



STATUTORY INSTRUMENTS.

S.I. No. 471 of 2015



CIRCUIT COURT RULES (COMPANIES ACT 2014) 2015

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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) and section 27 of the Courts (Supplemental Provisions) Act 1961, 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, with the concurrence of the Minister for Justice and Equality, make the annexed Rules of Court.

Dated this 14th day of July 2015.

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

Fiona Duffy Coady
Rita Considine
Noel Rubotham

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

Dated this 25th day of October, 2015.

Signed: FRANCES FITZGERALD,
MINISTER FOR JUSTICE AND EQUALITY

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 30th October, 2015.*

S.I. No. 471 of 2015

CIRCUIT COURT RULES (COMPANIES ACT 2014) 2015

1. (1) These Rules, which may be cited as the Circuit Court Rules (Companies Act 2014) 2015, shall come into operation on the 9th day of November, 2015.

(2) These Rules shall be construed together with the Circuit Court Rules 2001 to 2015.

(3) The Circuit Court Rules 2001 to 2015 as amended by these Rules may be cited as the Circuit Court Rules 2001 to 2015.

2. (1) Any proceedings commenced under a provision of the prior Companies Acts but not disposed of before the commencement of the corresponding provision of the Companies Act 2014 may be proceeded with and heard and determined in accordance with section 5 and Schedule 6 of the Companies Act 2014 and the relevant provisions of these Rules shall, with such adaptations and modifications as may be necessary and subject to such order as may be made or direction as may be given by the Circuit Court for that purpose in the proceedings concerned, apply accordingly.

(2) Without prejudice to the generality of sub-paragraph (1):

(a) Any originating notice of motion presented for the appointment of an examiner to a company before the repeal by the Companies Act 2014 of the provision relied on in such originating notice of motion of the prior Companies Acts but not disposed of before the commencement of the corresponding provision of the Companies Act 2014 may be proceeded with and heard and determined in accordance with section 5 and paragraph 8 of Schedule 6 of the Companies Act 2014 and subject to any order made or direction given by the Circuit Court in accordance with paragraph 8 of Schedule 6 of the Companies Act 2014;

(b) Any subsequent act, application or proceeding in any such matter commenced by originating notice of motion mentioned in paragraph (1) but not completed before the corresponding provision of the Companies Act 2014 was commenced may be so done, proceeded with or heard in accordance with section 5 and paragraph 8 of Schedule 6 of the Companies Act 2014 and subject to any order made or direction given by the Circuit Court in accordance with paragraph 8 of Schedule 6 of the Companies Act 2014.

(3) In this paragraph, the expression the “prior Companies Acts” shall have the meaning assigned to it by section 2(1) of the Companies Act 2014.

3. The Circuit Court Rules are amended:

- (i) by the substitution for Orders 53 and 53A of the Orders bearing the like numbers respectively set out in Schedule 1;
- (ii) by the insertion immediately following Order 53A of the Order set out in Schedule 2;
- (iii) by the substitution for Forms 41 and 53A in the Schedule of Forms annexed to the Circuit Court Rules of the forms bearing the like numbers respectively set out in Schedule 3, and
- (iv) by the insertion in the Schedule of Forms annexed to the Circuit Court Rules, immediately following Form 53C, of the Form 53D set out in Schedule 3.

Schedule 1**“Order 53****Restoration of Companies to the Register pursuant to Chapter 2 of Part 12 of the Companies Act 2014**

1. In this Order, the “Act” means the Companies Act 2014.
2. All applications for the restoration of companies to the register of companies which may be made before the Court under the Act shall be by originating Notice of Motion grounded upon Affidavit. Every Motion issued under this Order shall name as the plaintiff the person mentioned in section 738(2) of the Act making the application or the Registrar of Companies as appropriate. The application shall be made to the Judge of the Circuit Court for the circuit mentioned in section 743 of the Act.
3. All applications pursuant to this Order shall be made in accordance with Form 41 in the Schedule of Forms. The Affidavit grounding such applications shall:
 - (a) specify the status of the Plaintiff in relation to the company sought to be restored;
 - (b) confirm that service has been effected on all persons requiring to have notice of the application and provide proof of service thereof;
 - (c) where the applicant is a creditor, provide details of the debt due, and the manner in which such debt has arisen, and include averments that such debt was due at the time the company concerned was struck off and that it is intended to pursue that debt as against the company concerned;
 - (d) where any notice party has given consent in writing to the application, exhibit such consent; and
 - (e) provide any other relevant information.
4. Notice of an application pursuant to this Order (as required by section 739 or section 741 of the Act) shall be served by registered post, or in any of the modes in which a Civil Bill may otherwise be served.
5. This Rule shall not apply to the Dublin Circuit. Every Motion issued under this Order shall state the date of commencement of the Sittings at which it is intended that the Motion shall be listed for hearing, and a copy thereof, with the endorsement of Service thereof, shall be filed at the Office by the plaintiff not later than ten days before the commencement of such Sittings.
6. This Rule shall apply only to the Dublin Circuit. Every Motion shall state the date on which it is intended that the application shall be listed for hearing

