
STATUTORY INSTRUMENTS

2018 No. 1082

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

PART 2

COMPANY VOLUNTARY ARRANGEMENTS

CHAPTER 1

Preliminary

Interpretation

2.1. In this part—

“nominee” and “supervisor” include the proposed nominee or supervisor in relation to a proposal; and

“proposal” means a proposal for a CVA.

CHAPTER 2

The proposal for a CVA (section 1)

[Notes: — (1) Section 1 sets out who may propose a CVA.

(2) A document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Proposal for a CVA: general principles and amendment

2.2.—(1) A proposal must—

- (a) contain identification details for the company;
- (b) explain why the proposer thinks a CVA is desirable;
- (c) explain why the creditors are expected to agree to a CVA; and
- (d) be authenticated and dated by the proposer.

(2) The proposal may be amended with the nominee’s agreement in writing in the following cases.

(3) The first case is where—

- (a) no steps have been taken to obtain a moratorium;
- (b) the nominee is not the liquidator or administrator of the company; and
- (c) the nominee’s report has not been lodged with the court under section 2(2).

(4) The second case is where—

- (a) the proposal is made with a view to obtaining a moratorium; and

- (b) the nominee’s statement under paragraph 6(2) of Schedule A1(1) (nominee’s opinion on prospects of CVA being approved etc.) has not yet been submitted to the directors.

Proposal: contents

2.3.—(1) The proposal must set out the following so far as known to the proposer—

Assets	<ul style="list-style-type: none"> (a) the company’s assets, with an estimate of their respective values; (b) which assets are subject to any security in favour of creditors and the extent of any such security; (c) which assets are to be excluded from the CVA; (d) particulars of any property to be included in the CVA which is not owned by the company, including details of who owns such property, and the terms on which it will be available for inclusion;
Liabilities	<ul style="list-style-type: none"> (a) the nature and amount of the company’s liabilities; (b) how the company’s liabilities will be met, modified, postponed or otherwise dealt with by means of the CVA and, in particular- <ul style="list-style-type: none"> (i) how preferential creditors and creditors who are, or claim to be, secured will be dealt with, (ii) how creditors who are connected with the company(2) will be dealt with, (iii) if the company is not in administration or liquidation whether, if the company did go into administration or liquidation, there are circumstances which might give rise to claims under section 242 (gratuitous alienations) section 243 (unfair preferences), section 244 (extortionate credit transactions) or section 245(3) (floating charges invalid) and (iv) where there are circumstances that might give rise to such claims, whether, and if so what, provision will be made to indemnify the company in respect of them;
Nominee’s fees and expenses	the amount proposed to be paid to the nominee by way of fees and expenses;
Supervisor	<ul style="list-style-type: none"> (a) identification and contact details for the supervisor; (b) confirmation that the supervisor is qualified to act as an insolvency practitioner in relation to the company and the name of the relevant recognised professional body which is the source of the supervisor’s authorisation; (c) how the fees and expenses of the supervisor will be determined and paid; (d) the functions to be performed by the supervisor; (e) where it is proposed that two or more supervisors be appointed a statement whether acts done in connection with the CVA may be done by any one or more of them or must be done by all of them;
Cautionary obligations and proposed	<ul style="list-style-type: none"> (a) whether any, and if so what, cautionary obligations (including guarantees) have been given in respect of the company’s debts, specifying which of the guarantors are persons connected with the company;

(1) Paragraph 6(2) was added by the Insolvency Act 2000 (c.39) and is amended by paragraph 9(2) of Schedule 9 to the 2015 Act.

(2) “Connected with a company” is defined in section 249.

