
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 21

THE EC REGULATION

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Interpretation for this Part

21.1. In this Part—

“winding-up proceedings” are the winding-up proceedings within the meaning of Article 2(c) of the EC Regulation listed under the United Kingdom entry in Annex B to that Regulation, other than bankruptcy and sequestration proceedings; and

“conversion into winding-up proceedings” refers to an order under Article 37 of the EC Regulation (conversion of earlier proceedings) that—

- (a) a CVA be converted into administration proceedings the purposes of which are limited to the winding up of the company through administration and exclude the purpose contained in paragraph 3(1)(a) of Schedule B1;
- (b) the purposes of an administration be limited to the winding up of the company through administration and exclude the purpose contained in paragraph 3(1)(a) of Schedule B1; or
- (c) a CVA or an administration be converted into—
 - (i) a creditors’ voluntary winding up, or
 - (ii) a winding up by the court.

Conversion into winding up proceedings or bankruptcy: application

21.2.—(1) This rule applies where a member State liquidator in main proceedings applies to the court under Article 37 of the EC Regulation for—

- (a) conversion into winding-up proceedings of a CVA or an administration, or
- (b) conversion of an IVA into a bankruptcy.

(2) A witness statement made by or on behalf of the member State liquidator must be filed with the court in support of the application.

(3) The witness statement must state—

- (a) that main proceedings have been opened in relation to the company or, as the case may be, the debtor in a member State other than the United Kingdom;
- (b) the belief of the person making the statement that the conversion of the CVA or administration into winding-up proceedings or the IVA into a bankruptcy would prove to be in the interests of the creditors in the main proceedings;

- (c) where the application is for conversion into winding-up proceedings of a CVA or an administration, in the opinion of the person making the statement, into which proceedings the CVA or administration should be converted; and
- (d) all other matters that, in the opinion of the member State liquidator, would assist the court in—
 - (i) deciding whether to make such an order, and
 - (ii) considering whether and, if so, what consequential provision to include.
- (4) The application and the witness statement must be served upon—
 - (a) the company or the debtor, as the case may be; and
 - (b) the supervisor or the administrator, as the case may be.

Conversion into winding up proceedings or bankruptcy: court order

21.3.—(1) On hearing an application for conversion into winding-up proceedings, or conversion of an IVA into a bankruptcy the court may, subject to Article 37 of the EC Regulation, make such order as it thinks just.

- (2) An order for conversion into winding-up proceedings may—
 - (a) provide that the company be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the order is made; and
 - (b) contain such consequential provisions as the court thinks just.
- (3) An order for the conversion of an IVA into a bankruptcy may contain such consequential provisions as the court thinks just.

Confirmation of creditors' voluntary winding up: application

- 21.4.**—(1) This rule applies where—
- (a) a company has passed a resolution for voluntary winding up, and either—
 - (i) no declaration of solvency has been made in accordance with section 89, or
 - (ii) a declaration made under section 89—
 - (aa) has no effect by virtue of section 89(2), or
 - (bb) is treated as not having been made by virtue of section 96(1); or
 - (b) a company has moved from administration to creditors' voluntary winding up in accordance with paragraph 83 of Schedule B1(2).
- (2) The liquidator may apply to court for an order confirming the winding up as a creditors' voluntary winding up for the purposes of the EC Regulation.
- (3) The application must be supported by a witness statement made by the liquidator which must contain—
- (a) identification details for the liquidator and the company;
 - (b) the date on which the resolution for voluntary winding up was passed;
 - (c) a statement that the application is accompanied by the documents required by paragraph (4);

(1) A new section 96 is substituted by paragraph 20 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(2) Paragraph 83 subparagraphs (1)(b) and (2)(b) are amended by section 128(3) of the Small Business, Enterprise and Employment Act 2015 and subparagraphs (5)(b) and (8)(d) are amended by paragraph 10(31) and (32) of Schedule 9 to that Act.

- (d) a statement that the documents required by paragraph (4)(c) and (d) are true copies of the originals; and
 - (e) a statement whether the proceedings will be main proceedings, secondary proceedings or territorial proceedings.
- (4) The liquidator must file with the court—
- (a) two copies of the application;
 - (b) evidence of having been appointed liquidator of the company;
 - (c) a copy of—
 - (i) the resolution for voluntary winding up, or
 - (ii) the notice of moving from administration to creditors' voluntary winding up sent by the administrator to the registrar of companies under paragraph 83(3) of Schedule B1; and
 - (d) a copy of—
 - (i) the statement of affairs required by section 99(3) or under paragraph 47 of Schedule B1, or
 - (ii) the information included in the administrator's statement of proposals under rule 3.35(1)(h).

Confirmation of creditors' voluntary winding up: court order

21.5.—(1) On an application under the preceding rule, the court may make an order confirming the creditors' voluntary winding up.

(2) It may do so without a hearing.

(3) If the court makes an order confirming the creditors' voluntary winding up, it must affix its seal to the application.

(4) A member of the court staff may deal with an application under this rule.

Confirmation of creditors' voluntary winding up: notice to member State liquidator

21.6.—(1) Where the court has confirmed the creditors' voluntary winding up, the liquidator must as soon as reasonably practicable give notice to any member State liquidator appointed in relation to the company.

(2) Paragraph (1) is without prejudice to the liquidator's obligation in Article 40 of the EC Regulation (duty to inform creditors in other member States) in relation to the creditors' voluntary winding up.

Member State liquidator: duty to give notice

21.7.—(1) This rule applies where—

- (a) the supervisor of a CVA or an IVA, an administrator, a liquidator or a trustee in bankruptcy is required to give notice, or provide a copy of a document (including an order of court), to the court, the registrar of companies or the official receiver; and
- (b) a member State liquidator has been appointed in relation to a company.

(3) Section 99 subsections (12) and (3) are substituted by new subsections (1) and (3) by paragraph 23 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(2) Where not already required to do so by Article 31 of the EC Regulation, the supervisor, administrator, liquidator or trustee must also give notice or provide a copy to the member State liquidator.

Member State liquidator: rules on creditors' participation in proceedings

21.8.—(1) The provisions in these Rules apply to a member State liquidator's participation in proceedings in accordance with Article 32(3) of the EC Regulation (exercise of creditors' rights) in the same manner as they do to creditors' participation in those proceedings.

(2) In this rule, "creditors' participation"—

(a) includes the following matters—

- (i) requesting and being provided with information, including inspecting or obtaining copies of documents or files,
- (ii) being provided with notices or other documents,
- (iii) participating and voting in decision procedures,
- (iv) the establishment and operation of creditor committees,
- (v) proving in respect of debts and receipt of dividends, and
- (vi) applying to the court and appearing at hearings; and

(b) is limited to creditors' participation from the time of the opening of proceedings in accordance with Article 2(f) of the EC Regulation.