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and a copy thereof, with the endorsement of service thereof, shall be filed by the plaintiff at the Office not later than ten days before such date.

Order 53A

Examinership

Definitions

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

the “Act” means the Companies Act 2014;

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

“company” means a company that, in respect of the latest financial year of the company that has ended prior to the date of the presentation of the originating Notice of Motion, fell to be treated as a small company by virtue of section 350 of the Act;

the “Director” has the same meaning as in section 2(1) of the Act;

“Examiner” shall be construed in accordance with section 508 of the Act and, for the avoidance of doubt, includes an interim examiner appointed under section 512(7) of the Act;

“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 509 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;

“society” means a registered industrial and provident society that falls to be treated as a small society by virtue of the provisions of the Friendly Societies and Industrial and Provident Societies (Miscellaneous Provisions) Act 2014;

“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.

Venue

2. (1) All applications and proceedings under this Order shall, in accordance with section 509(10) of the Act, be brought:

- (a) in the county in which the registered office of the company or society 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 or society 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 509 of the Act shall be grounded on an originating Notice of Motion which shall be in the Form 53A in the Schedule of Forms in the case of a company or in the Form 53D in the Schedule of Forms in the case of a society. The originating Notice of Motion shall comply with section 512 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 509 of the Act. Where the application is made by the company or society

concerned, it shall additionally be entitled on the application of the company or society, as the case may be; where the application is made by a person other than the company or society concerned, it shall additionally be entitled as between the applicant as applicant and the company or society concerned as respondent.

(3) The originating Notice of Motion shall, in the case of a company:

(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:

- (i) 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 350 of the Act and shall set out the relevant conditions, as specified in that section, which are met in the case of the company or, as the case may be,
- (ii) in respect of the latest financial year of the society 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 society that preceded its latest financial year ending prior to the date of

presentation of the originating Notice of Motion, the society fell to be treated as a small society and verify how the qualifying conditions which are stated to be met in the case of the society are satisfied.

(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:

(i) 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 350 of the Act 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 or, as the case may be

(ii) in respect of the latest financial year of the society 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 society that preceded its latest financial year ending prior to the date of presentation of the originating Notice of Motion, the society fell to be treated as a small society and verify how the qualifying conditions which are stated to be met in the case of the society, 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 513 of the Act, the report of the independent expert shall be exhibited to the verifying affidavit.

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

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 or society 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) in any appropriate case, make an order under section 513 of the Act;
- (f) make an order appointing a proposed Examiner on an interim basis until the date fixed for the hearing of the originating Notice of Motion.

(2) An Examiner appointed in accordance with sub-rule (1)(f) over any company or society, or any related company or related society, shall be referred to as the Interim Examiner and shall have the same powers and duties in relation to such company or society 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 or related society

8. (1) An application for the appointment of an Examiner to be appointed an Examiner of a related company or related society pursuant to section 517 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 or related society on an interim basis and may also confer on such Examiner in relation to such company or society all or any of the powers and duties conferred on him in relation to the first mentioned company or first mentioned society 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 or related society shall, if brought by any person other than the original applicant or the Examiner of the first mentioned company or first mentioned society, 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:

- (i) 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;
- (ii) 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 society or an Examiner has been appointed Interim Examiner of a related company of that company or, as the case may be, a related society of that society, 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 or, as the case may be, to that society or to that related society, or
- (b) a person other than the Interim Examiner is appointed as Examiner to the company or to the related company or, as the case may be, to that society or to that related society,

the Interim Examiner shall prepare a written report for the Court in relation to the company or to the related company or both or, as the case may be, to that society or to the related society 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 529 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 520 of the Act by Examiner and other persons

10. (1) Any application by any Examiner of a company or society pursuant to section 520(5) of the Act in relation to any existing proceedings involving that company or society shall be brought by motion on notice to all the parties to such proceedings including the company or society in relation to which the Examiner was appointed.

