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STATUTORY INSTRUMENTS

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**1986 No. 1915**

**The Insolvency (Scotland) Rules 1986**

**PART 2**

**ADMINISTRATION PROCEDURE**

**CHAPTER 1**

**APPLICATION FOR, AND MAKING OF, THE ORDER**

**Independent report on company's affairs**

**2.1.—**(1) Where it is proposed to apply to the court by way of petition for an administration order to be made under section 8 in relation to a company, there may be prepared in support of the petition a report by an independent person to the effect that the appointment of an administrator for the company is expedient.

(2) The report may be by the person proposed as administrator, or by any other person having adequate knowledge of the company's affairs, not being a director, secretary, manager, member or employee of the company.

(3) The report shall specify which of the purposes specified in section 8(3) may, in the opinion of the person preparing it, be achieved for the company by the making of an administration order in relation to it.

**Notice of petition**

**2.2.—**(1) Under section 9(2)(a), notice of the petition shall forthwith be given by the petitioner to the person who has appointed, or is or may be entitled to appoint, an administrative receiver, and to the following persons:-

- (a) an administrative receiver, if appointed;
- (b) if a petition for the winding up of the company has been presented but no order for winding up has yet been made, the petitioner under that petition;
- (c) a provisional liquidator, if appointed;
- (d) the person proposed in the petition to be the administrator;
- (e) the registrar of companies;
- (f) the Keeper of the Register of Inhibitions and Adjudications for recording in that register; and
- (g) the company, if the petition for the making of an administration order is presented by the directors or by a creditor or creditors of the company.

(2) Notice of the petition shall also be given to the persons upon whom the court orders that the petition be served.

### **Notice and advertisement of administration order**

**2.3.—**(1) If the court makes an administration order, it shall forthwith give notice of the order to the person appointed as administrator.

(2) Under section 21(1)(a) the administrator shall forthwith after the order is made, advertise the making of the order once in the Edinburgh Gazette and once in a newspaper circulating in the area where the company has its principal place of business or in such newspaper as he thinks most appropriate for ensuring that the order comes to the notice of the company's creditors.

(3) Under section 21(2), the administrator shall send a notice with a copy of the court's order certified by the clerk of court to the registrar of companies, and in addition shall send a copy of the order to the following persons:-

- (a) any person who has appointed an administrative receiver, or has power to do so;
- (b) an administrative receiver, if appointed;
- (c) a petitioner in a petition for the winding up of the company, if that petition is pending;
- (d) any provisional liquidator of the company, if appointed; and
- (e) the Keeper of the Register of Inhibitions and Adjudications for recording in that register.

(4) If the court dismisses the petition under section 9(4) or discharges the administration order under section 18(3) or 24(5), the petitioner or, as the case may be, the administrator shall -

- (a) forthwith send a copy of the court's order dismissing the petition or effecting the discharge to the Keeper of the Register of Inhibitions and Adjudications for recording in that register; and
- (b) within 14 days after the date of making of the order, send a notice with a copy, certified by the clerk of court, of the court's order dismissing the petition or effecting the discharge to the registrar of companies.

(5) Paragraph (4) is without prejudice to any order of the court as to the persons by and to whom, and how, notice of any order made by the court under section 9(4), 18 or 24 is to be given and to section 18(4) or 24(6) (notice by administrator of court's order discharging administration order).

## **CHAPTER 2**

### **STATEMENT OF AFFAIRS AND PROPOSALS TO CREDITORS**

#### **Notice requiring statement of affairs**

**2.4.—**(1) This Rule and Rules 2.5 and 2.6 apply where the administrator decides to require a statement as to the affairs of the company to be made out and submitted to him in accordance with section 22.

(2) The administrator shall send to each of the persons upon whom he decides to make such a requirement under section 22, a notice in the form required by Rule 7.30 and Schedule 5 requiring him to make out and submit a statement of affairs.

(3) Any person to whom a notice is sent under this Rule is referred to in this Chapter as “a deponent”.

#### **Form of the statement of affairs**

**2.5.—**(1) The statement of affairs shall be in the form required by Rule 7.30 and Schedule 5.

(2) The administrator shall insert any statement of affairs submitted to him in the sederunt book.

