

S.I. 333 of 2002

European Communities (Corporate Insolvency) Regulations 2002

I, Mary Harney, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and, together with the European Communities (Personal Insolvency) Regulations 2002 (S.I. No. 334 of 2002), for the purpose of giving full effect to Council Regulation (EC) No. 1346/2000¹ of 29 May 2000 on insolvency proceedings, make the following regulations:

Part 1

PRELIMINARY AND GENERAL

Citation and construction

1. These Regulations -
 - (a) may be cited as the European Communities (Corporate Insolvency) Regulations 2002, and
 - (b) shall be construed as one with the Companies Acts, 1963 to 2001.

Interpretation

2. (1) In these Regulations -
“enforcement order” means an order under Regulation 6(5);

¹ OJ L160 of 30.6.2000

“insolvency proceedings” means insolvency proceedings opened in a member state of the European Communities other than the State and Denmark under Article 3 where the proceedings relate to a body corporate;

“Insolvency Regulation” means Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, the text of which, in the English language, is set out in the Schedule to these Regulations for convenience of reference.

(2) Unless provided otherwise, a word or expression used in these Regulations and also in the Insolvency Regulation has the same meaning in these Regulations as it has in that Regulation.

(3) References in these Regulations (other than Regulation 6) to numbered Articles without qualification are references to the Articles so numbered of the Insolvency Regulation.

Amendment of Companies Act 1963

3. The Companies Act 1963 (No. 33 of 1963) is amended -

(a) in section 2 (interpretation), by inserting the following definitions in subsection (1):

“ ‘insolvency proceedings’ means insolvency proceedings opened under Article 3 of the Insolvency Regulation in a member state of the

European Communities other than the State and Denmark where the proceedings relate to a body corporate;

‘Insolvency Regulation’ means Council Regulation (EC) No. 1346/2000 of 29 May 2000¹ on insolvency proceedings;

‘property’ -

(a) in relation to proceedings opened in the State under Article 3(1) of the Insolvency Regulation, includes property situated outside the State, and

(b) in relation to proceedings so opened under Article 3(2) of the Regulation, does not include property so situated;”

(b) by inserting the following section before section 206, but in Part VI:

“Restriction of this Part.

205A. This Part is subject to Chapters I (general provisions) and III (secondary insolvency proceedings) of the Insolvency Regulation.”

¹ OJ L160 of 30.6.2000

(c) by inserting the following sections after section 227:

“Registration of judgments given in insolvency proceedings.

227A. (1) Without prejudice to Article 16(1) of the Insolvency Regulation, a liquidator appointed in insolvency proceedings who intends -

- (a) to request under Article 21 of the Regulation that notice of the judgment opening the proceedings and, where appropriate, the decision appointing him or her be published in the State, or
- (b) to take any other action in the State under the Regulation,

shall deliver to the Registrar of Companies for registration a duly certified copy of the judgment and, where appropriate, of the decision appointing the liquidator.

(2) Registration under subsection (1) may also be effected by the Registrar of Companies on application by a liquidator who does not intend to take any action in the State under the Insolvency Regulation.

(3) The certified copy or copies mentioned in subsection (1) shall be accompanied by -

- (a) if the judgment or decision is not expressed in Irish or English, a translation, certified to be correct by a person competent to do so, into either of those languages,
- (b) the prescribed form, and
- (c) the fee payable under the Eighth Schedule, as altered by order of the Minister under section 395(2).

(4) The Registrar shall issue a certificate of the registration to the liquidator.

(5) In any proceedings a document purporting to be -

- (a) a duly certified copy of a judgment opening insolvency proceedings or a decision appointing a liquidator in such proceedings, or

- (b) a translation of such a document which is certified as correct by a person competent to do so,

shall, without further proof, be admissible as evidence of the judgment, the liquidator's appointment or the translation, unless the contrary is shown.

Publication in relation to insolvency proceedings.

- 227B. (1) In this section 'publication' means publication of -
- (a) notice of the judgment opening the insolvency proceedings concerned,
 - (b) where appropriate, the decision appointing the liquidator in those proceedings,
 - (c) the name and business address of the liquidator, and
 - (d) the provision (either paragraph 1 or paragraph 2) of Article 3 of the Insolvency Regulation giving jurisdiction to open the proceedings,

in *Iris Oifigiúil* and once at least in two daily morning newspapers circulating in the State.

(2) Without prejudice to section 227A(1), publication shall be effected by the liquidator concerned.

