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STATUTORY INSTRUMENTS

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**1986 No. 1915**

**The Insolvency (Scotland) Rules 1986**

**PART 4**

**WINDING UP BY THE COURT**

**CHAPTER 6**

**THE LIQUIDATOR**

*SECTION A: APPOINTMENT AND FUNCTIONS OF LIQUIDATOR*

**Appointment of liquidator by the court**

**4.18.**—(1) This Rule applies where a liquidator is appointed by the court under section 138(1) (appointment of interim liquidator), 138(5) (no person appointed or nominated by the meetings of creditors and contributories), 139(4) (different persons nominated by creditors and contributories) or 140(1) or (2) (liquidation following administration or voluntary arrangement).

(2) The court shall not make the appointment unless and until there is lodged in court a statement to the effect that the person to be appointed is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.

(3) Thereafter, the court shall send a copy of the order to the liquidator, whose appointment takes effect from the date of the order.

(4) The liquidator shall -

- (a) within 7 days of his appointment, give notice of it to the registrar of companies; and
- (b) within 28 days of his appointment, give notice of it to the creditors and contributories or, if the court so permits, he shall advertise his appointment in accordance with the directions of the court.

(5) In any notice or advertisement to be given by him under this Rule, the liquidator shall -

- (a) state whether he intends to summon meetings of creditors and contributories for the purpose of establishing a liquidation committee or whether he proposes to summon only a meeting of creditors for that purpose; and
- (b) if he does not propose to summon any meeting, set out the powers of the creditors under section 142(3) to require him to summon such a meeting.

**Appointment by creditors or contributories**

**4.19.**—(1) This Rule applies where a person is nominated for appointment as liquidator under section 139(2) either by a meeting of creditors or by a meeting of contributories.

(2) Subject to section 139(4) the interim liquidator, as chairman of the meeting, or, where the interim liquidator is nominated as liquidator, the chairman of the meeting, shall certify the appointment of a person as liquidator by the meeting but not until and unless the person to be

appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator and that he consents so to act.

(3) The appointment of the liquidator shall be effective as from the date when his appointment is certified under paragraph (2) by the chairman of the meeting of the creditors or, where no person has been nominated to be liquidator by that meeting, the chairman of the meeting of the contributories and this date shall be stated in the certificate.

(4) The liquidator shall -

- (a) within 7 days of his appointment, give notice of his appointment to the court and to the registrar of companies; and
- (b) within 28 days of his appointment, give notice of it 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 it comes to the notice of the company's creditors and contributories.

(5) The provisions of Rule 4.18(5) shall apply to any notice given by the liquidator under this Rule.

(6) Paragraphs (4) and (5) need not be complied with in the case of a liquidator appointed by a company meeting and replaced by another liquidator appointed on the same day by a creditors' meeting.

#### **Authentication of liquidator's appointment**

**4.20.** A copy certified by the clerk of court of any order of court appointing the liquidator or, as the case may be, a copy, certified by the chairman of the meeting which appointed the liquidator, of the certificate of the liquidator's appointment under Rule 4.19(2), shall be sufficient evidence for all purposes and in any proceedings that he has been appointed to exercise the powers and perform the duties of liquidator in the winding up of the company.

#### **Hand-over of assets to liquidator**

**4.21.—**(1) This Rule applies where a person appointed as liquidator ("the succeeding liquidator") succeeds a previous liquidator ("the former liquidator") as the liquidator.

(2) When the succeeding liquidator's appointment takes effect, the former liquidator shall forthwith do all that is required for putting the succeeding liquidator into possession of the assets.

(3) The former liquidator shall give to the succeeding liquidator all such information, relating to the affairs of the company and the course of the winding up, as the succeeding liquidator considers to be reasonably required for the effective discharge by him of his duties as such and shall hand over all books, accounts, statements of affairs, statements of claim and other records and documents in his possession relating to the affairs of the company and its winding up.

#### **Taking possession and realisation of the company's assets**

**4.22.—**(1) Sections 38 and 39(4) and (7) of the Bankruptcy Act shall apply in relation to a liquidation of a company as it applies in relation to a sequestration of a debtor's estate, subject to the modifications specified in paragraph (2) and Rule 4.16(2) and to any other necessary modifications.

(2) For subsection (1) of section 38, there shall be substituted the following section:-

“(1) The liquidator shall -

- (a) as soon as may be after his appointment take possession of the whole assets of the company and any property, books, papers or records in the possession or control of the company or to which the company appears to be entitled; and

- (b) make up and maintain an inventory and valuation of the assets which he shall retain in the sederunt book.”.

#### *SECTION B: REMOVAL AND RESIGNATION; VACATION OF OFFICE*

##### **Summoning of meeting for removal of liquidator**

**4.23.**—(1) Subject to section 172(3) and without prejudice to any other method of summoning the meeting, a meeting of creditors for the removal of the liquidator in accordance with section 172(2) shall be summoned by the liquidator if requested to do so by not less than one quarter in value of the creditors.