(2) Any application by any person under section 520(5) of the Act seeking the leave of the Court to commence proceedings in relation to the company or society shall be brought by way of motion on notice to the Examiner and to the company or society.

Applications under section 524 of the Act

11. (1) Any application by an Examiner pursuant to section 524(7) of the Act may be made *ex parte* to the Court.

(2) An application by the company or society or by an interested party pursuant to section 532(9) 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 526 of the Act by Examiner

12. (1) Once an Examiner has certified any refusal or refusals specified in section 526(6) 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 528 of the Act by Examiner

13. (1) An application to the Court by the Examiner pursuant to section 528 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 or, as the case may be, the members of the committee of management or other directing body of the society, shall be made by notice of motion served on the directors of the company or, as the case may be, the members of the committee of management or other directing body of the society, 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 530 of the Act by Examiner

14. (1) An application by the Examiner, pursuant to section 530 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 or society 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 530 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 532 of the Act by Examiner and other persons

15. (1) An Examiner wishing to resign pursuant to section 532 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 or society, the directors of the company or, as the case may be, the members of the committee of management or other directing body of the society, 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 532 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 or, as the case may be, to the society and the members of its committee of management or other directing body, 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 532(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.

Directions under section 533 of the Act

16. (1) Where it appears to the Court that there is evidence of a substantial disappearance of property of the company that is not adequately accounted for, or of other serious irregularities in relation to the company's affairs having occurred, and the Court directs the holding of a hearing under section 533 of the Act to consider that evidence, the Court shall give such further directions in relation to the preparations for and conduct of that hearing as it considers appropriate, which may include directions as to the filing of any affidavit by any person entitled to be heard or by any other person, and directions as to the preparation of any report by the Examiner.

(2) An application for directions under section 533(5) of the Act concerning the supply of the examiner's report under section 533 shall be by motion *ex parte* provided that the Court may direct that notice be given to such person or persons as it may deem fit.

Steps under sections 534 and 535

17. (1) When an Examiner is formulating proposals pursuant to section 534 of the Act for a compromise or scheme of arrangement, any application for an extension of time for the delivery by the Examiner of his report thereon, shall be made *ex parte* to the Court within the time for the delivery of the report or as extended by the Court. Any party affected by the extension, may on notice of motion to the Examiner apply to the Court to set the said order aside upon grounds to be specified and verified in an affidavit and on such application, the Court may make such orders it thinks fit.

(2) An application by the Examiner for directions under section 535 of the Act shall be made *ex parte* to the Court in the first instance and the Court may direct service of notice of the application on any person. Any party affected by such directions, may on notice of motion to the Examiner apply to the Court to vary or set aside any directions upon grounds to be specified and verified in an affidavit and on such application, the Court may make vary or set aside such directions as it thinks fit.

Report under sections 534

18. (1) When an Examiner has prepared a report pursuant to section 534 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 539 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 534(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 534 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 534(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

19. All meetings of members or classes of members or creditors or classes of creditors convened for the purposes of section 534 or section 540 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 or society's books to be a creditor of the company or society or, as the case may be, a member of the company or society, 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 society, or the company's or society'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 185 of the Act 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 or society under section 537 of the Act

20. An application by the company or society pursuant to section 537 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 537(2) of the Act.

Application under section 553 of the Act

21. (1) An application to the Court pursuant to section 553 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.

(4) A certified copy of an order made in an application mentioned in sub-rule (3) shall be delivered by the person as the Court may direct in accordance with section 553(3) of the Act to the Registrar of Companies; the Central Bank of Ireland (if the company or society to which the order relates is a company referred to in section 510 (2), (3), or (4) of the Act) and, the Director as soon as practicable following its authentication.

Application by Examiner under section 554 of the Act

22. (1) An application by the Examiner pursuant to section 554 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

23. 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 otherwise be served or, in the case of service on a company, in any manner permitted by the Act.”