(3) Where the debtor company has an establishment (within the meaning of Article 2(h) of the Insolvency Regulation) in the State, the liquidator or any authority mentioned in Article 21(2) of the Regulation shall ensure that publication takes place as soon as practicable after the opening of the insolvency proceedings.”,

(d) in section 250 (enforcement of order made in winding up by courts outside State), by adding the following subsection:

“(4) This section does not apply in relation to an order made by a court of a member state of the European Communities other than the State and Denmark.”,

(e) by inserting the following section after section 267:

“Confirmation of creditors’ voluntary winding up.

267A. Where -

- (a) a liquidator is appointed in a creditors’ voluntary winding up of a company in pursuance of section 267, and

- (b) the centre of the company's main interests is situated in the State,

the Master of the High Court may, on application by the liquidator in the prescribed form and payment of the prescribed fee, confirm the creditors' voluntary winding up for the purposes of the Insolvency Regulation and shall so certify.”,

- (f) by inserting the following section after section 313, but in Part VI:

“Provision of certain documents to liquidator or examiner.

313A. On -

- (a) the making of -

- (i) a winding up order, or

- (ii) an order under section 2 of the Companies (Amendment) Act 1990 appointing an examiner to a company,

or

- (b) the issue of a certificate by the Master of the High Court under section 267A (inserted by the European Communities (Corporate Insolvency) Regulations 2002 (S.I. No 333 of 2002)) of this Act in relation to the

confirmation by the Master of a creditors' voluntary winding up,

the proper officer of the Central Office of the High Court shall, on request and payment of the prescribed fee and subject to any conditions that may be specified in rules of court, give to the liquidator or examiner concerned -

- (i) a copy of the order or certificate, certified by the officer to be a true copy, and
- (ii) any other prescribed particulars.”,

and

- (g) by inserting the following section before section 344, but in Part X:

“Restriction of this Part.

343A. This Part is subject to Chapters I (general provisions) and III (secondary insolvency proceedings) of the Insolvency Regulation.”.

Amendment of Companies (Amendment) Act 1990

4. The Companies (Amendment) Act 1990 (No. 27 of 1990) is amended by inserting the following section after section 1:

“Restriction of this Act.

1A. This Act is subject to Chapters I (general provisions) and III (secondary insolvency proceedings) of Council Regulation (EC) No. 1346/2000 of 29 May 2000¹ on insolvency proceedings.”.

Registration of insolvency judgments

5. (1) A request by a liquidator under Article 22 that the judgment opening the insolvency proceedings be registered in a public register shall be made to the person or authority responsible for keeping the register concerned.

Enforcement in State of insolvency judgments

6. (1) In this Regulation -

“Brussels 1 Regulation” means Council Regulation (EC) No 44/2001 of 22 December 2000² on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

“insolvency judgment” means a judgment referred to in Article 25 of the Insolvency Regulation;

and, except where the context otherwise requires, references to numbered Articles are references to Articles so numbered of the Brussels 1 Regulation.

¹ OJ L160 of 30.6.2000

² OJ L12 of 16.1.2001

(2) Having regard to Article 68 of the Brussels 1 Regulation, references in Article 25 of the Insolvency Regulation to enforcement of insolvency judgments in accordance with certain Articles of the Brussels Convention are to be read as references to enforcement of those judgments in accordance with Articles 38 to 58 of the Brussels 1 Regulation.

(3) An application under the Brussels 1 Regulation for the enforcement in the State of an insolvency judgment shall be made to the Master of the High Court.

(4) The Master shall determine the application by order in accordance with the Brussels 1 Regulation.

(5) The Master shall declare the insolvency judgment enforceable immediately on completion of the formalities provided for in Article 53 without any review under Articles 34 and 35 and shall make an enforcement order in relation to the judgment.

(6) An order under paragraph (5) of this Regulation may provide for the enforcement of only part of the insolvency judgment concerned.

(7) An application to the Master under Article 39 for an enforcement order in respect of an insolvency judgment may include an application for any preservation measures the High Court has power to grant in proceedings that, apart from these Regulations, are within its jurisdiction.

(8) Where an enforcement order is made, the Master shall grant any such preservation measures so applied for.

(9) For the purposes of these Regulations references in Articles 42, 43, 45, 47, 48, 52, 53 and 57 to a declaration of enforceability are to be treated as references to an enforcement order under this Regulation.

(10) Subject to the restrictions on enforcement contained in Article 47(3), if an enforcement order has been made respecting an insolvency judgment, the judgment -

- (a) shall, to the extent to which its enforcement is authorised by the enforcement order, be of the same force and effect as a judgment of the High Court, and
- (b) may be enforced by the High Court, and proceedings taken on it, as if it were a judgment of that Court.

