



STATUTORY INSTRUMENTS.

S.I. No. 121 of 2012



RULES OF THE SUPERIOR COURTS (WINDING-UP OF COMPANIES
AND EXAMINERSHIP) 2012

(Prn. A12/0602)

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RULES OF THE SUPERIOR COURTS (WINDING-UP OF COMPANIES
AND EXAMINERSHIP) 2012

We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, by virtue of the powers conferred upon us by The Courts of Justice Act 1924, section 36, and the Courts of Justice Act 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), the Courts (Supplemental Provisions) Act 1961, section 14, the European Communities (Rules of Court) Regulations 1972 (S.I. No. 320 of 1972), and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 28th day of November, 2011.

Susan Denham

Nicholas Kearns

Joseph Finnegan

Elizabeth Dunne

John Edwards

Paul McGarry

Gerard Meehan

Patrick Groarke

Patrick O'Connor

Mary Cummins

Noel Rubotham

Geraldine Manners

I concur in the making of the following Rules of Court.

Dated this 11th day of April, 2012.

ALAN SHATTER

Minister for Justice and Equality

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 13th April, 2012.*

S.I. No. 121 of 2012

RULES OF THE SUPERIOR COURTS (WINDING-UP OF COMPANIES
AND EXAMINERSHIP) 2012

1.— (1) These Rules, which may be cited as the Rules of the Superior Courts (Winding-Up of Companies and Examinership) 2012, shall come into operation on the 20th day of April 2012.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2012.

2. The Rules of the Superior Courts are amended:

(i) by the substitution for Order 74 of the Order set out in Schedule 1;

(ii) by the substitution for rule 1 of Order 75A of the following rule:

“1. (1) In this Order, unless the context or subject matter otherwise requires:

“the Act” means the Companies (Amendment) Act 1990;

“centre of main interests” shall be construed in accordance with the Insolvency Regulation;

“Examiner” shall include Interim Examiner;

“the Insolvency Regulation”, “liquidator in main proceedings”, “main proceedings”, “Member State”, “secondary proceedings” and “territorial proceedings” each has the same meaning as in Order 74.

(2) Words and expressions contained in this Order shall have the same meaning as in the Act and where necessary the same meaning as in the Companies Acts.

(3) In any case in which main proceedings have been opened in a Member State other than the State, the Examiner shall, where such document may be relevant to the main proceedings concerned, immediately send a copy of every petition, notice, report, affidavit or other document in the proceedings to the liquidator in the main proceedings by electronic mail or facsimile where possible or otherwise by registered prepaid post, in accordance with and for the purposes of Article 31 of the Insolvency Regulation.”;

(iii) by the substitution for rule 3 of Order 75A of the following rules:

“3. (1) An application under section 2 of the Act shall be grounded on the petition and the verifying affidavit of the party making such

application and shall be heard and determined on affidavit unless the Court otherwise orders.

(2) The petition referred to in sub-rule (1) shall

(a) contain either:

- (i) statements that the Insolvency Regulation applies to the proceedings and that the company's centre of main interests (determined in accordance with the Insolvency Regulation) is situated in the State and the facts and grounds supporting each statement; or
- (ii) statements that the Insolvency Regulation applies to the proceedings and that the company's centre of main interests is situated in another specified Member State and the facts and grounds supporting each statement; or
- (iii) a statement that the Insolvency Regulation does not apply to the proceedings, and the facts and grounds supporting that statement, and in such case, shall contain a statement of the reasons why the debtor is entitled to apply for the appointment of an examiner;

(b) contain a statement that, to the petitioner's knowledge, no insolvency proceedings (within the meaning of Article 2 of the Insolvency Regulation) have been opened in respect of the company in any Member State (other than the State), or that such insolvency proceedings have been opened and if so, whether the proceedings which have been opened are main proceedings, territorial proceedings or secondary proceedings.

(3) Where insolvency proceedings have been opened in any other Member State, the affidavit verifying the petition shall exhibit a certified copy of the original decision appointing the liquidator in the main proceedings or any other certificate of the court having jurisdiction (as referred to in Article 19 of the Insolvency Regulation) and if such decision or certificate is not in one of the official languages of the State, a translation of that decision or certificate into the Irish or the English language certified by a person competent and qualified for the purpose.

3A. (1) This rule applies only where, in the petitioner's belief, the centre of the company's main interests is situated within the territory of a Member State other than the State.

(2) In a case to which this rule applies, the petition shall also:

- (i) identify the place within the State where the company has an establishment (determined in accordance with Article 2(*h*) of the Insolvency Regulation);
 - (ii) where main proceedings have not been opened in another Member State, contain a statement as to which of the conditions referred to in Article 3(4)(*a*) or Article 3(4)(*b*) of the Insolvency Regulation is met and the facts and grounds supporting that statement.”;
- (iv) by the insertion immediately following sub-rule (3) of rule 6 of Order 75A of the following sub-rule:

“(4) The moving party in an application under this rule shall in his or its affidavit grounding such application:

- (*a*) verify that, to the moving party’s knowledge, no insolvency proceedings have been opened in respect of the related company in any Member State or Member States (other than the State), or that such insolvency proceedings have been opened and if so, whether those insolvency proceedings are main proceedings, territorial proceedings or secondary proceedings;
 - (*b*) in a case where, in that party’s belief, the centre of the related company’s main interests is situated within the territory of a Member State other than the State, identify the Member State concerned and the place within the State where, in the moving party’s belief, the company has an establishment (determined in accordance with Article 2(*h*) of the Insolvency Regulation).”;
- (v) by the insertion immediately following rule 22 of Order 75A of the following rule:

“23. A request by a liquidator in main proceedings pursuant to Article 37 of the Insolvency Regulation for the conversion into winding-up proceedings of proceedings under the Act previously opened in the State in respect of a company shall be by notice of motion in the proceedings by the liquidator in the main proceedings. Such notice of motion shall be grounded upon an affidavit sworn by or on behalf of the liquidator in the main proceedings, which affidavit shall specify the reasons why it is alleged the conversion of the proceedings into winding-up proceedings would be in the interests of the creditors in the main proceedings. A copy of the notice of motion and a copy of the grounding affidavit and any exhibits thereto shall be served upon the company and the examiner not later than seven days before the return date. On the return date, the Court may make such orders or give such directions for the conduct and hearing of the application as seem appropriate.”;

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- (vi) by the substitution for the Forms numbered 1, 2, 5, 10 and 53 respectively in Appendix M of the Forms bearing the like numbers respectively set out in Schedule 2, and
- (vii) by the insertion in appropriate sequence in Appendix M of the Form numbered 35A set out in Schedule 3.

Schedule 1

“Order 74 — WINDING-UP OF COMPANIES.

I. Preliminary

1. (1) In this Order and in the forms in Appendix M, unless the context or subject matter otherwise requires—

“the Act” means the Companies Act 1963;

“centre of main interests” shall be construed in accordance with the Insolvency Regulation;

“the company” means the company which is being wound up or in respect of which proceedings to have it wound up have been commenced;

“the Companies Acts” has the meaning assigned to it by the Interpretation Act 2005;

“creditor” includes a company or corporation or a firm or partnership and shall, where relevant, include reference to a liquidator in main proceedings;

“debt proved” includes any debt which shall have been duly admitted without proof;

“the Insolvency Regulation” means Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L160/1 of 30 June 2000);

references without qualification to “Liquidator” shall, where appropriate, be construed as including “Official Liquidator”;

“liquidator in main proceedings” means a person performing, in relation to a debtor company, functions mentioned in Article 2(b) of the Insolvency Regulation in main proceedings opened in a Member State other than the State;

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

(a) in relation to the State, set out in Annex A to the Insolvency Regulations under the heading “Ireland”, and

(b) in relation to another Member State, set out in Annex A to the Insolvency Regulation under the heading relating to that Member State;

“Member State” means a Member State of the European Union other than the Kingdom of Denmark;

“secondary proceedings” means proceedings referred to as secondary proceedings in Article 3(3) of the Insolvency Regulation and

- (a) in relation to the State, set out in Annex A to the Insolvency Regulations under the heading “Ireland”, and
- (b) in relation to another Member State, set out in Annex A to the Insolvency Regulation under the heading relating to that Member State.

“territorial proceedings” means proceedings falling within the definition of insolvency proceedings in Article 2(a) of the Insolvency Regulation opened in the circumstances referred to in Article 3(2) of the Insolvency Regulation and

- (a) in relation to the State, set out in Annex A to the Insolvency Regulations under the heading “Ireland”, and
- (b) in relation to another Member State, set out in Annex A to the Insolvency Regulation under the heading relating to that Member State.

(2) Words and expressions contained in this Order shall have the same meaning as in the Companies Acts.

(3) In this Order, a reference to a section or subsection is to that section or subsection in the Act unless it is indicated that reference to some other enactment is intended.

(4) In any case in which main proceedings or secondary proceedings have been opened in a Member State other than the State, the Liquidator shall, where such document may be relevant to the main proceedings or secondary proceedings concerned, immediately send a copy of every petition, notice, report, affidavit or other document in the proceedings to the liquidator in the main proceedings by electronic mail or facsimile where possible or otherwise by registered prepaid post, in accordance with and for the purposes of Article 31 of the Insolvency Regulation.

Application of this Order

2. Rules which from their nature and subject matter are, or which by the headings above the group in which they are contained or by their terms are made applicable only to the proceedings in winding up by the Court or only to such proceedings and to proceedings in a creditors’ voluntary winding up, shall not apply to the proceedings in a voluntary winding up, or, as the case may be, in a members’ voluntary winding up.

Assignment of Judge

3. All applications and proceedings (including petitions for winding up) in relation to every winding up under the Act shall be assigned to such Judge or Judges as the President of the High Court shall from time to time assign to hear such applications and proceedings but if such Judge or Judges shall be unable to dispose of such applications or proceedings, any other Judge or Judges of the High Court may dispose of any such application.

Use of forms

4. The forms in Appendix M where applicable, and where they are not applicable, forms of the like character, with such variations as circumstances may require, shall be used, and the forms referred to in this Order are those in Appendix M. The directions contained in any form shall be observed in relation thereto. Where such forms are applicable, any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same, unless the Court shall otherwise direct.

II. Proceedings

Title of proceedings

5. (1) Every petition, summons, notice, affidavit and other proceeding in a winding up matter shall with any necessary additions be entitled as in the Form No. 1. Where the company is in liquidation there shall be added after the name of the company the words “in liquidation”.

(2) The first proceeding shall have a distinctive number assigned to it in the Central Office, and all proceedings subsequent to the first proceeding shall bear the same number as the first proceeding. Numbers and dates may be denoted by figures.

