



STATUTORY INSTRUMENTS.

S.I. No. 284 of 2014



CIRCUIT COURT RULES (EXAMINERSHIP) 2014

S.I. No. 284 of 2014

CIRCUIT COURT RULES (EXAMINERSHIP) 2014

We, the Circuit Court Rules Committee, constituted pursuant to the provisions of section 69 of the Courts of Justice Act 1936, by virtue of the powers conferred on us by section 66 of the Courts of Justice Act 1924 and section 70 of the Courts of Justice Act 1936, (as applied by section 48 of the Courts (Supplemental Provisions) Act 1961), section 27 of the Courts (Supplemental Provisions) Act 1961, section 2(11) of the Companies (Amendment) Act 1990 (inserted by section 2 of the Companies (Miscellaneous Provisions) Act 2013) and of all other powers enabling us in this behalf, do hereby, with the concurrence of the Minister for Justice and Equality, make the annexed Rules of Court.

Dated this 28th day of April 2014.

(Signed): Raymond Groarke
(Chairman of the Circuit Court Rules Committee)

Alison Lindsay

Fiona Duffy Coady

Noel Rubotham

Mairead Ahern

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

Dated this 16th day of June 2014.

Signed: FRANCES FITZGERALD
MINISTER FOR JUSTICE AND EQUALITY

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 24th June, 2014.*

S.I. No. 284 of 2014

CIRCUIT COURT RULES (EXAMINERSHIP) 2014

1. (1) These Rules, which may be cited as the Circuit Court Rules (Examinership) 2014, shall come into operation on the 14th day of July 2014.

(2) These Rules shall be construed together with the Circuit Court Rules 2001 to 2014.

(3) The Circuit Court Rules 2001 to 2014 as amended by these Rules may be cited as the Circuit Court Rules 2001 to 2014.

2. The Circuit Court Rules are amended:

(i) by the insertion immediately following Order 53 of the Order set out in Schedule 1, and

(ii) by the insertion in the Schedule of Forms immediately following Form 52H of the forms set out in Schedule 2.

Schedule 1

“Order 53A

Examinership

Definitions

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” includes Interim Examiner;

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

“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;

the “original applicant” means the person on whose application an Examiner was appointed pursuant to section 2 of the Act;

“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;

words and expressions have the same meaning as in the Act and, where necessary, the same meaning as in the Companies Acts.

Venue

2. (1) All applications and proceedings under this Order shall, in accordance with section 2(9) of the Act, be brought:

- (a) in the county in which the registered office of the company is situated or has its principal place of business at the time of the presentation of the originating Notice of Motion; or
- (b) if, at that time, there is no registered office of the company and its principal place of business is outside the State, in the Dublin Circuit.

(2) 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 originating Notice of Motion, 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.

Originating Notice of Motion

3. (1) An application under section 2 of the Act shall be grounded on an originating Notice of Motion, which shall be in the Form 53A in the Schedule of Forms and shall comply with section 3(3) of the Act and this rule, and shall be verified by an affidavit sworn by or on behalf of the party making the application.

(2) The originating Notice of Motion shall be entitled in the matter of section 2 of the Act. Where the application is made by the company concerned, it shall additionally be entitled on the application of the company; where the application is made by a person other than the

company concerned, it shall additionally be entitled as between the applicant as applicant and the company concerned as respondent.

(3) The originating Notice of Motion 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 applicant'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.

(4) The originating Notice of Motion shall additionally contain a statement that in respect of the latest financial year of the company that has ended prior to the date of presentation of the originating Notice of Motion or, as the case may be, the financial year of the company that preceded its latest financial year ending prior to the date of presentation of the originating Notice of Motion, the company fell to be treated as a small company by virtue of section 8 or (as the case may be) section 9 of the Companies (Amendment) Act 1986 and shall set out the relevant conditions, as specified in those sections, which are met in the case of the company.

(5) The application shall be heard and determined on affidavit evidence unless the Court otherwise orders.

Additional requirements for originating Notice of Motion where company's centre of main interests in the territory of another Member State

4. (1) This rule applies only where, in the applicant'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 originating Notice of Motion 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.

Presentation of originating Notice of Motion, assignment of return date and initial application for directions

5. (1) An originating Notice of Motion for the appointment of an Examiner under the Act shall be presented for issue at and shall be retained in the Office in the county in which, by virtue of rule 2, the proceedings have been brought. A sealed copy of the originating Notice of Motion shall be issued to the applicant or the solicitor for the applicant and shall be used as if it were an original.

