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PARTS 5 AND 6 INSOLVENCY OF INDIVIDUALS; BANKRUPTCY

PART 6

BANKRUPTCY

CHAPTER 10

THE TRUSTEE IN BANKRUPTCY

SECTION B: RESIGNATION AND REMOVAL; VACATION OF OFFICE

Creditors' meeting to receive trustee's resignation

6.123.—(1) Before resigning his office, the trustee must call a meeting of creditors for the purpose of receiving his resignation. The notice summoning the meeting shall indicate that this is the purpose, or one of the purposes, of it, and shall draw the attention of creditors to Rule 6.132 with respect to the trustee's release.

(2) A copy of the notice shall at the same time also be sent to the official receiver.

(3) The notice to creditors under paragraph (1) must be accompanied by an account of the trustee's administration of the bankrupt's estate, including—

- (a) a summary of his receipts and payments and
- (b) a statement by him that he has reconciled his account with that which is held by the Department in respect of the bankruptcy.

(4) Subject to paragraph (5), the trustee may only proceed under this Rule 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 trustee.

(5) Where two or more persons are acting as trustee jointly, any one of them may proceed under this Rule (without prejudice to the continuation in office of the other or others) on the ground that, in his opinion and that of the other or others, it is no longer expedient that there should continue to be the present number of joint trustees.

(6) If there is no quorum present at the meeting summoned to receive the trustee's resignation, the meeting is deemed to have been held, a resolution is deemed to have been passed that the trustee's resignation be accepted and the creditors are deemed not to have resolved against the trustee having his release.

(7) Where paragraph (6) applies, any reference in the Rules to a resolution that the trustee's resignation be accepted is replaced by a reference to the making of a written statement, signed by

the person who, had there been a quorum present, would have been chairman of the meeting, that no quorum was present and that the trustee may resign.

[E.R.6.126]

Action following acceptance of resignation

6.124.—(1) This Rule applies where a meeting is summoned to receive the trustee's resignation.

(2) If the chairman of the meeting is other than the official receiver, and there is passed at the meeting any of the following resolutions—

- (a) that the trustee's resignation be accepted,
- (b) that a new trustee be appointed,
- (c) that the resigning trustee be not given his release,

the chairman shall, within 3 days, send to the official receiver a copy of the resolution.

(3) If it has been resolved to accept the trustee's resignation, the chairman shall send to the official receiver a certificate to that effect.

(4) If the creditors have resolved to appoint a new trustee, the certificate of his appointment shall also be sent to the official receiver within that time; and Rule 6.120 shall be complied with in respect of it.

(5) If the trustee's resignation is accepted, the notice of it required by Article 271 (6) shall be given by him forthwith after the meeting; and he shall send a copy of the notice to the official receiver.

(6) The notice under Article 271(6) shall be accompanied by a copy of the account sent to creditors under Rule 6.123(3).

(7) The official receiver shall file a copy of the notice in court.

(8) The trustee's resignation is effective as from the date on which the official receiver files the copy notice in court, that date to be endorsed on the copy notice.

[E.R.6.127]

Leave to resign granted by the court

6.125.—(1) If at a creditors' meeting summoned to accept the trustee's resignation it is resolved that it be not accepted, the court may, on the trustee's application, make an order giving him leave to resign.

(2) The court's order under this Rule may include such provision as it thinks fit with respect to matters arising in connection with the resignation, and shall determine the date from which the trustee's release is effective.

(3) The court shall send 2 sealed copies of the order to the trustee, who shall send one of the copies forthwith to the official receiver.

(4) On sending notice of his resignation to the court, as required by Article 271(6), the trustee shall send a copy of it to the official receiver.

[E.R.6.128]

Meeting of creditors to remove trustee

6.126.—(1) Where a meeting of creditors is summoned for the purpose of removing the trustee, the notice summoning it shall indicate that this is the purpose, or one of the purposes, of the meeting; and the notice shall draw the attention of creditors to Article 272(3) with respect to the trustee's release.

(2) A copy of the notice shall at the same time also be sent to the official receiver.

