STATUTORY INSTRUMENTS

1986 No. 1915

The Insolvency (Scotland) Rules 1986

PART I

COMPANY VOLUNTARY ARRANGEMENTS

CHAPTER 1

PRELIMINARY

Scope of this Part; interpretation

1.1.—(1) The Rules in this Part apply where, pursuant to Part I of the Act, it is intended to make and there is made a proposal to a company and to its creditors for a voluntary arrangement, that is to say, a composition in satisfaction of its debts or a scheme of arrangement of its affairs.

(2) In this Part -

(a) Chapter 2 applies where the proposal for a voluntary arrangement is made by the directors of the company, and neither is the company in liquidation nor is an administration order under Part II of the Act in force in relation to it;

(b) Chapter 3 applies where the company is in liquidation or an administration order is in force and the proposal is made by the liquidator or (as the case may be) the administrator, he in either case being the nominee for the purposes of the proposal;

(c) Chapter 4 applies in the same case as Chapter 3, but where the nominee is an insolvency practitioner other than the liquidator or administrator; and

(d) Chapters 5 and 6 apply in all of the three cases mentioned in sub-paragraphs (a) to (c) above.

(3) In Chapters 3, 4 and 5 the liquidator or the administrator is referred to as the "responsible insolvency practitioner".

CHAPTER 2

PROPOSAL BY DIRECTORS

Preparation of proposal

1.2. The directors shall prepare for the intended nominee a proposal on which (with or without amendments to be made under Rule 1.3 below) to make his report to the court under section 2.

Contents of proposal

1.3.—(1) The directors' proposal shall provide a short explanation why, in their opinion, a voluntary arrangement under Part I of the Act is desirable, and give reasons why the company's creditors may be expected to concur with such an arrangement.

(2) The following matters shall be stated, or otherwise dealt with, in the directors' proposal -

(a) the following matters, so far as within the directors' immediate knowledge -

(i) the company's assets, with an estimate of their respective values;

(ii) the extent (if any) to which the assets are subject to any security in favour of any creditors;

(iii) the extent (if any) to which particular assets of the company are to be excluded from the voluntary arrangement;

(b) particulars of any property other than assets of the company itself, which is proposed to be included in the arrangement, the source of such property and the terms on which it is to be made available for inclusion;

(c) the nature and amount of the company's liabilities (so far as within the directors' immediate knowledge), the manner in which they are proposed to be met, modified, postponed or otherwise dealt with by means of the arrangement, and (in particular) -

(i) how it is proposed to deal with preferential creditors (defined in section 386) and creditors who are, or claim to be, secured;

(ii) how persons connected with the company (being creditors) are proposed to be treated under the arrangement; and

(iii) whether there are, to the directors' knowledge, any circumstances giving rise to the possibility, in the event that the company should go into liquidation, of claims under -

section 242 (gratuitous alienations),

section 243 (unfair preferences),

section 244 (extortionate credit transactions), or

section 245 (floating charges invalid);

and, where any such circumstances are present, whether, and if so how, it is proposed under the voluntary arrangement to make provision for wholly or partly indemnifying the company in respect of such claims;

(d) whether any, and if so what, cautionary obligations (including guarantees) have been given of the company's debts by other persons, specifying which (if any) of the cautioners are persons connected with the company;

(e) the proposed duration of the voluntary arrangement;

(f) the proposed dates of distributions to creditors, with estimates of their amounts;

(g) the amount proposed to be paid to the nominee (as such) by way of remuneration and expenses;

(h) the manner in which it is proposed that the supervisor of the arrangement should be remunerated and his expenses defrayed;

(i) whether, for the purposes of the arrangement, any cautionary obligations (including guarantees) are to be offered by directors, or other persons, and whether (if so) any security is to be given or sought;

(j) the manner in which funds held for the purposes of the arrangement are to be banked, invested or otherwise dealt with pending distribution to creditors;

(k) the manner in which funds held for the purpose of payment to creditors, and not so paid on the termination of the arrangement, are to be dealt with;

(l) the manner in which the business of the company is being and is proposed to be conducted during the course of the arrangement;

(m) details of any further credit facilities which it is intended to arrange for the company and how the debts so arising are to be paid;

(n) the functions which are to be undertaken by the supervisor of the arrangement;

(o) the name, address and qualification of the person proposed as supervisor of the voluntary arrangement, and confirmation that he is (so far as the directors are aware) qualified to act as an insolvency practitioner in relation to the company.

