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STATUTORY INSTRUMENTS

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**2018 No. 1082**

**The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018**

**PART 1**

**SCOPE, INTERPRETATION, TIME AND RULES ABOUT DOCUMENTS**

**CHAPTER 2**

**Interpretation**

**Defined terms**

**1.2.—**(1) In these Rules, unless the context otherwise requires—

“the Act” means the Insolvency Act 1986, and—

- (a) a reference to a numbered section without mention of another Act is to that section of the Act; and
- (b) a reference to Schedule A1(1) or B1(2) is to that Schedule to the Act;

“the Companies Act” means the Companies Act 2006(3);

“appointed person” means a person who meets the requirements in paragraph (2) and who is appointed by an office-holder;

“Article 1.2 undertaking” means one of the following within the meaning of Article 1.2 of the EU Regulation—

- (a) an insurance undertaking;
- (b) a credit institution;
- (c) an investment undertaking which provides services involving the holding of funds or securities for third parties;
- (d) a collective investment undertaking;

[Note: “associate” is defined in section 435];

“attendance” and “attend”—

a person attends a meeting by being present, by attending remotely in accordance with section 246A(4) or rule 5.6, or by participating in a virtual meeting; and a person may attend a meeting in person, by proxy or by corporate representative (in accordance with section 434B(5) of the Act or section 323 of the Companies Act, as applicable);

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(1) Schedule A1 was inserted by paragraph 4 of Schedule 1 to the Insolvency Act 2000 (c.39).  
(2) Schedule B1 was inserted by paragraph 1 of Schedule 16 to the Enterprise Act 2002 (c.40).  
(3) 2006 c.46.  
(4) Section 246A was added by S.I. 2010/18 and amended by paragraph 54 of Schedule 9 to the 2015 Act and article 5 of the Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 (S.S.I. 2017/209).  
(5) Section 434B was inserted by S.I. 2008/948 and amended by paragraph 57 of Schedule 9 to the 2015 Act.

“authenticate” means to authenticate in accordance with rule 1.6;

“blank proxy” is to be interpreted in accordance with rule 6.3

[Note: “business day” is defined in section 251]

“centre of main interests” has the same meaning as in the EU Regulation;

[Note: “connected” used of a person in relation to a company is defined in section 249 of the Act];

“consumer” means an individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession;

“convener” means an office-holder or other person who seeks a decision in accordance with Part 5 of these Rules;

[Note: “the court” is defined in section 251];

“CVA” means a voluntary arrangement in relation to a company made under Part 1 of the Act;

“debt” as it relates to administration, means any of the following—

- (a) any debt or liability to which the company is subject at the relevant date;
- (b) any debt or liability to which the company may become subject after the relevant date by reason of any obligation incurred before that date;
- (c) any interest provable as mentioned in rule 3.111;

and for the purposes of the definition of debt, “relevant date” means—

- (a) in the case of an administration which was not immediately preceded by a winding up, the date on which the company entered administration; and
- (b) in the case of an administration which was immediately preceded by a winding up, the date on which the company went into liquidation.

“decision date” and “decision procedure” are to be interpreted in accordance with rule 5.2;

[Note: “deemed consent procedure” is defined in section 246ZF(6)];

“deliver” and “delivery” are to be interpreted in accordance with Chapter 9 of Part 1 of these Rules;

“deliver to the creditors” and similar expressions in these Rules and the Act are to be interpreted in accordance with rule 1.33;

“document” includes a written notice or statement or anything else in writing capable of being delivered to a recipient;

[Note: “the EU Regulation” is defined in section 436(7) as “Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings(8)”];

[Note: “the Gazette” has the meaning given in section 251];

“Gazette notice” means a notice which is, has been, or is to be gazetted;

“to gazette” means to advertise in the Gazette, whether electronically or otherwise;

[Note: “hire-purchase agreement” is defined in section 436(1); and is supplemented by paragraph 1 of Schedule A1 (company voluntary arrangements) for the purposes of that Schedule and by paragraph 111(1) of Schedule B1 (administration) for the purposes of that Schedule];

“identification details” and similar references to information identifying persons, insolvency proceedings etc. are to be interpreted in accordance with rule 1.7;

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(6) Section 246ZF is inserted by section 122 of the 2015 Act.

(7) Section 436 was relevantly amended by [S.I. 2017/702](#).

(8) OJ L 141, 5.6.2015 p.19.

