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STATUTORY INSTRUMENTS

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**2016 No. 1024**

**The Insolvency (England and Wales) Rules 2016**

**PART 3**

ADMINISTRATION

CHAPTER 1

Interpretation for this Part

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

**Interpretation for Part 3**

**3.1.** In this Part—

“pre-administration costs” means fees charged, and expenses incurred by the administrator, or another person qualified to act as an insolvency practitioner in relation to the company, before the company entered administration but with a view to it doing so; and

“unpaid pre-administration costs” means pre-administration costs which had not been paid when the company entered administration.

**Proposed administrator's statement and consent to act**

**3.2.**—(1) References in this Part to a consent to act are to a statement by a proposed administrator headed “Proposed administrator's statement and consent to act” which contains the following—

- (a) identification details for the company immediately below the heading;
- (b) a certificate that the proposed administrator is qualified to act as an insolvency practitioner in relation to the company;
- (c) the proposed administrator's IP number;
- (d) the name of the relevant recognised professional body which is the source of the proposed administrator's authorisation to act in relation to the company;
- (e) a statement that the proposed administrator consents to act as administrator of the company;
- (f) a statement whether or not the proposed administrator has had any prior professional relationship with the company and if so a short summary of the relationship;
- (g) the name of the person by whom the appointment is to be made or the applicant in the case of an application to the court for an appointment; and
- (h) a statement that the proposed administrator is of the opinion that the purpose of administration is reasonably likely to be achieved in the particular case.

(2) The statement and consent to act must be authenticated and dated by the proposed administrator.

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(3) Where a number of persons are proposed to be appointed to act jointly or concurrently as the administrator of a company, each must make a separate statement and consent to act.

## CHAPTER 2

### Appointment of administrator by Court

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

#### **Administration application (paragraph 12 of Schedule B1)**

**3.3.**—(1) An administration application in relation to a company must be headed “Administration application” and must identify the company immediately below the heading.

(2) The application must contain—

- (a) the name of the applicant;
- (b) a statement whether the application is being made by—
  - (i) the company under paragraph 12(1)(a) of Schedule B1,
  - (ii) the directors of the company under paragraph 12(1)(b) of Schedule B1,
  - (iii) a single creditor under paragraph 12(1)(c) of Schedule B1,
  - (iv) a creditor under paragraph 12(1)(c) of Schedule B1 on behalf of that creditor and others,
  - (v) the holder of a qualifying floating charge under paragraph 35 or 37 of Schedule B1 (specifying which),
  - (vi) the liquidator of the company under paragraph 38 of Schedule B1,
  - (vii) the supervisor of a CVA under section 7(4)(b), or
  - (viii) a designated officer of a magistrates' court under section 87A of the Magistrates' Courts Act 1980 <sup>M1</sup>;
- (c) if the application is made by a creditor on behalf of that creditor and others, the names of the others;
- (d) if the application is made by the holder of a qualifying floating charge, details of the charge including the date of the charge, the date on which it was registered and the maximum amount if any secured by the charge;
- (e) if the company is registered under the Companies Act—
  - (i) any issued and called-up capital, the number of shares into which the capital is divided, the nominal value of each share and the amount of capital paid up or treated as paid up; or
  - (ii) that it is a company limited by guarantee;
- (f) particulars of the principal business carried on by the company;
- (g) a statement whether the company is an Article 1.2 undertaking;
- (h) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EC proceedings and that the reasons for the statement are set out in the witness statement in support of the application made under rule 3.6;
- (i) except where the applicant is the holder of a qualifying floating charge and is making the application under paragraph 35 of Schedule B1, a statement that the applicant believes, for the reasons set out in the witness statement in support of the application that the company is, or is likely to become, unable to pay its debts;

- (j) the name and address of the proposed administrator;
- (k) the address for service of the applicant;
- (l) the statement that the applicant requests the court—
  - (i) to make an administration order in relation to the company,
  - (ii) to appoint the proposed person to be administrator, and
  - (iii) to make such ancillary order as the applicant may request, and such other order as the court thinks appropriate.
- (3) The application must be authenticated by the applicant or the applicant's solicitor and dated.

#### Marginal Citations

**M1** 1980 c.43; section 87A was inserted by [Criminal Justice Act 1988 \(c.33\)](#) and amended by [Enterprise Act 2002 \(c.40\)](#), [Courts Act 2003 \(c.39\)](#) and [Tribunals, Courts and Enforcement Act 2007 \(c.15\)](#).

### Administration application made by the directors

**3.4.** After an application by the directors for an administration order is filed it is to be treated for all purposes as an application by the company.

### Administration application by the supervisor of a CVA

**3.5.** After an application by the supervisor of a CVA for an administration order in respect of the company has been served on the company as required by rule 3.8(3)(d) it is to be treated for all purposes as an application by the company.

### Witness statement in support of administration application

- 3.6.—**(1) If an administration application is to be made by—
- (a) the company, a witness statement must be made by one of the following stating that the person making the statement does so on behalf of the company—
    - (i) one of the directors,
    - (ii) the secretary of the company, or
    - (iii) the supervisor of a CVA;
  - (b) the company's directors, a witness statement must be made by one of the following stating that the person making it does so on behalf of the directors—
    - (i) one of the directors, or
    - (ii) the secretary of the company;
  - (c) a single creditor, a witness statement must be made by—
    - (i) that creditor, or
    - (ii) a person acting under that creditor's authority;
  - (d) two or more creditors, a witness statement must be made by a person acting under the authority of them all, whether or not one of their number.
- (2) In a case falling within paragraph (1)(c)(ii) or (d), the witness statement must state the nature of the authority of the person making it and the means of that person's knowledge of the matters to which the witness statement relates.
- (3) The witness statement must contain—

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- (a) a statement of the company's financial position, specifying (to the best of the applicant's knowledge and belief) the company's assets and liabilities, including contingent and prospective liabilities;
  - (b) details of any security known or believed to be held by creditors of the company, and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver or to appoint an administrator under paragraph 14 of Schedule B1;
  - (c) a statement that an administrative receiver has been appointed if that is the case;
  - (d) details of any insolvency proceedings in relation to the company, including any petition that has been presented for the winding up of the company so far as known to the applicant;
  - (e) where it is intended to appoint a number of persons as administrators, a statement of the matters relating to the exercise of their functions set out in paragraph 100(2) of Schedule B1;
  - (f) the reasons for the statement that the proceedings will be main, secondary, territorial or non-EC proceedings; and
  - (g) any other matters which, in the applicant's opinion, will assist the court in deciding whether to make such an order.
- (4) Where the application is made by the holder of a qualifying floating charge under paragraph 35 or 37 of Schedule B1, the witness statement must give sufficient details to satisfy the court that the applicant is entitled to appoint an administrator under paragraph 14 of Schedule B1.
- (5) Where the application is made under paragraph 37 or 38 of Schedule B1 in relation to a company in liquidation, the witness statement must also contain—
- (a) details of the existing insolvency proceedings, the name and address of the liquidator, the date the liquidator was appointed and by whom;
  - (b) the reasons why it has subsequently been considered appropriate that an administration application should be made; and
  - (c) any other matters that would, in the applicant's opinion, assist the court in deciding whether to make provision in relation to matters arising in connection with the liquidation.

### **Filing of application**

**3.7.—**(1) The application must be filed with the court together with the witness statement in support and the proposed administrator's consent to act.

(2) The court must fix a venue for the hearing of the application.

(3) There must also be filed, at the same time as the application or at any time after that, a sufficient number of copies of the application and the statement for service in accordance with rule 3.8.

(4) Each of the copies filed must—

- (a) have applied to it the seal of the court;
- (b) be endorsed with—
  - (i) the date and time of filing, and
  - (ii) the venue fixed by the court; and
- (c) be delivered by the court to the applicant.

### **Service of application**

**3.8.—**(1) In this rule, references to the application are to a copy of the application and witness statement delivered by the court under rule 3.7(4)(c).

(2) Notification for the purposes of paragraph 12(2) of Schedule B1 must be by service of the application.

(3) The applicant must serve the application on the following (in addition to serving it on the persons referred to in paragraph 12(2)(a) to (c) of Schedule B1)—

- (a) any administrative receiver of the company;
- (b) if there is a petition pending for the winding up of the company on—
  - (i) the petitioner, and
  - (ii) any provisional liquidator;
- (c) any member State liquidator appointed in main proceedings in relation to the company;
- (d) the company, if the application is made by anyone other than the company or its directors;
- (e) any supervisor of a CVA in relation to the company; and
- (f) the proposed administrator.

(4) The certificate of service must be filed with the court as soon as reasonably practicable after service and in any event not later than the business day before the hearing of the application.

#### **Notice to enforcement agents charged with distress or other legal process, etc.**

**3.9.** The applicant must as soon as reasonably practicable after filing the application deliver a notice of its being made to—

- (a) any enforcement agent or other officer who to the knowledge of the applicant is charged with distress or other legal process against the company or its property; and
- (b) any person who to the knowledge of the applicant has distrained against the company or its property.

#### **Notice of other insolvency proceedings**

**3.10.** After the application has been filed and until an order is made, it is the duty of the applicant to file with the court notice of the existence of any insolvency proceedings in relation to the company, as soon as the applicant becomes aware of them—

- (a) anywhere in the world, in the case of a company registered under the Companies Act in England and Wales;
- (b) in any EEA State (including the United Kingdom), in the case of a company incorporated in an EEA State other than the United Kingdom; or
- (c) in any member State other than Denmark, in the case of a company not incorporated in an EEA State.

#### **Intervention by holder of qualifying floating charge (paragraph 36(1)(b) of Schedule B1)**

**3.11.**—(1) Where the holder of a qualifying floating charge applies to the court under paragraph 36(1)(b) of Schedule B1 to have a specified person appointed as administrator, the holder must produce to the court—

- (a) the written consent of the holder of any prior qualifying floating charge;
- (b) the proposed administrator's consent to act; and
- (c) sufficient evidence to satisfy the court that the holder is entitled to appoint an administrator under paragraph 14 of Schedule B1.

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(2) If an administration order is made appointing the specified person, the costs of the person who made the administration application and of the applicant under paragraph 36(1)(b) of Schedule B1 are, unless the court orders otherwise, to be paid as an expense of the administration.

### **The hearing**

**3.12.**—(1) At the hearing of the administration application, any of the following may appear or be represented—

- (a) the applicant;
- (b) the company;
- (c) one or more of the directors;
- (d) any administrative receiver;
- (e) any person who has presented a petition for the winding up of the company;
- (f) the proposed administrator;
- (g) any member State liquidator appointed in main proceedings in relation to the company;
- (h) the holder of any qualifying floating charge;
- (i) any supervisor of a CVA;
- (j) with the permission of the court, any other person who appears to have an interest which justifies appearance.

