
STATUTORY INSTRUMENTS

1986 No. 1915

The Insolvency (Scotland) Rules 1986

PART 4

WINDING UP BY THE COURT

CHAPTER 10

SPECIAL MANAGER

Appointment and remuneration

4.69.—(1) This Chapter applies to an application under section 177 by the liquidator or, where one has been appointed, by the provisional liquidator for the appointment of a person to be special manager (references in this Chapter to the liquidator shall be read as including the provisional liquidator).

(2) An application shall be supported by a report setting out the reasons for the appointment. The report shall include the applicant's estimate of the value of the assets in respect of which the special manager is to be appointed.

(3) The order of the court appointing the special manager shall specify the duration of his appointment, which may be for a period of time or until the occurrence of a specified event. Alternatively the order may specify that the duration of the appointment is to be subject to a further order of the court.

(4) The appointment of a special manager may be renewed by order of the court.

(5) The special manager's remuneration shall be fixed from time to time by the court.

(6) The acts of the special manager are valid notwithstanding any defect in his appointment or qualifications.

Caution

4.70.—(1) The appointment of the special manager does not take effect until the person appointed has found (or, being allowed by the court to do so, has undertaken to find) caution to the person who applies for him to be appointed.

(2) It is not necessary that caution be found for each separate company liquidation; but it may be found either specially for a particular liquidation, or generally for any liquidation in relation to which the special manager may be employed as such.

(3) The amount of the caution shall be not less than the value of the assets in respect of which he is appointed, as estimated by the applicant in his report under Rule 4.69.

(4) When the special manager has found caution to the person applying for his appointment, that person shall certify the adequacy of the security and notify the court accordingly.

(5) The cost of finding caution shall be paid in the first instance by the special manager; but -

- (a) where a winding up order is not made, he is entitled to be reimbursed out of the property of the company, and the court may make an order on the company accordingly, and
- (b) where a winding up order has been or is subsequently made, he is entitled to be reimbursed as an expense of the liquidation.

Failure to find or to maintain caution

4.71.—(1) If the special manager fails to find the required caution within the time stated for that purpose by the order appointing him, or any extension of that time that may be allowed, the liquidator shall report the failure to the court, which may thereupon discharge the order appointing the special manager.

(2) If the special manager fails to maintain his caution the liquidator shall report his failure to the court, which may thereupon remove the special manager and make such order as it thinks fit as to expenses.

(3) If an order is made under this Rule removing the special manager, or recalling the order appointing him, the court shall give directions as to whether any, and if so what, steps should be taken to appoint another special manager in his place.

Accounting

4.72.—(1) The special manager shall produce accounts containing details of his receipts and payments for the approval of the liquidator.

(2) The accounts shall be in respect of 3-month periods for the duration of the special manager's appointment (or for a lesser period if his appointment terminates less than 3 months from its date, or from the date to which the last accounts were made up).

(3) When the accounts have been approved, the special manager's receipts and payments shall be added to those of the liquidator.

Termination of appointment

4.73.—(1) The special manager's appointment terminates if the winding up petition is dismissed or, if a provisional liquidator having been appointed, he is discharged without a winding up order having been made.

(2) If the liquidator is of opinion that the employment of the special manager is no longer necessary or profitable for the company, he shall apply to the court for directions, and the court may order the special manager's appointment to be terminated.

(3) The liquidator shall make the same application if a resolution of the creditors is passed, requesting that the appointment be terminated.