(2) The County Registrar shall appoint the time and place at which the originating Notice of Motion is to be heard.

(3) On the same day as the originating Notice of Motion is presented or as soon as may be thereafter, the applicant shall apply *ex parte* to the Judge for directions as to the proceedings to be taken on the originating Notice of Motion.

Verifying affidavit

6. (1) Every originating Notice of Motion for the appointment of an Examiner shall be verified by affidavit.

(2) The verifying affidavit shall be made by the applicant or by one of the applicants if more than one, or where the originating Notice of Motion is presented by a corporation or company, by one of the directors, secretary or other officer of that corporation or company and shall be sworn before the presentation of the originating Notice of Motion and filed with the originating Notice of Motion.

(3) The verifying affidavit shall contain evidence sufficient to verify statements in the originating Notice of Motion, or otherwise to:

- (a) show the jurisdiction of the Court and
- (b) establish that in respect of the latest financial year of the company that has ended prior to the date of presentation of the originating Notice of Motion or, as the case may be, the

financial year of the company that preceded its latest financial year ending prior to the date of presentation of the originating Notice of Motion, the company fell to be treated as a small company by virtue of section 8 or (as the case may be) section 9 of the Companies (Amendment) Act 1986 and verify how the relevant conditions, as specified in those sections, which are stated to be met in the case of the company, are satisfied.

(4) Where insolvency proceedings have been opened in any other Member State, the verifying affidavit shall additionally 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.

(5) The verifying affidavit shall be sufficient prima facie evidence of the statements in the originating Notice of Motion.

(6) Except in a case where an application is made for an order under section 3A of the Act, the report of the independent accountant mentioned in section 3(3A) of the Act shall be exhibited to the verifying affidavit.

(7) The consent signed by the person nominated to be Examiner shall be exhibited to the verifying affidavit.

(8) Where any proposals for a compromise or scheme of arrangement in relation to the Company's affairs have been prepared for submission to interested parties for their approval, a copy of the proposals shall be exhibited to the verifying affidavit.

(9) In a case where an order is made under section 3A of the Act, the report of the independent accountant mentioned in section 3(3A) of the Act shall be exhibited to an affidavit to be filed promptly following the completion of that report.

Directions

7. (1) On the hearing of the *ex parte* application referred to in rule 5(3) or on any adjourned hearing of that application or on any subsequent application, the Court may make such order or orders as it thinks fit and may give such directions as it thinks fit and in particular may:

- (a) give directions as to the parties on whom the originating Notice of Motion should be served, the mode of service and the time for such service;

- (b) give directions as to the manner in which creditors of the company are to be notified or may be notified of their right to be heard on the hearing of the originating Notice of Motion;
- (c) fix a date for the hearing of the originating Notice of Motion (different to that appointed by the County Registrar);
- (d) give directions as to whether the originating Notice of Motion should be advertised and if so, how the same should be advertised;
- (e) specify any omission to be made from any copy of the report of the independent accountant supplied in accordance with section 3C of the Act;
- (f) in any appropriate case, make an order under section 3A of the Act;
- (g) make an order appointing a proposed Examiner on an interim basis until the date fixed for the hearing of the originating Notice of Motion;
- (h) in any appropriate case, fix the date of a hearing for the purposes of section 13A of the Act and give directions in accordance with section 13A of the Act in relation to such hearing.

(2) An Examiner appointed in accordance with sub-rule (1)(g) over any company or any related company shall be referred to as the Interim Examiner and shall have the same powers and duties in relation to such company until the date of the adjourned hearing as if he were an Examiner appointed other than on an interim basis.

(3) The Court may adjourn the hearing of the originating Notice of Motion or any adjourned hearing from time to time and from place to place until any party or parties which the Court considers should be notified have been notified of the presentation of the originating Notice of Motion, whether by advertisement or otherwise, and may adjourn any hearing of the originating Notice of Motion for any other reason that appears to the Court to be just and equitable.

(4) On the hearing of an originating Notice of Motion or on the adjournment or the further hearing of such originating Notice of Motion, the Court may, having heard the applicant, any creditor desiring to be heard and any other interested party or person who has been notified of the originating Notice of Motion and who appears on the hearing, as the case may be, appoint an Examiner, and may make such further or other order as it thinks fit.