(2) If the court makes an administration order, the costs of the applicant, and of any other person whose costs are allowed by the court, are payable as an expense of the administration.

### **The order**

**3.13.**—(1) Where the court makes an administration order the court's order must be headed “Administration order” and must contain the following—

- (a) identification details for the proceedings;
- (b) the name and title of the judge making the order;
- (c) the address for service of the applicant;
- (d) details of any other parties (including the company) appearing and by whom represented;
- (e) an order that during the period the order is in force the affairs, business and property of the company is to be managed by the administrator;
- (f) the name of the person appointed as administrator;
- (g) an order that that person is appointed as administrator of the company;
- (h) a statement that the court is satisfied either that the EC Regulation does not apply or that it does;
- (i) where the EC Regulation does apply, a statement whether the proceedings are main, secondary or territorial proceedings;
- (j) the date of the order (and if the court so orders the time); and
- (k) such other provisions if any as the court thinks just.

(2) Where two or more administrators are appointed the order must also specify (as required by paragraph 100(2) of Schedule B1)—

- (a) which functions (if any) are to be exercised by those persons acting jointly; and
- (b) which functions (if any) are to be exercised by any or all of those persons.

### Order on an application under paragraph 37 or 38 of Schedule B1

**3.14.** Where the court makes an administration order in relation to a company on an application under paragraph 37 or 38 of Schedule B1, the court must also include in the order—

- (a) in the case of a liquidator appointed in a voluntary winding up, the removal of that liquidator from office;
- (b) provision for payment of the expenses of the winding up;
- (c) such provision as the court thinks just relating to—
  - (i) any indemnity given to the liquidator,
  - (ii) the release of the liquidator,
  - (iii) the handling or realisation of any of the company's assets in the hands of or under the control of the liquidator, and
  - (iv) other matters arising in connection with the winding up; and
- (d) such other provisions if any as the court thinks just.

### Notice of administration order

**3.15.—**(1) If the court makes an administration order, it must as soon as reasonably practicable deliver two sealed copies of the order to the applicant.

(2) The applicant must as soon as reasonably practicable deliver a sealed copy of the order to the person appointed as administrator.

(3) If the court makes an order under sub-paragraph (d) or (f) of paragraph 13(1) of Schedule B1, it must give directions as to the persons to whom, and how, notice of that order is to be delivered.

## CHAPTER 3

### Appointment of administrator by holder of floating charge

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

### Notice of intention to appoint

**3.16.—**(1) This rule applies where the holder of a qualifying floating charge (“the appointer”) gives a notice under paragraph 15(1)(a) of Schedule B1 of intention to appoint an administrator under paragraph 14 and files a copy of the notice with the court under paragraph 44(2).

(2) The notice filed with the court must be headed “Notice of intention to appoint an administrator by holder of qualifying floating charge” and must contain the following—

- (a) identification details for the proceedings;
- (b) the name and address of the appointer;
- (c) a statement that the appointer intends to appoint an administrator of the company;
- (d) the name and address of the proposed administrator;
- (e) a statement that the appointer is the holder of the qualifying floating charge in question and that it is now enforceable;
- (f) details of the charge, the date upon which it was registered and the maximum amount if any secured by the charge;
- (g) a statement that the notice is being given in accordance with paragraph 15(1)(a) of Schedule B1 to the holder of every prior floating charge which satisfies paragraph 14(2) of that Schedule;

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- (h) the names and addresses of the holders of such prior floating charges and details of the charges;
  - (i) a statement whether the company is or is not subject to insolvency proceedings at the date of the notice, and details of the proceedings if it is;
  - (j) a statement whether the company is an Article 1.2 undertaking; and
  - (k) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EC proceedings with reasons for the statement.
- (3) The notice must be authenticated by the appointer or the appointer's solicitor and dated.
- (4) The filing of the copy with the court under paragraph 44(2) of Schedule B1 must be done at the same time as notice is given in accordance with paragraph 15(1)(a).
- (5) The giving of notice under paragraph 15(1)(a) must be by service of the notice.

### **Notice of appointment**

**3.17.**—(1) Notice of an appointment under paragraph 14 of Schedule B1 must be headed “Notice of appointment of an administrator by holder of a qualifying floating charge” and must contain—

- (a) identification details for the proceedings;
- (b) the name and address of the appointer;
- (c) a statement that the appointer has appointed the person named as administrator of the company;
- (d) the name and address of the person appointed as administrator;
- (e) a statement that a copy of the administrator's consent to act accompanies the notice;
- (f) a statement that the appointer is the holder of the qualifying floating charge in question and that it is now enforceable;
- (g) details of the charge including the date of the charge, the date on which it was registered and the maximum amount if any secured by the charge;
- (h) one of the following statements—
  - (i) that notice has been given in accordance with paragraph 15(1)(a) of Schedule B1 to the holder of every prior floating charge which satisfies paragraph 14(2) of that Schedule, that two business days have elapsed from the date the last such notice was given (if more than one) and—
    - (aa) that a copy of every such notice was filed with the court under paragraph 44(2) of Schedule B1, and the date of that filing (or the latest date of filing if more than one), or
    - (bb) that a copy of every such notice accompanies the notice of appointment but was not filed with the court under paragraph 44(2) of Schedule B1,
  - (ii) that the holder of every such floating charge to whom notice was given has consented in writing to the making of the appointment and that a copy of every consent accompanies the notice of appointment,
  - (iii) that the holder of every such floating charge has consented in writing to the making of the appointment without notice having been given to all and that a copy of every consent accompanies the notice of appointment, or
  - (iv) that there is no such floating charge;
- (i) a statement whether the company is or is not subject to insolvency proceedings at the date of the notice, and details of the proceedings if it is;
- (j) a statement whether the company is an Article 1.2 undertaking;



- (k) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EC proceedings and the reasons for so stating; and
  - (l) a statement that the appointment is in accordance with Schedule B1.
- (2) Where two or more administrators are appointed the notice must also specify (as required by paragraph 100(2) of Schedule B1)—
- (a) which functions (if any) are to be exercised by those persons acting jointly; and
  - (b) which functions (if any) are to be exercised by any or all of those persons.
- (3) The statutory declaration included in the notice in accordance with paragraph 18(2) of Schedule B1 must be made not more than five business days before the notice is filed with the court.

### **Filing of notice with the court**

**3.18.**—(1) Three copies of the notice of appointment must be filed with the court, accompanied by—

- (a) the administrator's consent to act; and
- (b) either—
  - (i) evidence that the appointer has given notice as required by paragraph 15(1)(a) of Schedule B1; or
  - (ii) copies of the written consent of all those required to give consent in accordance with paragraph 15(1)(b) of Schedule B1.

(2) The court must apply the seal of the court to the copies of the notice, endorse them with the date and time of filing and deliver two of the sealed copies to the appointer.

(3) The appointer must as soon as reasonably practicable deliver one of the sealed copies to the administrator.

(4) This rule is subject to rules 3.20 and 3.21 (appointment made out of court business hours).

### **Appointment by floating charge holder after administration application made**

**3.19.**—(1) This rule applies where the holder of a qualifying floating charge, after receiving notice that an administration application has been made, appoints an administrator under paragraph 14 of Schedule B1.

(2) The holder must as soon as reasonably practicable deliver a copy of the notice of appointment to—

- (a) the person making the administration application; and
- (b) the court in which the application has been made.

### **Appointment taking place out of court business hours: procedure**

**3.20.**—(1) When (but only when) the court is closed, the holder of a qualifying floating charge may file a notice of appointment with the court by—

- (a) faxing it to a designated telephone number; or
- (b) emailing it, or attaching it to an email, to a designated email address.

(2) The notice must specify the name of the court (and hearing centre if applicable) that has jurisdiction.

(3) The Lord Chancellor must designate the telephone number and email address.

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(4) The Secretary of State must publish the designated telephone number and email address on the Insolvency Service webpages and deliver notice of them to any person requesting them from the Insolvency Service.

(5) The appointer must ensure that—

- (a) a fax transmission report giving the time and date of the fax transmission and the telephone number to which the notice was faxed and containing a copy of the first page (in part or in full) of the document faxed is created by the fax machine that is used to fax the notice; or
- (b) a hard copy of the email is created giving the time and date of the email and the address to which it was sent.

(6) The appointer must retain the fax transmission report or hard copy of the email.

(7) The appointer must deliver a notice to the administrator of the filing of the notice of appointment as soon as reasonably practicable.

(8) The copy of the faxed or emailed notice of appointment as received by the Courts Service must be delivered by the Lord Chancellor as soon as reasonably practicable to the court specified in the notice as the court having jurisdiction in the case, to be placed on the relevant court file.

(9) The appointer must take to the court on the next occasion that the court is open for business—

- (a) three copies of the faxed or emailed notice of appointment;
- (b) the fax transmission report or hard copy required by paragraph (5);
- (c) all supporting documents referred to in the notice in accordance with rule 3.21(1) which are in the appointer's possession; and
- (d) a statement providing reasons for the out-of-hours filing of the notice of appointment, including why it would have been damaging to the company or its creditors not to have so acted.

(10) The copies of the notice must be sealed by the court and endorsed with—

- (a) the date and time when, according to the appointer's fax transmission report or hard copy of the email, the notice was faxed or sent; and
- (b) the date when the notice and accompanying documents were delivered to the court.

(11) The court must deliver two of the sealed copies of the notice of appointment to the appointer.

(12) The appointer must, as soon as reasonably practicable, deliver one of the copies to the administrator.

(13) The reference—

- (a) to the Insolvency Service in paragraph (4) means the Secretary of State acting by means of the Insolvency Service; and
- (b) to the Courts Service in paragraph (8) means the Lord Chancellor acting by means of Her Majesty's Courts and Tribunals Service.