Interest on insolvency judgments and payment of costs

7. (1) Where, on application for an enforcement order respecting an insolvency judgment, it is shown -

- (a) that the judgment provides for the payment of a sum of money, and
- (b) that, in accordance with the law of the member state in which the judgment was given, interest on the sum is recoverable under the judgment at a particular rate or rates and from a particular date or time,

the enforcement order, if made, shall provide that the person liable to pay the sum shall also be liable to pay the interest, apart from any interest on costs recoverable under paragraph (2), in accordance with the particulars noted in the order, and the interest shall be recoverable by the applicant as though it were part of the sum.

(2) An enforcement order may provide for the payment to the applicant by the respondent of the reasonable costs of or incidental to the application for the enforcement order.

(3) A person required by an enforcement order to pay costs shall be liable to pay interest on the costs as if they were the subject of an order for the payment of costs made by the High Court on the date on which the enforcement order was made.

(4) Interest shall be payable on a sum referred to in paragraph (1)(a) only as provided for in this Regulation.

Currency of payments under enforceable insolvency judgments

8. (1) An amount payable in the State under an insolvency judgment by virtue of an enforcement order shall be payable in the currency of the State.

(2) If the amount is stated in the insolvency judgment in any currency except the euro, payment shall be made on the basis of the exchange rate prevailing, on the date the enforcement order is made, between the currency of the State and any such currency.

(3) For the purposes of this Regulation a certificate purporting to be signed by an officer of an authorised institution and to state the exchange rate prevailing on a specified date between a specified currency and the currency of the State shall be admissible as evidence of the facts stated in the certificate.

(4) In this Regulation, "authorised institution" means any of the following:

- (a) a body licensed to carry on banking business under the Central Bank Acts, 1942 to 1998, or authorised to carry on such business under the ACC Bank Acts, 1978 to 2001, or regulations under the European Communities Acts, 1972 to 1998,
- (b) a building society within the meaning of the Building Societies Act 1989 (No. 17 of 1989);
- (c) a trustee savings bank within the meaning of the Trustee Savings Banks Acts, 1989 and 2001,
- (d) An Post.

Preservation measures

9. (1) A request under Article 38 for measures to secure and preserve any of the debtor's assets in the State shall be made to the High Court.

(2) On such a request the High Court -

- (a) may grant any such measures that the Court has power to grant in proceedings that, apart from these Regulations, are within its jurisdiction, and
- (b) may refuse to grant the measures sought if, in its opinion, the fact that, apart from this Regulation, the Court does not have jurisdiction in relation to the subject matter of the proceedings makes it inexpedient for it to grant the measures.

Venue

10. The jurisdiction of the Circuit Court or District Court in proceedings that may be instituted in the State by a liquidator in exercise of his or her powers under Article 18 may be exercised by the judge for the time being assigned -

- (a) in the case of the Circuit Court, to the circuit, and
- (b) in the case of the District Court, to the district court district,

in which the defendant ordinarily resides or carries on any profession, business or occupation.

Language of claims

11. A claim lodged with a liquidator (within the meaning of the Companies Acts, 1963 to 2001) by a creditor referred to in Article 42(2) may, if not in Irish or English, be required by the liquidator to be translated, in whole or in part, into either of these languages.

Non-recognition or non-enforcement of judgments

12. It shall be for the High Court to determine whether judgments referred to in Article 25(1), or insolvency proceedings or judgments referred to in Article 26, should not be recognised or enforced on grounds mentioned in those provisions.

Revocation

13. Paragraph 2 of the Companies (Recognition of Countries) Order 1964 (S.I. No. 42 of 1964) is amended by the substitution of “section 367” for “sections 250 and 367”.

SCHEDULE

Regulation 2(1)

TEXT OF INSOLVENCY REGULATION

GIVEN under my Official Seal,

This 2nd day of July 2002.

Mary Harney

Minister for Enterprise, Trade

and Employment

EXPLANATORY NOTE

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

These Regulations are intended to facilitate the operation of Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency Proceedings, insofar as they concern corporate insolvency. The Regulations set out the necessary amendments to domestic legislation (the Companies Acts 1963 to 2001) and make necessary provisions for the good administration of the Council Regulation, which came into effect on 31 May, 2002.

The facilitation of the operation of the Council Regulation with regard to personal insolvency is set out in Statutory Instrument No. 334 of 2002.