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STATUTORY INSTRUMENTS

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**2018 No. 1082**

The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018

PART 3

ADMINISTRATION

CHAPTER 11

Extension and ending of administration

[Note: A document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

**Interpretation**

**3.53.** “Final progress report” means in this Chapter, and in Chapter 14, a progress report which includes a summary of—

- (a) the administrator’s proposals;
- (b) any major amendments to, or deviations from, those proposals;
- (c) the steps taken during the administration; and
- (d) the outcome.

**Application to extend an administration and extension by consent (paragraph 76(2) of Schedule B1)**

**3.54.—(1)** This rule applies where an administrator makes an application to the court for an order, or delivers a notice to the creditors requesting their consent, to extend the administrator’s term of office under paragraph 76(2) of Schedule B1.

(2) The application or the notice must state the reasons why the administrator is seeking an extension.

(3) A request to the creditors may contain or be accompanied by a notice that if the extension is granted a notice of the extension will be made available for viewing and downloading on a website and that no other notice will be delivered to the creditors.

(4) Where the result of a request to the creditors is to be made available for viewing and downloading on a website, the notice must comply with the requirements for use of a website to deliver documents set out in rule 1.44(2)(a) to (c), (3) and (4) with any necessary modifications and rule 1.44(5)(a) applies to determine the time of delivery of the document.

(5) Where the court makes an order extending the administrator’s term of office, the administrator must as soon as reasonably practicable deliver to the creditors a notice of the order together with the reasons for seeking the extension given in the application to the court.

(6) Where the administrator's term of office has been extended with the consent of creditors, the administrator must as soon as reasonably practicable deliver a notice of the extension to the creditors except where paragraph (3) applies.

(7) The notice which paragraph 78(5)(b) of Schedule B1 requires to be delivered to the registrar of companies must also identify the insolvency proceedings.

### **Notice of automatic end of administration (paragraph 76 of Schedule B1)**

**3.55.**—(1) This rule applies where—

- (a) the appointment of an administrator has ceased to have effect, and
- (b) the administrator is not required by any other rule to give notice of that fact.

(2) The former administrator must, as soon as reasonably practicable, and in any event within five business days of the date on which the appointment has ceased, deliver to the registrar of companies and lodge with the court a notice accompanied by a final progress report.

(3) The notice must be headed "Notice of automatic end of administration" and identify the company immediately below the heading.

(4) The notice must contain—

- (a) identification details for the insolvency proceedings;
- (b) the former administrator's name and address;
- (c) a statement that that person had been appointed administrator of the company;
- (d) the date of the appointment;
- (e) the name of the person who made the appointment or the administration application, as the case may be;
- (f) the date on which the appointment ceased to have effect;
- (g) a statement that the appointment has ceased to have effect; and
- (h) a statement that a copy of the final progress report accompanies the notice.

(5) The notice must be authenticated by the administrator and dated.

(6) A copy of the notice and accompanying final progress report must be delivered as soon as reasonably practicable to—

- (a) the directors of the company; and
- (b) all other persons to whom notice of the administrator's appointment was delivered.

(7) A former administrator who defaults in complying with this rule is guilty of an offence.

### **Notice of end of administration when purposes achieved (paragraph 80(2) of Schedule B1)**

**3.56.**—(1) Where an administrator who was appointed under paragraph 14 or 22 of Schedule B1 thinks that the purpose of administration has been sufficiently achieved, the notice ("notice of end of administration") which the administrator may lodge with the court and deliver to the registrar of companies under paragraph 80(2) of Schedule B1 must be headed "Notice of end of administration" and identify the company immediately below the heading.

(2) The notice must contain—

- (a) identification details for the insolvency proceedings;
- (b) the administrator's name and address;
- (c) a statement that that person has been appointed administrator of the company;
- (d) the date of the appointment;

- (e) the name of the person who made the appointment or the administration application, as the case may be;
  - (f) a statement that the administrator thinks that the purpose of the administration has been sufficiently achieved;
  - (g) a statement that a copy of the final progress report accompanies the notice; and
  - (h) a statement that the administrator is lodging the notice with the court and delivering a copy to the registrar of companies.
- (3) The notice must be authenticated by the administrator and dated.
- (4) The notice must be accompanied by a final progress report.
- (5) The notice lodged with the court must also be accompanied by a copy of the notice.
- (6) The court must endorse the notice and the copy with the date and time of lodging, certify the copy and deliver it to the administrator.
- (7) The prescribed period within which the administrator, under paragraph 80(4)(1) of Schedule B1, must send a copy of the notice to the creditors is five business days from the lodging of the notice.
- (8) The copy of the notice sent to creditors must be accompanied by the final progress report.
- (9) The administrator must within the same period deliver a copy of the notice and the final progress report to all other persons (other than the creditors and the registrar of companies) to whom notice of the administrator's appointment was delivered.
- (10) The administrator is taken to have complied with the requirement in paragraph 80(4) of Schedule B1 to give notice to the creditors if, within five business days of lodging the notice with the court, the administrator gazettes a notice which—
- (a) states that the administration has ended, and the date on which it ended;
  - (b) undertakes that the administrator will provide a copy of the notice of end of administration to any creditor of the company who applies in writing; and
  - (c) specifies the address to which to write.
- (11) The Gazette notice may be advertised in such other manner as the administrator thinks fit.