#### **Appointment taking place out of court business hours: content of notice**

**3.21.—**(1) Notice of an appointment filed in accordance with rule 3.20 must be headed “Notice of appointment of an administrator by holder of a qualifying floating charge”, identify the company immediately below the heading and must contain—

- (a) the name and address of the appointer;
- (b) a statement that the appointer has appointed the person named as administrator of the company;
- (c) the name and address of the person appointed as administrator;

- (d) a statement that the appointer is the holder of the qualifying floating charge in question and that it is now enforceable;
  - (e) details of the charge, the date upon which it was registered and the maximum amount secured by the charge;
  - (f) one of the following statements—
    - (i) that notice has been given in accordance with paragraph 15(1)(a) of Schedule B1 to the holder of every prior floating charge which satisfies paragraph 14(2) of that Schedule, that a copy of every such notice was filed with the court under paragraph 44(2) of that Schedule, the date of that filing (or the latest date of filing if more than one) and that two business days have elapsed [<sup>F1</sup>since notice was given under paragraph 15(1)(a) of Schedule B1],
    - (ii) that notice has been given in accordance with paragraph 15(1)(a) of Schedule B1 to the holder of every prior floating charge which satisfies paragraph 14(2) of that Schedule and that a copy of every such notice is in the appointer's possession but was not filed with the court under paragraph 44(2) of that Schedule,
    - (iii) that the holder of every such floating charge to whom notice was given has consented to the making of the appointment and that a copy of every consent [<sup>F2</sup>in writing] is in the appointer's possession,
    - (iv) that the holder of every such floating charge has consented to the making of the appointment without notice having been given to all and that a copy of every consent [<sup>F3</sup>in writing] is in the appointer's possession, or
    - (v) that there is no such floating charge;
  - (g) a statement whether the company is or is not subject to insolvency proceedings at the date of the notice, and details of the proceedings if it is;
  - (h) a statement whether the company is an Article 1.2 undertaking <sup>F4</sup>...;
  - (i) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EC proceedings [<sup>F5</sup>and that a statement of the reasons for stating this is in the appointer's possession];
  - (j) an undertaking that the following will be delivered to the court on the next occasion on which the court is open—
    - (i) any document referred to in the notice in accordance with rule 3.20 as being in the appointer's possession,
    - (ii) the fax transmission report or hard copy of the email, and
    - (iii) the statement of reasons for out-of-hours filing;
  - (k) a statement that the proposed administrator consents to act; and
  - (l) a statement that the appointment is in accordance with Schedule B1.
- (2) Where two or more administrators are appointed the notice must also specify (as required by paragraph 100(2) of Schedule B1)—
- (a) which functions (if any) are to be exercised by those persons acting jointly; and
  - (b) which functions (if any) are to be exercised by any or all of those persons.
- (3) The statutory declaration included in the notice in accordance with paragraph 18(2) of Schedule B1 must be made not more than five business days before the notice is filed with the court.

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### Textual Amendments

- F1** Words in rule 3.21(1)(f)(i) substituted (6.4.2017) by [The Insolvency \(England and Wales\) \(Amendment\) Rules 2017 \(S.I. 2017/366\)](#), rules 1, **12(1)**
- F2** Words in rule 3.21(1)(f)(iii) inserted (6.4.2017) by [The Insolvency \(England and Wales\) \(Amendment\) Rules 2017 \(S.I. 2017/366\)](#), rules 1, **12(2)**
- F3** Words in rule 3.21(1)(f)(iv) inserted (6.4.2017) by [The Insolvency \(England and Wales\) \(Amendment\) Rules 2017 \(S.I. 2017/366\)](#), rules 1, **12(2)**
- F4** Words in rule 3.21(1)(h) omitted (6.4.2017) by virtue of [The Insolvency \(England and Wales\) \(Amendment\) Rules 2017 \(S.I. 2017/366\)](#), rules 1, **12(3)**
- F5** Words in rule 3.21(1)(i) inserted (6.4.2017) by [The Insolvency \(England and Wales\) \(Amendment\) Rules 2017 \(S.I. 2017/366\)](#), rules 1, **12(4)**

### Appointment taking place out of court business hours: legal effect

**3.22.**—(1) The filing of a notice in accordance with rule 3.20 has the same effect for all purposes as the filing of a notice of appointment in accordance with rule 3.18.

(2) The appointment—

- (a) takes effect from the date and time of the fax transmission or sending of the email; but
- (b) ceases to have effect if the requirements of rule 3.20(9) are not completed on the next occasion the court is open for business.

(3) Where any question arises in relation to the date and time that the notice of appointment was filed with the court, it is a presumption capable of rebuttal that the date and time shown on the appointer's fax transmission report or hard copy of the email is the date and time at which the notice was filed.

## CHAPTER 4

### Appointment of administrator by company or directors

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

### Notice of intention to appoint

**3.23.**—(1) If paragraph 26 of Schedule B1 requires a notice of intention to appoint an administrator under paragraph 22 of that Schedule then the notice must be headed “Notice of intention to appoint an administrator by company or directors” and must contain the following—

- (a) identification details for the proceedings;
- (b) a statement that the company or the directors, as the case may be, intend to appoint an administrator of the company;
- (c) the name and address of the proposed administrator;
- (d) the names and addresses of the persons to whom notice is being given in accordance with paragraph 26(1) of Schedule B1;
- (e) a statement that each of those persons is or may be entitled to appoint—
  - (i) an administrative receiver of the company, or
  - (ii) an administrator of the company under paragraph 14 of Schedule B1;
- (f) a statement that the company has not within the preceding 12 months been—
  - (i) in administration;

- (ii) the subject of a moratorium under Schedule A1 <sup>M2</sup> which ended on a date when no CVA was in force; or
- (iii) the subject of a CVA which was made during a moratorium under Schedule A1 and which ended prematurely within the meaning of section 7B;
- (g) a statement that in relation to the company there is no—
  - (i) petition for winding up which has been presented but not yet disposed of,
  - (ii) administration application which has not yet been disposed of, or
  - (iii) administrative receiver in office;
- (h) a statement whether the company is an Article 1.2 undertaking;
- (i) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EC proceedings and the reasons for so stating;
- (j) a statement that the notice is accompanied (as appropriate) by either—
  - (i) a copy of the resolution of the company to appoint an administrator, or
  - (ii) a record of the decision of the directors to appoint an administrator; and
- (k) a statement that if a recipient of the notice who is named in paragraph (e) wishes to consent in writing to the appointment that person may do so but that after five business days have expired from delivery of the notice the appointer may make the appointment although such a recipient has not replied.
- (2) The notice must be accompanied by—
  - (a) a copy of the resolution of the company to appoint an administrator, where the company intends to make the appointment, or
  - (b) a record of the decision of the directors, where the directors intend to make the appointment.
- (3) The giving of notice under paragraph 26(1) of Schedule B1 must be by service of the notice.
- (4) If notice of intention to appoint is given under paragraph 26(1) of Schedule B1, a copy of the notice under paragraph 26(2) <sup>M3</sup> must be [<sup>F6</sup>sent] at the same time to—
  - (a) any enforcement agent or other officer who, to the knowledge of the person giving the notice, is charged with distress or other legal process against the company;
  - (b) any person who, to the knowledge of the person giving the notice, has distrained against the company or its property;
  - (c) any supervisor of a CVA; and
  - (d) the company, if the company is not intending to make the appointment.
- (5) The giving of notice under paragraph 26(2) of Schedule B1 must be by service of the notice.
- (6) The statutory declaration accompanying the notice in accordance with paragraph 27(2) of Schedule B1 must—
  - (a) if it is not made by the person making the appointment, indicate the capacity in which the person making the declaration does so; and
  - (b) be made not more than five business days before the notice is filed with the court.

#### Textual Amendments

- F6** Word in rule 3.23(4) substituted (6.4.2017) by [The Insolvency \(England and Wales\) \(Amendment\) Rules 2017 \(S.I. 2017/366\)](#), rules 1, 13

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### Marginal Citations

- M2** Relevant amending Acts are paragraph 9 of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#) and paragraph 20 of Schedule 6 to the [Deregulation Act 2015 \(c.20\)](#).
- M3** Paragraph 26(2) is amended by paragraph 6 of Schedule 6 to the [Deregulation Act 2015 \(c.20\)](#).

### Notice of appointment after notice of intention to appoint

**3.24.**—(1) Notice of an appointment under paragraph 22 of Schedule B1 (when notice of intention to appoint has been given under paragraph 26) must be headed “Notice of appointment of an administrator by a company (where a notice of intention to appoint has been given)” or “Notice of appointment of an administrator by the directors of a company (where a notice of intention to appoint has been given)” and must contain—

- (a) identification details for the company immediately below the heading;
- (b) a statement that the company has, or the directors have, as the case may be, appointed the person named as administrator of the company;
- (c) the name and address of the person appointed as administrator;
- (d) a statement that a copy of the administrator's consent to act accompanies the notice;
- (e) a statement that the company is, or the directors are, as the case may be, entitled to make an appointment under paragraph 22 of Schedule B1;
- (f) a statement that the appointment is in accordance with Schedule B1;
- (g) a statement whether the company is an Article 1.2 undertaking;
- (h) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EC proceedings and the reasons for so stating;
- (i) a statement that the company has, or the directors have, as the case may be, given notice of their intention to appoint in accordance with paragraph 26(1) of Schedule B1, that a copy of the notice was filed with the court, the date of that filing and either—
  - (i) that five business days have elapsed [<sup>F7</sup>since notice was given under paragraph 26(1) of Schedule B1], or
  - (ii) that each person to whom the notice was given has consented to the appointment; and
- (j) the date and time of the appointment.

(2) Where two or more administrators are appointed the notice must also specify (as required by paragraph 100(2) of Schedule B1)—

- (a) which functions (if any) are to be exercised by those persons acting jointly; and
- (b) which functions (if any) are to be exercised by any or all of those persons.

(3) The statutory declaration included in the notice in accordance with paragraph 29(2) of Schedule B1 must be made not more than five business days before the notice is filed with the court.

(4) If the statutory declaration is not made by the person making the appointment it must indicate the capacity in which the person making the declaration does so.

### Textual Amendments

- F7** Words in rule 3.24(1)(i)(i) substituted (6.4.2017) by [The Insolvency \(England and Wales\) \(Amendment\) Rules 2017 \(S.I. 2017/366\)](#), rules 1, **14**

### **Notice of appointment without prior notice of intention to appoint**

**3.25.**—(1) Notice of an appointment under paragraph 22 of Schedule B1 (when notice of intention to appoint has not been given under paragraph 26) must be headed “Notice of appointment of an administrator by a company (where a notice of intention to appoint has not been given)” or “Notice of appointment of an administrator by the directors of a company (where a notice of intention to appoint has not been given)” and must identify the company immediately below the heading.

(2) The notice must state the following—

- (a) that the company has, or the directors have, as the case may be, appointed the person specified under sub-paragraph (b) as administrator of the company;
- (b) the name and address of the person appointed as administrator;
- (c) that a copy of the administrator's consent to act accompanies the notice;
- (d) that the company is or the directors are, as the case may be, entitled to make an appointment under paragraph 22 of Schedule B1;
- (e) that the appointment is in accordance with Schedule B1;
- (f) that the company has not within the preceding 12 months been—
  - (i) in administration,
  - (ii) the subject of a moratorium under Schedule A1 which ended on a date when no CVA was in force, or
  - (iii) the subject of a CVA which was made during a moratorium under Schedule A1 and which ended prematurely within the meaning of section 7B;
- (g) that in relation to the company there is no—
  - (i) petition for winding up which has been presented but not yet disposed of,
  - (ii) administration application which has not yet been disposed of, or
  - (iii) administrative receiver in office;
- (h) whether the company is an Article 1.2 undertaking;
- (i) whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EC proceedings and the reasons for so stating;
- (j) that the notice is accompanied by—
  - (i) a copy of the resolution of the company to appoint an administrator, or
  - (ii) a record of the decision of the directors to appoint an administrator; and
- (k) the date and time of the appointment.

