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STATUTORY RULES OF NORTHERN IRELAND

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**2015 No. 262**

**INSOLVENCY**

**The Insolvency (Amendment) Rules (Northern Ireland) 2015**

*Made* - - - - *28th May 2015*  
*Coming into operation* *3rd September 2015*

The Department of Justice makes the following Rules in exercise of the powers conferred by Article 359 of the Insolvency (Northern Ireland) Order 1989<sup>(1)</sup>, with the concurrence of the Department of Enterprise, Trade and Investment<sup>(b)</sup> and in relation to those rules that affect court procedure, with the concurrence of the Lord Chief Justice of Northern Ireland under Article 359 (1A)<sup>(2)</sup> of that Order.

Before making these Rules, the Department of Justice consulted the Committee existing for the purposes of Article 360<sup>(3)</sup> of that Order.

**Citation, commencement and interpretation**

**1.—**(1) These Rules may be cited as the Insolvency (Amendment) Rules (Northern Ireland) 2015 and shall come into operation on 3rd September 2015.

(2) In these Rules—

“the principal Rules” means the Insolvency Rules (Northern Ireland) 1991<sup>(4)</sup> and any reference to a numbered Part, Rule, Schedule or form is a reference to the Part, Rule, Schedule or form so numbered in the principal Rules unless the context otherwise requires; and

“the Order” means the Insolvency (Northern Ireland) Order 1989 and any reference to a numbered Article is a reference to an Article of that Order unless the context otherwise requires.

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- (1) [S.I. 1989/2405 \(N.I. 19\)](#). Article 359 was amended by the Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) 2002 ([S.R. 2002 No. 223](#)), section 15 of and paragraph 81 of Schedule 5 to the Constitutional Reform Act 2005 ([c.4](#)), and by Article 15(1) and (5) of and paragraph 142 of Schedule 18 to the (Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 ([S.I. 2010/976](#))).
- (2) Article 359(1A) was inserted by paragraph 81 of Schedule 5 to the Constitutional Reform Act 2005 ([c.4](#)).
- (3) Article 360 was amended by Article 15(1) of and paragraph 143 of Schedule 18 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 ([S.I. 2010/976](#)).
- (4) The Insolvency Rules (Northern Ireland) 1991 ([S.R. 1991 No. 364](#)), as amended by [S.R. 1994 No. 26](#), [S.R. 1995 No. 291](#), [S.R. 2000 No. 247](#), [S.R. 2002 No. 261](#), [S.R. 2003 No. 549](#), [S.R. 2006 No. 47](#), [S.R. 2008 No. 118](#), [S.R. 2009 No. 404](#), [S.R. 2011 No. 151](#), [S.R. 2013 No. 278](#) and [S.I. 2004/355](#).

### **Transitional provisions**

**2.—**(1) Where an insolvency event to which this Rule applies occurs before 3rd September 2015, the principal Rules shall continue to apply until 3rd September 2016 as if, the amendment made by Rule 29 of these Rules had not been made.

(2) An insolvency event to which this Rule applies occurs where—

- (a) in relation to a company—
  - (i) a moratorium under a company voluntary arrangement comes into force;
  - (ii) the company enters administration;
  - (iii) a receiver or manager is appointed;
  - (iv) a resolution for a voluntary winding up is passed; or
  - (v) a winding up petition is presented to the court; and
- (b) in relation to an individual a bankruptcy petition is presented to the court.

**3.—**(1) Where an insolvency event to which this Rule applies occurs, the principal Rules shall continue to apply as if the amendments made by Rules 5 to 10, 12 to 19, 21, 22, 24, 25, and 28 of these Rules had not been made.

(2) An insolvency event to which this Rule applies occurs where—

- (a) a person agrees to act as nominee in respect of a proposal for a company voluntary arrangement before 3rd September 2015;
- (b) a company enters administration
  - (i) by virtue of an administration order under paragraph 11 of Schedule B1 to the Order on an application made before 3rd September 2015, or
  - (ii) which is immediately preceded by a voluntary liquidation in respect of which the resolution to wind up was passed before 3rd September 2015, or
  - (iii) which is immediately preceded by a liquidation on the making of a winding-up order on a petition which was presented before 3rd September 2015;
- (c) in a receivership, a receiver or manager is appointed in respect of a company before 3rd September 2015;
- (d) a company goes into liquidation upon the passing before 3rd September 2015 of a resolution to wind up;
- (e) a company goes into voluntary liquidation under paragraph 84 of Schedule B1 to the Order where the preceding administration—
  - (i) commenced before 3rd September 2015, or
  - (ii) is an administration which commenced by virtue of an administration order under paragraph 11 of Schedule B1 to the Order on an application which was made before 3rd September 2015;
- (f) a company goes into liquidation on the making of a winding-up order on a petition presented on or after 3rd September 2015 where the liquidation is immediately preceded by—
  - (i) an administration under paragraph 11 of Schedule B1 to the Order where the administration order was made on an application made before 3rd September 2015,
  - (ii) an administration in respect of which the appointment of an administrator under paragraph 15 or 23 of Schedule B1 to the Order took effect before 3rd September 2015, or

- (iii) a voluntary liquidation in respect of which the resolution to wind up was passed before 3rd September 2015;
- (g) a person agrees to act as nominee in respect of a proposal for an individual voluntary arrangement before 3rd September 2015; and
- (h) a bankruptcy order is made on a petition presented to the court before 3rd September 2015.