(3) With the agreement in writing of the nominee, the directors' proposal may be amended at any time up to delivery of the former's report to the court under section 2(2).

Notice to intended nominee

1.4.—(1) The directors shall give to the intended nominee written notice of their proposal.

(2) The notice, accompanied by a copy of the proposal, shall be delivered either to the nominee himself, or to a person authorised to take delivery of documents on his behalf.

(3) If the intended nominee agrees to act, he shall cause a copy of the notice to be endorsed to the effect that it has been received by him on a specified date; and the period of 28 days referred to in section 2(2) then runs from that date.

(4) The copy of the notice so endorsed shall be returned by the nominee forthwith to the directors at an address specified by them in the notice for that purpose.

Statement of affairs

1.5.—(1) The directors shall, within 7 days after their proposal is delivered to the nominee, or within such longer time as he may allow, deliver to him a statement of the company's affairs.

(2) The statement shall comprise the following particulars (supplementing or amplifying, so far as is necessary for clarifying the state of the company's affairs, those already given in the directors' proposal): -

(a) a list of the company's assets, divided into such categories as are appropriate for easy identification, with estimated values assigned to each category;

(b) in the case of any property on which a claim against the company is wholly or partly secured, particulars of the claim and its amount and of how and when the security was created;

(c) the names and addresses of the company's preferential creditors (defined in section 386), with the amounts of their respective claims;

(d) the names and addresses of the company's unsecured creditors, with the amounts of their respective claims;

(e) particulars of any debts owed by or to the company to or by persons connected with it;

(f) the names and addresses of the company's members and details of their respective shareholdings; and

(g) such other particulars (if any) as the nominee may in writing require to be furnished for the purposes of making his report to the court on the directors' proposal.

(3) The statement of affairs shall be made up to a date not earlier than 2 weeks before the date of the notice given by the directors to the nominee under Rule 1.4. However the nominee may allow an extension of that period to the nearest practicable date (not earlier than 2 months before the date of the notice under Rule 1.4); and if he does so, he shall give his reasons in his report to the court on the directors' proposal.

(4) The statement shall be certified as correct, to the best of their knowledge and belief, by two or more directors of the company or by the company secretary and at least one director (other than the secretary himself).

Additional disclosure for assistance of nominee

1.6.—(1) If it appears to the nominee that he cannot properly prepare his report on the basis of information in the directors' proposal and statement of affairs, he may call on the directors to provide him with -

(a) further and better particulars as to the circumstances in which, and the reasons why, the company is insolvent or (as the case may be) threatened with insolvency;

(b) particulars of any previous proposals which have been made in respect of the company under Part I of the Act;

(c) any further information with respect to the company's affairs which the nominee thinks necessary for the purposes of his report.

(2) The nominee may call on the directors to inform him, with respect to any person who is, or at any time in the 2 years preceding the notice under Rule 1.4 has been, a director or officer of the company, whether and in what circumstances (in those 2 years or previously) that person -

(a) has been concerned in the affairs of any other company (whether or not incorporated in Scotland) which has become insolvent, or

(b) has had his estate sequestrated, granted a trust deed for his creditors, been adjudged bankrupt or compounded or entered into an arrangement with his creditors.

(3) For the purpose of enabling the nominee to consider their proposal and prepare his report on it, the directors must give him access to the company's accounts and records.

Nominee's report on the proposal

1.7.—(1) With his report to the court under section 2 the nominee shall lodge -

(a) a copy of the directors' proposal (with amendments, if any, authorised under Rule 1.3(3));

(b) a copy or summary of the company's statement of affairs.

(2) If the nominee makes known his opinion that meetings of the company and its creditors should be summoned under section 3, his report shall have annexed to it his comments on the proposal. If his opinion is otherwise, he shall give his reasons for that opinion.

(3) The nominee shall send a copy of his report and of his comments (if any) to the company. Any director, member or creditor of the company is entitled, at all reasonable times on any business day, to inspect the report and comments.

Replacement of nominee

1.8. Where any person intends to apply to the court under section 2(4) for the nominee to be replaced he shall give to the nominee at least 7 days' notice of his application.