(3) Where two or more administrators are appointed the notice must also specify (as required by paragraph 100(2) of Schedule B1)—

- (a) which functions (if any) are to be exercised by those persons acting jointly; and
- (b) which functions (if any) are to be exercised by any or all of those persons.

(4) The statutory declaration included in the notice in accordance with paragraphs 29(2) and 30 of Schedule B1 must—

- (a) if the declaration is made on behalf of the person making the appointment, indicate the capacity in which the person making the declaration does so; and
- (b) be made not more than five business days before the notice is filed with the court.

**Notice of appointment: filing with the court**

**3.26.**—(1) Three copies of the notice of appointment must be filed with the court, accompanied by—

- (a) the administrator's consent to act; and
- (b) the written consent of all those persons to whom notice was given in accordance with paragraph 26(1) of Schedule B1 unless the period of notice set out in paragraph 26(1) has expired.

(2) Where a notice of intention to appoint an administrator has not been given, the copies of the notice of appointment must also be accompanied by—

- (a) a copy of the resolution of the company to appoint an administrator, where the company is making the appointment; or
- (b) a record of the decision of the directors, where the directors are making the appointment.

(3) The court must apply to the copies the seal of the court, endorse them with the date and time of filing and deliver two of the sealed copies to the appointer.

(4) The appointer must as soon as reasonably practicable deliver one of the sealed copies to the administrator.

**CHAPTER 5****Notice of administrator's appointment**

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

**Publication of administrator's appointment**

**3.27.**—(1) The notice of appointment, to be published by the administrator as soon as reasonably practicable after appointment under paragraph 46(2)(b) of Schedule B1, must be gazetted and may be advertised in such other manner as the administrator thinks fit.

(2) The notice of appointment must state the following—

- (a) that an administrator has been appointed;
- (b) the date of the appointment; and
- (c) the nature of the business of the company.

(3) The administrator must, as soon as reasonably practicable after the date specified in paragraph 46(6) of Schedule B1, deliver a notice of the appointment—

- (a) if a receiver or an administrative receiver has been appointed, to that person;
- (b) if there is pending a petition for the winding up of the company, to the petitioner (and also to the provisional liquidator, if any);
- (c) to any enforcement officer, enforcement agent or other officer who, to the administrator's knowledge, is charged with distress or other legal process against the company or its property;
- (d) to any person who, to the administrator's knowledge, has distrained against the company or its property; and
- (e) any supervisor of a CVA.

(4) Where, under Schedule B1 or these Rules, the administrator is required to deliver a notice of the appointment to the registrar of companies or any other person, it must be headed "Notice of administrator's appointment" and must contain—

- (a) the administrator's name and address and IP number;



- (b) identification details for the proceedings; and
- (c) a statement that the administrator has been appointed as administrator of the company;
- (5) The notice must be authenticated and dated by the administrator.

## CHAPTER 6

### Statement of affairs

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

#### Interpretation

**3.28.** In this Chapter—

“nominated person” means a relevant person who has been required by the administrator to make out and deliver to the administrator a statement of affairs; and

“relevant person” means a person mentioned in paragraph 47(3) of Schedule B1.

#### **Statement of affairs: notice requiring and delivery to the administrator (paragraph 47(1) of Schedule B1)**

[Note: see section 234(1) and 235(1) for the application of section 235 to administrators.]

**3.29.—**(1) A requirement under paragraph 47(1) of Schedule B1 for one or more relevant persons to provide the administrator with a statement of the affairs of the company must be made by a notice delivered to each such person.

(2) The notice must be headed “Notice requiring statement of affairs” and must—

(a) require each nominated person to whom the notice is delivered to prepare and submit to the administrator a statement of the affairs of the company;

(b) inform each nominated person of—

(i) the names and addresses of all others (if any) to whom the same notice has been delivered,

<sup>F8</sup>(ii) the requirement to deliver the statement of affairs to the administrator no later than eleven days after receipt of the notice requiring the statement of affairs;]

(iii) the effect of paragraph 48(4) of Schedule B1 (penalty for non-compliance) and section 235 (duty to co-operate with the office-holder).

(3) The administrator must inform each nominated person to whom notice is delivered that a document for the preparation of the statement of affairs capable of completion in compliance with rule 3.30 will be supplied if requested.

(4) The nominated person (or one of them, if more than one) must deliver the statement of affairs to the administrator with the statement of truth required by paragraph 47(2)(a) of Schedule B1 and a copy of each statement.

#### **Textual Amendments**

**F8** Rule 3.29(2)(b)(ii) substituted (6.4.2017) by [The Insolvency \(England and Wales\) \(Amendment\) Rules 2017 \(S.I. 2017/366\)](#), rules 1, 15

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### **Statement of affairs: content (paragraph 47 of Schedule B1)**

[Note: paragraph 47(2)(a) of Schedule B1 requires the statement of affairs to be verified by a statement of truth.]

**3.30.**—(1) The statement of the company's affairs must be headed “Statement of affairs” and must—

- (a) identify the company immediately below the heading; and
- (b) state that it is a statement of the affairs of the company on a specified date, being the date on which it entered administration.

(2) The statement of affairs must contain (in addition to the matters required by paragraph 47(2) of Schedule B1)—

- (a) a summary of the assets of the company, setting out the book value and the estimated realisable value of—
  - (i) any assets subject to a fixed charge,
  - (ii) any assets subject to a floating charge,
  - (iii) any uncharged assets, and
  - (iv) the total value of all the assets available for preferential creditors;
- (b) a summary of the liabilities of the company, setting out—
  - (i) the amount of preferential debts,
  - (ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts,
  - (iii) an estimate of the prescribed part, if applicable,
  - (iv) an estimate of the total assets available to pay debts secured by floating charges,
  - (v) the amount of debts secured by floating charges,
  - (vi) an estimate of the deficiency with respect to debts secured by floating charges or the surplus available after paying the debts secured by fixed or floating charges,
  - (vii) the amount of unsecured debts (excluding preferential debts),
  - (viii) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts,
  - (ix) any issued and called-up capital, and
  - (x) an estimate of the deficiency with respect to, or surplus available to, members of the company;
- (c) a list of the company's creditors with the further particulars required by paragraph (3) indicating—
  - (i) any creditors under hire-purchase, chattel leasing or conditional sales agreements, and
  - (ii) any creditors claiming retention of title over property in the company's possession; and
- (d) the name and address of each member of the company and the number, nominal value and other details of the shares held by each member.

(3) The list of creditors required by paragraph 47(2) of Schedule B1 and paragraph (2)(c) of this rule must contain the details required by paragraph (4) except where paragraphs (5) and (6) apply.

(4) The particulars required by paragraph (3) are as follows—

- (a) the name and postal address of the creditor;
  - (b) the amount of the debt owed to the creditor;
  - (c) details of any security held by the creditor;
  - (d) the date on which the security was given; and
  - (e) the value of any such security.
- (5) Paragraph (6) applies where the particulars required by paragraph (4) relate to creditors who are either—
- (a) employees or former employees of the company; or
  - (b) consumers claiming amounts paid in advance for the supply of goods or services.
- (6) Where this paragraph applies—
- (a) the statement of affairs itself must state separately for each of paragraph (5)(a) and (b) the number of such creditors and the total of the debts owed to them; and
  - (b) the particulars required by paragraph (4) must be set out in separate schedules to the statement of affairs for each of paragraphs (5)(a) and (b).

#### **Statement of affairs: statement of concurrence**

**3.31.**—(1) The administrator may require a relevant person to deliver to the administrator a statement of concurrence.

(2) A statement of concurrence is a statement, verified by a statement of truth, that that person concurs in the statement of affairs submitted by a nominated person.

(3) The administrator must inform the nominated person who has been required to submit a statement of affairs that the relevant person has been required to deliver a statement of concurrence.

(4) The nominated person must deliver a copy of the statement of affairs to every relevant person who has been required to submit a statement of concurrence.

(5) A statement of concurrence—

- (a) must identify the company; and
- (b) may be qualified in relation to matters dealt with in the statement of affairs where the relevant person—
  - (i) is not in agreement with the statement of affairs,
  - (ii) considers the statement of affairs to be erroneous or misleading, or
  - (iii) is without the direct knowledge necessary for concurring with it.

(6) The relevant person must deliver the required statement of concurrence together with a copy to the administrator before the end of the period of five business days (or such other period as the administrator may agree) beginning with the day on which the relevant person receives the statement of affairs.

#### **Statement of affairs: filing**

**3.32.**—(1) The administrator must as soon as reasonably practicable deliver to the registrar of companies a copy of—

- (a) the statement of affairs; and
- (b) any statement of concurrence.

(2) However, the administrator must not deliver to the registrar of companies with the statement of affairs any schedule required by rule 3.30(6)(b).

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(3) The requirement to deliver the statement of affairs is subject to any order of the court made under rule 3.45 that the statement of affairs or a specified part must not be delivered to the registrar of companies.

#### **Statement of affairs: release from requirement and extension of time**

**3.33.**—(1) The power of the administrator under paragraph 48(2) of Schedule B1 to revoke a requirement to provide a statement of affairs or to extend the period within which it must be submitted may be exercised upon the administrator's own initiative or at the request of a nominated person who has been required to provide it.

(2) The nominated person may apply to the court if the administrator refuses that person's request for a revocation or extension.

(3) On receipt of an application, the court may, if it is satisfied that no sufficient cause is shown for it, dismiss it without giving notice to any party other than the applicant.

(4) Unless the application is dismissed, the court must fix a venue for it to be heard.

(5) The applicant must, at least 14 days before any hearing, deliver to the administrator a notice stating the venue with a copy of the application and of any evidence on which the applicant intends to rely.

(6) The administrator may do either or both of the following—

(a) file a report of any matters which the administrator thinks ought to be drawn to the court's attention; or

(b) appear and be heard on the application.

(7) If a report is filed, the administrator must deliver a copy of it to the applicant not later than five business days before the hearing.

(8) Sealed copies of any order made on the application must be delivered by the court to the applicant and the administrator.

(9) On an application under this rule, the applicant's costs must be paid by the applicant in any event, but the court may order that an allowance of all or part of them be payable as an expense of the administration.

#### **Statement of affairs: expenses**

**3.34.**—(1) The expenses of a nominated person which the administrator considers to have been reasonably incurred in making a statement of affairs or of a relevant person in making a statement of concurrence must be paid by the administrator as an expense of the administration.

(2) A decision by the administrator that expenses were not reasonably incurred (and are therefore not payable as an expense of the administration) may be appealed to the court.