Application to appoint Examiner to related company

8. (1) An application for the appointment of an Examiner to be appointed an Examiner of a related company pursuant to section 4 of the Act if brought by the original applicant or by the Examiner shall be made *ex parte* to the Court.

(2) On the hearing of any such application, the Court may make such order or orders or give such directions as it thinks fit, including directions as to whether, and if so, on which parties notice of the application should be served, the mode of such service and the time allowed for such service and whether the application should be advertised and if so, how the same should be advertised and may adjourn the hearing of such application to a date to be specified.

(3) The Court may, if it thinks fit, while adjourning such application, make such interim order as it sees fit including the appointment of the Examiner as the Examiner of the related company on an interim basis and may also confer on such Examiner in relation to such company all or any of the powers and duties conferred on him in relation to the first mentioned company on an interim basis until the adjourned hearing.

(4) An application for the appointment of an Examiner to be the Examiner of a related company shall, if brought by any person other than the original applicant or the Examiner of the first-mentioned company, be brought by way of notice of motion served on the Examiner and on the original applicant.

(5) 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).

Report by Interim Examiner

9. (1) In any case where an Interim Examiner has been appointed to any company or an Examiner has been appointed Interim Examiner of a related company of that company, and where on the final hearing

of the application or of the originating Notice of Motion, as the case may be:

- (a) no Examiner is appointed to that company or to that related company, as the case may be, or
- (b) a person other than the Interim Examiner is appointed as Examiner to the company or to the related company,

the Interim Examiner shall prepare a written report for the Court in relation to the company or to the related company or both in such time as the Court shall direct.

(2) An Examiner shall keep and maintain a true record of all liabilities certified by him under section 10 of the Act and shall in his written report give a full account of all liabilities so certified to the Court and shall deal with such further or other matters as may be directed by the Court.

Applications under section 5 of the Act by Examiner and other persons

10. (1) Any application by any Examiner of a company pursuant to section 5(3) of the Act in relation to any existing proceedings involving that company shall be brought by motion on notice to all the parties to such proceedings including the company in relation to which the Examiner was appointed.

(2) Any application by any person under section 5(3) of the Act seeking the leave of the Court to commence proceedings in relation to the company shall be brought by way of motion on notice to the Examiner and to the company.

Applications under section 7 of the Act

11. (1) Any application by an Examiner pursuant to section 7(6) of the Act may be made *ex parte* to the Court.

(2) An application by the company or by an interested party pursuant to section 13(7) of the Act shall be made by motion on notice to the Examiner and to any other interested party or the company, as the case may be.

(3) On the hearing of an application mentioned in this rule, the Court may adjourn the application and give such directions as to the giving of notice of the application to any person or as to the proceedings to be taken on or in relation to the application as it thinks fit and the Court may make such order on the application as appears just and proper in the circumstances.

Applications under section 8 of the Act by Examiner

12. (1) Once an Examiner has certified any refusal or refusals specified in section 8(5) of the Act, he shall immediately apply *ex parte* to

the Court for leave to produce the said certificate in relation to such refusal and shall verify the facts in the Certificate by affidavit.

(2) On the production to the Court of a certificate mentioned in sub-rule (1) which has been verified on affidavit, the Court, on notice to the party concerned, may make such enquiries and give such directions in relation to the refusals as it thinks fit and shall hear such evidence as may be produced in relation to the certificate and may make such order as seems just and proper in the circumstances.

Applications under section 9 of the Act by Examiner

13. (1) An application to the Court by the Examiner pursuant to section 9 of the Act for the further vesting in him of all or any of the powers or functions vested in or exercisable by the directors of the company shall be made by notice of motion served on the directors, grounded on the affidavit of the Examiner specifying which, if not all, of the powers he seeks to have vested in him by order of the Court.

(2) The Court may give such directions in relation to the hearing of an application mentioned in sub-rule (1) as it thinks fit.

Applications under section 11 of the Act by Examiner

14. (1) An application by the Examiner, pursuant to section 11 of the Act, for the disposal of any property which is the subject of any security or of any goods which are in the possession of the company under a hire purchase agreement, shall be made by notice of motion grounded on an affidavit of the Examiner and served on the holder of such security or the hire purchase company, as the case may be, or on any other person who appears to have an interest in the property.

(2) The Court may on the hearing of an application mentioned in sub-rule (1) make such order under section 11 of the Act as appears just and proper and may give such directions concerning the proceeds of all such disposals as are authorised by the Court.