Summoning of meetings under section 3

1.9.—(1) If in his report the nominee states that in his opinion meetings of the company and its creditors should be summoned to consider the directors' proposal, the date on which the meetings are to be held shall be not less than 14, nor more than 28 days from the date on which he lodged his report in court under section 2.

(2) The notice summoning the meeting shall specify the court in which the nominee's report under section 2 has been lodged and with each notice there shall be sent -

(a) a copy of the directors' proposal;

(b) a copy of the statement of affairs or, if the nominee thinks fit, a summary of it (the summary to include a list of creditors and the amount of their debts); and

(c) the nominee's comments on the proposal.

CHAPTER 3

PROPOSAL BY ADMINISTRATOR OR LIQUIDATOR WHERE HE IS THE NOMINEE

Preparation of proposal

1.10. The responsible insolvency practitioner's proposal shall specify -

(a) all such matters as under Rule 1.3 in Chapter 2 the directors of the company would be required to include in a proposal by them, and

(b) such other matters (if any) as the insolvency practitioner considers appropriate for ensuring that members and creditors of the company are enabled to reach an informed decision on the proposal.

Summoning of meetings under section 3

1.11.—(1) The responsible insolvency practitioner shall give at least 14 days' notice of the meetings of the company and of its creditors under section 3(2).

(2) With each notice summoning the meeting, there shall be sent -

(a) a copy of the responsible insolvency practitioner's proposal; and

(b) a copy of the company's statement of affairs or, if he thinks fit, a summary of it (the summary to include a list of the creditors and the amount of their debts).

CHAPTER 4

PROPOSAL BY ADMINISTRATOR OR LIQUIDATOR WHERE ANOTHER INSOLVENCY PRACTITIONER IS THE NOMINEE

Preparation of proposal and notice to nominee

1.12.—(1) The responsible insolvency practitioner shall give notice to the intended nominee, and prepare his proposal for a voluntary arrangement, in the same manner as is required of the directors in the case of a proposal by them, under Chapter 2.

(2) Rule 1.2 applies to the responsible insolvency practitioner as it applies to the directors; and Rule 1.4 applies as regards the action to be taken by the nominee.

(3) The content of the proposal shall be as required by Rule 1.3, reading references to the directors as referring to the responsible insolvency practitioner.

(4) Rule 1.6 applies, in respect of the information to be provided to the nominee, reading references to the directors as referring to the responsible insolvency practitioner.

(5) With the proposal the responsible insolvency practitioner shall provide a copy of the company's statement of affairs.

(6) Rules 1.7 to 1.9 apply as regards a proposal under this Chapter as they apply to a proposal under Chapter 2.

CHAPTER 5

MEETINGS

General

1.13. The provisions of Chapter 1 of Part 7 (Meetings) shall apply with regard to the meetings of the company and of the creditors which are summoned under section 3, subject to Rules 1.9, 1.11 and 1.12(6) and the provisions in this Chapter.

Summoning of meetings

1.14.—(1) In fixing the date, time and place for the creditors' meeting and the company meeting, the person summoning the meetings ("the convenor") shall have regard primarily to the convenience of the creditors.

(2) The meetings shall be held on the same day and in the same place, but the creditors' meeting shall be fixed for a time in advance of the company meeting.

Attendance by company officers

1.15.—(1) At least 14 days' notice to attend the meetings shall be given by the convenor to -

(a) all directors of the company, and

(b) any persons in whose case the convenor thinks that their presence is required as being officers of the company or as having been directors or officers of it at any time in the 2 years immediately preceding the date of the notice.

(2) The chairman may, if he thinks fit, exclude any present or former director or officer from attendance at a meeting, either completely or for any part of it; and this applies whether or not a notice under this Rule has been sent to the person excluded.

Adjournments

1.16.—(1) On the day on which the meetings are held, they may from time to time be adjourned; and, if the chairman thinks fit for the purpose of obtaining the simultaneous agreement of the meetings to the proposal (with the same modifications, if any), the meetings may be held together.

(2) If on that day the requisite majority for the approval of the voluntary arrangement (with the same modifications, if any) has not been obtained from both creditors and members of the company, the chairman may, and shall, if it is so resolved, adjourn the meetings for not more than 14 days.

