representative for the purpose of proceedings under these Regulations.

(4) If the court dismisses an application under sub-paragraph (3) then it may also, if it thinks fit, make an order terminating recognition of the foreign proceeding and—

(a) such an order may include such provision as the court thinks fit with respect to matters arising in connection with the termination; and

(b) paragraph 5 shall not apply to such an order.

(53) Section 690A was inserted by S.I. 1992/3179.

(54) As amended by S.I. 2000/3373 and 2002/912.

(55) As amended by the Statute Law (Repeals) Act 2004 (c. 14) and S.I. 2001/1228.

(56) 2000 c. 8.

Misfeasance by a foreign representative

- 3.—(1) The court may examine the conduct of a person who—
- (a) is or purports to be the foreign representative in relation to a debtor, or
 - (b) has been or has purported to be the foreign representative in relation to a debtor.
- (2) An examination under this paragraph may be held only on the application of—
- (a) a British insolvency officeholder acting in relation to the debtor,
 - (b) a creditor of the debtor, or
 - (c) with the permission of the court, any other person who appears to have an interest justifying an application.
- (3) An application under sub-paragraph (2) must allege that the foreign representative—
- (a) has misapplied or retained money or other property of the debtor,
 - (b) has become accountable for money or other property of the debtor,
 - (c) has breached a fiduciary duty or other duty in relation to the debtor, or
 - (d) has been guilty of misfeasance.
- (4) On an examination under this paragraph into a person’s conduct the court may order him—
- (a) to repay, restore or account for money or property;
 - (b) to pay interest;
 - (c) to contribute a sum to the debtor’s property by way of compensation for breach of duty or misfeasance.
- (5) In sub-paragraph (3), “foreign representative” includes a person who purports or has purported to be a foreign representative in relation to a debtor.

PART 3

COURT PROCEDURE AND PRACTICE

Preliminary and interpretation

- 4.—(1) This Part applies to—
- (a) any of the following applications made to the court under these Regulations—
 - (i) a recognition application;
 - (ii) an article 21 remedy application;
 - (iii) an application under paragraph 2(3) for an order confirming the status of a replacement foreign representative;
 - (iv) a review application; and
 - (b) any of the following orders made by the court under these Regulations—
 - (i) a recognition order;
 - (ii) an order granting interim remedy under article 19 of the Model Law;
 - (iii) an order granting remedy under article 21 of the Model Law;
 - (iv) an order confirming the status of a replacement foreign representative; or
 - (v) a modification or termination order.

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Reviews of court orders—where court makes order of its own motion

5.—(1) The court shall not of its own motion make a modification or termination order unless the foreign representative and the debtor have either—

- (a) had an opportunity of being heard on the question, or
- (b) consented in writing to such an order.

(2) If the court makes a modification or termination order, the order may include such provision as the court thinks fit with respect to matters arising in connection with the modification or termination.

The hearing

6.—(1) At the hearing of the application, the applicant and any of the following persons (not being the applicant) may appear or be represented—

- (a) the foreign representative;
- (b) the debtor and, in the case of any debtor other than an individual, any one or more directors or other officers of the debtor, including—
 - (i) where applicable, any person registered under Part 23 of the Companies Act 1985⁽⁵⁷⁾ as authorised to represent the debtor in respect of its business in Scotland;
 - (ii) in the case of a debtor which is a partnership, any person who is a member of the partnership;
- (c) if a British insolvency officeholder is acting in relation to the debtor, that person;
- (d) if any person has been appointed an administrative receiver of the debtor or as a receiver or manager of the property of the debtor, that person;
- (e) if a member State liquidator has been appointed in main proceedings in relation to the debtor, that person;
- (f) if a foreign representative has been appointed in any other foreign proceeding regarding the debtor, that person;
- (g) any person who has presented a petition for the winding up or sequestration of the debtor in Scotland;
- (h) any person who is or may be entitled to appoint an administrator of the debtor under paragraph 14 of Schedule B1 to the 1986 Act⁽⁵⁸⁾ (appointment of administrator by holder of qualifying floating charge);
- (i) if the debtor is a debtor who is of interest to the Financial Services Authority, that Authority; and
- (j) with the permission of the court, any other person who appears to have an interest justifying his appearance.