Applications under section 13 of the Act by Examiner and other persons

15. (1) An Examiner wishing to resign pursuant to section 13 of the Act shall apply *ex parte* to the Court for that purpose.

(2) On the hearing of an application mentioned in sub-rule (1), the Court may, if it thinks fit, direct that notice of the application be served on the original applicant, the company, the directors of the company or any other interested party as may be appropriate.

(3) The application of the Examiner shall be grounded on an affidavit sworn by him, specifying the reasons for the proposed resignation, and the date of the proposed resignation.

(4) The Court may make such order on the application as appears just and proper in the circumstances.

(5) An application to the Court pursuant to section 13 of the Act to remove an Examiner shall be made by motion on notice to the Examiner, to the original applicant, to the company and its directors and to any other party as the Court may direct.

(6) An application mentioned in sub-rule (5) shall be grounded on an affidavit of the moving party specifying the cause alleged to exist justifying the removal of the Examiner by the Court.

(7) On the hearing of an application mentioned in sub-rule (5), the Court may make such order as appears just in the circumstances and, if satisfied that cause has been shown for the removal of the Examiner by the Court shall order that he be removed forthwith or on such date as the Court shall specify. The Court may either before or after ruling on the application for the removal of the Examiner make such order for the production of any document or documents, or the preparation of such report or reports as it thinks fit.

(8) An application pursuant to section 13(2) of the Act to fill a vacancy in the office of an Examiner shall be made *ex parte* to the Court provided that the Court may, if it thinks fit, adjourn the application and make such order or give such directions as appear proper in the circumstances, including directions for service of notice of the making of the application on such party as it thinks proper.

Report under section 18

16. (1) When an Examiner has prepared a report pursuant to section 18 of the Act within the time prescribed or within such time as has been fixed by the Court, he shall effect delivery of his report by making an *ex parte* application to the Court to deliver it.

(2) The report shall contain a full account of each meeting convened by the Examiner and of the proposals put before each such meeting and shall contain as an appendix to the report a copy of the proposals which shall deal with each of the matters specified in section 22 of the Act in the order set out in that section.

(3) The Examiner shall in his application specify whether and if so, what portions of the report should be omitted from delivery under section 18(5) of the Act.

(4) The Examiner shall draw to the attention of the Court any particular aspects of the report which are or may be relevant to the exercise by the Court of any other of its functions under the Act.

(5) When the Examiner has been given leave to deliver his report pursuant to sub-rule (1) and where the Examiner has formulated proposals pursuant to section 18 of the Act for a compromise or scheme of arrangement and has reported to the Court in the period prescribed or within such further period as has been specified by the Court, the Examiner may apply to the Court *ex parte* for an extension of the

period of protection pursuant to section 18(4) of the Act for such further period as may be necessary for the Court to enable it to take a decision in relation to the report of the Examiner on the proposals.

(6) On the making of the application, the Court may direct that the Examiner serve notice of the application on such party or parties as the Court thinks fit. The Court may adjourn the application to enable the service to take place, but may extend the period concerned until the adjourned date of the hearing or such other date as to the Court may seem fit, and the Court may further extend the period concerned in the event of any further adjournments of the said hearing.

Rules for conduct of meetings of members or creditors

17. All meetings of members or classes of members or creditors or classes of creditors convened for the purposes of section 18 or section 23 of the Act shall be governed by the following rules:

(1) The Examiner shall summon all meetings of creditors and members by sending by post not less than three days before the day appointed for the meeting to every person appearing in the company's books to be a creditor of the company or a member of the company, notice of the meeting of creditors or members, as the case may be.

(2) The notice to each creditor or member shall be sent to the address given in the report of the Examiner of the company, if any or to such other address as may be known to the Examiner.

(3) An affidavit by the Examiner or Examiner's solicitor or by some officer or clerk of the company or the company's 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.

(4) The Examiner may fix a meeting or meetings to be held at such place as in his opinion is most convenient for the majority of creditors or members, or both, and different times and/or places may be named for meetings of creditors and of members.

(5) The Examiner shall preside at and be chairman of any meeting which he has convened and shall conduct the business of the meeting in an orderly manner so as to ensure the proper discussion of all proposals placed by him before the said meeting.

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

(7) The Examiner may with the consent of the meeting adjourn 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.

(8) A meeting may not act for any purpose except the adjournment of the meeting unless there are present or represented at that meeting, in the case of a creditors meeting, at least three creditors ruled by the Examiner to be entitled to vote or in the case of a meeting of members, at least two members.

