



STATUTORY INSTRUMENTS.

S.I. No. 395 of 2013



RULES OF THE SUPERIOR COURTS (WINDING-UP OF COMPANIES:
FORMS) 2013

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RULES OF THE SUPERIOR COURTS (WINDING-UP OF COMPANIES:
FORMS) 2013

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 24th day of January 2013.

Susan Denham

Nicholas Kearns

Elizabeth Dunne

Paul McGarry

Gerard Meehan

Patrick Groarke

Stuart Gilhooly

Mary Cummins

Noel Rubotham

John Mahon

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

Dated this 11th day of October, 2013.

ALAN SHATTER,
Minister for Justice and Equality.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 22nd October, 2013.*

S.I. No. 395 of 2013

RULES OF THE SUPERIOR COURTS (WINDING-UP OF COMPANIES:
FORMS) 2013

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Winding-Up of Companies: Forms) 2013, shall come into operation on the 11th day of November 2013.

(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 2013.

2. The Rules of the Superior Courts are amended by the substitution for the Forms numbered 3 and 4 respectively in Appendix M of the Forms bearing the like numbers respectively set out in the Schedule.

Schedule

NO. 3.

O. 74, r. 7.

PETITION BY UNPAID CREDITOR ON SIMPLE CONTRACT DEBT

[Title as in Form No. 1]

To the High Court.

The humble petition of *(insert full name and address of petitioner)* 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 of 19/20

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 of made on 20

* 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*).

8. The company is indebted to your petitioner in the sum of € for (*state the consideration for the debt with particulars to establish that debt claimed is due*).

9. On the day of 20..... , your petitioner served on the company by leaving the same at the registered office thereof as aforesaid a demand under his hand calling on the company to pay the said sum which demand was in the following terms: (*insert demand*).

10. More than three weeks have now passed since the demand was made but the company has neglected to pay or satisfy the said sum in whole or in part or to make any offer to your petitioner to secure or compound the same.

11. The company is [insolvent and] unable to pay its debts.

12. In the circumstances it is just and equitable that the company should be wound up.

[Note 4] 13. 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] 13. 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.

Your petitioner therefore prays:

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

*[Note 5] in main proceedings (in accordance with Article 3(1) of Council Regulation (EC) No 1346/2000)

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

*[Note 7] 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*) *[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 13 must be included. Where the petition is served on NAMA, proof of service must be produced on the hearing of the petition.

[Note 5] 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 6] 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 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 one of the conditions in Article 3(4) of the Council Regulation is satisfied.

*Delete where inapplicable.

NO. 4.

O. 74, r. 7.

PETITION FOR ORDER WHERE THE POWERS OF THE DIRECTORS
ARE BEING EXERCISED IN A MANNER OPPRESSIVE TO A
MEMBER

[Title as in Form No. 1]

To the High Court.

The humble petition of (*insert full name and address of petitioner*) shows as follows:

1. The Company Limited (hereinafter called “the company”), of which your petitioner is a member, was incorporated in the State under the Companies Act 1963 (or as the case may be) in the month of 19/20

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 of made on 20.....

*..... 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.

9. (*Here set out in paragraphs the facts and grounds on which the petitioner relies in seeking a winding up order, for example:*

9. *The company was formed by A.B., deceased, to carry on the business of formerly carried on by him in partnership with C.D. and E.F. The said A.B., C.D., and E.F. were the first directors of the company. Each of the said three directors held 2,000 shares in the company.*

10. *The said A.B. died on the day of 20..., having appointed his widow, G.H. the petitioner, to be the sole executrix of his last will.*

11. By clauses and of the articles of association of the company it is provided: (set out the clauses relating to registration of executors and of transfers and for the remuneration of the directors).

12. The said C.D. and E.F. as the sole remaining directors of the company have refused to register the said G.H. as a shareholder of the company.

13. During the lifetime of the said A.B. each of the said directors was paid a salary of € and directors' fees of € under resolutions passed at general meetings of the company. At an extraordinary general meeting of the company held on the day of 20, the said C.D. and E.F. by the exercise of their voting power as the holders of more than one half of the registered shares of the company increased their remuneration as directors from the sum of € to the sum of €

14. Since the date of the death of the said A.B. no dividends have been paid by the company although the balance sheets and profit and loss accounts have shown considerable profits.

15. Your petitioner charges that the said C.D. and E.F. have excluded and intend to continue to exclude the petitioner from any share in the conduct of the company's business or in the distribution of its profits.

16. Your petitioner further charges that the said C.D. and E.F. are attempting to compel your petitioner to sell her shares to the company to the said C.D. and E.F. at a gross undervalue and that the company's affairs are being conducted and that the powers of the directors of the company are being exercised in a manner oppressive to her and in disregard of her interests as the personal representative of a deceased member.

(Conclude as follows):—

[No.] It is just and equitable that the company should be wound up.

Your petitioner therefore prays:

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

*[Note 5] in main proceedings (in accordance with Article 3(1) of Council Regulation (EC) No 1346/2000)

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

*[Note 7] 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*) *[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] 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 6] 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 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 one of the conditions in Article 3(4) of the Council Regulation is satisfied.

*Delete where inapplicable.

EXPLANATORY NOTE

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

These rules substitute forms numbered 3 and 4 in Appendix M of the Rules of the Superior Courts (Petition By Unpaid Creditor On Simple Contract Debt and Petition For Order Where The Powers Of The Directors Are Being Exercised In A Manner Oppressive To A Member, respectively) to incorporate in those forms a full listing of the recitals required 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).

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