(2) Where a meeting of creditors is summoned especially for the purpose of removing the liquidator in accordance with section 172(2), the notice summoning it shall draw attention to section 174(4)(a) or (b) with respect to the liquidator's release.

(3) At the meeting, a person other than the liquidator or his nominee may be elected to act as chairman; but if the liquidator or his nominee is chairman and a resolution has been proposed for the liquidator'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 a meeting is to be held or is proposed to be summoned under this Rule, 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 under this Rule.

##### **Procedure on liquidator's removal**

**4.24.**—(1) Where the creditors have resolved that the liquidator be removed, the chairman of the creditors' meeting shall forthwith -

- (a) if, at the meeting, another liquidator was not appointed, send a certificate of the liquidator's removal to the court and to the registrar of companies, and
- (b) otherwise, deliver the certificate to the new liquidator, who shall forthwith send it to the court and to the registrar of companies.

(2) The liquidator's removal is effective as from such date as the meeting of the creditors shall determine, and this shall be stated in the certificate of removal.

##### **Release of liquidator on removal**

**4.25.**—(1) Where the liquidator has been removed by a creditors' meeting which has not resolved against his release, the date on which he has his release in terms of section 174(4)(a) shall be stated in the certificate of removal before a copy of it is sent to the court and to the registrar of companies under Rule 4.24(1).

(2) Where the liquidator is removed by a creditors' meeting which has resolved against his release, or is removed by the court, he must apply to the Accountant of Court for his release.

(3) When the Accountant of Court releases the former liquidator, he shall -

- (a) issue a certificate of release to the new liquidator who shall send a copy of it to the court and to the registrar of companies, and
- (b) send a copy of the certificate to the former liquidator,

and in this case release of the former liquidator is effective from the date of the certificate.

### **Removal of liquidator by the court**

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

(2) The court may require the applicant to make a deposit or give caution for the expenses to be incurred by the liquidator on the application.

(3) The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating its date, time and place and accompanied by a copy of the application, and of any evidence which he intends to adduce in support of it.

(4) Subject to any contrary order of the court, the expenses of the application are not payable as an expense of the liquidation.

(5) Where the court removes the liquidator -

- (a) it shall send two copies of the order of removal to him;
- (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 liquidator, Rule 4.18 applies,

and the liquidator, on receipt of the two court orders under sub-paragraph (a), shall send one copy of the order to the registrar of companies, together with a notice of his ceasing to act as a liquidator.

### **Advertisement of removal**

**4.27.** Where a new liquidator is appointed in place of the one removed, Rules 4.19 to 4.21 shall apply to the appointment of the new liquidator except that the notice to be given by the new liquidator under Rule 4.19(4) shall also state -

- (a) that his predecessor as liquidator has been removed; and
- (b) whether his predecessor has been released.

### **Resignation of liquidator**

**4.28.**—(1) Before resigning his office under section 172(6) the liquidator shall call a meeting of creditors for the purpose of receiving his resignation.

(2) The notice summoning the meeting shall draw attention to section 174(4)(c) and Rule 4.29(4) with respect of the liquidator's release and shall also be accompanied by an account of the liquidator's administration of the winding up, including a summary of his receipts and payments.

(3) Subject to paragraph (4), the liquidator may only proceed under this Rule on the grounds of ill health or because -

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

(4) Where two or more persons are acting as liquidator jointly, any one of them may resign (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 liquidators.

### **Action following acceptance of liquidator's resignation**

**4.29.**—(1) This Rule applies where a meeting is summoned to receive the liquidator's resignation.

(2) If the liquidator's resignation is accepted, it is effective as from such date as the meeting of the creditors may determine and that date shall be stated in the notice given by the liquidator under paragraph (3).

(3) The liquidator, whose resignation is accepted, shall forthwith after the meeting give notice of his resignation to the court as required by section 172(6) and shall send a copy of it to the registrar of companies.

(4) The meeting of the creditors may grant the liquidator his release from such date as they may determine. If the meeting resolves against the liquidator having his release, Rule 4.25(2) and (3) shall apply.

(5) Where the creditors have resolved to appoint a new liquidator in place of the one who has resigned, Rules 4.19 to 4.21 shall apply to the appointment of the new liquidator, except that the notice to be given by the new liquidator under Rule 4.19(4) shall also state that his predecessor as liquidator has resigned and whether he has been released.

### **Leave to resign granted by the court**

**4.30.**—(1) If, at a creditors' meeting summoned to receive the liquidator's resignation, it is resolved that it be not accepted, the court may, on the liquidator'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 including the notices to be given to the creditors and the registrar of companies and shall determine the date from which the liquidator's release is effective.

## *SECTION C: RELEASE ON COMPLETION OF WINDING UP*

### **Final meeting**

**4.31.**—(1) The liquidator shall give at least 28 days' notice of the final meeting of creditors to be held under section 146. The notice shall be sent to all creditors whose claims in the liquidation have been accepted.