(9) If within 15 minutes from the time appointed for the meeting, a quorum of creditors or members as the case may be is not present or represented, the meeting shall be adjourned for the same day in the following week at the same time and place or to such other day or time or place as the Examiner may appoint but so that the day appointed shall be not less than three, nor more than 21 days from the date from which the meeting was adjourned.

(10) The Examiner shall cause minutes of the proceedings of the meeting to be drawn up and entered in a book kept for that purpose and the minutes shall be signed by him.

(11) The Examiner shall cause a list of creditors or members present at every meeting to be kept and every such list shall be signed by him.

(12) A creditor or member may appear either in person or by proxy. Where a person is authorised in the manner provided by section 139 of the Companies Act 1963 to represent a corporation at any meeting of creditors or members, such person shall produce to the Examiner a copy of the resolution so authorising him. Such copies shall be under the seal of the corporation or be certified to be a true copy by the secretary or director of the corporation.

(13) Every instrument of proxy shall, as far as possible, be in either the Form 53B or 53C in the Schedule of Forms.

(14) A general and a special form of proxy shall be sent to each of the creditors or members with a notice summoning the meeting and neither the name nor the description of the Examiner or any other person shall be printed or inserted in the body of any instrument of proxy before it is sent.

(15) A creditor or a member may appoint any person a special proxy to vote at any specified meeting or adjournment of that meeting on all questions relating to any matter arising at that meeting or an adjournment of that meeting.

(16) A creditor or member may appoint the Examiner to act as his general or special proxy.

(17) Every instrument of proxy shall be lodged with the Examiner no later than 4.00 in the afternoon of the day before the meeting or adjourned meeting at which it is to be used and the same shall be kept by the Examiner.

(18) No person who is a child shall be appointed a general or special proxy.

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

(20) The Examiner shall have power to allow or disallow the vote of a person claiming to be a creditor or member, if he thinks fit, but his decision may be subject to appeal to the Court. If he is in doubt whether a vote should be allowed or disallowed, he shall allow it and record the vote as such subject to the vote being declared invalid in the event of an objection being taken and sustained by the Court.

Application by company under section 20 of the Act

18. An application by the company pursuant to section 20 of the Act to repudiate any contract or any application arising out of such repudiation shall be made by motion on notice to the Examiner and on notice to the other contracting party or parties and on notice to any person referred to in section 20(2) of the Act.

Application under section 27 of the Act

19. (1) An application to the Court pursuant to section 27 of the Act for the revocation of confirmation of proposals confirmed by the Court, shall be made *ex parte* for directions as to the proceedings to be taken.

(2) The application shall be grounded on an affidavit which shall specify and supply full particulars of the fraud alleged and shall specify the names and addresses of all parties who have or may have acquired interests or property in good faith and for value and in reliance on the confirmation of the proposals by the Court.

(3) On such application, the Court may make such order and give such directions for the hearing of the application including directions for service of notice of the application on all such parties as appear proper in the circumstances and may give such further directions as to the application, including particularly, whether and if so, how the application should be advertised and if it seems fit, direct the filing of any pleadings in the matter.

Application by Examiner under section 29 of the Act

20. (1) An application by the Examiner pursuant to section 29 of the Act for payment to him of remuneration and costs and reasonable expenses properly incurred by him shall be made by application *ex parte* to the Court and on an affidavit of the Examiner in which he shall:

- (a) set out a full account of the work carried out by him to the date of the application, and
- (b) set out a full account of the costs and expenses incurred by him, and
- (c) vouch the costs and expenses incurred by him, and
- (d) specify what use, if any, he has made of the services of the staff and/or of the facilities of the company to which he has been appointed and the extent of such use, and
- (e) set out the basis for the proposed remuneration which he is seeking to be paid.

(2) The Court may, where it thinks fit, order that notice of the application be given to all such persons as the Court may direct, and may give directions as to the service of the said notice and fix a date for the hearing of the application.

Service

21. Every originating Notice of Motion issued under this Order shall be served, where service is required, by registered post, in any of the modes in which a Civil Bill may be served or, in the case of service on a company, in any manner permitted by the Companies Acts.”

Schedule 2

O. 53A, r. 3(1)

Form 53A

Record No.