## CHAPTER 7

### Administrator's proposals

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

#### **Administrator's proposals: additional content**

**3.35.**—(1) The administrator's statement of proposals made under paragraph 49 of Schedule B1<sup>M4</sup> (which is required by paragraph 49(4) to be delivered to the registrar of companies, creditors and members) must identify the proceedings and, in addition to the matters set out in paragraph 49, contain—

- (a) any other trading names of the company;
- (b) details of the administrator's appointment, including—
  - (i) the date of appointment,
  - (ii) the person making the application or appointment, and
  - (iii) where a number of persons have been appointed as administrators, details of the matters set out in paragraph 100(2) of Schedule B1 relating to the exercise of their functions;
- (c) the names of the directors and secretary of the company and details of any shareholdings in the company which they may have;
- (d) an account of the circumstances giving rise to the appointment of the administrator;
- (e) the date the proposals are delivered to the creditors;
- (f) if a statement of the company's affairs has been submitted—
  - (i) a copy or summary of it, except so far as an order under rule 3.45 or 3.46 limits disclosure of it, and excluding any schedule referred to in rule 3.30(6)(b), or the particulars relating to individual creditors contained in any such schedule,
  - (ii) details of who provided the statement of affairs, and
  - (iii) any comments which the administrator may have upon the statement of affairs;
- (g) if an order under rule 3.45 or 3.46 has been made—
  - (i) a statement of that fact, and
  - (ii) the date of the order;
- (h) if no statement of affairs has been submitted—
  - (i) details of the financial position of the company at the latest practicable date (which must, unless the court orders otherwise, be a date not earlier than that on which the company entered administration), and
  - (ii) an explanation as to why there is no statement of affairs;
- (i) a full list of the company's creditors in accordance with paragraph (2) if either—
  - (i) no statement of affairs has been submitted, or
  - (ii) a statement of affairs has been submitted but it does not include such a list, or the administrator believes the list included is less than full;
- (j) a statement of—
  - (i) how it is envisaged the purpose of the administration will be achieved, and
  - (ii) how it is proposed that the administration will end, including, where it is proposed that the administration will end by the company moving to a creditors' voluntary winding up—
    - (aa) details of the proposed liquidator,
    - (bb) where applicable, the declaration required by section 231, and
    - (cc) a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator in accordance with paragraph 83(7) (a) of Schedule B1 and rule 3.60(6)(b);
- (k) a statement of either—
  - (i) the method by which the administrator has decided to seek a decision from creditors as to whether they approve the proposals, or
  - (ii) the administrator's reasons for not seeking a decision from creditors;

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- (l) the manner in which the affairs and business of the company—
    - (i) have, since the date of the administrator's appointment, been managed and financed, including, where any assets have been disposed of, the reasons for the disposals and the terms upon which the disposals were made, and
    - (ii) will, if the administrator's proposals are approved, continue to be managed and financed;
  - (m) a statement whether the proceedings are main, secondary, territorial or non-EC proceedings; and
  - (n) any other information that the administrator thinks necessary to enable creditors to decide whether or not to approve the proposals.
- (2) The list of creditors required by paragraph (1)(i) must contain the details required by sub-paragraph (3) except where paragraphs (4) and (5) apply;
- (3) The particulars required by paragraph (2) are as follows and must be given in this order—
- (a) the name and postal address of the creditor;
  - (b) the amount of the debt owed to the creditor;
  - (c) details of any security held by the creditor;
  - (d) the date on which any such security was given; and
  - (e) the value of any such security;
- (4) This paragraph applies where the particulars required by paragraph (3) relate to creditors who are either—
- (a) employees or former employees of the company; or
  - (b) consumers claiming amounts paid in advance for the supply of goods and services.
- (5) Where paragraph (4) applies—
- (a) the list of creditors required by paragraph (1)(i) must state separately for each of paragraphs (4)(a) and (b) the number of the creditors and the total of the debts owed to them; and
  - (b) the particulars required by paragraph (3) in respect of such creditors must be set out in separate schedules to the list of creditors for each of sub-paragraphs (4)(a) and (b); and
  - (c) the administrator must not deliver any such schedule to the registrar of companies with the statement of proposals.
- (6) Except where the administrator proposes a CVA in relation to the company, the statement made by the administrator under paragraph 49 of Schedule B1 must also include—
- (a) to the best of the administrator's knowledge and belief, an estimate of the value of—
    - (i) the prescribed part (whether or not the administrator might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts), and
    - (ii) the company's net property (as defined by section 176A(6)); and
  - (b) a statement whether the administrator proposes to make an application to the court under section 176A(5) and if so the reason for the application.
- (7) The administrator may exclude from an estimate under paragraph (6)(a) information the disclosure of which could seriously prejudice the commercial interests of the company.
- (8) If the exclusion of such information affects the calculation of an estimate, the report must say so.

(9) The document containing the statement of proposals must include a statement of the basis on which it is proposed that the administrator's remuneration should be fixed by a decision in accordance with Chapter 4 of Part 18 of these Rules.

(10) Where applicable the document containing the statement of proposals must include—

- (a) a statement of any pre-administration costs charged or incurred by the administrator or, to the administrator's knowledge, by any other person qualified to act as an insolvency practitioner in relation to the company;
- (b) a statement that the payment of any unpaid pre-administration costs as an expense of the administration is—
  - (i) subject to approval under rule 3.52, and
  - (ii) not part of the proposals subject to approval under paragraph 53<sup>M5</sup> of Schedule B1.

#### Marginal Citations

- M4** Paragraph 49(4) is amended by paragraph 10(2) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).
- M5** Paragraph 53 and the preceding heading are amended by paragraph 10(8) to (1) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

#### Administrator's proposals: statement of pre-administration costs

**3.36.** A statement of pre-administration costs under rule 3.35(10)(a) must include—

- (a) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made;
- (b) details of the work done for which the fees were charged and expenses incurred;
- (c) an explanation of why the work was done before the company entered administration and how it had been intended to further the achievement of an objective in paragraph 3(1) of Schedule B1 in accordance with sub-paragraphs (2) to (4) of that paragraph;
- (d) a statement of the amount of the pre-administration costs, setting out separately—
  - (i) the fees charged by the administrator,
  - (ii) the expenses incurred by the administrator,
  - (iii) the fees charged (to the administrator's knowledge) by any other person qualified to act as an insolvency practitioner in relation to the company (and, if more than one, by each separately), and
  - (iv) the expenses incurred (to the administrator's knowledge) by any other person qualified to act as an insolvency practitioner in relation to the company (and, if more than one, by each separately);
- (e) a statement of the amounts of pre-administration costs which have already been paid (set out separately as under sub-paragraph (d));
- (f) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person set out separately as under sub-paragraph (d); and
- (g) a statement of the amounts of unpaid pre-administration costs (set out separately as under sub-paragraph (d)).

### **Advertising administrator's proposals and notices of extension of time for delivery of proposals (paragraph 49 of Schedule B1)**

**3.37.**—(1) A notice published by the administrator under paragraph 49(6) of Schedule B1 must—

- (a) identify the proceedings and contain the registered office of the company;
- (b) be advertised in such manner as the administrator thinks fit; and
- (c) be published as soon as reasonably practicable after the administrator has delivered the statement of proposals to the company's creditors but no later than eight weeks (or such other period as may be agreed by the creditors or as the court may order) from the date on which the company entered administration.

(2) Where the court orders, on an application by the administrator under paragraph 107 of Schedule B1, an extension of the period in paragraph 49(5) of Schedule B1 for delivering copies of the statement of proposals, the administrator must as soon as reasonably practicable after the making of the order deliver a notice of the extension to—

- (a) the creditors of the company;
- (b) the members of the company of whose address the administrator is aware; and
- (c) the registrar of companies.

(3) The notice must—

- (a) identify the proceedings;
- (b) state the date to which the court has ordered an extension; and
- (c) contain the registered office of the company.

(4) The administrator is taken to comply with paragraph (1)(b) if the administrator publishes a notice complying with paragraph (5).

(5) The notice must—

- (a) contain the information required by paragraph (3);
- (b) be advertised in such manner as the administrator thinks fit;
- (c) state that members may request in writing a copy of the notice of the extension, and state the address to which to write; and
- (d) be published as soon as reasonably practicable after the administrator has delivered the notice of the extension to the company's creditors.

### **Seeking approval of the administrator's proposals**

**3.38.**—(1) This rule applies where the administrator is required by paragraph 51 of Schedule B1<sup>M6</sup> to seek approval from the company's creditors of the statement of proposals made under paragraph 49 of that Schedule.

(2) The statement of proposals delivered under paragraph 49(4) of Schedule B1<sup>M7</sup> must be accompanied by a notice to the creditors of the decision procedure in accordance with rule 15.8.

(3) The administrator may seek a decision using deemed consent in which case the requirements in rule 15.7 also apply to the notice.

(4) Where the administrator has made a statement under paragraph 52(1) of Schedule B1 and has not sought a decision on approval from creditors, the proposal will be deemed to have been approved unless a decision has been requested under paragraph 52(2) of Schedule B1<sup>M8</sup>.

(5) Where under paragraph (4) the proposal is deemed to have been approved the administrator must, as soon as reasonably practicable after the expiry of the period for requisitioning a decision set



out in rule 15.18(2), deliver a notice of the date of deemed approval to the registrar of companies, the court and any creditor to whom the administrator has not previously delivered the proposal.

(6) The notice must contain—

- (a) identification details for the proceedings;
- (b) the name of the administrator;
- (c) the date the administrator was appointed; and
- (d) the date on which the statement of proposals was delivered to the creditors.

(7) A copy of the statement of proposals, with the statements required by rule 3.35(5), must accompany the notice given to the court and to any creditors to whom a copy of the statement of proposals has not previously been delivered.

#### Marginal Citations

- M6** Paragraph 51 and the preceding heading are amended by paragraph 10(4) to (5) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).
- M7** Paragraph 49 is amended by paragraph 10(2) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015.
- M8** Paragraph 52(2) is amended by paragraph 10(6) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

#### Invitation to creditors to form a creditors' committee

**3.39.**—(1) Where the administrator is required to seek a decision from the company's creditors under rule 3.38, the administrator must at the same time deliver to the creditors a notice inviting them to decide whether a creditors' committee should be established if sufficient creditors are willing to be members of the committee.

(2) The notice must also invite nominations for membership of the committee, such nominations to be received by the administrator by a date to be specified in the notice.

(3) The notice must state that any nominations—

- (a) must be delivered to the administrator by the specified date; and
- (b) can only be accepted if the administrator is satisfied as to the creditor's eligibility under rule 17.4.

(4) A notice under this rule must also be delivered to the creditors at any other time when the administrator seeks a decision from creditors and a creditors' committee has not already been established at that time.