### **Expenses of statement of affairs**

**2.6.**—(1) A deponent who makes up and submits to the administrator a statement of affairs shall be allowed and be paid by the administrator out of his receipts, any expenses incurred by the deponent in so doing which the administrator considers to be reasonable.

(2) Any decision by the administrator under this Rule is subject to appeal to the court.

(3) Nothing in this Rule relieves a deponent from any obligation to make up and submit a statement of affairs, or to provide information to the administrator.

### **Statement to be annexed to proposals**

**2.7.** There shall be annexed to the administrator's proposals, when sent to the registrar of companies under section 23 and laid before the creditors' meeting to be summoned under that section, a statement by him showing -

- (a) details relating to his appointment as administrator, the purposes for which an administration order was applied for and made, and any subsequent variation of those purposes;
- (b) the names of the directors and secretary of the company;
- (c) an account of the circumstances giving rise to the application for an administration order;
- (d) if a statement of affairs has been submitted, a copy or summary of it with the administrator's comments, if any;
- (e) if no statement of affairs has been submitted, details of the financial position of the company at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that of the administration order);
- (f) the manner in which the affairs of the company will be managed and its business financed, if the administrator's proposals are approved; and
- (g) such other information (if any) as the administrator thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.

### **Notices of proposals to members**

**2.8.** Any notice required to be published by the administrator -

- (a) under section 23(2)(b) (notice of address for members of the company to write for a copy of the administrator's statement of proposals), and
- (b) under section 25(3)(b) (notice of address for members of the company to write for a copy of the administrator's statement of proposed revisions to the proposals),

shall be inserted once in the Edinburgh Gazette and once in the newspaper in which the administrator's appointment was advertised.

## **CHAPTER 3**

### **MEETINGS AND NOTICES**

#### **General**

**2.9.** The provisions of Chapter 1 of Part 7 (Meetings) shall apply with regard to meetings of the company's creditors or members which are summoned by the administrator, subject to the provisions in this Chapter.

### **Meeting to consider administrator's proposals**

**2.10.**—(1) The administrator shall give at least 14 days' notice to attend the meeting of the creditors under section 23(1) to any directors or officers of the company (including persons who have been directors or officers in the past) whose presence at the meeting is, in the administrator's opinion, required.

(2) If at the meeting there is not the requisite majority for approval of the administrator's proposals (with modifications, if any), the chairman may, and shall if a resolution is passed to that effect, adjourn the meeting for not more than 14 days.

### **Retention of title creditors**

**2.11.** For the purpose of entitlement to vote at a creditors' meeting in administration proceedings, a seller of goods to the company under a retention of title agreement shall deduct from his claim the value, as estimated by him, of any rights arising under that agreement in respect of goods in the possession of the company.

### **Hire-purchase, conditional sale and hiring agreements**

**2.12.**—(1) Subject as follows, an owner of goods under a hire-purchase agreement or under an agreement for the hire of goods for more than 3 months, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to him by the company as at the date of the administration order.

(2) In calculating the amount of any debt for this purpose, no account shall be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the presentation of the petition for an administration order or any matter arising in consequence of that or of the making of the order.

### **Report of meetings**

**2.13.** Any report by the administrator of the proceedings of creditors' meetings held under section 23(1) or 25(2) shall have annexed to it details of the proposals which were considered by the meeting in question and of any modifications which were also considered.

### **Notices to creditors**

**2.14.**—(1) Within 14 days after the conclusion of a meeting of creditors to consider the administrator's proposals or proposed revisions under section 23(1) or 25(2), the administrator shall send notice of the result of the meeting (including, where appropriate, details of the proposals as approved) to every creditor to whom notice of the meeting was sent and to any other creditor of whom the administrator has become aware since the notice was sent.

(2) Within 14 days after the end of every period of 6 months beginning with the date of approval of the administrator's proposals or proposed revisions, the administrator shall send to all creditors of the company a report on the progress of the administration.

(3) On vacating office, the administrator shall send to creditors a report on the administration up to that time. This does not apply where the administration is immediately followed by the company going into liquidation, nor where the administrator is removed from office by the court or ceases to be qualified to act as an insolvency practitioner.