Notification and advertisement of order

7.—(1) This paragraph applies where the court makes any of the orders referred to in paragraph 4(1)(b).

(2) The foreign representative shall send a certified copy of the interlocutor as soon as reasonably practicable to the debtor.

(3) The foreign representative shall, as soon as reasonably practicable after the date of the order, give notice of the making of the order—

⁽⁵⁷⁾ 1985 c. 6.

⁽⁵⁸⁾ Schedule B1 was inserted by the Enterprise Act 2002 (c. 40), section 248(2) and Schedule 16.

- (a) if a British insolvency officeholder is acting in relation to the debtor, to him;
- (b) if any person has been appointed an administrative receiver of the debtor or, to the knowledge of the foreign representative, as a receiver or manager of the property of the debtor, to him;
- (c) if a member State liquidator has been appointed in main proceedings in relation to the debtor, to him;
- (d) if to his knowledge a foreign representative has been appointed in any other foreign proceeding regarding the debtor, that person;
- (e) if there is pending in Scotland a petition for the winding up or sequestration of the debtor, to the petitioner;
- (f) to any person who to his knowledge is or may be entitled to appoint an administrator of the debtor under paragraph 14 of Schedule B1 to the 1986 Act (appointment of administrator by holder of qualifying floating charge);
- (g) if the debtor is a debtor who is of interest to the Financial Services Authority, to that Authority; and
- (h) to such persons as the court may direct.

(4) Where the debtor is a relevant company, the foreign representative shall send notice of the making of the order to the registrar of companies before the end of the period of 5 business days beginning with the date of the order. The notice to the registrar of companies shall be in Form ML 7.

(5) The foreign representative shall advertise the making of the following orders once in the Gazette and once in such newspaper as he thinks most appropriate for ensuring that the making of the order comes to the notice of the debtor's creditors—

- (a) a recognition order,
- (b) an order confirming the status of a replacement foreign representative, and
- (c) a modification or termination order which modifies or terminates recognition of a foreign proceeding,

and the advertisement shall be in Form ML 8.

Registration of court order

8.—(1) Where the court makes a recognition order in respect of a foreign main proceeding or an order suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor being heritable property, the clerk of the court shall send forthwith a certified copy of the order to the keeper of the register of inhibitions and adjudications for recording in that register.

(2) Recording under sub-paragraph (1) or (3) shall have the effect as from the date of the order of an inhibition and of a citation in an adjudication of the debtor's heritable estate at the instance of the foreign representative.

(3) Where the court makes a modification or termination order, the clerk of the court shall send forthwith a certified copy of the order to the keeper of the register of inhibitions and adjudications for recording in that register.

(4) The effect mentioned in sub-paragraph (2) shall expire—

- (a) on the recording of a modification or termination order under sub-paragraph (3); or
- (b) subject to sub-paragraph (5), if the effect has not expired by virtue of paragraph (a), at the end of the period of 3 years beginning with the date of the order.

(5) The foreign representative may, if recognition of the foreign proceeding has not been modified or terminated by the court pursuant to its powers under the Model Law, before the end of the period of 3 years mentioned in sub-paragraph (4)(b), send a memorandum in a form prescribed by the

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Court of Session by act of sederunt to the keeper of the register of inhibitions and adjudications for recording in that register, and such recording shall renew the effect mentioned in sub-paragraph (2); and thereafter the said effect shall continue to be preserved only if such memorandum is so recorded before the expiry of every subsequent period of 3 years.