#### Notice of extension of time to seek approval

**3.40.**—(1) Where the court orders an extension to the period set out in paragraph 51(2) of Schedule B1, the administrator must deliver a notice of the extension as soon as reasonably practicable to each person mentioned in paragraph 49(4) of Schedule B1.

(2) The notice must contain identification details for the proceedings and the date to which the court has ordered an extension.

(3) The administrator is taken to have complied with paragraph (1) as regards members of the company if the administrator publishes a notice complying with paragraph (4).

(4) The notice must—

- (a) be advertised in such manner as the administrator thinks fit;

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- (b) state that members may request in writing a copy of the notice of the extension, and state the address to which to write; and
- (c) be published as soon as reasonably practicable after the administrator has delivered the notice of the extension to the company's creditors.

### **Notice of the creditors' decision on the administrator's proposals (paragraph 53(2))**

**3.41.**—(1) In addition to delivering a report to the court and the registrar of companies (in accordance with paragraph 53(2) of Schedule B1) the administrator must deliver a report to—

- (a) the company's creditors (accompanied by a copy of the statement of proposals, with the statement required by rule 3.35(10)(a) and (b), if it has not previously been delivered to the creditor); and
- (b) every other person to whom a copy of the statement of proposals was delivered.

(2) A report mentioned in paragraph (1) must contain—

- (a) identification details for the proceedings;
- (b) details of decisions taken by the creditors including details of any modifications to the proposals which were approved by the creditors; and
- (c) the date such decisions were made.

(3) A copy of the statement of proposals, with any statements required by rule 3.35(9) and (10), must accompany the report to the court.

### **Administrator's proposals: revision**

**3.42.**—(1) Where paragraph 54(1) of Schedule B1 <sup>M9</sup> applies, the statement of the proposed revision which is required to be delivered to the creditors must be delivered with a notice of the decision procedure in accordance with rule 15.8.

(2) The statement must identify the proceedings and include—

- (a) any other trading names of the company;
- (b) details of the administrator's appointment, including—
  - (i) the date of appointment, and
  - (ii) the person making the application or appointment;
- (c) the names of the directors and secretary of the company and details of any shareholdings in the company which they may have;
- (d) a summary of the original proposals and the reason or reasons for proposing a revision;
- (e) details of the proposed revision, including details of the administrator's assessment of the likely impact of the proposed revision upon creditors generally or upon each class of creditors;
- (f) where the proposed revision relates to the ending of the administration by a creditors' voluntary winding up and the nomination of a person to be the proposed liquidator of the company—
  - (i) details of the proposed liquidator,
  - (ii) where applicable, the declaration required by section 231, and
  - (iii) a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator in accordance with paragraph 83(7)(a) of Schedule B1 and rule 3.60(6)(b); and

- (g) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions.
- (3) The administrator may seek a decision using deemed consent in which case the requirements in rule 15.7 also apply to the notice.
- (4) The period within which, subject to paragraph 54(3) of Schedule B1, the administrator must send a copy of the statement to every member of the company of whose address the administrator is aware is five business days after sending the statement of the proposed revision to the creditors.
- (5) Notice under paragraph 54(3) and (4) of Schedule B1 must—
- (a) be advertised in such manner as the administrator thinks fit as soon as reasonably practicable after the administrator has sent the statement to the creditors; and
  - (b) state that members may request in writing a copy of the proposed revision, and state the address to which to write.
- [<sup>F9</sup>(6) A copy of the statement of revised proposals under rule 3.43(3) must be delivered to the registrar of companies not later than five days after the report under rule 3.43(1) is delivered.]

**Textual Amendments**

**F9** Rule 3.42(6) inserted (6.4.2017) by [The Insolvency \(England and Wales\) \(Amendment\) Rules 2017 \(S.I. 2017/366\)](#), rules 1, 16

**Marginal Citations**

**M9** Paragraph 54 is amended by paragraph 10(11) to (16) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

**Notice of result of creditors' decision on revised proposals (paragraph 54(6))**

- 3.43.—**(1) In addition to delivering a report to the court and the registrar of companies (in accordance with paragraph 54(6) of Schedule B1) the administrator must deliver a report to—
- (a) the company's creditors (accompanied by a copy of the original statement of proposals and the revised statement of proposals if the administrator had not delivered notice of the decision procedure or deemed consent procedure to the creditor); and
  - (b) every other person to whom a copy of the original statement of proposals was delivered.
- (2) A report mentioned in paragraph (1) must contain—
- (a) identification details for the proceedings;
  - (b) the date of the revised proposals;
  - (c) details of decisions taken by the creditors including details of any modifications to the revised proposals which were approved by the creditors; and
  - (d) the date such decisions were made.
- (3) A copy of the statement of revised proposals must accompany the notice to the court.

**CHAPTER 8**

Limited disclosure of statements of affairs and proposals

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

## **Application of Chapter**

**3.44.** This Chapter applies to the disclosure of information which would be likely to prejudice the conduct of the administration or might reasonably be expected to lead to violence against any person.

## **Orders limiting disclosure of statement of affairs etc.**

**3.45.—(1)** If the administrator thinks that the circumstances in rule 3.44 apply in relation to the disclosure of—

- (a) the whole or part of the statement of the company's affairs;
- (b) any of the matters specified in rule 3.35(1)(h) and (i) (administrator's proposals); or
- (c) a statement of concurrence,

the administrator may apply to the court for an order in relation to the particular document or a specified part of it.

(2) The court may order that the whole of or a specified part of a document referred to in paragraph (1)(a) to (c) must not be delivered to the registrar of companies or, in the case of the statement of proposals, to creditors or members of the company.

(3) The administrator must as soon as reasonably practicable deliver to the registrar of companies—

- (a) a copy of the order;
- (b) the statement of affairs, statement of proposals and any statement of concurrence to the extent provided by the order; and
- (c) if the order relates to the statement of proposals, an indication of the nature of the matter in relation to which the order was made.

(4) If the order relates to the statement of proposals, the administrator must as soon as reasonably practicable also deliver to the creditors and members of the company—

- (a) the statement of proposals to the extent provided by the order; and
- (b) an indication of the nature of the matter in relation to which the order was made.

## **Order for disclosure by administrator**

**3.46.—(1)** A creditor may apply to the court for an order that the administrator disclose any of the following in relation to which an order has been made under rule 3.45(2)—

- (a) a statement of affairs;
- (b) a specified part of it;
- (c) a part of a statement of proposals; or
- (d) statement of concurrence.

(2) The application must be supported by a witness statement.

(3) The applicant must deliver to the administrator notice of the application at least three business days before the hearing.

(4) In an order for disclosure, the court may include conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances or such other matters as it thinks just.

### **Rescission or amendment of order for limited disclosure**

**3.47.**—(1) If there is a material change in circumstances rendering an order for limited disclosure under rule 3.45(2) wholly or partially unnecessary, the administrator must, as soon as reasonably practicable after the change, apply to the court for the order to be rescinded or amended.

(2) If the court makes such an order, the administrator must as soon as reasonably practicable deliver to the registrar of companies—

- (a) a copy of the order; and
- (b) the statement of affairs, the statement of proposals and any statement of concurrence to the extent provided by the order.

(3) If the order relates to the statement of proposals, the administrator must as soon as reasonably practicable also deliver to the creditors and members the statement of proposals to the extent allowed by the order.

### **Publication etc. of statement of affairs or statement of proposals**

**3.48.**—(1) CPR Part 31 does not apply to an application under rule 3.45, 3.46 or 3.47.

(2) If, after the administrator has sent a statement of proposals under paragraph 49(4) of Schedule B1, a statement of affairs is delivered to the registrar of companies in accordance with rule 3.47(2) as the result of the rescission or amendment of an order, the administrator must deliver to the creditors a copy or summary of the statement of affairs as delivered to the registrar of companies.

(3) The administrator is taken to comply with the requirements for delivery to members of the company in rule 3.45(4) or 3.47(3) if the administrator publishes the required notice.

(4) The required notice must—

- (a) be advertised in such manner as the administrator thinks fit;
- (b) state that members can request in writing—
  - (i) a copy of the statement of proposals to the extent provided by the order, and
  - (ii) an indication of the nature of the matter in relation to which the order was made;
- (c) state the address to which to such a written request is to be made; and
- (d) be published as soon as reasonably practicable after the administrator has delivered the statement of proposals to the extent provided by the order to the company's creditors.

## **CHAPTER 9**

### **Disposal of charged property**

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

### **Disposal of charged property**

**3.49.**—(1) This rule applies where the administrator applies to the court under paragraph 71 or 72 of Schedule B1 for authority to dispose of—

- (a) property which is subject to a security other than a floating charge; or
- (b) goods in the possession of the company under a hire-purchase agreement.

(2) The court must fix a venue for the hearing of the application.

(3) As soon as reasonably practicable after the court has done so, the administrator must deliver notice of the venue to the holder of the security or the owner of the goods.

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(4) If an order is made under paragraph 71 or 72 of Schedule B1, the court must deliver two sealed copies to the administrator.

(5) The administrator must deliver—

- (a) one of the sealed copies to the holder of the security or the owner of the goods; and
- (b) a copy of the sealed order to the registrar of companies.

## CHAPTER 10

### Expenses of the Administration

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

#### Expenses

**3.50.**—(1) All fees, costs, charges and other expenses incurred in the course of the administration are to be treated as expenses of the administration.

(2) The expenses associated with the prescribed part must be paid out of the prescribed part.

(3) The cost of the security required by section 390(3) for the proper performance of the administrator's functions is an expense of the administration.

(4) For the purposes of paragraph 99 of Schedule B1, a former administrator's remuneration and expenses comprise all the items in rule 3.51(2).

#### Order of priority

**3.51.**—(1) Where there is a former administrator, the items in paragraph 99 of Schedule B1 are payable in priority to the expenses in this rule.

(2) Subject to paragraph (1) and to any court order under paragraph (3) the expenses of the administration are payable in the following order of priority—

- (a) expenses properly incurred by the administrator in performing the administrator's functions;
- (b) the cost of any security provided by the administrator in accordance with the Act or these Rules;
- (c) where an administration order was made, the costs of the applicant and any person appearing on the hearing of the application whose costs were allowed by the court;
- (d) where the administrator was appointed otherwise than by order of the court—
  - (i) the costs and expenses of the appointer in connection with the making of the appointment, and
  - (ii) the costs and expenses incurred by any other person in giving notice of intention to appoint an administrator;
- (e) any amount payable to a person in respect of assistance in the preparation of a statement of affairs or statement of concurrence;
- (f) any allowance made by order of the court in respect of the costs on an application for release from the obligation to submit a statement of affairs or deliver a statement of concurrence;
- (g) any necessary disbursements by the administrator in the course of the administration (including any [<sup>F10</sup>costs referred to in Articles 30 or 59 of the EU Regulation and] expenses incurred by members of the creditors' committee or their representatives and allowed for

by the administrator under rule 17.24, but not including any payment of corporation tax in circumstances referred to in sub-paragraph (j) below);

- (h) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the company, as required or authorised under the Act or these Rules;
- (i) the administrator's remuneration the basis of which has been fixed under Part 18 and unpaid pre-administration costs approved under rule 3.52; and
- (j) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company (irrespective of the person by whom the realisation is effected).