#### **Amendment of the principal Rules**

- 4. The principal Rules shall be amended as provided by Rules 5 to 30 of these Rules.

#### **Administrator's proposals**

- 5. In Rule 2.034—

- (1) in paragraph (2)—

- (a) after sub-paragraph (k) insert—

“(ka) a statement complying with paragraph (2B) of this Rule of any pre-administration costs charged or incurred by the administrator or, to the administrator’s knowledge, by any other person qualified to act as an insolvency practitioner;”;

- (b) in sub-paragraph (m)—

- (i) at the beginning insert, “a statement (which shall comply with paragraph (2C) of this Rule where that paragraph applies) of”;

- (ii) omit the second sentence;

- (c) in sub-paragraph (p)(ii), after “main proceedings” insert “, secondary proceedings”.

- (2) after paragraph (2) insert—

“(2A) In this Part—

- (a) “pre-administration costs” are—

- (i) fees charged, and

- (ii) expenses incurred,

by the administrator, or another person qualified to act as an insolvency practitioner, before the company entered administration but with a view to its doing so; and

- (b) “unpaid pre-administration costs” are pre-administration costs which had not been paid when the company entered administration.

(2B) A statement of pre-administration costs complies with this paragraph if it includes

- (a) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made,

- (b) details of the work done for which the fees were charged and expenses incurred,

- (c) an explanation of why the work was done before the company entered administration and how it would further the achievement of an objective in sub-paragraph (1) of paragraph 4 in accordance with sub-paragraphs (2) to (4) of that paragraph,

- (d) a statement of the amount of the pre-administration costs, setting out separately—

- (i) the fees charged by the administrator;
- (ii) the expenses incurred by the administrator;
- (iii) the fees charged (to the administrator's knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately); and
- (iv) the expenses incurred (to the administrator's knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately),
- (e) a statement of the amounts of pre-administration costs which have already been paid (set out separately as under sub-paragraph (d)),
- (f) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person set out separately as under sub-paragraph (d),
- (g) a statement of the amounts of unpaid pre-administration costs (set out separately as under sub-paragraph (d)), and
- (h) a statement that the payment of unpaid pre-administration costs as an expense of the administration is—
  - (i) subject to approval under Rule 2.068A, and
  - (ii) not part of the proposals subject to approval under paragraph 54.

(2C) This paragraph applies where it is proposed that the administration will end by the company moving to a creditors' voluntary liquidation; and in that case, the statement required by paragraph (2)(m) shall include—

- (a) details of the proposed liquidator;
- (b) where applicable, the declaration required by Article 195; and
- (c) a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator in accordance with paragraph 84(6)(a) and Rule 2.118(3)."

(3) after paragraph (5) insert—

"(5A) Where proposals are deemed under paragraph (5) of this Rule to have been approved, the administrator shall, forthwith after expiry of the period set out in Rule 2.038(1), give notice of the date on which they were deemed to have been approved to the registrar (on Form 2.18BA), the court and the creditors; and a copy of the proposals shall be attached to the notice given to the court and to creditors who have not previously received them".

(4) in paragraph (6), for "10 " insert "7 business".

### **Meetings to consider administrator's proposals**

**6.** In Rule 2.035—

(1) in paragraph (4) omit "and may only adjourn once".

(2) after paragraph (4) insert—

"(5) If there are subsequently further adjournments, the final adjournment shall not be to a day later than 14 days after the date on which the meeting was originally held, subject to any direction of the court.

(6) Where a meeting is adjourned under this Rule, proofs and proxies may be used if lodged at any time up to 12.00 hours on the business day immediately before the adjourned meeting.”.

### **Creditors’ meeting generally**

7. In Rule 2.036, for paragraph (7) substitute—

“(7) If within 30 minutes from the time fixed for commencement of the meeting those persons attending the meeting do not constitute a quorum, the chairman may adjourn the meeting to such time and place as the chairman may appoint;

- (b) once only in the course of the meeting the chairman may, without an adjournment, declare the meeting suspended for any period up to one hour;
- (c) the chairman may, and shall if the meeting so resolves, adjourn the meeting to such time and place as seems to the chairman to be appropriate in the circumstances;
- (d) an adjournment under this paragraph shall not be for a period of more than 14 days, subject to the direction of the court;
- (e) if there are subsequently further adjournments, the final adjournment shall not be to a day later than 14 days after the date on which the meeting was originally held;
- (f) where a meeting is adjourned under this Rule, proofs and proxies may be used if lodged at any time up to 12.00 hours on the business day immediately before the adjourned meeting;
- (g) paragraph (3) of this Rule applies with regard to the venue fixed for a meeting adjourned under this Rule”.

### **Chairman at meetings**

8. In Rule 2.037, after paragraph (2), insert—

“(3) Where the chairman holds a proxy which includes a requirement to vote for a particular resolution and no other person proposes that resolution—

- (a) the chairman shall propose it unless the chairman considers that there is good reason for not doing so, and
- (b) if the chairman does not propose it, the chairman shall forthwith after the meeting notify the principal of the reason why not.”.

### **Meeting requisitioned by creditors**

9. In Rule 2.038, in paragraph (1), for “12” substitute “8 business”.

### **Correspondence instead of creditors’ meetings**

10. In Rule 2.049—

(1) at the end of paragraph (2), insert “unless it has already been given to the administrator under that Rule”.

(2) omit paragraph (8).

### **Termination of membership**

11. In Rule 2.058, in paragraph (1a), after “bankrupt”, insert “or has a debt relief order made in respect of him”.