**Administrator's application for order ending administration (paragraph 79 of Schedule B1)**

**3.57.—(1)** An application to court by the administrator under paragraph 79 of Schedule B1(2) for an order ending an administration must be accompanied by—

- (a) a progress report for the period since—
    - (i) the last progress report (if any), or
    - (ii) if there has been no previous progress report, the date on which the company entered administration;
  - (b) a statement indicating what the administrator thinks should be the next steps for the company (if applicable); and
  - (c) where the administrator makes the application because of a requirement decided by the creditors, a statement indicating with reasons whether or not the administrator agrees with the requirement.
- (2) Where the application is made other than because of a requirement by a decision of the creditors—

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(1) Paragraph 80(4) is amended by paragraph 10(3) of Schedule 9 to the 2015 Act.

(2) Paragraph 79(2)(c) is amended by paragraph 10(29) of Schedule 9 to the 2015 Act.

- (a) the administrator must, at least five business days before the application is made, deliver notice of the administrator's intention to apply to court to—
    - (i) the person who made the administration application or appointment, and
    - (ii) the creditors; and
  - (b) the application must be accompanied by—
    - (i) a statement that notice has been delivered to the creditors, and
    - (ii) copies of any response from creditors to that notice.
- (3) Where the application is in conjunction with a petition under section 124 for an order to wind up the company, the administrator must, at least five business days before the application is made, deliver notice to the creditors as to whether the administrator intends to seek appointment as liquidator.

### **Creditors' application for order ending administration (paragraph 81 of Schedule B1)**

**3.58.**—(1) Where a creditor applies to the court under paragraph 81 of Schedule B1 for an order ending an administration, a copy of the application must be delivered, not less than five business days before the date fixed for the hearing, to—

- (a) the administrator;
  - (b) the person who made the administration application or appointment; and
  - (c) where the appointment was made under paragraph 14 of Schedule B1, the holder of the floating charge by virtue of which the appointment was made (if different to (b)).
- (2) Any of those persons may appear at the hearing of the application.
- (3) Where the court makes an order under paragraph 81 of Schedule B1 ending the administration, the court must deliver a copy of the order to the administrator.

### **Notice by administrator of court order**

**3.59.** Where the court makes an order ending the administration, the administrator must as soon as reasonably practicable deliver a copy of the order and of the final progress report to—

- (a) the registrar of companies;
- (b) the directors of the company; and
- (c) all other persons to whom notice of the administrator's appointment was delivered.

### **Moving from administration to creditors' voluntary winding up (paragraph 83 of Schedule B1)**

**3.60.**—(1) This rule applies where the administrator delivers to the registrar of companies a notice under paragraph 83(3) of Schedule B1(3) of moving from administration to creditors' voluntary winding up.

- (2) The notice must contain—
  - (a) identification details for the insolvency proceedings;
  - (b) the name of the person who made the appointment or the administration application, as the case may be; and
  - (c) the name and IP number of the proposed liquidator.

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(3) Sub-paragraphs (1)(b) and (2)(b) are amended by section 128(3) and sub-paragraphs (5)(b) and (8)(d) are amended by paragraphs 10(31) and (32) of Schedule 9 to the 2015 Act.

(3) The notice to the registrar of companies must be accompanied by a copy of the administrator's final progress report.

(4) A copy of the notice and the final progress report must be sent as soon as reasonably practicable after delivery of the notice to all those persons to whom notice of the administrator's appointment was delivered in addition to the creditors (as required by paragraph 83(5)(b)).

(5) The person who ceases to be administrator on the registration of the notice must inform the person who becomes liquidator of anything which happens after the date of the final progress report and before the registration of the notice which the administrator would have included in the final report had it happened before the date of the report.

(6) For the purposes of paragraph 83(7)(a) of Schedule B1, a person is nominated by the creditors as liquidator by—

- (a) their approval of the statement of the proposed liquidator in the administrator's proposals or revised proposals; or
- (b) their nomination of a different person, through a decision procedure, before their approval of the proposals or revised proposals.

(7) Where the creditors nominate a different person, the nomination must, where applicable, include the declaration required by section 231.

#### **Moving from administration to dissolution (paragraph 84 of Schedule B1)**

**3.61.**—(1) This rule applies where the administrator delivers to the registrar of companies a notice under paragraph 84(1) of Schedule B1 of moving from administration to dissolution.

(2) The notice must contain identification details for the insolvency proceedings.

(3) As soon as reasonably practicable after sending the notice, the administrator must deliver a copy of the notice to all persons to whom notice of the administrator's appointment was delivered (in addition to the creditors mentioned in paragraph 84(5)(b) of Schedule B1(4)).

(4) A final progress report must accompany the notice to the registrar of companies and every copy filed or otherwise delivered.

(5) Where a court makes an order under paragraph 84(7) of Schedule B1 it must, where the applicant is not the administrator, deliver a copy of the order to the administrator.

(6) The administrator must deliver a copy of the order to the registrar of companies with the notice required by paragraph 84(8) of Schedule B1.