Schedule 2

“Order 53B

Investigation of company’s affairs under Part 13 of the Companies Act 2014

Interpretation

1. (1) In this Order, unless the context or subject matter otherwise requires:
the “Act” means the Companies Act 2014;

“company” means a company that, in respect of the latest financial year of the company that has ended prior to the date of the presentation of the originating Notice of Motion, fell to be treated as a small or medium company by virtue of section 350 of the Act, to which any application under this Order relates and, where the context so admits or requires, includes any related company of that company;

the “Director” has the same meaning as in section 2(1) of the Act;

the “Minister” means the Minister for Jobs, Enterprise and Innovation.

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

Title and venue

2. (1) Every application brought in the Court in relation to a company under Part 13 of the Act shall be entitled in the matter of the company and in the matter of Part 13 of the Companies Act 2014 and where the company is under investigation there shall be added after the name of the company the words “under investigation”.

(2) All applications brought by a creditor or member under this Order shall, in accordance with section 747(9) of the Act, be made to the judge of the Circuit Court:

- (a) for the circuit in which the registered office of the company is situated at the time of the making of the application, or
- (b) if there is no registered office of the company at that time, for the circuit in which the creditor or member resides, or
- (c) if there is no registered office of the company at that time and the creditor or member resides outside the State, for the Dublin Circuit.

(3) All applications and proceedings brought by the company or a director of the company under this Order shall, in accordance with section 747(10) of the Act, be made to the judge of the Circuit Court:

- (a) for the circuit in which the registered office of the company is situated at the time of the making of the application, or

(b) if there is no registered office of the company at that time, for the Dublin Circuit.

(4) All applications and proceedings brought by the Director under this Order shall, in accordance with section 748(8) of the Act, be made to the judge of the Circuit Court:

(a) for the circuit in which the registered office of the company is situated at the time of the making of the application, or

(b) if there is no registered office of the company at that time, for the Dublin Circuit.

Application under section 747

3. (1) An application to appoint an inspector or inspectors under section 747(1) of the Act shall be made by originating Notice of Motion. Such an application when not made by the company or a director of the company shall be served on the company and its directors, and when made by a director, shall be served on the company and the other directors, and when made by the company shall be served on its directors.

(2) An application under sub-rule (1) shall be grounded upon an affidavit sworn by or on behalf of the moving party, which shall:

(a) contain a statement that the company is a small company meeting the qualifying conditions referred to in section 350(5) or, as the case may be, a medium company meeting the qualifying conditions referred to in section 350(6) of the Act and verify the satisfaction of the qualifying conditions concerned;

(b) exhibit the letter required by section 747(5) of the Act giving not less than 14 days' notice to the Director of the intention to make the application and proof of service of that letter on the Director;

(c) set out the grounds of the application and verify any facts relied on.

Application under section 748

4. (1) An application to appoint an inspector or inspectors under section 748 of the Act shall be made by originating Notice of Motion. Such an application shall be served on the company and its directors.

(2) An application under sub-rule (1) shall be grounded upon an affidavit sworn by or on behalf of the Director, which shall:

(a) contain a statement that the company is a small company meeting the qualifying conditions referred to in section 350(5) or, as the case may be, a medium company meeting the qualifying conditions referred to in section 350(6) of the Act and verify the satisfaction of the qualifying conditions concerned;

- (b) set out the circumstances mentioned in section 748(1) of the Act relevant to the application and verify any facts relied on.

Application to investigate a related body corporate

5. (1) An application for the approval of the Court to investigate a related body corporate, being a small or medium company within the meaning of section 350 of the Act, under section 750 of the Act shall be by notice of motion by the inspector grounded on an affidavit, which shall:

- (a) contain a statement that the related body corporate is a small company meeting the qualifying conditions referred to in section 350(5) or, as the case may be, a medium company meeting the qualifying conditions referred to in section 350(6) of the Act and verify the satisfaction of the qualifying conditions concerned;
- (b) set out the reasons why the inspector considers that it is necessary for the purposes of the investigation to investigate the affairs of the related body corporate and verify any facts relied on.

(2) A copy of the notice of motion, grounding affidavit and any exhibits shall be served on the company and on its directors and, if different, on the applicant at whose instance the inspector was appointed.

Order on considering investigator's report

6. (1) After considering a report made under section 758 of the Act, the Court may make such order as it thinks fit.