III. Service of documents in winding up by the Court

6. (1) Subject to rule 1(4), service of all notices, motions and other documents other than those of which personal service is required, may be effected:

- (a) where a winding up order has been made and a notice to proceed has issued in accordance with Order 55, rule 11, through the Examiner’s Office;
- (b) in any case where paragraph (a) does not apply, through the Central Office, or
- (c) by sending them by pre-paid post to the last known address of the person to be served therewith;

and the notice, motion or document shall be considered served at the time that the same ought to have been delivered in the ordinary course of post. When any such notices, motions or other documents are served by sending them by pre-paid post, a certificate of posting shall be obtained from the Post Office and shall be conclusive evidence of such service.

(2) Where a creditor mentioned in rule 28(2) or rule 95(2) has signified to the Official Liquidator his willingness to receive notices by electronic mail or facsimile, service on such creditor by that means shall be sufficient.

IV. Petition to wind up a company

7. (1) Every petition for the winding up of a company by the Court shall be in one of the Forms Nos. 2, 3 or 4.

(2) Every petition for the winding up of a company by the Court shall contain:

(a) either:

(i) statements that the Insolvency Regulation applies to the proceedings and that the company's centre of main interests (determined in accordance with the Insolvency Regulation) is situated in the State and the facts and grounds supporting each statement; or

(ii) statements that the Insolvency Regulation applies to the proceedings and that the company's centre of main interests is situated in another specified Member State and the facts and grounds supporting each statement, or

(iii) a statement that the Insolvency Regulation does not apply to the proceedings, and the facts and grounds supporting that statement, and in such case, shall contain a statement of the reasons why the petitioner is entitled to apply for the winding up of the company, or

(b) where the Insolvency Regulation applies to the proceedings, a statement that, to the petitioner's knowledge, no insolvency proceedings have been opened in respect of the company in any Member State or Member States (other than the State) or that such insolvency proceedings have been opened in any other Member State, and if so, whether the proceedings which have been opened are main proceedings, secondary proceedings or territorial proceedings.

(3) Where, in the petitioner's belief, the centre of the company's main interests is situated within the territory of a Member State other than the State the petition shall identify the place within the State where, in the petitioner's belief, the company has an establishment (determined in accordance with Article 2(*h*) of the Insolvency Regulation) and the affidavit verifying the petition shall set out the facts supporting such belief.

(4) Where, in the petitioner's belief, the centre of the company's main interests is situated within the territory of a Member State other than the State, and where main proceedings have not been opened in another Member State, the petition shall contain a statement as to which of the conditions referred to in Article 3(4)(*a*) or Article 3(4)(*b*) of the Insolvency Regulation is met and the facts and grounds supporting that statement.

(5) Where insolvency proceedings have been opened in another Member State, the affidavit verifying the petition shall exhibit a certified copy of the original decision appointing the liquidator in the main proceedings or any other

certificate of the court having jurisdiction (as referred to in Article 19 of the Insolvency Regulation) and if such decision or certificate is not in one of the official languages of the State, a translation of that decision or certificate into the Irish or the English language certified by a person competent and qualified for the purpose.

8. The petition shall be presented at and shall be retained in the Central Office. A sealed copy thereof shall be taken out by the petitioner or his solicitor and shall be used as if it were an original.

9. The petition and sealed copy shall be brought to the office of one of the Registrars who shall appoint the time and place at which the petition is to be heard. Notice of the time and place appointed for hearing the petition shall be written on the petition and the sealed copy thereof and the Registrar may at any time before the petition has been advertised, alter the time appointed and fix another time.

Advertisement of petition

10. (1) Every petition shall be advertised seven clear days before the hearing, once in *Iris Oifigiúil* and once at least in two Dublin daily morning newspapers or in such other newspapers as the Registrar when appointing the time and place at which the petition is to be heard shall direct.

(2) The advertisement, which shall be in the Form No. 5, shall state the day on which the petition was presented, the name and address of the petitioner, and the name and registered place of business of his solicitor, and shall contain a note at the foot thereof stating that any person who intends to appear at the hearing of the petition, either to oppose or support, shall send notice of his intention to the petitioner, or to his solicitor, within the time and in the manner prescribed by rule 15, and an advertisement of a petition for the winding up of a company by the Court which does not contain such a note shall be deemed irregular.

(3) The petitioner shall vouch the advertisement of the petition on affidavit, which affidavit shall be filed not later than one clear day before the date fixed for the hearing of the petition, and a certified copy of that affidavit shall be produced on the hearing of the petition.

Service of petition

11. (1) Subject to sub-rule (2), every petition shall, unless presented by the company, be served on the company at the registered office of the company, and if there is no registered office, then at the principal or last known principal place of business of the company if any such can be found, by leaving a copy with any member, officer or servant of the company there, or in case no such member, officer or servant can be found there, then by leaving a copy at such registered office or principal place of business, or by serving it on such member or members of the company as the Court may direct and when the company is being wound up voluntarily, every such petition shall also be served upon the liquidator appointed for the purpose of winding up the affairs of the company.

(2) Where main proceedings have been opened in a Member State other than the State, and the registered office of the company is not situated in the State, the petitioner need not serve the petition on the company, but shall send a copy of the petition to the liquidator in the main proceedings immediately following presentation of the petition.

Verification of petition

12. Every petition for the winding up of a company by the Court shall be verified by affidavit. Such affidavit, which shall be in one of the Forms Nos. 6 or 7, shall be made by the petitioner, or by one of the petitioners if more than one, or in case the petition is presented by a corporation or company, by some director, secretary or other officer thereof, and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient prima facie evidence of the statements in the petition.

Copy of petition

13. Every contributory or creditor of the company shall be entitled to be furnished by the solicitor of the petitioner with a copy of the petition within twenty-four hours after making the request for such copy on paying for it at the rate specified in Order 117.

V. Provisional liquidator

Appointment of provisional liquidator

14. (1) Subject to sub-rule (2), after the presentation of a petition for the winding up of a company, the Court, upon the application of a creditor, or of a contributory or of the company, and upon proof by affidavit of sufficient ground for the appointment of a provisional liquidator and without advertisement or notice to any person (unless the Court shall otherwise direct) may, upon such terms as in the opinion of the Court shall be just and necessary, appoint a provisional liquidator.

(2) When appointing a provisional liquidator, the Court shall:

(a) where it is satisfied that the Insolvency Regulation applies to the proceedings, determine and specify in its order, as the case may be:

- (i) the petitioner having adduced evidence that the centre of main interests of the company is situated in Ireland and no insolvency proceedings have been opened in another Member State, the proceedings are main proceedings, in accordance with Article 3(1) of the Insolvency Regulation, or
- (ii) the petitioner having adduced evidence that insolvency proceedings have been opened in another Member State as proceedings to which Article 3(1) of the Insolvency Regulation refers, and that an establishment of the company is situated in

Ireland, the proceedings are secondary proceedings, in accordance with Article 3(3) of the Insolvency Regulation, or

- (iii) the petitioner having adduced evidence that the centre of main interests of the company is not situated in Ireland, but that an establishment of the company is situated in Ireland, the proceedings are territorial proceedings, in accordance with Article 3(4) of the Insolvency Regulation;

(b) where it is satisfied that the Insolvency Regulation does not apply to the proceedings, so specify in its order.

(3) The order appointing the provisional liquidator shall state the nature and a short description of the property of which the provisional liquidator is ordered to take possession, and the duties to be performed by the provisional liquidator.

(4) Subject to any order of the Court, if no order for the winding up of the company is made upon the petition, or if an order for the winding up of the company is rescinded or if all proceedings on the petition are stayed, the provisional liquidator shall be entitled to be paid out of the property of the company all the costs, charges and expenses properly incurred by him as provisional liquidator, including such sum as the Court may fix for his remuneration and may retain out of such property the amount of such costs, charges and expenses.

VI. Hearing of petitions and orders made thereon

Hearing of petition and appearances thereon

15. Every person who intends to appear on the hearing of a petition shall serve on, or send by post to, the petitioner or his solicitor at the address stated in the advertisement of the petition, notice of his intention. The notice shall contain the address of such person, and shall be signed by him, or by his solicitor and shall be served, or if sent by post, shall be posted in such time as in the ordinary course of post to reach the address not later than five o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition. The notice may be in the Form No. 8. A person who has failed to comply with this rule shall not, without the special leave of the Court, be allowed to appear on the hearing of the petition.

16. The petitioner, or his solicitor, shall prepare a list in the Form No. 9 of the names and addresses of the persons who have given notice of their intention to appear on the hearing of a petition, and of their respective solicitors. On the day appointed for hearing the petition, a copy of the list (or if no notice of intention to appear has been given, a statement in writing to that effect) shall be handed by the petitioner, or his solicitor, to the Registrar prior to the hearing of the petition.

17. Affidavits in opposition to a petition that the company may be wound up under the order of the Court shall be filed within seven days after the publication of the last of the advertisements required by rule 10, and notice of the

filing of every affidavit in opposition to such a petition shall be given to the petitioner, or his solicitor, on the day on which the affidavit is filed.

18. When a petitioner consents to withdraw his petition, or to allow it to be dismissed, or the hearing adjourned, or fails to appear in support of his petition when it is called in Court on the day originally fixed for the hearing thereof, or on any day to which the hearing has been adjourned, or if appearing, does not apply for an order in the terms of the prayer of his petition, the Court may, if, and upon such terms as it shall deem just, substitute as petitioner any person who would have a right to present a petition, and who desires to prosecute the petition.

Winding up order

19. An order to wind up a company or for the appointment of a provisional liquidator shall contain at the foot thereof a notice stating that it will be the duty of the persons who are liable to make out or concur in making out the company's statement of affairs to attend before the Court at such time and place as the Court may appoint and to give to the Court all information which the Court may require.

20. (1) The Court shall determine and specify in an order for the winding up of a company, as the case may be, the matters specified in rule 14(2).

(2) Every order for the winding up of a company by the Court may (subject to rule 19) be in the Form No. 10. Every such order shall, within twelve days after the date thereof, or within such extended time as may be allowed by the Court, be advertised in the Form No. 11 by the petitioner once in *Iris Oifigiúil*, and in each of the newspapers in which the petition was advertised, unless the Court shall otherwise direct and shall, subject to rule 1(4) and to rule 28(2), be served upon such persons (if any) and in such manner as the Court may direct.