Right to inspect court process

9.—(1) In the case of any proceedings under these Regulations, the following have the right, at all reasonable times, to inspect the court process of the proceedings—

- (a) the Secretary of State;
- (b) the person who is the foreign representative in relation to the proceedings;
- (c) if a foreign representative has been appointed in any other foreign proceeding regarding the debtor, that person;
- (d) if a British insolvency officeholder is acting in relation to the debtor, that person;
- (e) any person stating himself in writing to be a creditor of the debtor to which the proceedings under these Regulations relate;
- (f) if a member State liquidator has been appointed in relation to a debtor which is subject to proceedings under these Regulations, that person; and
- (g) the debtor to which the proceedings under these Regulations relate, or, if that debtor is a company, corporation or partnership, every person who is, or at any time has been—
 - (i) a director or officer of the debtor,
 - (ii) a member of the debtor, or
 - (iii) where applicable, a person registered under Part 23 of the Companies Act 1985 as authorised to represent the debtor in respect of its business in Scotland.

(2) The right of inspection conferred as above on any person may be exercised on his behalf by a person properly authorised by him.

Copies of court orders

10.—(1) In any proceedings under these Regulations, any person who under paragraph 9 has a right to inspect documents in the court process also has the right to require the foreign representative in relation to those proceedings to furnish him with a copy of any court order in the proceedings.

(2) Sub-paragraph (1) does not apply if a copy of the court order has been served on that person or notice of the making of the order has been given to that person under other provisions of these Regulations.

Transfer of proceedings—actions to avoid acts detrimental to creditors

11. If, in accordance with article 23(6) of the Model Law, the court grants a foreign representative permission to make an application in accordance with paragraph (1) of that article, it may also order the relevant proceedings under British insolvency law taking place regarding the debtor to be transferred to the Court of Session if those proceedings are taking place in Scotland and are not already in that court.

PART 3

GENERAL

Giving of notices, etc

12.—(1) All notices required or authorised by or under these Regulations to be given, sent or delivered must be in writing, unless it is otherwise provided, or the court allows the notice to be sent or given in some other way.

(2) Any reference in these Regulations to giving, sending or delivering a notice or any such document means, without prejudice to any other way and unless it is otherwise provided, that the notice or document may be sent by post, and that, subject to paragraph 13, any form of post may be used. Personal service of the notice or document is permissible in all cases.

(3) Where under these Regulations a notice or other document is required or authorised to be given, sent or delivered by a person (“the sender”) to another (“the recipient”), it may be given, sent or delivered by any person duly authorised by the sender to do so to any person duly authorised by the recipient to receive or accept it.

(4) Where two or more persons are acting jointly as the British insolvency officeholder in proceedings under British insolvency law, the giving, sending or delivering of a notice or document to one of them is to be treated as the giving, sending or delivering of a notice or document to each or all.

Sending by post

13.—(1) For a document to be properly sent by post, it must be contained in an envelope addressed to the person to whom it is to be sent, and pre-paid for either first or second class post.

(2) Any document to be sent by post may be sent to the last known address of the person to whom the document is to be sent.

(3) Where first class post is used, the document is to be deemed to be received on the second business day after the date of posting, unless the contrary is shown.

(4) Where second class post is used, the document is to be deemed to be received on the fourth business day after the date of posting, unless the contrary is shown.

Certificate of giving notice, etc

14.—(1) Where in any proceedings under these Regulations a notice or document is required to be given, sent or delivered by any person, the date of giving, sending or delivery of it may be proved by means of a certificate by that person that he gave, posted or otherwise sent or delivered the notice or document on the date stated in the certificate, or that he instructed another person (naming him) to do so.

(2) A certificate under this paragraph may be endorsed on a copy of the notice to which it relates.

(3) A certificate purporting to be signed by or on behalf of the person mentioned in subparagraph (1) shall be deemed, unless the contrary is shown, to be sufficient evidence of the matters stated therein.

Forms for use in proceedings under these Regulations

15.—(1) Forms ML 7 and ML 8 contained in Schedule 5 to these Regulations shall be used in, and in connection with, proceedings under these Regulations.

(2) The forms shall be used with such variations, if any, as the circumstances may require.

SCHEDULE 4

Regulation 6

NOTICES DELIVERED TO THE REGISTRAR OF COMPANIES

Interpretation

1.—(1) In this Schedule—

“the 1985 Act” means the Companies Act 1985⁽⁵⁹⁾;

“electronic communication” means the same as in the Electronic Communications Act 2000⁽⁶⁰⁾;

“Model Law notice” means a notice delivered to the registrar of companies under paragraph 26(6) of Schedule 2 or paragraph 7(4) of Schedule 3.