“insolvent estate” means the company’s assets;

“IP number” means the number assigned to an office-holder as an insolvency practitioner by the Secretary of State;

“local creditor” has the same meaning as in Article 2 of the EU Regulation;

“main proceedings” means proceedings opened in accordance with Article 3(1) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of the EU Regulation and which—

- (a) in relation to Scotland, are set out in Annex A to that Regulation under the heading “United Kingdom”; and
- (b) in relation to another member State, are set out in Annex A under the heading relating to that member State;

“meeting” in relation to a company’s creditors means either a “physical meeting” or a “virtual meeting”;

“member State liquidator” means a person falling within the definition of “insolvency practitioner” in Article 2(5) of the EU Regulation appointed in proceedings to which the EU Regulation applies in a member State other than the United Kingdom;

[Note: “nominee” is defined in section 1(2) in relation to company voluntary arrangements];

“non-EU proceedings” means insolvency proceedings which are not main, secondary or territorial proceedings;

“office-holder” means a person who under the Act or these Rules holds an office in relation to insolvency proceedings and includes a nominee;

“official rate” is the rate of interest on a sheriff court decree or extract under section 9 of the Sheriff Courts (Scotland) Extracts Act 1892<sup>(9)</sup> (as it may be amended by section 4 of the Administration of Justice (Scotland) Act 1972)<sup>(10)</sup>;

“physical meeting” has the meaning given by rule 5.2;

“prescribed part” has the same meaning as in section 176A(2)(a)<sup>(11)</sup> and the Insolvency Act 1986 (Prescribed Part) Order 2003<sup>(12)</sup>;

“progress report” means a report which complies with rules 3.93 and 3.94;

[Note: “property” is defined in section 436(1)];

“proxy” and “proxy-holder” are to be interpreted in accordance with rule 6.2;

“qualified to act as an insolvency practitioner”, in relation to a company, is to be interpreted in accordance with Part 13 of the Act;

[Note: “records” are defined in section 436(1)];

“secondary proceedings” means proceedings opened in accordance with Article 3(2) and (3) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of the EU Regulation and which—

- (a) in relation to Scotland, are set out in Annex A to that Regulation under the heading “United Kingdom”; and
- (b) in relation to another member State are set out in Annex A under the heading relating to that member State;

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<sup>(9)</sup> 1892 c.17. See S.I. 1993/769.

<sup>(10)</sup> 1972 c.59.

<sup>(11)</sup> Section 176A was inserted by section 252 of the Enterprise Act 2002 (c.40).

<sup>(12)</sup> S.I. 2003/2097.

“serve” and “service” are to be interpreted in respect of a particular document by reference to the Rules of Court;

“standard contents” means—

- (a) for a Gazette notice, the standard contents set out in Chapter 5 of Part 1;
- (b) for a notice to be advertised other than in the Gazette, the standard contents set out in Chapter 6 of Part 1;
- (c) for a document to be delivered to the registrar of companies, the standard contents set out in Chapter 7 of Part 1; and
- (d) for notices to be delivered to other persons, the standard contents set out in Chapter 8 of Part 1;

“standard fee for copies” means 15 pence per A4 or A5 page or 30 pence per A3 page;

“statement of claim” is to be interpreted in accordance with rule 3.105;

“statement of proposals” means a statement made by an administrator under paragraph 49 of Schedule B1(13) setting out proposals for achieving the purpose of an administration;

“territorial proceedings” means proceedings opened in accordance with Article 3(2) and (4) of the EU Regulation and falling within the definition of insolvency proceedings in Article 2(4) of that Regulation and which—

- (a) in relation to Scotland, are set out in Annex A to the EU Regulation under the heading “United Kingdom”; and
- (b) in relation to another member State, are set out in Annex A under the heading relating to that member State;

“venue” in relation to any proceedings, attendance before the court, decision procedure or meeting means the time, date and place or platform for the proceedings, attendance, decision procedure or meeting;

“virtual meeting” has the meaning given by rule 5.2;

[Note: “writing” is to be construed in accordance with section 436B(14)];

“written resolution” in respect of a private company means a written resolution passed in accordance with Chapter 2 of Part 13 of the Companies Act.

- (2) An appointed person in relation to a company must be—
  - (a) qualified to act as an insolvency practitioner in relation to that company, or
  - (b) a person experienced in insolvency matters who is—
    - (i) a member or employee of the office-holder’s firm, or
    - (ii) an employee of the office-holder.
- (3) A fee or remuneration is chargeable when the work to which it relates is done.

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(13) Paragraph 49 is amended by paragraph 10 of Schedule 9 to the 2015 Act.

(14) Section 436B(1) provides that a reference in the Act to a thing in writing includes that thing in electronic form; subsection (2) excludes certain sections of the Act from the application of subsection (1). Section 436B was inserted by S.I. 2010/18.