21. A copy of every order for the winding up of a company certified by the petitioner or his solicitor to be a true copy shall be left by him at the Examiner's Office within ten days after the same shall have been perfected, and in default thereof any other person interested in the winding up may leave the same, similarly certified, and the Court may give the carriage and prosecution of the order to such person. Upon such order being left, a notice to proceed under the order shall be taken out and served upon all parties who appeared upon the hearing of the petition. Upon the return day of such notice to proceed, a time shall be fixed for the proof of debts and for the list of contributories to be brought in, and directions may be given as to the advertisements to be issued for all or any of such purposes, and generally as to the proceedings and parties to attend thereon. The proceedings under the order shall be continued by adjournment and when necessary, by further notice and any directions as aforesaid may be given, added to, or varied at any subsequent time as may be found necessary.

22. (1) A copy of every order for the winding up of a company certified by the petitioner or his solicitor to be a true copy shall be served upon the company by pre-paid letter addressed to its registered office (if any) or if there is no

registered office at its principal or last known principal place of business or upon such other person or persons or in such other manner as the Court may direct.

(2) Sub-rule (1) shall not apply when the company is the petitioner.

(3) Rule 1(4) shall apply to an order for the opening of secondary proceedings in respect of a company.

Notice to the sheriff

23. For the purposes of section 292 notice that (1) a winding up petition has been presented, or (2) a winding up order has been made, or (3) a provisional liquidator has been appointed, or (4) a meeting has been called at which there is to be proposed a resolution for the voluntary winding up of the company, or (5) a resolution has been passed for the voluntary winding up of the company, shall be in writing and shall be addressed to the sheriff and may be served by being delivered by hand, or by registered post, at his office.

VII. Statement of affairs

Preparation of statement of affairs

24. (1) A statement of affairs of a company required under section 224 shall be made out in duplicate, one copy of which shall be verified by affidavit. The verified statement of affairs shall, where the Court has made a winding up order, be filed in the Examiner's Office and, where a provisional liquidator has been appointed, and while no winding up order has been made, be filed in the Central Office.

(2) The Court may from time to time require any such person as is mentioned in paragraphs (a), (b), (c) or (d) of subsection (2) of section 224 to attend before the Court on a date fixed by the Court for the purpose of requiring him to give such information in relation to the company as the Court may think fit and it shall be the duty of every such person to attend at the Court at such time and place and to give to the Court all information that the Court may require.

(3) When any person requires any extension of time for submitting the statement of affairs, he shall apply to the Court for such extension.

25. A person who is required to make or concur in making any statement of affairs of a company, shall before incurring any costs or expenses in and about the preparation and making of the statement, apply to the Official Liquidator for his sanction and submit a statement of the estimated costs and expenses which it is intended to incur and if there shall be no Official Liquidator, shall apply to the Court; and, except by order of the Court, no person shall be allowed out of the assets of the company any costs or expenses which have not, before being incurred, been sanctioned by the Official Liquidator or the Court.

Dispensing with statement of affairs

26. (1) Any application to dispense with the requirements of section 224 shall be supported by a report of the Official Liquidator showing the special circumstances which, in his opinion, render such a course desirable.

(2) When the Court has made an order dispensing with the requirements of the said section, it may give such consequential directions as it may see fit and, in particular, may give directions as to the sending of any notices which are by this Order required to be sent to any person mentioned in the statement of affairs.

27. Every statement of affairs shall be in the Form No. 13.

28. (1) Unless the Court shall otherwise order, the Official Liquidator shall, as soon as practicable, send to each creditor mentioned in the company's statement of affairs and to each person appearing from the company's books or otherwise to be a contributory of the company a summary of the company's statement of affairs including the causes of its failure and any observations thereon which the Official Liquidator may think fit to make.

(2) In a winding up to which the Insolvency Regulation applies, notice shall be given by the Official Liquidator of the opening of the proceedings and of the Official Liquidator's appointment, in accordance with Article 40 of the Insolvency Regulation, to each creditor of whom he is aware, who does not appear to have his or its habitual residence, domicile or registered office in the State. That notice shall also specify:

- (a) such time limit, if any, as has been fixed for the lodging and proving of claims;
- (b) that in default of compliance with any such time limit, a creditor will be excluded from any distribution made before that creditor's debt or claim is proved;
- (c) the name and address of the liquidator for the purpose of lodging and proving claims;
- (d) whether preferential or secured creditors need lodge their claims, and
- (e) the relevant provisions of the winding up order.

(3) When prior to the winding up order the company has commenced to be wound up voluntarily, the Official Liquidator may, if in his absolute discretion he thinks fit to do so, send to the persons aforesaid or any of them an account of such voluntary winding up showing how such winding up has been conducted and how the property of the company has been disposed of.

VIII. Appointment and duties of Official Liquidator

29. The Court may appoint a person to the office of Official Liquidator without previous advertisement or notice to any party or fix a time and place for the appointment of an Official Liquidator and may appoint or reject any person nominated at such time and place and appoint any person not so nominated.

30. When the time and place are fixed for the appointment of an Official Liquidator, such time and place may be advertised in such manner as the Court shall direct so that the first or only advertisement shall be published within fourteen days and not less than seven days before the day so fixed.

31. An Official Liquidator shall give security by entering into a bond which shall be in the Form No. 22 in Appendix G with two or more sufficient sureties in such sum as the Court may approve and the Court may accept as a sole surety any company carrying on business in Ireland and having power to enter into guarantees in lieu of two or more sufficient sureties if such company has deposited moneys in Court under the Insurance Acts 1909 to 2009. The Court may authorise an Official Liquidator to act as such without giving security for such time as the Court may fix.

32. An Official Liquidator shall be appointed by order which may be in the Form No. 12, and unless he shall have given security, a time shall be fixed by such order within which he is to do so, and the order shall fix the times or periods at which the Official Liquidator is to leave his accounts of receipts and payments at the Examiner's Office and shall direct that all moneys to be received shall be paid into the Bank within seven days after the receipt thereof to the account of the Official Liquidator of the company, and an account shall be opened there accordingly, and an attested copy of the order shall be lodged at the Bank.

33. When an Official Liquidator has given security pursuant to the direction in the order appointing him, the bond shall be filed in the Examiner's Office and the proper officer in the Examiner's Office shall indorse on the order appointing such Official Liquidator a certificate that the bond has been filed.

34. An Official Liquidator shall on each occasion of passing his account and also when the Court may so require, satisfy the Court that his sureties are living and resident in Ireland and have not been adjudged bankrupt or become insolvent or that any company accepted as aforesaid is still in existence and is not in course of being wound up or dissolved and in default thereof he may be required to enter into fresh security within such time as shall be directed.

35. Every appointment of an Official Liquidator shall be advertised in such manner as the Court shall direct immediately after he has given security.

36. In case of the death, removal or resignation of an Official Liquidator, another shall be appointed in his place in the same manner as in the case of a first appointment and proceedings for that purpose may be taken by such party as may be authorised by the Court.

37. An Official Liquidator shall with all convenient speed after he is appointed proceed to make up, continue, complete, check and rectify the books of account of the company in such manner as may be necessary or as the Court may direct.

38. The Official Liquidator of a company, or any member of the committee of inspection of a company, or any other person employed in or in connection with the winding up of the company shall not under any circumstances whatever accept from or arrange to accept from any solicitor, auctioneer or other person connected with the company any gift, gratuity, remuneration, emolument, or pecuniary or other consideration or benefit whatever in addition to or apart from such remuneration as he may properly be entitled to under the provisions of the Act or this Order; nor shall any such person so employed as aforesaid give up or arrange to give up to any such solicitor, auctioneer or other person any portion of his proper remuneration.

39. The Official Liquidator or any member of the committee of inspection of a company shall not, while acting as liquidator or member of such committee, except by leave of the Court, either directly or indirectly, by himself or any employer, partner, clerk, agent or servant, become buyer of any part of the company's assets. Any such purchase made contrary to the provisions of this rule may be set aside by the Court on the application of any creditor or contributory in any winding up.

Restriction on purchase of goods by Official Liquidator

40. Where the Official Liquidator carries on the business of the company, he shall not, without the express sanction of the Court, purchase goods for the carrying on of such business from any person whose connection with him is of such a nature as would result in his obtaining any portion of the profit (if any) arising out of the transaction.

Costs of obtaining sanction of the Court

41. In any case in which the sanction of the Court is obtained under rules 39 or 40, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained and shall not be payable out of the company's assets.

42. If an Official Liquidator is adjudicated a bankrupt, his office shall be vacated and he shall be deemed to have been removed as of the date of adjudication.

43. Upon an Official Liquidator resigning, or being removed from his office, he shall deliver over to the new Official Liquidator all books kept by him and all other books, documents, papers and accounts in his possession relating to the office of Official Liquidator. An Official Liquidator shall not be released unless and until he has delivered over to the new Official Liquidator all the books, papers, documents and accounts which he is by this rule required to deliver on his resignation or removal as aforesaid.

Proceeds of sale of the company's assets

44. Where property forming part of the company's assets is sold by an Official Liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent to the Official Liquidator and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent upon an order of the Court for the payment thereof. Every Official Liquidator by whom such auctioneer or agent is employed shall, unless the Court otherwise orders, be accountable for the proceeds of such sale.

Description and remuneration of Official Liquidator

45. An Official Liquidator shall be described in all proceedings by the style of the Official Liquidator of the particular company in respect of which he is appointed.

46. An Official Liquidator shall be allowed in his accounts or otherwise paid, such salary or remuneration as the Court may from time to time direct and in fixing such salary or remuneration the Court shall have regard to any necessary employment of accountants, assistants or clerks by him. Such salary or remuneration may be fixed either at the time of his appointment or at any time thereafter. Every allowance of such salary or remuneration, unless made at the time of his appointment or upon passing an account, may be made upon application for that purpose by the Official Liquidator on notice to such persons (if any) and shall be supported by such evidence as the Court shall require. The Court may from time to time allow such sum (if any) as the Court shall think fit to the Official Liquidator on account of the salary or remuneration to be thereafter allowed. The Court may direct that an inquiry be held by the Examiner or the Master as to the salary or remuneration of the Official Liquidator and that the Examiner or the Master (as the case may be) do report thereon to the Court. The Master shall have the same powers as the Examiner in conducting any such enquiry.

47. Where an Official Liquidator receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which should have been performed by the Official Liquidator.

48. The accounts of an Official Liquidator shall be left at the Examiner's Office or with the Master's Registrar (as the case may be) at the times directed by the order appointing him, and at such other times as may from time to time be required by the Court, and such accounts shall from time to time be passed and verified in such manner, and upon notice to such parties (if any) as the Court may direct.