(3) If the assets are insufficient to satisfy the liabilities, the court may make an order as to the payment out of the assets of the expenses incurred in the administration in such order of priority as the court thinks just.

#### Textual Amendments

**F10** Words in rule 3.51(2)(g) inserted (26.6.2017) by [The Insolvency Amendment \(EU 2015/848\) Regulations 2017 \(S.I. 2017/702\)](#), reg. 1, **Sch. para. 37** (with reg. 3)

#### Pre-administration costs

**3.52.**—(1) Where the administrator has made a statement of pre-administration costs under rule 3.35(10)(a), the creditors' committee may determine whether and to what extent the unpaid pre-administration costs set out in the statement are approved for payment.

(2) Paragraph (3) applies where—

- (a) there is no creditors' committee;
- (b) there is a creditors' committee but it does not make the necessary determination; or
- (c) the creditors' committee does make the necessary determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient.

(3) When this paragraph applies, determination of whether and to what extent the unpaid pre-administration costs are approved for payment must be—

- (a) by a decision of the creditors through a decision procedure; or
- (b) in a case where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1, by—
  - (i) the consent of each of the secured creditors, or
  - (ii) if the administrator has made, or intends to make, a distribution to preferential creditors, by—
    - (aa) the consent of each of the secured creditors, and
    - (bb) a decision of the preferential creditors in a decision procedure.

(4) The administrator must call a meeting of the creditors' committee or seek a decision of creditors by a decision procedure if so requested for the purposes of paragraphs (1) to (3) by another insolvency practitioner who has charged fees or incurred expenses as pre-administration costs; and the administrator must deliver notice of the meeting or decision procedure within 28 days of receipt of the request.

(5) The administrator (where the fees were charged or expenses incurred by the administrator) or other insolvency practitioner (where the fees were charged or expenses incurred by that practitioner)

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may apply to the court for a determination of whether and to what extent the unpaid pre-administration costs are approved for payment if either—

- (a) there is no determination under paragraph (1) or (3); or
- (b) there is such a determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient.

(6) Where there is a creditors' committee the administrator or other insolvency practitioner must deliver at least 14 days' notice of the hearing to the members of the committee; and the committee may nominate one or more of its members to appear, or be represented, and to be heard on the application.

(7) If there is no creditors' committee, notice of the application must be delivered to such one or more of the company's creditors as the court may direct, and those creditors may nominate one or more of their number to appear or be represented, and to be heard on the application.

(8) The court may, if it appears to be a proper case, order the costs of the application, including the costs of any member of the creditors' committee appearing or being represented on it, or of any creditor so appearing or being represented, to be paid as an expense of the administration.

(9) Where the administrator fails to call a meeting of the creditors' committee or seek a decision from creditors in accordance with paragraph (4), the other insolvency practitioner may apply to the court for an order requiring the administrator to do so.

## CHAPTER 11

### Extension and ending of administration

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

### Interpretation

**3.53.** “Final progress report” means in this Chapter, and in Part 18 in so far as it relates to final progress reports in an administration, a progress report which includes a summary of—

- (a) the administrator's proposals;
- (b) any major amendments to, or deviations from, those proposals;
- (c) the steps taken during the administration; and
- (d) the outcome.

### Application to extend an administration and extension by consent (paragraph 76(2) of Schedule B1)

**3.54.**—(1) This rule applies where an administrator makes an application to the court for an order, or delivers a notice to the creditors requesting their consent, to extend the administrator's term of office under paragraph 76(2) <sup>M10</sup> of Schedule B1.

(2) The application or the notice must state the reasons why the administrator is seeking an extension.

(3) A request to the creditors may contain or be accompanied by a notice that if the extension is granted a notice of the extension will be made available for viewing and downloading on a website and that no other notice will be delivered to the creditors.

(4) Where the result of a request to the creditors is to be made available for viewing and downloading on a website, the notice must comply with the requirements for use of a website to



deliver documents set out in rule 1.49(2)(a) to (c), (3) and (4) with any necessary modifications and rule 1.49(5)(a) applies to determine the time of delivery of the document.

(5) Where the court makes an order extending the administrator's term of office, the administrator must as soon as reasonably practicable deliver to the creditors a notice of the order together with the reasons for seeking the extension given in the application to the court.

(6) Where the administrator's term of office has been extended with the consent of creditors, the administrator must as soon as reasonably practicable deliver a notice of the extension to the creditors except where paragraph (3) applies.

(7) The notices which paragraph 78(5)(b) of Schedule B1 require to be delivered to the registrar of companies must also identify the proceedings.

#### Marginal Citations

**M10** Paragraph 76(2) is amended by section 127 of the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

### Notice of automatic end of administration (paragraph 76 of Schedule B1)

**3.55.**—(1) This rule applies where—

- (a) the appointment of an administrator has ceased to have effect; and
- (b) the administrator is not required by any other rule to give notice of that fact.

(2) The former administrator must, as soon as reasonably practicable, and in any event within five business days of the date on which the appointment has ceased, deliver to the registrar of companies and file with the court a notice accompanied by a final progress report.

(3) The notice must be headed “Notice of automatic end of administration” and identify the company immediately below the heading.

(4) The notice must contain—

- (a) identification details for the proceedings;
- (b) the former administrator's name and address;
- (c) a statement that that person had been appointed administrator of the company;
- (d) the date of the appointment;
- (e) the name of the person who made the appointment or the administration application, as the case may be;
- (f) a statement that the appointment has ceased to have effect;
- (g) the date on which the appointment ceased to have effect; and
- (h) a statement that a copy of the final progress report accompanies the notice.

(5) The notice must be authenticated by the administrator and dated.

(6) A copy of the notice and accompanying final progress report must be delivered as soon as reasonably practicable to—

- (a) the directors of the company; and
- (b) all other persons to whom notice of the administrator's appointment was delivered.

(7) A former administrator who makes default in complying with this rule is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

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### **Notice of end of administration when purposes achieved (paragraph 80(2) of Schedule B1)**

**3.56.**—(1) Where an administrator who was appointed under paragraph 14 or 22 of Schedule B1 thinks that the purpose of administration has been sufficiently achieved, the notice (“notice of end of administration”) which the administrator may file with the court and deliver to the registrar of companies under paragraph 80(2) of Schedule B1 must be headed “Notice of end of administration” and identify the company immediately below the heading.

(2) The notice must contain—

- (a) identification details for the proceedings;
- (b) the administrator's name and address;
- (c) a statement that that person has been appointed administrator of the company;
- (d) the date of the appointment;
- (e) the name of the person who made the appointment or the administration application, as the case may be;
- (f) a statement that the administrator thinks that the purpose of the administration has been sufficiently achieved;
- (g) a statement that a copy of the final progress report accompanies the notice; and
- (h) a statement that the administrator is filing the notice with the court and delivering a copy to the registrar of companies.

(3) The notice must be authenticated by the administrator and dated.

(4) The notice must be accompanied by a final progress report.

(5) The notice filed with the court must also be accompanied by a copy of the notice.

(6) The court must endorse the notice and the copy with the date and time of filing, seal the copy and deliver it to the administrator.

(7) The prescribed period within which the administrator, under paragraph 80(4)<sup>M11</sup> of Schedule B1, must send a copy of the notice to the creditors is five business days from the filing of the notice.

(8) The copy notice sent to creditors must be accompanied by the final progress report.

(9) The administrator must within the same period deliver a copy of the notice and the final progress report to all other persons (other than the creditors and the registrar of companies) to whom notice of the administrator's appointment was delivered.

(10) The administrator is taken to have complied with the requirement in paragraph 80(4) of Schedule B1 to give notice to the creditors if, within five business days of filing the notice with the court, the administrator gazettes a notice which—

- (a) states that the administration has ended, and the date on which it ended;
- (b) undertakes that the administrator will provide a copy of the notice of end of administration to any creditor of the company who applies in writing; and
- (c) specifies the address to which to write.

(11) The Gazette notice may be advertised in such other manner as the administrator thinks fit.

#### **Marginal Citations**

**M11** Paragraph 80(4) is amended by paragraph 10(30) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

### **Administrator's application for order ending administration (paragraph 79 of Schedule B1)**

**3.57.**—(1) An application to court by the administrator under paragraph 79 of Schedule B1 <sup>M12</sup> for an order ending an administration must be accompanied by—

- (a) a progress report for the period since—
  - (i) the last progress report (if any), or
  - (ii) if there has been no previous progress report, the date on which the company entered administration;
- (b) a statement indicating what the administrator thinks should be the next steps for the company (if applicable); and
- (c) where the administrator makes the application because of a requirement decided by the creditors, a statement indicating with reasons whether or not the administrator agrees with the requirement.

(2) Where the application is made other than because of a requirement by a decision of the creditors—

- (a) the administrator must, at least five business days before the application is made, deliver notice of the administrator's intention to apply to court to—
  - (i) the person who made the administration application or appointment, and
  - (ii) the creditors; and
- (b) the application must be accompanied by—
  - (i) a statement that notice has been delivered to the creditors, and
  - (ii) copies of any response from creditors to that notice.

(3) Where the application is in conjunction with a petition under section 124 for an order to wind up the company, the administrator must, at least five business days before the application is filed, deliver notice to the creditors as to whether the administrator intends to seek appointment as liquidator.

#### **Marginal Citations**

**M12** Paragraph 79(2)(c) is amended by paragraph 10(29) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

### **Creditor's application for order ending administration (paragraph 81 of Schedule B1)**

**3.58.**—(1) Where a creditor applies to the court under paragraph 81 of Schedule B1 for an order ending an administration, a copy of the application must be delivered, not less than five business days before the date fixed for the hearing, to—

- (a) the administrator;
- (b) the person who made the administration application or appointment; and
- (c) where the appointment was made under paragraph 14 of Schedule B1, the holder of the floating charge by virtue of which the appointment was made (if different to (b)).

(2) Any of those persons may appear at the hearing of the application.

(3) Where the court makes an order under paragraph 81 ending the administration, the court must deliver a copy of the order to the administrator.

*Status: Point in time view as at 26/06/2017.*

*Changes to legislation: There are currently no known outstanding effects for the The Insolvency (England and Wales) Rules 2016, PART 3. (See end of Document for details)*

### Notice by administrator of court order

**3.59.** Where the court makes an order ending the administration, the administrator must as soon as reasonably practicable deliver a copy of the order and of the final progress report to—

- (a) the registrar of companies;
- (b) the directors of the company; and
- (c) all other persons to whom notice of the administrator's appointment was delivered.