(3) At the meeting, a person other than the trustee or his nominee may be elected to act as chairman; but if the trustee or his nominee is chairman and a resolution has been proposed for the trustee's removal, the chairman shall not adjourn the meeting without the consent of at least one-half (in value) of the creditors present (in person or by proxy) and entitled to vote.

(4) Where the chairman of the meeting is other than the official receiver, and there is passed at the meeting any of the following resolutions—

- (a) that the trustee be removed,
- (b) that a new trustee be appointed,
- (c) that the removed trustee be not given his release,

the chairman shall, within 3 days, send to the official receiver a copy of the resolution.

(5) If it has been resolved to remove the trustee, the chairman shall send to the official receiver a certificate to that effect.

(6) If the creditors have resolved to appoint a new trustee, the certificate of his appointment shall also be sent to the official receiver within 3 days of the passing of the resolution; and Rule 6.117 shall be complied with in respect of it.

[E.R.6.129]

Court's power to regulate meeting under Rule 6.126

6.127. Where a meeting under Rule 6.126 is to be held, or is proposed to be summoned, the court may on the application of any creditor give directions as to the mode of summoning it, the sending out and return of forms of proxy, the conduct of the meeting, and any other matter which appears to the court to require regulation or control.

[E.R.6.130]

Procedure on removal

6.128.—(1) Where the creditors have resolved that the trustee be removed, the official receiver shall file the certificate of removal in court.

(2) The resolution is effective as from the date on which the official receiver files the certificate of removal in court, and that date shall be endorsed on the certificate.

(3) A copy of the certificate, so endorsed, shall be sent by the official receiver to the trustee who has been removed and, if a new trustee has been appointed, to him.

(4) The official receiver shall not file the certificate in court until the Department has certified to him that the removed trustee has reconciled his account with that held by the Department in respect of the bankruptcy.

[E.R.6.131]

Removal of trustee by the court

6.129.—(1) This Rule applies where application is made to the court for the removal of the trustee, or for an order directing the trustee to summon a meeting of creditors for the purpose of removing him.

(2) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for an ex parte hearing, of which he has been given at least 7 days' notice.

(3) If the application is not dismissed under paragraph (2), the court shall fix a venue for it to be heard.

(4) The applicant shall, at least 14 days before the hearing date, send to the trustee and the official receiver notice stating the venue so fixed; and the notice shall be accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

(5) Subject to any contrary order of the court, the costs of the application do not fall on the estate.

(6) Where the court removes the trustee—

(a) it shall send copies of the order of removal to him and to the official receiver;

(b) the order may include such provision as the court thinks fit with respect to matters arising in connection with the removal; and

(c) if the court appoints a new trustee, Rule 6.118 applies.

[E.R.6.132]

Removal of trustee by Department

6.130.—(1) If the Department decides to remove the trustee, it shall before doing so notify the trustee and the official receiver of its decision and the grounds of it, and specify a period within which the trustee may make representations against implementation of the decision.

(2) If the Department directs the removal of the trustee, it shall forthwith—

(a) file notice of its decision in court, and

(b) send notice to the trustee and the official receiver.

(3) If the trustee is removed by direction of the Department, the court may make any such order in his case as it would have power to make if he had been removed by itself.

[E.R.6.133]

Advertisement of resignation or removal

6.131. Where a new trustee is appointed in place of one who has resigned or been removed, the new trustee shall, in the advertisement of his appointment, state that his predecessor has resigned or, as the case may be, been removed and (if it be the case) that he has been given his release.

[E.R.6.134]

Release of resigning or removed trustee

6.132.—(1) Where the trustee's resignation is accepted by a meeting of creditors which has not resolved against his release, he has his release from when his resignation is effective under Rule 6.124.

(2) Where the trustee is removed by a meeting of creditors which has not resolved against his release, that fact shall be stated in the certificate of removal.

(3) Where—

(a) the trustee resigns, and the creditors' meeting called to receive his resignation has resolved against his release, or

(b) he is removed by a creditors' meeting which has so resolved, or is removed by the court, he must apply to the Department for his release.

(4) When the Department gives the release, it shall so certify, and send the certificate to the official receiver, to be filed in court.

(5) A copy of the certificate shall be sent by the Department to the former trustee, whose release is effective from the date of the certificate.

[E.R.6.135]