(2) If on consideration of a report made to the Court under section 758 of the Act the Court considers that it may be appropriate that an order should be made for the winding up of a body corporate to which the report relates, the Court may refer the proceedings to the High Court, in accordance with section 747(8) or, as the case may be, section 748(7) of the Act, by directing the inspector (unless the Court otherwise directs) to apply to the High Court on notice to the original applicant for the appointment of the inspector and the company to put the report before the High Court for the purpose of considering the making of such an order.

Applications by motion ex parte

7. (1) The following applications shall be made by motion *ex parte* of the inspector grounded upon an affidavit:—

- (a) an application for directions in an investigation under section 749 of the Act;
- (b) an application for leave to deliver an interim report to the Court under section 758(1) of the Act;
- (c) an application for leave to deliver a final report to the Court under section 758(1) of the Act;

- (d) an application for leave to inform the Court of matters under section 758(2) of the Act;
- (e) an application as to whether a part of a report should, under section 759(5) of the Act, be omitted from a report to be forwarded, provided, printed or published.

(2) The Court may direct that notice of an application mentioned in sub-rule (1) be given to any person.

Application under section 757

8. (1) An application under section 757 of the Act shall be made by notice of motion of the inspector grounded upon an affidavit. Copies of the notice of motion, affidavit and any exhibit shall be served on every person alleged to be in default, and each such person shall be at liberty to deliver and file a replying affidavit.

Directions and conduct of applications

9. (1) On the hearing of any application made to the Court pursuant to rule 3, rule 4, rule 5, rule 7 or rule 8, the Court may make such order or give such directions as it thinks fit including directions as to whether, and if so, upon which other party notice of the application should be served, the mode of service and the time allowed for such service and may adjourn the hearing or further hearing of such application to date to be specified.

(2) Every application under Part 13 of the Act shall be grounded upon the affidavit of the party making such application and shall be heard and determined on affidavit unless the Court otherwise orders.

(3) Notwithstanding sub-rule (2), the Court may, in any case in which the Court considers that it is either necessary or desirable in the interests of justice so to do, direct a hearing in the matter on oral evidence and may make such order and give such directions in relation to the exchange of pleadings and the settling of issues between the parties as shall appear proper in the circumstances.”

Schedule 3

O. 53, r. 2

FORM 41

Record No.

AN CHUIRT CHUARDA
THE CIRCUIT COURT

CIRCUIT

COUNTY OF

IN THE MATTER OF SECTION *738 *741 OF THE COMPANIES ACT
2014 AND IN THE MATTER OF [*INSERT NAME OF COMPANY
REQUIRED TO BE RESTORED*]

BETWEEN/

A.B.

Plaintiff

and

C.D.

Defendant

ORIGINATING NOTICE OF MOTION

TAKE NOTICE that on the day of 20 at in the
forenoon or the first available opportunity thereafter, Counsel for the Plaintiff
in the above entitled proceedings will apply to this Honourable Court sitting at
for the following reliefs:

1. An Order pursuant to section *738 *741 of the Companies Act 2014 restoring
[*INSERT NAME OF COMPANY REQUIRED TO BE RESTORED*] to the
Register of Companies;
2. Such further or other orders as to this Honourable Court shall seem meet;
3. Costs.

AND FURTHER TAKE NOTICE that this application will be grounded upon
the pleadings and proceedings already had herein, this Notice of Motion
together with proof of service thereof, the Affidavit of sworn herein
on the day of 20 , such further evidence, including oral
evidence, as may be given by or on behalf of the Plaintiff, the nature of the case
and the reasons to be given.

Dated this day of 20 .

Signed:
 Plaintiff/Solicitors for the Plaintiff

To: The County Registrar
And To:
Defendant/Solicitors for the Defendant

*delete where inapplicable

AN CHÚIRT CHUARDA
THE CIRCUIT COURT

CIRCUIT

COUNTY OF

IN THE MATTER OF SECTION 509 OF THE COMPANIES ACT 2014
AND IN THE MATTER OF [INSERT NAME OF COMPANY]

*On the application of [INSERT NAME OF COMPANY]

*Between/ A.B.