IX. Proceedings by or against directors, promoters and officers when the company is being wound up by the Court

49. An application made to the Court under

(a) section 184;

(b) subsections (1) or (2) of section 297;

(c) section 298 or

(d) subsection (2) of section 391,

shall be made by motion in which shall be stated the nature of the declaration or order for which application is made and the grounds of the application, and notice of such motion, together with a copy of every report and affidavit upon which it is intended to be grounded, shall be served personally on every person against whom an order is sought, not less than seven clear days before the day named therein for hearing the application. Where the application is made by the Official Liquidator, he may make a report to the Court stating any relevant facts and information which he shall verify by affidavit. Where an application is made by any other person it shall be supported by affidavit to be filed by him. The Court may give such directions as to the procedure for the hearing of the application and may direct that the date fixed for the hearing shall be advertised in such form as the Court may approve, and on the hearing the Court may allow any person interested to appear either by counsel or in person and to cross-examine any of the witnesses giving evidence or to give evidence.

X. General meetings of creditors and contributories in a winding up by the Court and of creditors in a creditors' voluntary winding up.

Committee of inspection

50. When the Court directs a meeting of the creditors or separate meetings of the creditors and contributories of the company to be summoned under section 232, the Official Liquidator shall give notice in writing in the Forms Nos. 14 or 15 seven clear days before the day appointed for such meeting to every creditor or, as the case may be, to every creditor and every contributory, of the time and place appointed for such meeting or meetings and that the purpose of such meeting or meetings is to determine whether an application is to be made to the Court for the appointment of a committee of inspection to act with the Official Liquidator and who are to be the members of the committee if appointed. If the Court shall so direct such notice may be given by advertisement. The Official Liquidator or, if he is unable to act someone nominated by him, shall act as chairman of such meeting and such chairman shall make a report of the result of the meeting to the Court. Upon the result of the meetings of creditors and contributories being reported to the Court, if there is a difference between the determinations at the meetings of the creditors and contributories, the Court shall, on the application of the Official Liquidator, fix a time and place for considering the resolutions and determinations (if any) of the meetings, deciding differences and making such order as shall be necessary. In any other case the Court may upon the application of the Official Liquidator forthwith make any appointment necessary for giving effect to any such resolutions or determinations.

51. When a time and place have been fixed for the consideration of the resolutions and determinations of the meetings, such time and place shall be advertised by the Official Liquidator in such manner as the Court shall direct but so

that the first or only advertisement shall be published not less than seven days before the time so fixed.

52. Upon the consideration of the resolutions and determinations of the meetings, the Court shall hear the Official Liquidator and any creditor or contributory.

53. Every appointment of a committee of inspection shall be advertised by the Official Liquidator in such manner as the Court directs immediately after the appointment has been made unless the Court shall otherwise order.

Liquidator's meetings of creditors and contributories

54. (1) In addition to the meetings of creditors or contributories held pursuant to section 232 or section 309 (each of which is hereinafter referred to as a "Court meeting of creditors" or a "Court meeting of contributories" as the case may be), the Official Liquidator in any winding up by the Court may himself, from time to time, subject to the provisions of the Act and the control of the Court, summon, hold and conduct meetings of the creditors or contributories (each of which is hereinafter referred to as a "Liquidator's meetings of creditors" or a "Liquidator's meetings of contributories" as the case may be) for the purpose of ascertaining their wishes in all matters relating to the winding up.

(2) In any creditors' voluntary winding up the Liquidator may himself from time to time summon, hold and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the winding up (each of such meetings and any meeting of creditors which a Liquidator or a company is by the Act required to convene in or immediately before such a voluntary winding up and any meeting convened by a creditor in a voluntary winding up under this Order is hereinafter called a "voluntary liquidation meeting").

55. (1) When the Court directs a meeting of the creditors or contributories of the company to be summoned under section 309, the Official Liquidator shall give notice in writing in the Forms Nos. 16 or 17 seven clear days before the day appointed for such meeting, to every creditor or contributory, of the time and place appointed for such meeting and of the matter upon which the Court desires to ascertain the wishes of the creditors or contributories. If the Court so directs, such notice may be given by advertisement in which case the object of the meeting need not be stated.

(2) Where the Court appoints a chairman of such meeting, a memorandum of his appointment in the Form No. 18 shall be sufficient authority for the person so appointed to preside at such meeting and such chairman shall make a report of the result of the meeting in the Form No. 19.

Application of rules as to meetings

56. Except where and so far as the nature of the subject matter or the context may otherwise require, rules 58-83 (inclusive) shall apply to a Court meeting of creditors and to a Court meeting of contributories, to a Liquidator's meeting of creditors and to a Liquidator's meeting of contributories, and to a voluntary

liquidation meeting, but so nevertheless that the said rules shall take effect as to a meeting held under section 232 subject and without prejudice to any express provision of the Act and as to a Court meeting of creditors or Court meeting of contributories subject and without prejudice to any express directions of the Court.

Summoning of meetings

57. (1) The Liquidator shall summon all meetings of creditors and contributories, subject to rules 1(4) and 6(2), by sending by post not less than seven days before the day appointed for the meeting to every person appearing by the company's books to be a creditor of the company notice of the meeting of creditors and to every person appearing by the company's books or otherwise to be a contributory of the company notice of the meeting of contributories.

(2) Subject to rule 6(2), the notice to each creditor shall be sent to the address given in his proof, or if he has not proved, to the address given in the statement of affairs of the company, if any, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory or to such other address as may be known to the Liquidator.

(3) In the case of meetings under section 270 any creditor may summon the meeting.

(4) This rule shall not apply to meetings under section 266 or section 273.

Proof of notice

58. An affidavit by the Liquidator or creditor, or the solicitor or clerk of either of such persons, or as the case may be, by some officer or clerk of the company or its solicitor that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

Place of meetings

59. In the case of a company having its registered office in the City or County of Dublin or in the City or County of Cork every meeting shall be held at such place in the City or County of Dublin or in the City or County of Cork, as the case may be, as is in the opinion of the person convening the same most convenient for the majority of the creditors or contributories or both. In any other case every meeting shall be held at such place as is in the opinion of the person convening the same most convenient for the majority of the creditors or contributories or both. Different times or places may be named for the meetings of creditors and for the meetings of contributories.

Costs of calling meetings

60. The costs of summoning a meeting of creditors or contributories at the instance of any person other than the Liquidator shall be paid by the person at

whose instance it is summoned who shall before the meeting is summoned deposit with the Liquidator such sum as may be required by the Liquidator as security for the payment of such costs. The costs of summoning such meeting of creditors or contributories, including all disbursements for printing, stationery, postage and the hire of room, shall be calculated at the following rate for each creditor or contributory to whom notice is required to be sent, namely, one euro per creditor or contributory for the first twenty creditors or contributories, 75 cent per creditor or contributory for the next thirty creditors or contributories and 50 cent per creditor or contributory for any number of creditors or contributories after the first fifty. The said costs shall be repaid out of the assets of the company if the Court shall by order or if the creditors or contributories (as the case may be) shall by resolution so direct. This rule shall not apply to meetings under section 266 or section 270.

Chairman of meeting

61. Where a meeting is summoned by the Liquidator, he or, if he is unable to act someone nominated by him, shall be chairman of the meeting. At every other meeting of creditors or contributories the chairman shall be such person as the meeting by resolution shall appoint. This rule shall not apply to meetings under section 266.

Ordinary resolution of creditors and contributories

62. At a meeting of creditors a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution, and at a meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy and voting on the resolution have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the company.

Copy of resolution to be filed

63. The Liquidator shall file with the Registrar of Companies a copy certified by him of every resolution of a meeting of creditors or contributories.

Non-receipt of notice

64. Where a meeting of creditors or contributories is summoned by notice the proceedings and resolutions of the meeting shall unless the Court otherwise orders be valid notwithstanding that some creditors or contributories may not have received the notice sent to them.

Adjournments

65. The chairman may with the consent of the meeting adjourn it from time to time and from place to place but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the Court otherwise orders.

Quorum

66. (1) A meeting may not act for any purpose, except the election of a chairman and the adjournment of the meeting, unless there are present or represented thereat in the case of a creditors' meeting at least three creditors entitled to vote or all the creditors entitled to vote if the number entitled to vote shall not exceed three, or in the case of a meeting of contributories at least two contributories.

(2) If within fifteen minutes from the time appointed for the meeting a quorum of creditors or contributories, as the case may be, is not present or represented the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day or time or place as the chairman may appoint, but so that the day appointed shall be not less than seven nor more than twenty-one days from the day from which the meeting was adjourned.

Creditors entitled to vote

67. In the case of a meeting of creditors held pursuant to section 232 or of an adjournment thereof a person shall not be entitled to vote as a creditor unless he has duly lodged with the Liquidator not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting, a proof of the debt which he claims to be due to him from the company. In the case of any other Court meeting of creditors or a Liquidator's meeting of creditors, a person shall not be entitled to vote as a creditor unless he has lodged with the Liquidator a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part before the date on which the meeting is held; provided that the next four following rules shall not apply to a meeting of creditors held pursuant to section 232. This rule shall not apply to any creditors or class of creditors who by virtue of the Act or this Order are not required to prove their debts or to any voluntary liquidation meeting.

Cases in which creditors may not vote

68. A creditor shall not vote in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company and against whom an adjudication order in bankruptcy has not been made, as a security in his hands and to estimate the value thereof, and for purposes of voting but not for the purposes of dividend, to deduct it from his proof.

Votes of secured creditors

69. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof or in a voluntary liquidation in such a statement as is hereinafter mentioned the particulars of his security, the date when it was given and the value at which he assesses it and shall be entitled to vote only in

respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to surrender his security unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

Creditors required to give up security

70. The Liquidator may, within twenty-eight days after a proof or in a voluntary liquidation a statement estimating the value of a security as aforesaid has been used in voting at a meeting, require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated; provided that where a creditor has valued his security he may, at any time before being required to give it up, correct the valuation by a new proof and deduct the new value from his debt.

Admission and rejection of proofs for purpose of voting

71. The chairman shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether a proof should be admitted or rejected he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

Statement of security

72. For the purpose of voting at any voluntary liquidation meetings, a secured creditor shall, unless he surrender his security, lodge with the Liquidator before the meeting a statement giving the particulars of his security, the date when it was given and the value at which he assesses it. This rule shall not apply to a meeting of creditors held pursuant to section 266.

Minutes of meetings

73. (1) The chairman shall cause minutes of the proceedings at the meeting to be drawn up and entered in a book kept for that purpose and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

(2) The chairman shall cause a list of creditors (or contributories) present at every meeting to be made and kept as in the Form No. 20, and such list shall be signed by him.