(2) Expressions defined in the Model Law or Schedule 2 or 3, as appropriate, have the same meaning when used in this Schedule.

(3) References in this Schedule to delivering a notice include sending, forwarding, producing or giving it.

Functions of the registrar of companies

2.—(1) Where a Model Law notice is delivered to the registrar of companies in respect of a relevant company, the registrar shall enter a note in the register relating to that company.

(2) The note referred to in sub-paragraph (1) shall contain the following particulars, in each case as stated in the notice delivered to the registrar—

- (a) brief details of the court order made;
- (b) the date of the court order; and
- (c) the name and address for service of the person who is the foreign representative in relation to the company.

Registrar of companies to whom notices to be delivered

3.—(1) References in Schedules 2 and 3 to the registrar of companies in relation to a relevant company shall be construed in accordance with the following provisions.

(2) The notices which a relevant company is required to deliver to the registrar of companies shall be delivered—

- (a) to the registrar for England and Wales if the company has a relevant presence in England and Wales, and
- (b) to the registrar for Scotland if the company has a relevant presence in Scotland,

and if the relevant company has a relevant presence in both parts of Great Britain, the notices shall be delivered to both registrars.

(3) For the purposes of this paragraph a “relevant presence” means—

- (a) in the case of a company within the meaning of section 735(1) of the 1985 Act, its registered office,
- (b) in the case of an unregistered company within the meaning of Part 5 of the 1986 Act which is subject to a requirement imposed by virtue of section 690A of the 1985 Act⁽⁶¹⁾, a branch,

⁽⁵⁹⁾ 1985 c. 6.

⁽⁶⁰⁾ 2000 c. 7.

⁽⁶¹⁾ 1985 c. 6; section 690A was inserted by S.I. 1992/3179.

- (c) in the case of an unregistered company within the meaning of Part 5 of the 1986 Act which is subject to a requirement imposed by virtue of section 691(1)(62) of the 1985 Act, an established place of business, and
- (d) in the case of an unregistered company within the meaning of Part 5 of the 1986 Act which is subject to a requirement imposed by virtue of section 718(63) of the 1985 Act, a principal place of business.

Delivery to registrar of notices

4.—(1) Electronic communications may be used for the delivery of any Model Law notice, provided that such delivery is in such form and manner as is directed by the registrar.

(2) Where the Model Law notice is required to be signed, it shall instead be authenticated in such manner as is directed by the registrar.

(3) If a Model Law notice is delivered to the registrar which does not comply with the requirements of these Regulations, he may serve on the person by whom the notice was delivered (or, if there are two or more such persons, on any of them) a notice (a non-compliance notice) indicating the respect in which the Model Law notice does not comply.

(4) Where the registrar serves a non-compliance notice, then, unless a replacement Model Law notice—

- (a) is delivered to him within 14 days after the service of the non-compliance notice, and
- (b) complies with the requirements of these Regulations or is not rejected by him for failure to comply with those requirements,

the original Model Law notice shall be deemed not to have been delivered to him.

Enforcement of foreign representative's duty to give notice to registrar

5.—(1) If a foreign representative, having made default in complying with paragraph 26(6) of Schedule 2 or paragraph 7(4) of Schedule 3 fails to make good the default within 14 days after the service of a notice on the foreign representative requiring him to do so, the court may, on an application made to it by any creditor, member, director or other officer of the debtor or by the registrar of companies, make an order directing the foreign representative to make good the default within such time as may be specified in the order.

(2) The court's order may provide that all costs of and incidental to the application shall be borne by the foreign representative.

Rectification of the register under court order

6.—(1) The registrar shall remove from the register any note, or part of a note—

- (a) that relates to or is derived from a court order that the court has declared to be invalid or ineffective, or
- (b) that the court declares to be factually inaccurate or derived from something that is factually inaccurate or forged,

and that the court directs should be removed from the register.

