

5. Provision of Information for Creditors and Lodgement of Their Claims

Articles 39-42 of the Insolvency Regulation are applicable both to main proceedings and to territorial (independent or secondary) insolvency proceedings (see Whereas (21)).

5.1 Right to Lodge Claims

Every creditor that has its habitual residence, domicile or registered office in the Community has the right to lodge its claims in each of the insolvency proceedings pending in the Community relating to the debtor's assets. This also applies to tax authorities and social insurance institutions. However, in order to ensure equal treatment of creditors, the distribution of proceeds must be coordinated. The system is that every creditor should be able to keep what it has received in the course of insolvency proceedings, but should be entitled only to participate in the distribution of total assets in other proceedings if creditors with the same standing have obtained

the same proportion of their claims (so-called “hotchpot rule”). Laying down the right of foreign creditors to lodge claims in writing in insolvency proceedings, Article 39 establishes a rule of substantive law. This provision derogates from the application of national law pursuant to Article 4(2)(h).

The national law of each proceeding determines the costs, to the charge of a creditor, attached to the claim and to the verification of the debts. A prudent creditor will take into account the rules relevant to these and other costs, and will estimate the interest that his claim presents. He will obviously examine the ranking that the law of the proceedings accords to his claim and the importance of the assets that will be distributed. The right to lodge claims for a creditor situated in the Member State in which proceedings are opened is governed by national law. Article 39 gives creditors the right to lodge claims in writing, but it does not prevent national law from permitting their claims to be lodged in any other more favourable form for creditors.

Establishing the right of foreign creditors to lodge claims means that lodgement of their claims cannot be disallowed, not even on the grounds that the creditor is situated in another Member State or that the claim is governed by the public law of another Member State.

5.2 Duty to Inform Creditors

Without any delay the court having jurisdiction or the liquidator must inform known creditors, who have their habitual residence, domicile or registered office in the other Member States, about the opening of insolvency proceedings and the

need to lodge their claims (see Article 40(1)). The Regulation aims to improve the situation of intra-Community creditors situated outside the Member State in which proceedings are opened. The liquidator's duty to inform creditors situated in the State in which proceedings are opened is governed by national law. The Regulation does not take into consideration creditors from outside the European Community to whom the national law of the State in which the proceedings are opened applies; this law determines whether creditors located outside the EU should be informed.

Article 40(2) lays down the form and the content to be taken by the information provided for creditors. The liquidator is required to send a notice to each creditor. This notice has to state the time limits for lodging claims, the legal consequences laid down for failing to meet those time limits, and the person or body with whom claims must be lodged. It must specify whether creditors with preferential claims or claims secured *in rem* are required to lodge them.

5.3 Content of the Lodgement of a Claim

Under Article 4(2)(h), the lodging of claims is subject to the law of the State of the opening of proceedings. In exception to that rule, Article 41 constitutes, together with Articles 39 and 42(2), the content of claims lodged by creditors situated in another State. The requirements set out in Article 41 are intended to identify their claim, which is sought to be lodged. As this provision is meant to facilitate the exercise of intra-Community creditors' rights, national legislation may impose

no additional conditions on the content of the lodgement of claims by foreign creditors protected by the Regulation.

A creditor may lodge his claim in writing (Article 39), supplying copies of supporting documents, if any, stating (as referred to in Article 41) the nature of the claim, the date on which it arose, and its amount. It must also specify any preference, security right or reservation of title alleged, as well as the assets covered by the guarantee invoked. Under Article 4(2)(h), however, national law of the opening State governs the verification and admission of claims and determines the procedure by which a creditor must establish his claim in order to have any admitted to the proceedings.

5.4 Languages

The information for creditors regarding the opening of proceedings for their debtor's insolvency and the lodging of claims is to be given by an individual notice in the official language or one of the official languages of the State of the opening of proceedings. In order to help those creditors that do not understand the language of the State in which proceedings are opened, the form of the information notice has to be headed: "*Invitation to lodge a claim. Time limits to be observed.*" In order to help courts and liquidators comply with these requirements, a form has been drawn up by the European Commission to be used for this purpose or to serve as a model. The model in English follows (see Scheme 3).

Creditors from other States are allowed to lodge claims in an official language of the State in which they have their habitual residence, domicile or registered office. However,

their written statement must, according to Article 42(2), be headed “*Lodgement of claim*” in a language of a State in which proceedings are opened. Use of the creditor’s language is the rule, although a translation into the official language may be required in the course of the proceedings. There are also specific conditions on the content of the lodgement of claims as well as on supporting documents. In view of facilitating the exercise of foreign creditors’ rights in such proceedings, a form has been drawn up by the European Commission to be used for this purpose or to serve as a model. The model in English follows (see Scheme 4).

Scheme 3. Model “Invitation to lodge a claim. Time limits to be observed.”

«Convocatoria para la presentación de créditos. Plazos aplicables».
 "Opfordring til anmeldelse af fordringer. Vær opmærksom på fristerne."
 „Aufforderung zur Anmeldung einer Forderung. Etwaige Fristen beachten!“
 «Προσκληση για αναγγελία ή παρωχη'σες. Προσοχη' στις προθεσμίες»
 'Invitation to lodge a claim. Time limits to be observed'
 «Invitation à produire une créance. Délais à respecter»
 «Invito all'insinuazione di un credito. Termine da osservare»
 „Oproep tot indiening van schuldvorderingen. In acht te nemen termijnen”
 «Aviso de reclamação de créditos. Prazos legais a observar»
 "Kebotus saatavan ilmoittamiseen. Noudatettavat määräajat"
 "Anmodan att anmäla fordran. Tidsfrister att iaktta"

This information notice is to be filled in and sent by the court or the liquidator to each creditor, immediately after the opening of the insolvency proceedings.

1. Information about the debtor

2. Information about proceedings for the lodgement of claims

- Time limits:
- Penalties in regard to time limits:
- Body or authority empowered to accept the lodgement of claims:
- Other requirements:

3. Information about certain categories of claims

Creditors whose claims are preferential or secured in rem:

- ☐ need lodge their claims
- ☐ are exempted to do so

Done at date

Signature and/or stamp

Scheme 4 Model “Lodgement of claim.”

«Presentación de crédito»
"Anmeldelse af fordring"
„Anmeldung einer Forderung“
«Ανγγελία ή απαιτη'σας»
'Lodgement of claim'
«Production de créance»
«Insinuazione di credito»
„Indiening van een schuldvordering”
«Reclamação de crédito»
"Saatavaa koskeva ilmoitus"
"Anmälan av fordran"

1. Personal data

2. Information about your claim

- Nature:
- Date:
- Amount:EURO

Please supply copies of supporting documents

3. In respect of this claim, do you allege:

- ☐ Any preference
- ☐ Any security in rem
- ☐ Any reservation of title

Please cross the relevant box and give below a description of assets that are covered by the guarantee:

Done at date

Signature: