
STATUTORY INSTRUMENTS

1986 No. 1915

The Insolvency (Scotland) Rules 1986

PART 3

RECEIVERS

CHAPTER 1

APPOINTMENT

Acceptance of Appointment

3.1.—(1) Where a person has been appointed a receiver by the holder of a floating charge under section 53, his acceptance (which need not be in writing) of that appointment for the purposes of paragraph (a) of section 53(6) shall be intimated by him to the holder of the floating charge or his agent within the period specified in that paragraph and he shall, as soon as possible after his acceptance, endorse a written docquet to that effect on the instrument of appointment.

(2) The written docquet evidencing receipt of the instrument of appointment, which is required by section 53(6)(b), shall also be endorsed on the instrument of appointment.

(3) The receiver shall, as soon as possible after his acceptance of the appointment, deliver a copy of the endorsed instrument of appointment to the holder of the floating charge or his agent.

(4) This Rule shall apply in the case of the appointment of joint receivers as it applies to the appointment of a receiver, except that, where the docquet of acceptance required by paragraph (1) is endorsed by each of the joint receivers, or two or more of them, on the same instrument of appointment, it is the joint receiver who last endorses his docquet of acceptance who is required to send a copy of the instrument of appointment to the holder of the floating charge or his agent under paragraph (3).

CHAPTER 2

STATEMENT OF AFFAIRS

Notice requiring statement of affairs

3.2.—(1) Where the receiver decides to require from any person or persons a statement as to the affairs of the company to be made out and submitted to him in accordance with section 66, he shall send to each of those persons a notice in the form required by Rule 7.30 and Schedule 5 requiring him to make out and submit a statement of affairs in the form prescribed by the Receivers (Scotland) Regulations 1986(1).

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

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

Expenses of statement of affairs

3.3.—(1) A deponent who makes up and submits to the receiver a statement of affairs shall be allowed and be paid by the receiver, as an expense of the receivership, any expenses incurred by the deponent in so doing which the receiver considers to be reasonable.

(2) Any decision by the receiver 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 receiver.

CHAPTER 3

THE CREDITORS' COMMITTEE

Constitution of committee

3.4.—(1) Where it is resolved by the creditors' meeting to establish a creditors' committee under section 68, the committee shall consist of at least 3 and not more than 5 creditors of the company elected at the meeting.

(2) Any creditor of the company who has lodged a claim is eligible to be a member of the committee, so long as his claim has not been rejected for the purpose of his entitlement to vote.

(3) A body corporate or a partnership may be a member of the committee, but it cannot act as such otherwise than by a representative appointed under Rule 7.20, as applied by Rule 3.6.

Functions of the committee

3.5. In addition to the functions conferred on it by the Act, the creditors' committee shall represent to the receiver the views of the unsecured creditors and shall act in relation to him in such manner as may be agreed from time to time.

Application of provisions relating to liquidation committee

3.6.—(1) Chapter 7 of Part 4 (The liquidation committee) shall apply with regard to the creditors' committee in the receivership and its members as it applies to the liquidation committee and the creditor members thereof, subject to the modifications specified below and to any other necessary modifications.

(2) For any reference in the said Chapter 7 to -

(a) the liquidator or the liquidation committee, there shall be substituted a reference to the receiver or to the creditors' committee;

(b) to the creditor member, there shall be substituted a reference to a creditor,

and any reference to a contributory member shall be disregarded.

(3) In Rule 4.42(3) and 4.52(2), for the reference to Rule 4.41(1), there shall be substituted a reference to Rule 3.4(1).

(4) In Rule 4.57,

(a) for the reference to an expense of the liquidation, there shall be substituted a reference to an expense of the receivership;

(b) at the end of that Rule there shall be inserted the following:-

“This does not apply to any meeting of the committee held within 3 months of a previous meeting, unless the meeting in question is summoned at the instance of the receiver.”.

(5) The following Rules shall not apply, namely -

Rules 4.40, 4.41, 4.43 to 4.44, 4.53, 4.56, 4.58 and 4.59.

Information from receiver

3.7.—(1) Where the committee resolves to require the attendance of the receiver under section 68(2), the notice to him shall be in writing signed by the majority of the members of the committee for the time being or their representatives.

(2) The meeting at which the receiver's attendance is required shall be fixed by the committee for a business day, and shall be held at such time and place as he determines.

(3) Where the receiver so attends, the members of the committee may elect any one of their number to be chairman of the meeting, in place of the receiver or any nominee of his.

Members' dealings with the company

3.8.—(1) Membership of the committee does not prevent a person from dealing with the company while the receiver is acting, provided that any transactions in the course of such dealings are entered into on normal commercial terms.

(2) The court may, on the application of any person interested, set aside a transaction which appears to it to be contrary to the requirements of this Rule, and may give such consequential directions as it thinks fit for compensating the company for any loss which it may have incurred in consequence of the transaction.

CHAPTER 4 MISCELLANEOUS

Abstract of receipts and payments

3.9.—(1) The receiver shall -

- (a) within 2 months after the end of 12 months from the date of his appointment, and of every subsequent period of 12 months, and
- (b) within 2 months after he ceases to act as receiver,

send the requisite accounts of his receipts and payments as receiver to -

- (i) the registrar of companies,
- (ii) the holder of the floating charge by virtue of which he was appointed,
- (iii) the members of the creditors' committee (if any),
- (iv) the company or, if it is in liquidation, the liquidator.

(2) The court may, on the receiver's application, extend the period of 2 months referred to 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 12 months, or
- (b) where the receiver has ceased to act, receipts and payments during the period from the end of the last 12-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 receiver).

(4) This Rule is without prejudice to the receiver's duty to render proper accounts required otherwise than as above.

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

Receiver deceased

3.10. If the receiver dies, the holder of the floating charge by virtue of which he was appointed shall, forthwith on his becoming aware of the death, give notice of it to -

- (a) the registrar of companies,
- (b) the members of the creditors' committee (if any),
- (c) the company or, if it is in liquidation, the liquidator,
- (d) the holder of any other floating charge and any receiver appointed by him.

Vacation of office

3.11. The receiver, on vacating office on completion of the receivership or in consequence of his ceasing to be qualified as an insolvency practitioner, shall, in addition to giving notice to the registrar of companies under section 62(5), give notice of his vacating office, within 14 days thereof, to -

- (a) the holder of the floating charge by virtue of which he was appointed,
- (b) the members of the creditors' committee (if any),
- (c) the company or, if it is in liquidation, the liquidator,
- (d) the holder of any other floating charge and any receiver appointed by him.

CHAPTER 5

VAT BAD DEBT RELIEF

Issue of certificate of insolvency

3.12.—(1) In accordance with this Rule, it is the duty of the administrative receiver to issue a certificate in the terms of paragraph (b) of section 22(3) of the Value Added Tax Act 1983⁽²⁾ (which specifies the circumstances in which a company is deemed insolvent for the purposes of that section) forthwith upon his forming the opinion described in that paragraph.

- (2) There shall in the certificate be specified -
- (a) the name of the company and its registered number;
 - (b) the name of the administrative receiver and the date of his appointment; and
 - (c) the date on which the certificate is issued.

(3) The certificate shall be entitled “CERTIFICATE OF INSOLVENCY FOR THE PURPOSES OF SECTION 22(3)(b) OF THE VALUE ADDED TAX ACT 1983”.

Notice to creditors

3.13.—(1) Notice of the issue of the certificate shall be given by the administrative receiver within 3 months of his appointment or within 2 months of issuing the certificate, whichever is the later, to all of the company's unsecured creditors of whose address he is then aware and who have, to his knowledge, made supplies to the company, with a charge to value added tax, at any time before his appointment.

(2) Thereafter, he shall give the notice to any such creditor of whose address and supplies to the company he becomes aware.

- (3) He is not under obligation to provide any creditor with a copy of the certificate.

(2) 1983 c.55, as amended by section 32 of the Finance Act 1985 c.54.

Preservation of certificate with company's records

3.14.—(1) The certificate shall be retained with the company's accounting records, and section 222 of the Companies Act (where and for how long records are to be kept) shall apply to the certificate as it applies to those records.

(2) It is the duty of the administrative receiver, on vacating office, to bring this Rule to the attention of the directors or (as the case may be) any successor of his as receiver.