Proxies

74. A creditor or a contributory may vote either in person or by proxy. Where a person is authorised in manner provided by section 139 to represent a corporation at any meeting of creditors or contributories, such person shall produce to the Liquidator or the chairman of the meeting a copy of the resolution so authorising him. Such copy shall either be under the seal of the corporation or be certified to be a true copy by the secretary or a director of the corporation.

75. Every instrument of proxy shall be in either the Form No. 21 or the Form No. 22.

76. A general and a special form of proxy shall be sent to each of the creditors or contributories with the notice summoning the meeting, and neither the name nor description of the Liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

77. A creditor or a contributory may appoint any person a general proxy.

78. A creditor or a contributory may appoint any person a special proxy to vote at any specified meeting or adjournment thereof:

- (a) for or against the appointment or continuance in office of any specified person as Liquidator or member of the committee of inspection, and;
- (b) on all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.

79. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a Liquidator in obtaining proxies or in procuring his appointment as Liquidator except by the direction of a meeting of creditors or contributories, the Court may order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was exercised notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

80. A creditor or a contributory in a winding up may appoint the Liquidator or if there is no Liquidator the chairman of a meeting to act as his general or special proxy.

81. No person appointed as either a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the assets of the company otherwise than as a creditor rateably with the other creditors of the company; provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as Liquidator he may use the said proxies and vote accordingly.

82. (1) Every instrument of proxy shall be lodged with the Official Liquidator in a winding up by the Court, with the company at its registered office for a meeting under section 266, and with the Liquidator or if there is no Liquidator with the person named in the notice convening the meeting to receive the same in a voluntary winding up, not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

(2) No person who is an infant shall be appointed a general or special proxy.

(3) Where a company is a creditor, any person who is duly authorised under the seal of such company to act generally on behalf of such company at meetings

of creditors and contributories may fill in and sign the instrument of proxy on such company's behalf and appoint himself to be such company's proxy, and the instrument of proxy so filled in and signed by such person shall be received and dealt with as a proxy of such company.

83. The instrument of proxy of a creditor, blind or incapable of writing, may be accepted if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence; provided that all insertions in the instrument of proxy are in the handwriting of the witness, and that such witness shall have certified at the foot of the instrument of proxy that all such insertions have been made by him at the request and in the presence of such creditor before he attached his signature or mark.

XI. Disclaimer

84. (1) Any application in a winding up by the Court for leave to disclaim any part of the property of a company pursuant to section 290(1) shall be made ex parte, and in any other case by special summons. Such application shall be based on an affidavit showing who are the parties interested in the property and what their interests are. On the hearing of such application the Court shall give directions and in particular directions as to the notices to be given to the parties interested or any of them and as to advertisements to be published and may adjourn the application to enable any such party to attend.

(2) Where a Liquidator disclaims a leasehold interest he shall forthwith deliver the disclaimer to the registrar of companies. The disclaimer shall contain particulars of the interest disclaimed and a statement of the persons to whom notice of the disclaimer has been given. Until the disclaimer is so delivered it shall be inoperative. A disclaimer shall be in the Form No. 23 and a notice of disclaimer in the Form No. 24.

(3) Where any person claims to be interested in any part of the property of a company which the Liquidator wishes to disclaim, he shall at the request of the Liquidator furnish a statement of the interest so claimed by him.

85. (1) Any application under section 290(7) for an order for the vesting of any disclaimed property in, or the delivery of any such property to, any persons shall be grounded on the affidavit filed on the application for leave to disclaim such property.

(2) Where such an application as aforesaid relates to disclaimed property of a leasehold nature and it appears that there is any mortgagee by demise, chargeant or under-lessee of such property, the Court may direct that notice shall be given to such mortgagee, chargeant or under-lessee that, if he does not apply for such a vesting order within the time to be stated in the notice, he will be excluded from all interest in and security upon the property; and the Court may for the purposes aforesaid adjourn the original application. If at the expiration of the time so stated in the notice such mortgagee, chargeant or under-lessee fails himself to apply for a vesting order, the Court may make an order

vesting the property in the original applicant and excluding such mortgagee, chargeant or under-lessee from all interest in or security upon the property.

XII. List of contributories in a winding up by the Court.

86. Unless the Court shall dispense with a settlement of a list of contributories, the Official Liquidator shall at such time as the Court shall direct make out and leave at the Examiner's Office a list of the contributories of the company and such list shall be verified by the affidavit of the Official Liquidator in the Form No. 25 and shall, so far as is practicable, state the address of and the number of shares or extent of interest to be attributed to each contributory and the amount called up, and the amount paid up in respect of such shares or interest and distinguish the several classes of contributories. The Official Liquidator shall, in relation to representative contributories or contributories liable for the debts of others, as far as practicable, observe the requirements of section 235(3).

87. When the list of contributories has been left at the Examiner's Office, the Official Liquidator shall obtain an appointment from the Examiner to settle the same, and shall give notice in writing of such appointment in the Form No. 27 to every person included in such list, stating in what character, and for what number of shares, or extent of interest, such person is included in the list and that any application for the removal of the name of such person from the list or for a variation of the list should be made to the Examiner at the time appointed for the settlement of such list.

88. The result of the settlement of the list of contributories shall be stated in a certificate by the Examiner. Certificates may be made from time to time for the purpose of stating the result of such settlement down to any particular time, or as to any particular person, or stating any variation of the list.

89. The Official Liquidator may from time to time vary or add to the list of contributories, but any such variation or addition shall be settled in manner aforesaid.

XIII. Collection and distribution of company's assets by Official Liquidator

90. Subject to section 205A, the duties imposed on the Court by section 235(1) in a winding up by the Court with regard to the collection of the assets of the Company and the application of the assets in discharge of the company's liabilities shall be discharged by the Official Liquidator. For the purpose of the discharge by the Official Liquidator of the duties imposed, subject to section 205A, by section 235(1), the Official Liquidator shall for the purpose of acquiring or retaining possession of the property of the company be in the same position as if he were a receiver of the property appointed by the Court, and the Court may, on his application, enforce such acquisition or retention accordingly.

Power of Liquidator to require delivery of property

91. (1) Any contributory for the time being on the list of contributories, any trustee, receiver, banker or agent or officer of a company which is being wound

up under an order of the Court shall, on notice from the Official Liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender or transfer to or into the hands of the Official Liquidator any money, property, books or papers which happen to be in his hands for the time being and to which the company is prima facie entitled.

(2) A notice mentioned in sub-rule (1) shall not, in territorial proceedings or secondary proceedings, extend to any asset of the company, or any books or papers concerning any such asset, situated outside the State.

XIV. Calls

Calls by Liquidator

92. Every application to the Court to make any call on the contributories or any of them for any purpose authorised by the Act shall be made by motion on notice in the Form No. 28 stating the proposed amount of such call. Such motion which shall be grounded on an affidavit of the Official Liquidator in the Form No. 29 shall be served six clear days at the least before the hearing of the application on every contributory proposed to be included in such call, or if the Court shall so direct, notice of such intended call may be given by advertisement in the Form No. 30.

93. When an order for a call has been made, a copy thereof shall be forthwith served upon each of the contributories included in such call together with a notice in the Form No. 31 from the Official Liquidator specifying the amount or balance due from such contributory (having regard to the provisions of the Act) in respect of such call but such order need not be advertised unless for any special reason the Court shall so direct.

94. At the time of making an order for a call the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, and afterwards from time to time, so long as may be necessary. At the time appointed by any such adjournment or upon a motion to enforce payment of a call duly served and upon proof of the service of the order and notice of the amount due and non-payment, an order may be made that such of the contributories who have made default or that such of them against whom it shall be thought proper to make such an order, do pay the sum which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them respectively.

XV. Ascertainment of company's liabilities

95. (1) For the purpose of ascertaining the debts and claims due from the company and of requiring the creditors to come in and prove their debts or claims, an advertisement in the Form No. 35 shall be published at such time as the Court shall direct, and such advertisement shall fix a time for the creditors to send their names and addresses and the particulars of their debts and claims, and the names and registered places of business of their solicitors (if any) to the Official Liquidator and appoint a day for adjudicating thereon.

(2) In a winding up to which the Insolvency Regulation applies, in addition to advertisement, notice shall be given by the Official Liquidator in the Form No. 35A to each creditor of whom he is aware, who does not appear to have his or its habitual residence, domicile or registered office in the State, save where the information contained in that Form has already been furnished to that creditor under rule 28(2).

(3) A notice referred to sub-rule (2) shall be given by prepaid ordinary post to the creditors at the address set forth in the statement of affairs or at such address as may be known to the Official Liquidator not later than ten days before the expiration of the time so fixed (or in the case of the liquidator in main proceedings opened in a Member State other than the State, immediately by the means specified in rule 1(4)).

96. The creditors need not attend upon the adjudication nor prove their debts or claims unless they are required to do so by notice from the Official Liquidator but upon such notice being given they shall come in and prove their debts or claims within a time to be therein specified.

97. The Official Liquidator shall investigate the debts and claims sent in to him, and ascertain in so far as he is able which of such debts or claims are legally due from the company, and he shall make out and leave at the Examiner's Office a list of all the debts and claims sent in to him, distinguishing which of the debts and claims, or parts of the debts and claims so claimed are in his opinion legally due and proper to be allowed without further evidence, and which of them in his opinion ought to be proved by the creditor, and he shall make and file prior to the time appointed for adjudication, an affidavit in the Form No. 36 setting out which of the debts and claims in his opinion are legally due and proper to be allowed without further evidence and stating his belief that such debts and claims are legally due and proper to be allowed.

98. At the time appointed for adjudicating upon the debts and claims, or at any adjournment thereof, the Examiner may either allow the debts and claims upon the affidavit of the Official Liquidator or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereon to a time to be then fixed, and the Official Liquidator shall give notice in the Form No. 38 to the creditors whose debts and claims have been so allowed of such allowance. The Official Liquidator shall give notice in the Form No. 39 to the creditors whose debts or claims have not been allowed upon his affidavit, that they are required to come in and prove the same on or before a day to be therein named, being not less than seven days after such notice, and to attend at a time to be therein named being the time appointed by the advertisement or by adjournment (as the case may be) for adjudicating upon such debts or claims. If the creditor shall fail to comply with the requirements of this notice, his claim or the part thereof required to be proved shall be disallowed.

99. The value of such debts and claims as are made admissible to proof by section 283 shall, as far as possible, be estimated according to the value thereof at the date of the order to wind up the company.