Applicant

Applicant

and

[INSERT NAME OF COMPANY]

Respondent

ORIGINATING NOTICE OF MOTION

STATEMENT OF FACTS

1. The applicant,of....., is (state in accordance with section 510(1) of the Companies Act 2014 whether the applicant(s) is/are, as regards the company in respect of which the application is made, (a) the company; (b) a director(s); (c) a creditor, or contingent or prospective creditor (including an employee); (d) a member(s) holding at the date of the presentation of the application not less than one-tenth of such of the paid-up capital as carries at that date the right of voting at general meetings of the company; or (e) in a case in which section 510(2), (3) or (4) of the Companies Act 2014 applies, the Central Bank of Ireland).

2. The Company was incorporated in the State under the Companies Act 2014 (or as the case may be) with registered number.....on the day of19/20.....

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 constitution 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 350 of the Companies Act 2014 because [*set out the relevant conditions, as specified in section 350 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 of20.....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. and as relied on in the report of the independent expert. Set out also particulars of the independent expert's report, which should, unless an application is being made for an order under section 513 of the Companies Act 2014, 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 the..... day of20..... atin 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 atfor the following reliefs:

1. An order pursuant to section 509 of the Companies Act 2014 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 of20.....

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 509(5) of the Companies Act 2014. 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.

O. 53A, r. 3(1)

Form 53D

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 SECTIONS 509 AND 1312 OF THE
COMPANIES ACT 2014

AND IN THE MATTER OF PART 4 OF THE FRIENDLY SOCIETIES
AND INDUSTRIAL AND PROVIDENT SOCIETIES (MISCELLANEOUS
PROVISIONS) ACT 2014

AND IN THE MATTER OF [*INSERT NAME OF REGISTERED
INDUSTRIAL AND PROVIDENT SOCIETY*]

*On the application of [*INSERT NAME OF REGISTERED INDUSTRIAL
AND PROVIDENT SOCIETY*]

Applicant

*Between/ A.B.

Applicant

and

[*INSERT NAME OF REGISTERED INDUSTRIAL AND PROVIDENT
SOCIETY*]

Respondent

ORIGINATING NOTICE OF MOTION

STATEMENT OF FACTS

1. The applicant,of....., is (*state in accordance with section 17 of the Friendly Societies and Industrial and Provident Societies (Miscellaneous Provisions) Act 2014, whether the applicant(s) is/are, as regards the society in respect of which the application is made, (a) the society; (b) the board of management or other directing body; (c) a creditor, or contingent or prospective creditor (including an employee); (d) not less than one tenth of the total number of members, or, where the society has more than 1,000 members, not less than 100 members, or (e) the Central Bank of Ireland.*)

2. The Society was registered in the State under the Industrial and Provident Societies Act 1983 (*or as the case may be*) with registered number.....on the day of19/20.....

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

4. The object for which the Society was established is: to..... as set out in the registered rules thereof.

5. The members of the committee of management [or other directing body] of the Society are.....and.....

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

7. In respect of

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

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

the Society fell to be treated as a small society because [set out how the qualifying conditions which are stated to be met in the case of the Society, are satisfied]

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

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

10. No resolution subsists for the winding-up of the Society.

11. No order has been made for the winding-up of the Society.

[Note 1] **12. On the day of20.....the Society passed a resolution directing the members of the committee of management [or other directing body] to take the necessary steps on behalf of the Society 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 Society'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 Society (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 and as relied on in the report of the independent expert. Set out also particulars of any independent report, which should, unless an application is being made for an order under section 2A of the Companies (Amendment) Act 1990 and/or section 513 of the Companies Act 2014, be exhibited to the grounding affidavit].

[Note 1] *12. The application to seek the appointment of an Examiner to the Society arises in the following circumstances [*Set out circumstances, including details of the Society’s financial difficulties and its creditors*].

RELIEFS SOUGHT

TAKE NOTICE that on the..... day of20..... atin 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 atfor the following reliefs:

1. An order pursuant to section 2 of the Companies (Amendment) Act 1990 and/or section 509 of the Companies Act 2014 appointing [Name] as Examiner of [*INSERT NAME OF REGISTERED INDUSTRIAL AND PROVIDENT SOCIETY* (hereinafter the “Society”)]
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 Society. This note is unnecessary if the Society is itself the applicant)*

Dated this day of20.....

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 12 must be included.

*Delete where inapplicable.

EXPLANATORY NOTE

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

These rules amend the Circuit Court Rules by the substitution of Order 53 and 53A and Forms numbered 41 and 53A, and the insertion of a new Order 53B and Form 53D, to prescribe procedures to facilitate the operation of the Companies Act 2014.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
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