(3) If there are subsequently further adjournments, the final adjournment shall not be to a day later than 14 days after the date on which the meetings were originally held.

(4) There shall be no adjournment of either meeting unless the other is also adjourned to the same business day.

(5) In the case of a proposal by the directors, if the meetings are adjourned under paragraph (2), notice of the fact shall be given by the nominee forthwith to the court.

(6) If following any final adjournment of the meetings the proposal (with the same modifications, if any) is not agreed by both meetings, it is deemed rejected.

Report of meetings

1.17.—(1) A report of the meetings shall be prepared by the person who was chairman of them.

(2) The report shall -

(a) state whether the proposal for a voluntary arrangement was approved or rejected and, if approved, with what (if any) modifications;

(b) set out the resolutions which were taken at each meeting, and the decision on each one;

(c) list the creditors and members of the company (with their respective values) who were present or represented at the meeting, and how they voted on each resolution; and

(d) include such further information (if any) as the chairman thinks it appropriate to make known to the court.

(3) A copy of the chairman's report shall, within 4 days of the meetings being held, be lodged in court.

(4) In respect of each of the meetings the persons to whom notice of the result of the meetings is to be sent under section 4(6) are all those who were sent notice of the meeting. The notice shall be sent immediately after a copy of the chairman's report is lodged in court under paragraph (3).

(5) If the voluntary arrangement has been approved by the meetings (whether or not in the form proposed) the chairman shall forthwith send a copy of the report to the registrar of companies.

CHAPTER 6

IMPLEMENTATION OF THE VOLUNTARY ARRANGEMENT

Resolutions to follow approval

1.18.—(1) If the voluntary arrangement is approved (with or without modifications) by the two meetings, a resolution may be taken by the creditors, where two or more insolvency practitioners are appointed to act as supervisor, on the question whether acts to be done in connection with the arrangement may be done by one of them or are to be done by both or all.

(2) A resolution under paragraph (1) may be passed in anticipation of the approval of the voluntary arrangement by the company meeting if such meeting has not at that time been concluded.

(3) If at either meeting a resolution is moved for the appointment of some person other than the nominee to be supervisor of the arrangement, there must be produced to the chairman, at or before the meeting -

(a) that person's written consent to act (unless the person is present and then and there signifies his consent), and

(b) his written confirmation that he is qualified to act as an insolvency practitioner in relation to the company.

Hand-over of property, etc. to supervisor

1.19.—(1) After the approval of the voluntary arrangement, the directors or, where -

(a) the company is in liquidation or is subject to an administration order, and

(b) a person other than the responsible insolvency practitioner is appointed as supervisor of the voluntary arrangement,

the responsible insolvency practitioner, shall forthwith do all that is required for putting the supervisor into possession of the assets included in the arrangement.

(2) Where paragraph (1)(a) and (b) applies, the supervisor shall, on taking possession of the assets, discharge any balance due to the responsible insolvency practitioner by way of remuneration or on account of -

(a) fees, costs, charges and expenses properly incurred and payable under the Act or the Rules, and

(b) any advances made in respect of the company, together with interest on such advances at the official rate (within the meaning of Rule 4.66(2)(b)) ruling at the date on which the company went into liquidation or (as the case may be) became subject to the administration order.

(3) Alternatively, the supervisor shall, before taking possession, give the responsible insolvency practitioner a written undertaking to discharge any such balance out of the first realisation of assets.

(4) The sums due to the responsible insolvency practitioner as above shall be paid out of the assets included in the arrangement in priority to all other sums payable out of those assets, subject only to the deduction from realisations by the supervisor of the proper costs and expenses of such realisations.

(5) The supervisor shall from time to time out of the realisation of assets discharge all cautionary obligations (including guarantees) properly given by the responsible insolvency practitioner for the benefit of the company and shall pay all the responsible insolvency practitioner's expenses.

Revocation or suspension of the arrangement

1.20.—(1) This Rule applies where the court makes an order of revocation or suspension under section 6.

(2) The person who applied for the order shall serve copies of it -

(a) on the supervisor of the voluntary arrangement, and

(b) on the directors of the company or the administrator or liquidator (according to who made the proposal for the arrangement).

Service on the directors may be effected by service of a single copy of the order on the company at its registered office.