(2) The court order must specify what is to be removed from the register and indicate where on the register it is and the registrar shall carry out his duty under sub-paragraph (1) within a reasonable time of receipt by him of the relevant court order.

(62) As amended by S.I. 2000/3373 and 2002/912.

(63) As amended by the Statute Law (Repeals) Act 2004 (c. 14) and S. 1. 2001/1228.

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SCHEDULE 5

Schedule 2, paragraph 73 and Schedule 3, paragraph 15

FORMS

Schedule 2,
Paragraph 2

Form ML 1

The Cross-Border Insolvency Regulations 2006

Recognition application

Name of Debtor	Company number <i>where applicable</i>
In the <div style="text-align: right; font-size: small;">[full name of court]</div>	<i>For court use only</i> Court case number

- (a) Insert full name(s) of applicant(s) 1. The application of(a) _____

- being the foreign representative(s) appointed in relation to the above named debtor in a foreign proceeding, in reliance on article 15 of the UNCITRAL Model Law on cross-border insolvency as set out in Schedule 1 to the Cross-Border Insolvency Regulations 2006 ("the Model Law").
- (b) Insert full name of the debtor 2. The application is in respect of a foreign proceeding in relation to(b) _____

- ("the debtor") [[lately] carrying on business in(c) _____

- (c) Insert name of country where the foreign proceeding the subject of the application is taking place
- (d) Insert any trading name of the debtor if different from the full name given above and any former trading names in respect of any business in respect of which the debtor may have incurred debts or other liabilities still unsatisfied as(d) _____
_____]
- (e) Insert any trading name of the debtor in Great Britain if different from the full name given above and any former trading names in respect of any business in Great Britain in respect of which the debtor may have incurred debts or other liabilities still unsatisfied [and [lately] carrying on business in Great Britain as(e) _____
_____].
- (f) Delete any statements in paragraph 3 which do not apply and insert full address details, where applicable 3. (f)[The debtor's principal/last known* place of business in Great Britain is _____
_____]
- * Delete as applicable

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Form ML 1 continued

(g) If the debtor's principal/last known place of business is in Scotland insert details of any place of business in England and Wales (g)[and the debtor's principal/last known* place of business in England and Wales is _____]

* Delete as applicable [The debtor's usual/last known* place of residence in Great Britain is _____]

(h) If the debtor's usual/last known place of residence is in Scotland insert details of any place of residence in England and Wales (h)[and the debtor's usual/last known* place of residence in England and Wales is _____]

[The debtor has no place of business in Great Britain]

[The debtor has no place of residence in Great Britain.]

[The debtor has assets situated within England and Wales]

(i) Insert date of incorporation 4. The debtor was incorporated on(i) _____ (j) Insert registered number under the Companies Act 19 _____ , and the registered number of the debtor is(j) _____

OR

(k) If the debtor has a registered branch or place of business include applicable statement(s) and insert required details (k)[The debtor has one or more branches registered under Schedule 21A of the Companies Act 1985. The registered numbers of the branch(es) are _____]

[The debtor has delivered to the registrar of companies for the relevant part of Great Britain documents in respect of one or more places of business established by it in Great Britain.]

OR

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Form ML 1 continued

The debtor is not registered under the Companies Act 19 _____, nor does it have any branches registered under that Act or places of business of which particulars have been delivered to the registrar of companies.

(l) Give details of any business carried on by the debtor in respect of which the debtor may have incurred debts or other liabilities still unsatisfied

5. (l) The principal business [lately] carried on by the debtor in Great Britain is _____

OR

The debtor does not carry on business in Great Britain.

(m) Insert name of country where the foreign proceeding is taking place

6. The foreign proceeding in respect of which recognition is applied for is taking place in(m) _____

(n) Insert brief details of the foreign proceeding

The foreign proceeding is(n) _____

7. The foreign proceeding in respect of which recognition is applied for is a proceeding within the meaning of article 2(i) of the Model Law,

and the applicant is the foreign representative of the debtor within the meaning of article 2(j) of the Model Law in relation to that proceeding,

and the evidence referred to in article 15(2) of the Model Law is contained in or exhibited to the affidavit in support attached to this application.