AN CHÚIRT CHUARDA
THE CIRCUIT COURT

CIRCUIT

COUNTY OF

IN THE MATTER OF SECTION 2 OF THE COMPANIES (AMENDMENT)
ACT 1990 AND IN THE MATTER OF [INSERT NAME OF COMPANY]

* On the application of [INSERT NAME OF COMPANY]

Applicant

*Between/ A.B.

Applicant

and

[INSERT NAME OF COMPANY]

Respondent

ORIGINATING NOTICE OF MOTION

STATEMENT OF FACTS

1. The applicant, of, is (*state whether the company in respect of which the application is made, a creditor, a contributory or a liquidator within the meaning of Article 2 of Council Regulation (EC) No 1346/2000 in main insolvency proceedings*).

2. The Company was incorporated in the State under the Companies Act 1963 (*or as the case may be*) with registered number on the day of 19/20

3. The registered office of the Company is at in the County of The principal place of business of the Company is at..... *(*where the principal place of business is situated in the State*) in the County of

4. 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 €.....

5. The objects for which the Company was established are: to and other objects set forth in the memorandum of association thereof.

6. The directors of the Company are and

[Note 1] *7. 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] *7. 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] *7. Council Regulation (EC) No 1346/2000 does not apply to the proceedings, because [*specify reasons for non-application*].

[Note 3] *8. To the applicant'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] *8. 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 of made on 20....

*The applicant *..... 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.

[Note 4] *9. In the applicant'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 5] *10. All necessary inquiries having been made by the applicant, the company has no obligations in relation to a bank asset (within the meaning of the National Asset Management Agency Act 2009) that has been transferred to the National Asset Management Agency or a NAMA group entity (within the meaning of the last-mentioned Act).

[Note 5] *10. The company has *an obligation in relation to a bank asset (within the meaning of the National Asset Management Agency Act 2009) that has been transferred to the National Asset Management Agency or a NAMA group entity (within the meaning of the last-mentioned Act) and this notice of motion will be served on the National Asset Management Agency.

11. The Company is *unable/*unlikely to be able to pay its debts. The appointment of an Examiner to the Company is desirable because [*set out reasons*].

12. In respect of

*the latest financial year of the Company that has ended prior to the date of presentation of this originating Notice of Motion

*the financial year of the company that preceded its latest financial year ending prior to the date of presentation of this originating Notice of Motion

the Company fell to be treated as a small company by virtue of *section 8 *section 9 of the Companies (Amendment) Act 1986 because [*set out the relevant conditions, as specified in section 8 or, as the case may be, section 9, which are met in the case of the company the subject of the originating Notice of Motion*].

13. The *Company/*applicant has approached [*Name of proposed Examiner*] of [*Firm*] and he has agreed to act as Examiner *(and Interim Examiner) of the Company, if so appointed by this Honourable Court.

14. The *Company/*applicant believes that there is a reasonable prospect for the survival of the Company and the whole or any part of its undertaking as a going concern.

15. No resolution subsists for the winding-up of the Company.

16. No order has been made for the winding-up of the Company.

[Note 6] *17. On the day of 19/20 the Company passed a resolution directing the board of the Company to take the necessary steps on behalf of the Company to seek the protection of the Court and the appointment of an Examiner. The said resolution was passed in the following circumstances [*Set out circumstances, including details of the Company's financial difficulties. There should also be included (or exhibited and verified in the verifying affidavit) a statement of the assets and liabilities of the Company (in so far as they are known) as they stand on a date not earlier than seven days before the presentation of the originating Notice of Motion. Set out also particulars of any independent accountant's report, which*

should, unless an application is being made for an order under section 3A of the Companies (Amendment) Act 1990, be exhibited to the grounding affidavit].

[Note 6] *17. The application to seek the appointment of an Examiner to the Company arises in the following circumstances [*Set out circumstances, including details of the Company’s financial difficulties and its creditors*].

RELIEFS SOUGHT

TAKE NOTICE that on theday of 20 at in the forenoon or the first available opportunity thereafter, application will be made on behalf of the applicant in the above entitled proceedings to this Honourable Court sitting at for the following reliefs:

1. An order pursuant to section 2 of the Companies (Amendment) Act 1990 appointing [Name] as Examiner of [*INSERT NAME OF COMPANY*] (hereinafter the “Company”)

*[Note 7] in main proceedings, (in accordance with Article 3(1) of Council Regulation (EC) No 1346/2000)

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

*[Note 9] in territorial proceedings, (in accordance with Article 3(4) of Council Regulation (EC) No 1346/2000).