## CHAPTER 4

### THE CREDITORS' COMMITTEE

#### **Application of provisions in Part 3 (Receivers)**

**2.15.**—(1) Chapter 3 of Part 3 (The creditors' committee) shall apply with regard to the creditors' committee in the administration as it applies to the creditors' committee in receivership, subject to the modifications specified below and to any other necessary modifications.

(2) For any reference in the said Chapter 3, or in any provision of Chapter 7 of Part 4 as applied by Rule 3.6, to the receiver, receivership or the creditors' committee in receivership, there shall be substituted a reference to the administrator, the administration and the creditors' committee in the administration.

(3) In Rule 3.4(1) and 3.7(1), for the reference to section 68 or 68(2), there shall be substituted a reference to section 26 or 26(2).

(4) For Rule 3.5 there shall be substituted the following Rule:-

#### **“Functions of the Committee**

**3.5.** The creditors' committee shall assist the administrator in discharging his functions and shall act in relation to him in such manner as may be agreed from time to time.”

## CHAPTER 5

### THE ADMINISTRATOR

#### **Remuneration**

**2.16.**—(1) The administrator's remuneration shall be determined from time to time by the creditors' committee or, if there is no creditors' committee, by the court, and shall be paid out of the assets as an expense of the administration.

(2) The basis for determining the amount of the remuneration payable to the administrator may be a commission calculated by reference to the value of the company's property with which he has to deal, but there shall in any event be taken into account -

- (a) the work which, having regard to that value, was reasonably undertaken by him; and
- (b) the extent of his responsibilities in administering the company's assets.

(3) Rules 4.32 to 4.34 of Chapter 6 of Part 4 shall apply to an administration as they apply to a liquidation but as if for any reference to the liquidator or the liquidation committee there was substituted a reference to the administrator or the creditors committee.

#### **Abstract of receipts and payments**

**2.17.**—(1) The administrator shall -

- (a) within 2 months after the end of 6 months from the date of his appointment, and of every subsequent period of 6 months, and
- (b) within 2 months after he ceases to act as administrator,

send to the court, and to the registrar of companies, and to each member of the creditors' committee, the requisite accounts of the receipts and payments of the company.

(2) The court may, on the administrator's application, extend the period of 2 months mentioned in paragraph (1).

(3) The accounts are to be in the form of an abstract showing -

- (a) receipts and payments during the relevant period of 6 months, or
- (b) where the administrator has ceased to act, receipts and payments during the period from the end of the last 6 month period to the time when he so ceased (alternatively, if there has been no previous abstract, receipts and payments in the period since his appointment as administrator).

(4) If the administrator makes default in complying with this Rule, he is liable to a fine and, for continued contravention, to a daily default fine.

### **Resignation from office**

**2.18.**—(1) The administrator may give notice of his resignation on grounds of ill health or because

- (a) he intends ceasing to be in practice as an insolvency practitioner, or
- (b) there is some conflict of interest or change of personal circumstances, which precludes or makes impracticable the further discharge by him of the duties of administrator.

(2) The administrator may, with the leave of the court, give notice of his resignation on grounds other than those specified in paragraph (1).

(3) The administrator must give to the persons specified below at least 7 days' notice of his intention to resign, or to apply for the court's leave to do so -

- (a) if there is a continuing administrator of the company, to him;
- (b) if there is no such administrator, to the creditors' committee; and
- (c) if there is no such administrator and no creditors' committee, to the company and its creditors.

### **Administrator deceased**

**2.19.**—(1) Subject to the following paragraph, where the administrator has died, it is the duty of his executors or, where the deceased administrator was a partner in a firm, of a partner of that firm to give notice of that fact to the court, specifying the date of the death. This does not apply if notice has been given under the following paragraph.

(2) Notice of the death may also be given by any person producing to the court a copy of the death certificate.

### **Order filling vacancy**

**2.20.** Where the court makes an order filling a vacancy in the office of administrator, the same provisions apply in respect of giving notice of, and advertising, the appointment as in the case of the original appointment of an administrator.

## **CHAPTER 6**

### **VAT BAD DEBT RELIEF**

#### **Application of provisions in Part 3 (Receivers)**

**2.21.** Chapter 5 of Part 3 (VAT bad debt relief) shall apply to an administrator as it applies to an administrative receiver, subject to the modification that, for any reference to the administrative receiver, there shall be substituted a reference to the administrator.