8. The address of the debtor's centre of main interests is _____

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Form ML 1 continued

and

(o) Delete whichever of the two statements does not apply and insert address details, where applicable

(o) **EITHER**

* Delete as applicable

that is the address of the debtor's registered office/habitual residence*

OR

the address of the debtor's registered office/habitual residence* is _____

(p) If the application is for recognition of a foreign non-main proceeding include this statement, giving the name of the country where the foreign proceeding the subject of this application is taking place and the address of the establishment in that country

(p)[and the debtor has an establishment within the meaning of article 2(e) of the Model Law in _____

and the address of that establishment is _____

Note: The terms centre of main interests, habitual residence and establishment have the meaning given to them under the Model Law.

9. The debtor is not a person falling within any of the exceptions set out in article 1(2) of the Model Law.

10. An affidavit in support of this application is attached.

11. The statement referred to in article 15(3) of the Model Law is exhibited to the affidavit in support attached to this application.

(q) Insert address for service * Delete as applicable

12. The applicant's/applicant's solicitor's* address for service is(q) _____

Status: This is the original version (as it was originally made).

Form ML 1 continued

13. The applicant(s) therefore request(s) as follows:

Delete as applicable (a) that the court make an order recognising the foreign proceeding the subject of this application as a foreign main/non main proceeding

(r) Insert details of any ancillary orders sought (b) (r) _____

OR

(c) that such other order may be made as the court thinks appropriate.

*Delete as applicable Signed _____
Applicant/Applicant's solicitor*
(If signing on behalf of firm or company state position or office held)

Dated _____

Status: This is the original version (as it was originally made).

Schedule 2,
paragraph 5(2)

Form ML 2

The Cross-Border Insolvency Regulations 2006 Recognition order

Name of Debtor	Company number <i>where applicable</i>
In the [full name of court]	<i>For court use only</i> Court case number

(a) Insert full name(s) and address(es) for service of applicant(s) UPON THE APPLICATION OF (a) _____

(b) Insert date presented to the court on (b) _____

(c) Insert full name and address for service of the debtor in respect of (c) _____

and upon hearing

(d) Insert details of any other parties (including the debtor) appearing and by whom represented and for (d) _____

and upon reading the evidence

(e) Insert details of foreign proceeding IT IS ORDERED that (e) _____

* Delete as applicable be recognised as a foreign main proceeding/foreign non-main proceeding* in accordance with the UNCITRAL Model Law on cross-border insolvency as set out in Schedule 1 to the Cross-Border Insolvency Regulations 2006

(f) Insert particulars of any further order made by the court AND it is ordered that (f) _____

(g) Insert terms of order for costs AND it is ordered that the costs of the said application (g) _____

Status: This is the original version (as it was originally made).

Form ML 2 continued

(h) Insert date and time This order shall take effect from (h) _____

Status: This is the original version (as it was originally made).

Schedule 2,
paragraph 6

Form ML 3

The Cross-Border Insolvency Regulations 2006

Statement of subsequent information

Name of Debtor	Company number <i>where applicable</i>
In the [full name of court]	Court case number

(a) Insert full name(s) and address(es) of foreign representative(s)

I/We(a) _____

attach a statement providing information in accordance with article 18 of the UNCITRAL Model Law on cross-border insolvency, as set out in Schedule 1 to the Cross-Border Insolvency Regulations 2006, and paragraph 6(2)(b) of Schedule 2 to those Regulations.

Signed _____
Joint/Foreign Representative(s)

Dated _____

Schedule 2,
paragraph 32

Form ML 4

The Cross-Border Insolvency Regulations 2006

Originating application

In the _____ <div style="text-align: right;">[full name of court]</div>	<i>For court use only</i> Court case number _____
--	--

Between

Applicant _____

and

Respondent _____

(a) Insert full name and address of respondent

Let(a) _____

attend before the Judge on:

Date _____

Time _____ hours

Place _____

(b) Insert name of applicant

On the hearing of an application by(b) _____

(c) State the terms of the order to which the applicant claims to be entitled

the applicant for an order in the following terms:(c) _____

(d) Set out grounds or refer to a witness statement or affidavit in support

The grounds on which the applicant claims to be entitled to the order are:(d) _____

(e) State the name(s) and address(es) of the person(s) intended to be served

The names and addresses of the persons upon whom it is intended to serve this application are:(e)

OR

Status: This is the original version (as it was originally made).