2. Such directions as may appear appropriate to this Honourable Court in the circumstances.

3. Such further relief as may appear appropriate to this Honourable Court in the circumstances.

4. An order providing for the costs of and incidental to the proceedings on this application.

*NOTE:—It is intended to serve this originating Notice of Motion on (*here insert the name of the Company. This note is unnecessary if the Company is itself the applicant*)

Dated this day of 20

Signed:
Applicant /Solicitors for the Applicant

To:
The County Registrar

*and

To:
Respondent /Solicitors for the Respondent

NOTES:

(need not be included in document presented)

[Note 1] One alternative version only of paragraph 7 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 7 is appropriate to the case, paragraph 8 should be deleted.

[Note 3] Where paragraph 8 is required, only one alternative version must be included.

[Note 4] To be used only if Council Regulation (EC) No 1346/2000 applies, insolvency proceedings in respect of the company have not been opened in another Member State, and one of the conditions in Article 3(4) of that Regulation is satisfied.

[Note 5] See section 2(5) of the Companies (Amendment) Act 1990, inserted by section 234 and Schedule 3, Part 4 of the National Asset Management Agency Act 2009. One alternative version only of paragraph 10 must be included. Where the originating notice of motion is served on NAMA, proof of service must be produced on the hearing of the motion.

[Note 6] One alternative version only of paragraph 17 must be included.

[Note 7] To be used only if Council Regulation (EC) No 1346/2000 applies and the company’s centre of main interests is situated in the State.

[Note 8] To be used 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 9] To be used only if Council Regulation (EC) No 1346/2000 applies, insolvency proceedings in respect of the company have not been opened in another Member State, and one of the conditions in Article 3(4) of that Regulation is satisfied.

*Delete where inapplicable.

Form 53B

O. 53A, r. 17(13)

GENERAL PROXY

[Title as in Form No. 53A]

I/We, of..... a creditor [or member] hereby appoint [Note 1] to be my/our general proxy to vote at the meeting of creditors [or members] to be held in the above matter on the... day of, 20 or at any adjournment thereof.

Dated

(Signed) [Note 2]

NOTES:

[Note 1] The person appointed general proxy may be the Examiner or such other person (not being a child) as the creditor [or member] may appoint.

[Note 2] If a firm, sign the firm's trading name and add "by A.B. a partner in the said firm." If the appointor is a corporation, the form of proxy must be under its common seal or under the hand of some officer duly authorised in that behalf and the fact that the officer is so authorised must be so stated.

[Note 3] The proxy form when signed must be lodged with the Examiner no later than 4.00 in the afternoon of the day before the meeting at the address stated for that purpose in the notice convening the meeting at which it is to be used.

[Note 4] For rules on the conduct of meetings, see Order 53A, rule 17 of the Circuit Court Rules.

Form 53C

O. 53A, r. 20(13)

SPECIAL PROXY

[Title as in Form No. 53A]

I/We,..... of..... a creditor [or member] hereby appoint [Note 1]..... as my/our proxy at the meeting of creditors [or members] to be held on the..... day of....., 20... or at any adjournment thereof to vote [Note 2]..... the resolution No [Note 3]..... in the notice convening the said meeting.

Dated

(Signed) [Note 4]

NOTES:

[Note 1] The person appointed special proxy may be the Examiner or such other person (not being a child) as the creditor [or member] may appoint.

[Note 2] Here insert the word "for" or the word "against" as the case may require.

[Note 3] Specify the particular resolution.

[Note 4] If a firm, sign the firm's trading title and add "by A.B. a partner in the said firm". If the appointor is a corporation, the form of proxy must be under its common seal or under the hand of some officer duly authorised in that behalf, and the fact that he is so authorised must be so stated.

[Note 5] The proxy form when signed must be lodged with the Examiner no later than 4.00 in the afternoon of the day before the meeting at the address stated for that purpose in the notice convening the meeting at which it is to be used.

[Note 6] For rules on the conduct of meetings, see Order 53A, rule 17 of the Circuit Court Rules.

EXPLANATORY NOTE

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

These Rules amend the Circuit Court Rules by the insertion of a new Order 53A and new forms 53A, 53B and 53C, to regulate the procedure in respect of examinership proceedings brought in the Circuit Court by virtue of Section 2 of the Companies (Amendment) Act 1990 as amended by the Companies (Miscellaneous Provisions) Act 2013.

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