100. Such creditors as attend and prove their debts or claims pursuant to notice from the Official Liquidator shall be allowed their costs of proof in the same manner as in the case of debts proved in a cause.

101. The result of the adjudication upon debts and claims shall be stated in a certificate to be made by the Examiner and certificates as to any of such debts and claims may be made from time to time. All such certificates shall show the debts or claims allowed and whether allowed as against any particular assets or in any other qualified or special manner.

XVI. Proof of debts

Mode of proof

102. Save where the Official Liquidator or the Examiner shall require the same to be proved by affidavit, a debt may be proved in any winding up by delivering or sending through the post particulars of the claim to the Official Liquidator.

103. An affidavit proving a debt may be in the Form No. 40 and may be made by the creditor or by some person authorised by him. If made by a person so authorised, it shall state his authority and means of knowledge. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers (if any) by which the same can be substantiated and shall state whether the creditor is, or is not, a secured creditor. The creditor shall produce such vouchers if required to do so.

104. A creditor shall bear the cost of proving his debt or claim unless he has been required to attend and prove the same by the Official Liquidator.

Discount

105. A creditor proving his debt shall deduct therefrom (*a*) any discount in excess of two and a half per cent. which he may have agreed to allow for payment in cash on the net amount of his claim, and (*b*) all trade discounts.

Periodical payments

106. When any rent or other payment falls due at stated times and the order or resolution to wind up is made at any time other than at one of those times, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding up order or resolution as if the rent or payment accrued due from day to day. Provided that where the Official Liquidator remains in occupation of premises demised to a company which is being wound up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment of rent during the period of the company's or the Official Liquidator's occupation.

107. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the commencement of the winding up, the creditor may prove for interest at a

rate not exceeding six per cent. per annum to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment.

Proof for debt at a future time

108. A creditor may prove for a debt not payable at the date of the winding up order or resolution, as if it were payable presently, and may receive dividends equally with the other creditors, deducting only there out a rebate of interest at the rate of six per cent. per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

Proof under section 285

109. Unless the Liquidator shall in any special case otherwise direct, formal proof of the debts mentioned in section 285(2)(e) shall not be required.

Employees' wages

110. In any case in which it appears that there are numerous claims for wages by persons employed by the company, it shall be sufficient if one proof for all such claims is made either by a foreman or by a trades union official or by some other person on behalf of all such creditors. Such proof, which shall be in the Form No. 41, shall have annexed thereto as forming part thereof, a schedule setting forth the names of the employees and the amounts severally due to them. Any proof made in compliance with this rule shall have the same effect as if separate proofs had been made by each of the said employees.

Production of bills of exchange and promissory notes

111. Where a creditor seeks to prove in respect of a bill of exchange, promissory note or other negotiable instrument or security on which the company is liable, such bill of exchange, note, instrument or security shall, subject to any special order of the Court made to the contrary, be produced to the Official Liquidator and be marked by him before the proof can be admitted either for voting or for any other purpose.

XVII. Dividends in a winding up by the Court

Dividend to creditors

112. The Official Liquidator shall not declare a dividend without the sanction of the Court. Upon the application of the Official Liquidator for such sanction, the Court, if it grants the same, shall at the same time give such directions as may be thought expedient in regard to the amount of such dividend, and the time when the same shall be declared.

113. Upon the declaration of an interim or final dividend by the Official Liquidator he shall send notice thereof to each creditor whose proof has been admitted.

114. The Court may upon the application of the Official Liquidator, or without any such application, postpone the declaration of a dividend already sanctioned to a later date.

115. An application under rules 112 or 114 may be made to the Court *ex parte*.

116. If a person to whom dividends are payable desires that they shall be paid to some other person, he may lodge with the Official Liquidator a document in the Form No. 42, which shall be a sufficient authority for payment of the dividend to the person therein named.

XVIII. Payment in of moneys and deposit of securities

117. If the Official Liquidator does not pay the moneys received by him into the Bank to the account of the Official Liquidator of the company in accordance with the order of the Court in that behalf, such Official Liquidator shall, unless the Court otherwise directs, be charged interest in his account at the rate of one half per cent on the amount retained in his hands for every seven days during which the same shall have been so retained contrary to such order, and the Court may, for any such retention, disallow the salary or remuneration of the Official Liquidator or any part thereof.

118. All bills, notes and other securities payable to the company or to the Official Liquidator shall as soon as they come to the hands of the Official Liquidator be deposited by him in the Bank for the purpose of being presented by the Bank for acceptance and payment or for payment only as the case may be.

119. At the time of the service of any order for the payment into the Bank the Official Liquidator shall give to each of the parties served a notice in the Form No. 32 for the purpose of informing him how the payment is to be made; and, before the time fixed for such payment, the Official Liquidator shall furnish to the cashier of the Bank a certificate in the Form No. 33 to be signed by such cashier and delivered to the party paying in the money therein mentioned.

120. For the purpose of enforcing any order for payment of money into the Bank, an affidavit of the Official Liquidator in the Form No. 34 shall be sufficient evidence of the non-payment thereof.

121. All bills, notes and other securities delivered into the Bank shall be delivered out upon a request signed by the Official Liquidator and countersigned by the Examiner. Moneys placed to the account of the Official Liquidator shall be paid out on cheques or orders signed by the Official Liquidator and countersigned by the Examiner.

122. All or any part of the money for the time being standing to the credit of the Official Liquidator in the Bank and not immediately required for the purpose of the winding up may be invested in the joint names of the Examiner and the Official Liquidator. All such investments shall be made by the Bank upon a request in the Form No. 43 signed by the Official Liquidator and countersigned by the Examiner which request shall be a sufficient authority for debiting the account with the purchase money.

123. All dividends and interest to accrue due upon any such investments shall from time to time be received by the Bank, under a power of attorney to be executed by the Examiner and the Official Liquidator, and be placed to the credit of the account of such Official Liquidator.

XIX. Sales of property

124. (1) Subject to sub-rule (2), any real or personal property belonging to the company may be sold with the approval of the Court in the manner provided by Order 51 or, if the Court shall so direct, by the Official Liquidator. The conditions or contract of sale shall be settled and approved by the Court unless the Court shall otherwise direct, and the Court may, on any sale by public auction, fix a reserve. Unless the Court otherwise directs, all conditions and contracts of sale shall provide for the payment of any deposit into a joint deposit account bearing interest in the Bank in the names of the Official Liquidator and the Examiner and that the purchase money shall be paid by the buyer into the Bank to the account of the Official Liquidator.

(2) In main proceedings, the directions of the Court may be sought in respect of the use by the Official Liquidator in another Member State of any appropriate procedure in territorial proceedings or otherwise according to the law of that Member State for the sale or other realisation of any real or personal property belonging to the company which is situated in a Member State other than the State.

XX. Examination of witnesses

125. If a witness is examined in private, the transcript or notes of the examination shall not be filed or be open to the inspection of any person other than the Liquidator, unless and until the Court shall otherwise direct. The Court may from time to time give directions in regard to the custody and inspection of the transcripts and notes of examinations and the furnishing of copies or extracts therefrom.

XXI. Sanction of the Court

126. Every application by an Official Liquidator for the sanction of the Court to the taking or doing of any proceeding, act, matter, or thing which by the Act he is empowered to take or do with the sanction of the Court, shall be made to the court by motion on notice (where appropriate), or ex parte in pursuance of a motion paper setting forth shortly the nature of the application.

127. Where the Court sanctions the drawing, accepting, making or endorsing of any bill of exchange or promissory note by an Official Liquidator, a memorandum to that effect shall be made and signed by the Examiner on such bill of exchange or promissory note.

XXII. Costs and expenses payable out of the assets of the company

128. (1) The assets of a company in a winding up by the Court remaining after payment of the fees and expenses properly incurred in preserving, realising or getting in the assets, including where the company has previously commenced to be wound up voluntarily such remuneration, costs and expenses as the Court may allow to a Liquidator appointed in such voluntary winding up, shall, subject to any order of the Court, be liable to the following payments which shall be made in the following order of priority, namely:

First — The costs of the petition, including the costs of any person appearing on the petition whose costs are allowed by the Court.

Next — The costs and expenses of any person who makes or concurs in making the company's statement of affairs.

Next — The necessary disbursements of the Official Liquidator, other than expenses properly incurred in preserving, realising or getting in the assets herein before provided for.

Next — The costs payable to the solicitor for the Official Liquidator.

Next — The remuneration of the Official Liquidator.

Next — The out-of-pocket expenses necessarily incurred by the committee of inspection (if any).

(2) No payments in respect of bills of costs, charges or expenses of solicitors, accountants, auctioneers, brokers or other persons, other than payments for costs, charges or expenses fixed or allowed by the Court shall be allowed out of the assets of the company unless they have been duly fixed and allowed by the Examiner or the Taxing Master as the case may be.

XXIII. Statements by Liquidator to the Registrar of Companies

Conclusion of winding up

129. The winding up of a company shall for the purposes of section 306 be deemed to be concluded:

- (a) in the case of a company wound up by order of the Court, on the date on which the order dissolving the company has been reported by the Official Liquidator to the registrar of companies;
- (b) in the case of a company wound up voluntarily, on the date of the dissolution of the company, unless on such date any funds or assets

of the company remain unclaimed or undistributed in the hands or under the control of the Liquidator or any person who has acted as Liquidator, in which case the winding up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into The Companies Liquidation Account in the Bank.

Times for sending Liquidator's statements, and regulations applicable thereto

130. The statements in relation to the proceedings in and the position of the liquidation of a company the winding up of which is not concluded within two years after its commencement shall be sent to the Registrar of Companies as follows:

- (a) the first statement, commencing at the date when the Liquidator was first appointed and brought down to the end of two years from the commencement of the winding up, shall be sent within thirty days from the expiration of such two years or within such extended period as the Court may allow, and subsequent statements shall be sent, in case of a winding up by the Court, at intervals of one year or such other intervals as the Court may direct, and in case of a voluntary winding up, at intervals of half a year, each statement being brought down to the end of the period for which it is sent. In cases in which the assets of the company have been fully realised and distributed before the expiration of any such period, a final statement shall be sent forthwith;
- (b) the statement shall be in the Form No. 44, shall be sent in duplicate, and shall be verified by an affidavit in the Form No. 45, which shall be sent with the statement to the registrar of companies.

XXIV. Payment of unclaimed dividends and unapplied or undistributable balances into The Companies Liquidation Account

131. (1) All moneys in hand or under the control of a Liquidator representing unclaimed dividends admissible to proof and unapplied or undistributable balances, which under section 307(1) the Liquidator is to pay into The Companies Liquidation Account, shall be ascertained on the date which is two months after the date of the meeting referred to in section 263, or in section 273 (as the case may be), and shall be paid into The Companies Liquidation Account within fourteen days from the said date.