Form ML 4 continued

It is not intended to serve any person with this application.

(f) State the applicant's
address for service

The applicant's address for service is: (f) _____

Dated _____

Signed _____
(Solicitor for the) Applicant

If you do not attend, the court may make such order as it thinks fit.

Schedule 2,
paragraphs 19 and 32

Form ML 5

The Cross-Border Insolvency Regulations 2006

Ordinary application

In the _____ <div style="text-align: right; font-size: small;">[full name of court]</div>	Court case number _____
--	-------------------------

Between

Applicant _____

and

Respondent _____

Take notice that I intend to apply to the Judge on:

Date _____

Time _____ hours

Place _____

(a) State nature and grounds of application

for(a) _____

Signed _____
(SOLICITOR FOR THE) APPLICANT

My/Our address for service is: _____

(b) Give the name(s) and address(es) of the person(s) (including the respondent) on whom it is intended to serve the application

To:(b) _____

OR

It is not intended to serve any person with this application.

If you do not attend, the court may make such order as it thinks fit.

Status: This is the original version (as it was originally made).

Schedule 2,
Paragraph 23

Form ML 6

The Cross-Border Insolvency Regulations 2006

**Affidavit of service of application under the
Cross-Border Insolvency Regulations 2006**

Name of Debtor	Company number <i>where applicable</i>
In the [full name of court]	Court case number

(a) Insert full name and address of person making affidavit I, (a) _____

* Delete as applicable the applicant/acting on behalf of the applicant* state on oath:

(b) Insert details of application 1. That I did on _____ day the _____ day of _____ 20 ____
serve the above-named debtor with a copy of an application for (b) _____

(c) Insert address where served ("the application") duly sealed with the seal of the court and its supporting documents by leaving
the same at the debtor's proper address at(c) _____

OR by posting the same on _____ day the _____ day of _____ 20 ____
by ordinary post first class mail in an envelope duly pre-paid and properly addressed to the said
debtor at(c) _____

(d) Insert name 2. That I did on _____ day the _____ day of _____ 20 ____
serve(d) _____
the foreign representative in relation to the said debtor with a copy of the application duly sealed
with the seal of the court and its supporting documents by leaving the same at his proper address
at(c) _____

Status: This is the original version (as it was originally made).

Form ML 6 continued

OR by posting the same on ____ day the _____ day of _____ 20 ____
by ordinary post first class mail in an envelope duly pre-paid and properly addressed to the
said(d) _____
at(c) _____

3. That I did on ____ day the _____ day of _____ 20 ____
serve(d) _____
a British insolvency officeholder acting in relation to the said debtor with a copy of the
application duly sealed with the seal of the court and its supporting documents by leaving the
same at his proper address at(c) _____

OR by posting the same on ____ day the _____ day of _____ 20 ____
by ordinary post first class mail in an envelope duly pre-paid and properly addressed to the
said(d) _____
at(c) _____

4. That I did on ____ day the _____ day of _____ 20 ____
serve(d) _____

* Delete as applicable the administrative receiver/receiver or manager of the property of the debtor in England and
Wales* with a copy of the application duly sealed with the seal of the court and its supporting
documents by leaving the same at his proper address at(c) _____

OR by posting the same on ____ day the _____ day of _____ 20 ____
by ordinary post first class mail in an envelope duly prepaid and properly addressed to the said(d)

at(c) _____

Status: This is the original version (as it was originally made).