(2) The liquidator's report laid before the meeting shall contain an account of his administration of the winding up, including a summary of his receipts and payments.

(3) At the final meeting, the creditors may question the liquidator with respect to any matter contained in his report, and may resolve against the liquidator having his release.

(4) The liquidator shall within 7 days of the meeting give notice to the court and to the registrar of companies under section 172(8) that the final meeting has been held and the notice shall state whether or not he has been released, and be accompanied by a copy of the report laid before the meeting.

(5) If there is no quorum present at the final meeting, the liquidator shall report to the court that a final meeting was summoned in accordance with the Rules, but that there was no quorum present; and the final meeting is then deemed to have been held and the creditors not to have resolved against the liquidator being released.

(6) If the creditors at the final meeting have not resolved against the liquidator having his release, he is released in terms of section 174(4)(d)(ii) when he vacates office under section 172(8). If they have so resolved he shall apply for his release to the Accountant of Court, and Rules 4.25(2) and (3) shall apply accordingly.

## SECTION D: OUTLAYS AND REMUNERATION

### Determination of amount of outlays and remuneration

**4.32.**—(1) Subject to the provisions of Rules 4.33 to 4.35, claims by the liquidator for the outlays reasonably incurred by him and for his remuneration shall be made in accordance with section 53 of the Bankruptcy Act as applied by Rule 4.68 and as further modified by paragraphs (2) and (3) below.

(2) After section 53(1) of the Bankruptcy Act, there shall be inserted the following subsection:-

“(1A) The liquidator may, at any time before the end of an accounting period, submit to the liquidation committee (if any) an interim claim in respect of that period for the outlays reasonably incurred by him and for his remuneration and the liquidation committee may make an interim determination in relation to the amount of the outlays and remuneration payable to the liquidator and, where they do so, they shall take into account that interim determination when making their determination under subsection (3)(a)(ii).”.

(3) In section 53(6) of the Bankruptcy Act, for the reference to “subsection (3)(a)(ii)” there shall be substituted a reference to “subsection (1A) or (3)(a)(ii)”.

### Recourse of liquidator to meeting of creditors

**4.33.** If the liquidator's remuneration has been fixed by the liquidation committee and he considers the amount to be insufficient, he may request that it be increased by resolution of the creditors.

### Recourse to the court

**4.34.**—(1) If the liquidator considers that the remuneration fixed for him by the liquidation committee, or by resolution of the creditors, is insufficient, he may apply to the court for an order increasing its amount or rate.

(2) The liquidator shall give at least 14 days' notice of his application to the members of the liquidation committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

(3) If there is no liquidation committee, the liquidator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

(4) The court may, if it appears to be a proper case, order the expenses of the liquidator's application, including the expenses of any member of the liquidation committee appearing on it, or any creditor so appearing, to be paid as an expense of the liquidation.

### Creditors' claim that remuneration is excessive

**4.35.**—(1) If the liquidator's remuneration has been fixed by the liquidation committee or by the creditors, any creditor or creditors of the company representing in value at least 25 per cent of the creditors may apply to the court for an order that the liquidator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

(2) If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

(3) Unless the court orders otherwise, the expenses of the application shall be paid by the applicant, and are not payable as an expense of the liquidation.

## SECTION E: SUPPLEMENTARY PROVISIONS

### **Liquidator deceased**

**4.36.**—(1) Subject to the following paragraph, where the liquidator has died, it is the duty of his executors or, where the deceased liquidator was a partner in a firm, of a partner in that firm to give notice of that fact to the court and to the registrar of companies, specifying the date of 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 and to the registrar of companies a copy of the death certificate.

### **Loss of qualification as insolvency practitioner**

**4.37.**—(1) This Rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company.

(2) He shall forthwith give notice of his doing so to the court and to the registrar of companies.

(3) Rule 4.25(2) and (3) apply as regards the liquidator obtaining his release, as if he had been removed by the court.

### **Power of court to set aside certain transactions**

**4.38.**—(1) If in the course of the liquidation the liquidator enters into any transaction with a person who is an associate of his, the court may, on the application of any person interested, set the transaction aside and order the liquidator to compensate the company for any loss suffered in consequence of it.

(2) This does not apply if either -

(a) the transaction was entered into with the prior consent of the court, or

(b) it is shown to the court's satisfaction that the transaction was for value, and that it was entered into by the liquidator without knowing, or having any reason to suppose, that the person concerned was an associate.

(3) Nothing in this Rule is to be taken as prejudicing the operation of any rule of law with respect to a trustee's dealings with trust property, or the fiduciary obligations of any person.

### **Rule against solicitation**

**4.39.**—(1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the liquidator in obtaining proxies or procuring his appointment, it may order that no remuneration be allowed as an expense of the liquidation to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the court under this Rule overrides any resolution of the liquidation committee or the creditors, or any other provision of the Rules relating to the liquidator's remuneration.