### Moving from administration to creditors' voluntary winding up (paragraph 83 of Schedule B1)

[Note: the information referred to in paragraph (5) is required to be included in the first progress report of the liquidator. See rule 18.3(5).]

**3.60.**—(1) This rule applies where the administrator delivers to the registrar of companies a notice under paragraph 83(3) of Schedule B1<sup>M13</sup> of moving from administration to creditors' voluntary winding up.

(2) The notice must contain—

- (a) identification details for the proceedings;
- (b) the name of the person who made the appointment or the administration application, as the case may be; and
- (c) the name and IP number of the proposed liquidator.

(3) The notice to the registrar of companies must be accompanied by a copy of the administrator's final progress report.

(4) A copy of the notice and the final progress report must be sent as soon as reasonably practicable after delivery of the notice to all those persons to whom notice of the administrator's appointment was delivered in addition to the creditors (as required by paragraph 83(5)(b)).

(5) The person who ceases to be administrator on the registration of the notice must inform the person who becomes liquidator of anything which happens after the date of the final progress report and before the registration of the notice which the administrator would have included in the final report had it happened before the date of the report.

(6) For the purposes of paragraph 83(7)(a) of Schedule B1, a person is nominated by the creditors as liquidator by—

- (a) their approval of the statement of the proposed liquidator in the administrator's proposals or revised proposals; or
- (b) their nomination of a different person, through a decision procedure, before their approval of the proposals or revised proposals.

(7) Where the creditors nominate a different person, the nomination must, where applicable, include the declaration required by section 231.

#### Marginal Citations

**M13** Sub-paragraphs (1)(b) and (2)(b) are amended by section 128(3) and sub-paragraphs (5)(b) and (8)(d) are amended by paragraphs 10(31) and (32) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

### Moving from administration to dissolution (paragraph 84 of Schedule B1)

**3.61.**—(1) This rule applies where the administrator delivers to the registrar of companies a notice under paragraph 84(1) of Schedule B1 of moving from administration to dissolution.

(2) The notice must identify the proceedings.

(3) As soon as reasonably practicable after sending the notice, the administrator must deliver a copy of the notice to all persons to whom notice of the administrator's appointment was delivered (in addition to the creditors mentioned in paragraph 84(5)(b))<sup>M14</sup>.

(4) A final progress report must accompany the notice to the registrar of companies and every copy filed or otherwise delivered.

(5) Where a court makes an order under paragraph 84(7) of Schedule B1 it must, where the applicant is not the administrator, deliver a copy of the order to the administrator.

(6) The administrator must deliver a copy of the order to the registrar of companies with the notice required by paragraph 84(8).

#### Marginal Citations

**M14** Paragraph 84(5)(b) is amended by paragraph 10(33) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

## CHAPTER 12

### Replacing the administrator

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

#### Grounds for resignation

**3.62.**—(1) The administrator may resign—

- (a) on grounds of ill health;
- (b) because of the intention to cease to practise as an insolvency practitioner; or
- (c) because the further discharge of the duties of administrator is prevented or made impractical by—
  - (i) a conflict of interest, or
  - (ii) a change of personal circumstances.

(2) The administrator may, with the permission of the court, resign on other grounds.

#### Notice of intention to resign

**3.63.**—(1) The administrator must give at least five business days' notice of intention—

- (a) to resign in a case falling within rule 3.62(1); or
- (b) to apply for the court's permission to resign in a case falling within rule 3.62(2).

(2) The notice must contain—

- (a) identification details for the proceedings;
- (b) the date of the appointment of the administrator;
- (c) the name of the person who made the appointment or the administration application, as the case may be.

*Status: Point in time view as at 26/06/2017.*

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- (3) The notice must also contain—
  - (a) the date with effect from which the administrator intends to resign; or
  - (b) where the administrator was appointed by an administration order, the date on which the administrator intends to file with the court an application for permission to resign.
- (4) The notice must be delivered—
  - (a) to any continuing administrator of the company;
  - (b) to the creditors' committee (if any);
  - (c) if there is neither a continuing administrator nor a creditors' committee, to—
    - (i) the company, and
    - (ii) the company's creditors;
  - (d) to the member State liquidator appointed in relation to the company (if there is one);
  - (e) where the administrator was appointed by the holder of a qualifying floating charge under paragraph 14 of Schedule B1, to—
    - (i) the person who appointed the administrator, and
    - (ii) all holders of prior qualifying floating charges;
  - (f) where the administrator was appointed by the company or the directors of the company under paragraph 22 of Schedule B1, to—
    - (i) the appointer, and
    - (ii) all holders of qualifying floating charges.
- (5) The notice must be accompanied by a summary of the administrator's receipts and payments.

#### **Notice of resignation (paragraph 87 of Schedule B1)**

**3.64.**—(1) A resigning administrator must, within five business days of delivering the notice under paragraph 87(2) of Schedule B1, deliver a copy of the notice to—

- (a) the registrar of companies;
  - (b) all persons, other than the person who made the appointment, to whom notice of intention to resign was delivered under rule 3.63; and
  - (c) except where the appointment was by administration order, file a copy of the notice with the court.
- (2) The notice must contain—
    - (a) identification details for the proceedings;
    - (b) the date of the appointment of the administrator; and
    - (c) the name of the person who made the appointment or the administration application, as the case may be.
  - (3) The notice must state—
    - (a) the date from which the resignation is to have effect; and
    - (b) where the resignation is with the permission of the court, the date on which permission was given.
  - (4) Where an administrator was appointed by an administration order, notice of resignation under paragraph 87(2)(a) of Schedule B1 must be given by filing the notice with the court.

### **Application to court to remove administrator from office**

**3.65.**—(1) An application for an order under paragraph 88 of Schedule B1 that the administrator be removed from office must state the grounds on which the order is requested.

(2) A copy of the application must be delivered, not less than five business days before the date fixed for the hearing—

- (a) to the administrator;
  - (b) to the person who—
    - (i) made the application for the administration order, or
    - (ii) appointed the administrator;
  - (c) to the creditors' committee (if any);
  - (d) to any continuing administrator appointed to act jointly or concurrently; and
  - (e) where there is neither a creditors' committee nor a continuing administrator appointed, to the company and the creditors, including any floating charge holders.
- (3) The court must deliver to the applicant a copy of any order removing the administrator.
- (4) The applicant must deliver a copy—
- (a) as soon as reasonably practicable, and in any event within five business days of the copy order being delivered, to the administrator; and
  - (b) within five business days of the copy order being delivered, to—
    - (i) all other persons to whom notice of the application was delivered, and
    - (ii) the registrar of companies.

### **Notice of vacation of office when administrator ceases to be qualified to act**

**3.66.** An administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the company and gives notice in accordance with paragraph 89 of Schedule B1 must also deliver notice to the registrar of companies.

### **Deceased administrator**

**3.67.**—(1) If the administrator dies a notice of the fact and date of death must be filed with the court.

- (2) The notice must be filed as soon as reasonably practicable by one of the following—
- (a) a surviving administrator;
  - (b) a member of the deceased administrator's firm (if the deceased was a member or employee of a firm);
  - (c) an officer of the deceased administrator's company (if the deceased was an officer or employee of a company); or
  - (d) a personal representative of the deceased administrator.
- (3) If such a notice has not been filed within the 21 days following the administrator's death then any other person may file the notice.
- (4) The person who files the notice must also deliver a notice to the registrar of companies which contains—
- (a) identification details for the proceedings;
  - (b) the name of the person who made the appointment or the administration application, as the case may be;

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- (c) the date of the appointment of the administrator; and
- (d) the fact and date of death.

### **Application to replace**

**3.68.**—(1) Where an application to court is made under paragraph 91(1) or 95 of Schedule B1 to appoint a replacement administrator, the application must be accompanied by the proposed replacement administrator's consent to act.

(2) Where the application is made under paragraph 91(1), a copy of the application must be delivered—

- (a) to the person who made the application for the administration order;
- (b) to any person who has appointed an administrative receiver of the company;
- (c) to any person who is or may be entitled to appoint an administrative receiver of the company;
- (d) to any person who is or may be entitled to appoint an administrator of the company under paragraph 14 of Schedule B1;
- (e) to any administrative receiver of the company;
- (f) if there is pending a petition for the winding up of the company, to —
  - (i) the petitioner, and
  - (ii) any provisional liquidator;
- (g) to any member State liquidator appointed in main proceedings in relation to the company;
- (h) to the company, if the application is made by anyone other than the company;
- (i) to any supervisor of any CVA in relation to the company; and
- (j) to the proposed administrator.

(3) Where the application is made under paragraph 95, the application must be accompanied by a witness statement setting out the applicant's belief as to the matters set out in that paragraph.

(4) Rules 3.12, 3.13, and 3.15(1) and (2) apply to applications made under paragraph 91(1) and 95 of Schedule B1, with any necessary modifications.

### **Appointment of replacement or additional administrator**

**3.69.** Where a replacement administrator is appointed or an additional administrator is appointed to act—

- (a) the following apply—
  - (i) rule 3.17 (notice of appointment) the requirement as to the heading in paragraph (1) and paragraphs (1)(a) to (f), and (2),
  - (ii) rule 3.18 (filing of notice with court) paragraphs (1)(a) and (b)(ii), (2) and (3),
  - (iii) rule 3.24 (notice of appointment after notice of intention to appoint) paragraphs (1) (a) to (d) and (2),
  - (iv) rule 3.25 (notice of appointment without prior notice of intention to appoint) paragraphs (1), (2)(a) to (c) and (3),
  - (v) rule 3.26 (notice of appointment: filing with the court) paragraphs (1)(a), (3) and (4), and
  - (vi) rule 3.27 (publication of administrator's appointment) paragraphs (1), (2)(a) and (b), (3) and (4);



- (b) the replacement or additional administrator must deliver notice of the appointment to the registrar of companies; and
- (c) all documents must clearly identify the appointment as of a replacement administrator or an additional administrator.

#### **Administrator's duties on vacating office**

**3.70.**—(1) An administrator who ceases to be in office as a result of removal, resignation or ceasing to be qualified to act as an insolvency practitioner in relation to the company must as soon as reasonably practicable deliver to the person succeeding as administrator—

- (a) the assets (after deduction of any expenses properly incurred and distributions made by the departing administrator);
- (b) the records of the administration, including correspondence, proofs and other documents relating to the administration while it was within the responsibility of the departing administrator; and
- (c) the company's records.

(2) An administrator who makes default in complying with this rule is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

**Status:**

Point in time view as at 26/06/2017.

**Changes to legislation:**

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