Form ML 6 continued

5. That I did on ____ day the ____ day of ____ 20 ____
serve(d) _____

the member State liquidator of the said debtor with a copy of the application duly sealed with the
seal of the court and its supporting documents by leaving the same at his proper address at(c) _____

OR by posting the same on ____ day the ____ day of ____ 20 ____

by ordinary post first class mail in an envelope duly pre-paid and properly addressed to the
said(d) _____

at(c) _____

6. That I did on ____ day the ____ day of ____ 20 ____
serve(d) _____

a foreign representative of the said debtor appointed in another foreign proceeding regarding the
said debtor with a copy of the application duly sealed with the seal of the court and its supporting
documents by leaving the same at his proper address at(c) _____

OR by posting the same on ____ day the ____ day of ____ 20 ____

by ordinary post first class mail in an envelope duly pre-paid and properly addressed to the
said(d) _____

at(c) _____

7. That I did on ____ day the ____ day of ____ 20 ____
serve(d) _____

who has presented a petition to wind up the said debtor/for a bankruptcy order to be made against
the said debtor* with a copy of the application duly sealed with the seal of the court and its
supporting documents by leaving the same at his proper address at(c) _____

* Delete as applicable

OR by posting the same on ____ day the ____ day of ____ 20 ____

Status: This is the original version (as it was originally made).

Form ML 6 continued

by ordinary post first class mail in an envelope duly pre-paid and properly addressed to the
said(d) _____
at(c) _____

8. That I did on ____ day the _____ day of _____ 20 ____
serve(d) _____
a person who is or may be entitled to appoint an administrator of the said debtor under
paragraph 14 of Schedule B1 to the Insolvency Act 1986 with a copy of the application duly
sealed with the seal of the court and its supporting documents by leaving the same at his proper
address at(c) _____

OR by posting the same on ____ day the _____ day of _____ 20 ____
by ordinary post first class mail in an envelope duly pre-paid and properly addressed to the
said(d) _____
at(c) _____

9. That I did on ____ day the _____ day of _____ 20 ____
serve the Financial Services Authority with a copy of the application duly sealed with the seal of
the court and its supporting documents by leaving the same at its proper address at(c) _____

OR by posting the same on ____ day the _____ day of _____ 20 ____
by ordinary post first class mail in an envelope duly pre-paid and properly addressed to the
Financial Services Authority at(c) _____

Status: This is the original version (as it was originally made).

Form ML 6 continued

A sealed copy of the application and its supporting documents are now produced to me marked "A".

SWORN _____

Schedule 2,
paragraph 26(6)
and Schedule 3,
paragraph 7(4)

Form ML 7

The Cross-Border Insolvency Regulations 2006

**Notice to registrar of companies of ML 7
order under the Cross-Border
Insolvency Regulations 2006**

Name of Debtor	Company number <i>where applicable</i>
In the <div style="text-align: right; font-size: small;">[full name of court]</div>	Court case number

(a) Insert name(s) and
address(es) for service of
foreign representative(s)

Notice is hereby given by(a) _____

the foreign representative(s) in relation to the above named debtor that the following order has
been made under the Cross-Border Insolvency Regulations 2006(b):

(b) Insert brief details of court
order

(c) Insert date

The order was made on(c) _____

Signed _____
Joint/Foreign Representative(s)

Dated _____

Status: This is the original version (as it was originally made).

Form ML 7 continued

(d) If the debtor is an overseas company with branches in Great Britain, please complete requested details of branches. If this form is delivered in respect of more than one branch in the same part of Great Britain, the branch number and name (where different) must be given for each branch

(d) This return is delivered in respect of all the branches listed below.

Registration number	Branch name

Contact Details:

You do not have to give any contact information in the box opposite but if you do, it will help Companies House to contact you if there is a query on the form.

	Tel
DX Number	DX Exchange

Companies House receipt date barcode

When you have completed and signed this form please send it to the Registrar of Companies at:

for companies or branches registered or places of business established in England and Wales:

Companies House, Crown Way, Cardiff, CF14 3UZ DX 33050 Cardiff

for companies or branches registered or places of business established in Scotland:

Companies House, 37 Castle Terrace, Edinburgh, EH1 2EB DX 235 Edinburgh or LP-4 Edinburgh 2