(2) When a Liquidator desires to pay moneys into The Companies Liquidation Account, he shall make and file an affidavit entitled in the matter of the company in liquidation and in the matter of section 307, and setting forth:

- (a) the name of the company of which he is Liquidator,
- (b) his name and address,
- (c) the dates on which the resolution for winding up was passed and on which he was appointed Liquidator,

- (d) the amount of the moneys to be lodged to the said account,
- (e) the amount of the said moneys to be lodged which represents unclaimed dividends admissible to proof,
- (f) the amount of the said moneys to be lodged which represents unapplied or undistributable balances,
- (g) the names and last known addresses of the persons to whom the unclaimed dividends admissible to proof are payable and the amount payable to each such person,
- (h) the names and last known addresses of the persons to whom the unapplied or undistributable balances are payable and the amount payable to each such person,
- (i) the names and last known addresses of any persons (other than those mentioned in (g) and (h) hereof) who have claimed any interest in such unapplied or undistributable balances and the nature of such claim,
- (j) his submission to answer all such inquiries relating to the moneys so to be lodged as the Court may make or direct.

Such affidavit shall have annexed thereto a schedule as prescribed by Order 77, rule 100. When the Liquidator has filed such an affidavit, he shall request the Accountant to issue a direction to the Bank to receive such moneys for the credit of The Companies Liquidation Account. Every application for such request shall be in the Form No. 7 in Appendix P.

(3) Moneys invested or deposited at interest by a Liquidator shall be deemed to be moneys under his control and when such moneys form part of the balance payable into The Companies Liquidation Account pursuant to sub-rule (1) the Liquidator shall realise the investment or withdraw the deposit and shall pay the proceeds into The Companies Liquidation Account.

(4) Every person who has acted as Liquidator, whether the liquidation has been concluded or not, shall furnish to the Minister for Enterprise, Jobs and Innovation on request particulars of any moneys in hand or under his control representing unclaimed dividends admissible to proof or unapplied or undistributable balances and such other particulars as the Minister may require for the purpose of ascertaining or getting in any money payable into The Companies Liquidation Account, and the Minister may require such particulars to be verified by affidavit.

(5) The Minister may at any time request any such person as is mentioned in sub-rule (4) to submit to him an account verified by affidavit of the sums received and paid by him as Liquidator of the company and may direct an audit of the account.

(6) If any person who has been requested to furnish particulars of any moneys in hand or under his control representing unclaimed dividends admissible to proof or unapplied or undistributable balances under sub-rule (4) or to submit an account under sub-rule (5) shall fail to furnish such particulars or to submit such account within twenty-one days after being requested to do so, the Minister may apply to the Court by special summons and the Court shall make such order as shall be necessary for the purpose of enforcing sub-rules (4) and (5) hereof.

(7) An application under section 307(3) shall be made by special summons in which the Liquidator who made the lodgement out of which payment is sought and the Minister for Enterprise, Jobs and Innovation shall be named as defendants. If such Liquidator shall be dead or cannot be traced at the date of such special summons the Court may dispense with the necessity of naming the Liquidator as a defendant.

(8) An application by a Liquidator for payment out of The Companies Liquidation Account of any costs, expenses and disbursements of the voluntary winding up, shall be made by special summons in which the Minister for Enterprise, Jobs and Innovation shall be named as defendant.

(9) An application under section 307(4) for payment out of any moneys paid into the Exchequer shall be made by special summons in which the Minister for Finance shall be named as defendant.

XXV. File of proceedings

132. All orders, exhibits, admissions, memoranda, attested copies of affidavits, examinations, certificates and all other documents relating to the winding up of the company shall be filed by the Official Liquidator, as far as may be, on one continuous file, and such file shall be kept by him, or otherwise as the Court may from time to time direct. Every contributory of the company and every creditor whose debt or claim has been allowed, shall (save as otherwise provided in this Order) be entitled at all reasonable times to inspect such file free of charge, and at his own expense to take copies or extracts from any of the documents included therein, or to be furnished with such copies or extracts at a rate not exceeding ten cent per page of seventy-two words, and such file shall be produced in Court, and otherwise, as on occasion may be required.

XXVI. Applications to stay or restrain proceedings

133. (1) An application under section 217 to stay proceedings in an action then pending against the company in the High Court or on appeal in the Supreme Court shall be made by motion in that action on notice to the plaintiff.

(2) An application under section 217 to restrain further proceedings in any other action or proceeding than those mentioned in sub-rule (1) shall be made by motion in the winding up proceeding on notice to the plaintiff.

134. An application to stay proceedings in an action or proceeding against a company in voluntary liquidation shall, if such action be pending in the High

Court or on appeal in the Supreme Court, be made by motion in that action on notice to the plaintiff, and shall otherwise be made by special summons.

XXVII. Applications under sections 201, 245, 245A, 247 or 279

135. (1) An application by an Official Liquidator for an order under section 201 may be made by motion ex parte. On such application the Court may give such directions as it thinks proper in regard to the manner in which the meeting or meetings shall be summoned and in relation to the conduct thereof.

(2) When an order for the winding up of a company has been made, applications under sections 245, 245A or 247 may be made by motion ex parte.

(3) When a petition for the winding up of a company has been presented an application under section 247 may be made by motion ex parte.

(4) An appeal by a creditor or contributory under section 279(2) shall be brought by originating notice of motion.

XXVIII. Other Applications by motion on notice or by originating notice of motion

136. In any winding up an application under sections 234, 236, 237, 243, 244A, 256, 261, 286, 287(3), 297, 297A, 298, 299, 322B, 347 or 348 of the Act or under sections 139, 140, 141, 148, 204 or 225 of the Companies Act 1990 or under any other section of the Companies Acts not herein expressly provided for, shall, in the case of a winding up by the Court, be made by motion on notice and in the case of a voluntary winding up by originating notice of motion.

XXIX. Termination of winding up by the Court

137. When the Official Liquidator has passed his final account, he shall apply to the Court for directions as to how the balance due thereon shall be applied; and when the application of such balance as so directed has been vouched to the Examiner, a certificate in the Form No. 46 shall be made up by the Examiner that the disposal of such balance in manner so directed has been vouched and that the affairs of the company have been completely wound up. In case the company has not already been dissolved, the Official Liquidator shall, immediately after such certificate has become binding, apply to the Court for an order that the company be dissolved from the date of such order.

XXX. Applications in voluntary winding up

138. Every application or appeal to the Court in a voluntary winding up may be made by originating notice of motion, save as otherwise provided in this Order.

XXXI. Forms in voluntary winding up

139. The declaration of solvency referred to in section 256 together with the report and statement of the independent person referred to in that section shall be in the Form No. 47.

140. The statement of assets and liabilities referred to in section 261 shall be in the Form No. 48.

141. The Liquidator's final account referred to in sections 263 and 273 shall be in the Form No. 49.

142. The return of the final meeting in a members' voluntary winding up shall be in the Form No. 50.

143. The return of the final meetings in a creditors' voluntary winding up shall be in the Form No. 51.

Certification of Liquidator in a creditors' voluntary winding up

144. Any appointment of a Liquidator in a creditors' voluntary winding up may, for the purposes of Article 19 of the Insolvency Regulation, be evidenced by a certificate in the Form No. 53 issued by the Master of the High Court upon verification of that appointment, in the case of a creditors' voluntary winding up, by affidavit in the Form No. 52 made by the Liquidator and in any other case by the production to the Master of a certified copy of the winding up order."

Schedule 2

NO. 1.

O. 74, r. 5

TITLE OF PROCEEDINGS.

THE HIGH COURT

20 No.

In the matter of (*insert full name of company*) and in the matter of the Companies Acts

NOTE:—the words “in liquidation” should be inserted after the name of the company in forms used subsequent to the date of the order or resolution to wind up.

PETITION (GENERAL FORM)

[Title as in Form No. 1]

To the High Court.

The humble petition of (insert full name and address of petitioner stating whether a creditor, a contributory or a liquidator within the meaning of Article 2 of Council Regulation (EC) No 1346/2000 in main insolvency proceedings) shows as follows:

1. The Company Limited (hereinafter called “the company”) was incorporated in the State under the Companies Act 1963 (or as the case may be) in the month of19/20.....

2. The registered office of the company is at.....

3. The nominal share capital of the company is €....., divided into shares of €..... each. The amount of the capital paid up or credited as paid up is €.....

4. The objects for which the company was established are: (a) to and other objects set forth in the memorandum of association thereof.

[Note 1] 5. Council Regulation (EC) No 1346/2000 applies to the proceedings. The centre of main interests (determined in accordance with Council Regulation (EC) No 1346/2000) of the company is situated in the State because (*state facts and grounds relied on*).

[Note 1] 5. Council Regulation (EC) No 1346/2000 applies to the proceedings. The centre of main interests of the company is situated within the territory of a Member State of the European Union (other than the State) in which Council Regulation (EC) No 1346/2000 applies, namely at in because (*state facts and grounds relied on*) and the company has an establishment within the State at..... because (*state facts and grounds relied on*).

[Note 1] [Note 2] 5. Council Regulation (EC) No 1346/2000 does not apply to the proceedings, because [*specify reasons for non-application*].

[Note 3] 6. To your petitioner’s knowledge, no insolvency proceedings have been opened in respect of the company in a Member State of the European Union to which Council Regulation (EC) No 1346/2000 applies.

[Note 3] 6. Insolvency proceedings, which are

*main proceedings, (in accordance with Article 3(1) of Council Regulation (EC) No 1346/2000)

*secondary proceedings, (in accordance with Article 3(3) of Council Regulation (EC) No 1346/2000)

*territorial proceedings, (in accordance with Article 3(4) of Council Regulation (EC) No 1346/2000)

have been opened in respect of the company in a Member State of the European Union (other than the State) to which Council Regulation (EC) No 1346/2000 applies, namely in....., by decision ofmade on20....

*Your petitioner

*.....of.....

was appointed by the said decision to be liquidator (within the meaning of Article 2(b) of Council Regulation (EC) No 1346/2000) in those insolvency proceedings concerning the company.

*7. In your petitioner's belief, the centre of the company's main interests is situated within the territory of a Member State other than the State, and main proceedings have not been opened in another Member State. The condition referred to in *[Article 3(4)(a)] *[Article 3(4)(b)] of the Insolvency Regulation is met because (*state facts and grounds relied on*).