(3) If the order includes a direction given by the court, under section 6(4)(b), for any further meetings to be summoned, notice shall also be given by the person who applied for the order to whoever is, in accordance with the direction, required to summon the meetings.

(4) The directors or (as the case may be) the administrator or liquidator shall -

(a) forthwith after receiving a copy of the court's order, give notice of it to all persons who were sent notice of the creditors' and the company meetings or who, not having been sent that notice, appear to be affected by the order; and

(b) within 7 days of their receiving a copy of the order (or within such longer period as the court may allow), give notice to the court whether it is intended to make a revised proposal to the company and its creditors, or to invite re-consideration of the original proposal.

(5) The person on whose application the order of revocation or suspension was made shall, within 7 days after the making of the order, deliver a copy of the order to the registrar of companies.

Supervisor's accounts and reports

1.21.—(1) Where the voluntary arrangement authorises or requires the supervisor -

(a) to carry on the business of the company, or to trade on its behalf or in its name, or

(b) to realise assets of the company, or

(c) otherwise to administer or dispose of any of its funds,

he shall keep accounts and records of his acts and dealings in and in connection with the arrangement, including in particular records of all receipts and payments of money.

(2) The supervisor shall, not less often than once in every 12 months beginning with the date of his appointment, prepare an abstract of such receipts and payments and send copies of it, accompanied by his comments on the progress and efficacy of the arrangement, to -

(a) the court,

(b) the registrar of companies,

(c) the company,

(d) all those of the company's creditors who are bound by the arrangement,

(e) subject to paragraph (5) below, the members of the company who are so bound, and

(f) where the company is not in liquidation, the company's auditors for the time being.

If in any period of 12 months he has made no payments and had no receipts, he shall at the end of that period send a statement to that effect to all those specified in sub-paragraphs (a) to (f) above.

(3) An abstract provided under paragraph (2) shall relate to a period beginning with the date of the supervisor's appointment or (as the case may be) the day following the end of the last period for which an abstract was prepared under this Rule; and copies of the abstract shall be sent out, as required by paragraph (2), within the two months following the end of the period to which the abstract relates.

(4) If the supervisor is not authorised as mentioned in paragraph (1), he shall, not less often than once in every 12 months beginning with the date of his appointment, send to all those specified in paragraphs 2(a) to (f) a report on the progress and efficacy of the voluntary arrangement.

(5) The court may, on application by the supervisor, -

(a) dispense with the sending under this Rule of abstracts or reports to members of the company, either altogether or on the basis that the availability of the abstract or report to members on request is to be advertised by the supervisor in a specified manner;

(b) vary the dates on which the obligation to send abstracts or reports arises.

Fees, costs, charges and expenses

1.22. The fees, costs, charges and expenses that may be incurred for any of the purposes of a voluntary arrangement are -

(a) any disbursements made by the nominee prior to the approval of the arrangement, and any remuneration for his services as is agreed between himself and the company (or, as the case may be, the administrator or liquidator);

(b) any fees, costs, charges or expenses which -

(i) are sanctioned by the terms of the arrangement, or

(ii) would be payable, or correspond to those which would be payable, in an administration or winding up.

Completion of the arrangement

1.23.—(1) Not more than 28 days after the final completion of the voluntary arrangement, the supervisor shall send to all creditors and members of the company who are bound by it a notice that the voluntary arrangement has been fully implemented.

(2) With the notice there shall be sent to each creditor and member a copy of a report by the supervisor, summarising all receipts and payments made by him in pursuance of the arrangement, and explaining any difference in the actual implementation of it as compared with the proposal approved by the creditors' and company meetings.

(3) The supervisor shall, within the 28 days mentioned above, send to the registrar of companies and to the court a copy of the notice to creditors and members under paragraph (1), together with a copy of the report under paragraph (2).

(4) The court may, on application by the supervisor, extend the period of 28 days under paragraphs (1) or (3).

False representations, etc.

1.24.—(1) A person being a past or present officer of a company commits an offence if he make any false representation or commits any other fraud for the purpose of obtaining the approval of the company's members or creditors to a proposal for a voluntary arrangement under Part I of the Act.

(2) For this purpose "officer" includes a shadow director.

(3) A person guilty of an offence under this Rule is liable to imprisonment or a fine, or both.