[Note 4] 8. All necessary inquiries having been made by your petitioner, the company has no obligations in relation to a bank asset that has been transferred to the National Asset Management Agency (NAMA) or a NAMA group entity (each within the meaning of the National Asset Management Agency Act 2009).

[Note 4] 8. The company has obligations in relation to a bank asset that has been transferred to the National Asset Management Agency (NAMA) or a NAMA group entity (each within the meaning of the National Asset Management Agency Act 2009) and this petition will be served on NAMA.

[Note 5] 9. (*Here set out in paragraphs the facts and grounds on which the petitioner relies in seeking a winding up order*).

(Conclude as follows):—

Your petitioner therefore prays:

(1) That the Company Limited may be wound up by the Court under the provisions of the Companies Act 1963

*[Note 6] in main proceedings, (in accordance with Article 3(1) of Council Regulation (EC) No 1346/2000)

*[Note 7] in secondary proceedings, (in accordance with Article 3(3) of Council Regulation (EC) No 1346/2000)

*[Note 8] in territorial proceedings, (in accordance with Article 3(4) of Council Regulation (EC) No 1346/2000),

(2) Or that such other Order may be made on this petition as shall be just.

NOTE:—It is intended to serve this petition on (here insert the name of the company) (this note will be unnecessary if the company is the petitioner) [and on the National Asset Management Agency]

[Note 1] One alternative version only of paragraph 5 must be included.

Under Council Regulation (EC) No 1346/2000—

the “centre of main interests” should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties;

“establishment” means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods.

[Note 2] Where this version of paragraph 5 is appropriate to the case, paragraph 6 should be deleted, and the remaining paragraphs renumbered.

[Note 3] Where paragraph 6 is required, only one alternative version must be included.

[Note 4] See section 216(2) of the Companies Act 1963, inserted by section 233 and Schedule 3, Part 3 of the National Asset Management Agency Act 2009. One alternative version only of paragraph 8 must be included. Where the petition is served on NAMA, proof of service must be produced on the hearing of the petition.

[Note 5] In the case of the petition of a liquidator in main proceedings which concerns or involves the opening of secondary insolvency proceedings in the State pursuant to Article 27 of the Insolvency Regulation, evidence of the company’s insolvency is not necessary.

[Note 6] To be completed only if Council Regulation (EC) No 1346/2000 applies and the company’s centre of main interests is situated in the State.

[Note 7] To be completed only if Council Regulation (EC) No 1346/2000 applies, insolvency proceedings in respect of the company have been opened in another Member State, and the company has an establishment in the State.

[Note 8] To be completed only if Council Regulation (EC) No 1346/2000 applies, insolvency proceedings in respect of the company have been opened in another Member State, and one of the conditions in Article 3(4) of the Council Regulation is satisfied.

*Delete where inapplicable.

NO. 5.

O. 74, r. 10 (2)

ADVERTISEMENT OF PETITION.

[Title as in Form No. 1]

[Name of Company]

Notice is given that a petition was on the day of 20.... presented to the High Court by the company whose registered office is at (or by A.B. of) a creditor [or contributory, or liquidator in main proceedings] of the company [or as the case may be] for the winding up by the High Court of the above named company (the “company”) *in main proceedings, (in accordance with Article 3(1) of Council Regulation (EC) No 1346/2000) *in secondary proceedings, (in accordance with Article 3(3) of Council Regulation (EC) No 1346/2000) *in territorial proceedings, (in accordance with Article 3(4) of Council Regulation (EC) No 1346/2000).

The petition is directed to be heard on the day of 20.... Any creditor or contributory of the company [or liquidator in main proceedings] who wishes to support or oppose the making of an order on the petition may appear at the time of hearing by himself or his counsel for that purpose and a copy of the petition will be furnished to any creditor or contributory of the said company who requires it by the undersigned on payment of the regulated charge for the same.

(Signed)

Solicitor for the petitioner.

(Address)

NOTE:—Any person who intends to appear at the hearing of the petition must serve on or send by post to the petitioner or his solicitor, notice in writing of his intention to do so. The notice must state the name and address of the person or if a firm the name and address of the firm and must be signed by the person or firm, or his or their solicitor (if any) and must be served or, if posted, must be sent by post in sufficient time to reach the above-named solicitor or the petitioner not later than 5 o'clock in the afternoon of the day of, 20.....

*Delete where inapplicable

O. 74, r. 20

ORDER FOR WINDING UP BY THE COURT

[Title as in Form No. 1]

.....day, the day of, 20....

Upon the petition of A.B. of, a creditor [or contributory] [or liquidator in main proceedings] of the above-named company, presented to the High Court on the day of, 20...., and upon hearing counsel for the petitioner, and for and upon reading the said petition, an affidavit of L.M. filed the day of, 20...., *Iris Oifigiúil* of the day of, 20...., the newspaper of the day of, 20...., each containing an advertisement of the said petition [enter any other evidence],

*And the Court being satisfied that Council Regulation (EC) No 1346/2000 applies to these proceedings, and

*that the petitioner had adduced evidence that the centre of main interests of the company is situated in Ireland, IT IS ORDERED that the company be wound up by the Court under the provisions of the Companies Act 1963 in main proceedings, in accordance with Article 3(1) of Council Regulation (EC) No 1346/2000

*that the petitioner had adduced evidence that proceedings have been opened in another Member State as proceedings to which Article 3(1) of Council Regulation (EC) No 1346/2000 refers, IT IS ORDERED that the company be wound up by the Court under the provisions of the Companies Act 1963 in secondary proceedings, in accordance with Article 3(3) of Council Regulation (EC) No 1346/2000

*that the petitioner had adduced evidence that the centre of main interests of the company is not situated in Ireland, but that an establishment of the company is situated in Ireland, IT IS ORDERED that the company be wound up by the Court under the provisions of the Companies Act 1963 in territorial proceedings, in accordance with Article 3(4) of Council Regulation (EC) No 1346/2000

*And the Court being satisfied that Council Regulation (EC) No 1346/2000 does not apply to these proceedings, IT IS ORDERED that the company be wound up by the Court under the provisions of the Companies Act 1963

[Insert notice prescribed by rule 20].

*Delete where inapplicable

NO.53

O. 74, r.144

CERTIFICATION OF LIQUIDATOR

[Title as in Form No.1]

I,....., Master of the High Court of Ireland hereby certify-

1. That A.B. of is the liquidator of *[Limited] *[Public Liability Company] *(in voluntary liquidation) *(in official liquidation).

2. This certificate is issued in accordance with Article 19 of Council Regulation (EC) No.1346/2000 of 29 May 2000 on insolvency proceedings.

Dated the day of, 20....

(Signed)

Master of the High Court.

(Seal)

*Delete where inapplicable

Schedule 3

No.35A

O. 74, r. 95(2)

[Title as in Form No.1]

Invitation to lodge a claim

Покана за предявяване на вземане. Срокове, които трябва да се спазват
 Convocatoria para la presentación de créditos. Plazos aplicables
 Výzva k přihlášení pohledávky. Závazné lhůty
 Opfordring til anmeldelse af fordringer. Vær opmærksom på fristerne
 Aufforderung zur Anmeldung einer Forderung. Etwaige Fristen beachten!
 Nõude esitamise kutse. Järgitavad tähtajad
 Πρόσκληση για αναγγελία απαιτήσεως. Προσοχή στις προθεσμίες
 Invitation to lodge a claim. Time limits to be observed
 Invitation à produire une créance. Délais à respecter
 Cuireadh chun éileamh a thaisceadh. Teorainn ama socraithe
 Invito all'insinuazione di un credito. Termine da osservare
 Uzaicinājums iesniegt prasījumu. Terminī, kas jāievēro
 Kvietimas pateikti reikalavimą. Privalomieji terminai
 Felhívás követelés bejelentésére. Betartandó határidők
 Stedina għal prezentazzjoni ta' talba
 Oproep tot indiening van schuldvorderingen. In acht te nemen termijnen
 Wezwanie do zgłoszenia wierzytelności. Przestrzegać terminów
 Aviso de reclamação de créditos. Prazos legais a observar
 Invitație de înregistrare a cererii de admitere a creanței. Termenul limită
 Výzva na přihlášení pohľadávky. Je potrebné dodržat' stanovené termíny
 Poziv k prijavi terjatve. Roki, ki jih je treba upoštevati!
 Kehotus saatavan ilmoittamiseen. Noudatettavat määräajat
 Anmodan att anmäla fordran. Tidsfrister att iaktta

To:

of

.....*[Limited] *[Public Liability Company], having its registered office
 at (“the company”) was on theday of20..., ordered
 to be wound up by the High Court, the Court having determined that Council
 Regulation (EC) No 1346/2000 (the “Insolvency Regulation”) applies to these
 proceedings.

*The undersigned *.....of.....has been appointed to be
 the Official Liquidator of the company *and is the liquidator in main pro-
 ceedings for the purposes of the Insolvency Regulation.

You have been entered in the company's statement of affairs or have otherwise
 come to my notice as a creditor of the company, *who has not yet lodged a
 claim or proof of debt with me.

Please take notice of the following:

1. Claims and proofs of debt in respect of the bankrupt, bearing the heading “Lodgement of claim” and record number, and including the documents and information set out in Article 41 of Council Regulation (EC) No 1346/2000, must be submitted to me at the address below no later than theday of.....20..... If the claim or proof of debt is not in English or Irish, you must also provide a translation of same into English or Irish.

2. Under section 241 of the Companies Act 1963, the High Court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved. Accordingly, a proof submitted after that date risks exclusion from the benefit of any distribution made before the debt concerned is proved.

3. Creditors whose claims are preferential must lodge their claims with me within the period set out above.

4. Creditors whose claims are secured in rem should, where they propose to—

(i) abandon their security or

(ii) value that security and prove in the winding up for the unsecured balance of the claim,

lodge their claims with me within the period set out above.

5. If you are willing to receive any further notices concerning the liquidation from me by electronic mail or by fax, please confirm and provide me with your e-mail address or fax number.

6. Claims and proofs should be sent by registered post to:

.....(Official Liquidator)

at.....

[A summary or copy of the provisions of sections 275, 284 and 285 of the Companies Act 1963 to be attached.]

*Delete where inapplicable

EXPLANATORY NOTE

(This does not form part of the Instrument and does not purport to be a legal interpretation.)

These rules amend the Rules of the Superior Courts by substituting a new Order 74 for the existing Order 74, substituting and inserting various provisions of Order 75A, substituting certain Forms in Appendix M and inserting a new form in that Appendix, principally to facilitate the operation of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L160/1 of 30 June 2000).

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
nó trí aon díoltóir leabhar.

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