(3) There are amendments to sections 242, 244 and 245 but they are not relevant for the purposes of this rule.

cautionary obligations	(b) whether any, and if so what, cautionary obligations (including guarantees) are proposed to be offered for the purposes of the CVA and, if so, by whom and whether security is to be given or sought;
Timing	(a) the proposed duration of the CVA; (b) the proposed dates of distributions to creditors, with estimates of their amounts;
Type of insolvency proceedings	whether the insolvency proceedings will be main, secondary, territorial or non-EU insolvency proceedings with reasons;
Conduct of the business	how the business of the company will be conducted during the CVA;
Further credit facilities	details of any further proposed credit facilities for the company, and how the debts so arising are to be paid;
Handling of funds arising	(a) the manner in which funds held for the purposes of the CVA are to be banked, invested or otherwise dealt with pending distribution to creditors; (b) how funds held for the purpose of payment to creditors, and not so paid on the termination of the CVA, will be dealt with; (c) how the claim of any person bound by the CVA by virtue of section 5(2)(b)(ii)(4) or paragraph 37(2)(b)(ii) of Schedule A1 will be dealt with;
Address (where moratorium proposed)	where the proposal is made in relation to a company that is eligible for a moratorium (in accordance with paragraphs 2 and 3 of Schedule A1) with a view to obtaining a moratorium under Schedule A1, the address to which the documents referred to in paragraph 6(1) of that Schedule must be delivered; and
Other matters	any other matters which the proposer considers appropriate to enable members and creditors to reach an informed decision on the proposal.

(2) Where the proposal is made by the directors, it must contain an estimate so far as known to them of—

- (a) the value of the prescribed part if the proposal for the CVA is not accepted and the company goes into liquidation (whether or not the liquidator might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts); and
- (b) the value of the company's net property (as defined in section 176A(6)) on the date that the estimate is made.

(3) Where the proposal is made by the administrator or liquidator, it must contain the following so far as known to the office-holder—

- (a) an estimate of—
 - (i) the value of the prescribed part (whether or not the administrator or liquidator might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts) and
 - (ii) the value of the company's net property (as defined in section 176A(6));
- (b) a statement as to whether the administrator or liquidator proposes to make an application to the court under section 176A(5) and if so the reasons for the application; and

(4) Section 5(2) was amended by paragraph 6 of Schedule 2 and paragraph 1 of Schedule 5 to the Insolvency Act 2000 (c.39) and by paragraph 6 of Schedule 9 to the 2015 Act.

(c) details of the nature and amount of the company's preferential creditors.

(4) Information may be excluded from an estimate under paragraph (2) or (3)(a) if the inclusion of the information could seriously prejudice the commercial interests of the company.

(5) If the exclusion of such information affects the calculation of the estimate, the proposal must include a statement to that effect.

CHAPTER 3

Procedure for a CVA without a moratorium

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

Procedure for proposal where the nominee is not the liquidator or the administrator (section 2)

2.4.—(1) This rule applies where the nominee is not the same person as the liquidator or the administrator.

(2) A nominee who consents to act must deliver a notice of that consent to the proposer as soon as reasonably practicable after the proposal has been submitted to the nominee under section 2(3).

(3) The notice must state the date the nominee received the proposal.

(4) The period of 28 days in which the nominee must submit a report to the court under section 2(2)(5) begins on the date the nominee received the proposal as stated in the notice.

Statement of affairs (section 2(3))

2.5.—(1) The statement of the company's affairs required by section 2(3) must contain the following information—

- (a) a list of the company's assets, divided into such categories as are appropriate for easy identification, and with each category given an estimated value;
- (b) in the case of any property on which a claim against the company is wholly or partly secured, particulars of the claim, and of how and when the security was created;
- (c) the names and addresses of the preferential creditors, with the amounts of their respective claims;
- (d) the names and addresses of the unsecured creditors with the amounts of their respective claims;
- (e) particulars of any debts owed by the company to persons connected with it;
- (f) particulars of any debts owed to the company by persons connected with it;
- (g) the names and addresses of the company's members, with details of their respective shareholdings; and
- (h) any other particulars that the nominee in writing requires to be provided for the purposes of making the nominee's report on the proposal to the court.

(2) The statement must be made up to a date not earlier than two weeks before the date of the proposal.

(3) However the nominee may allow the statement to be made up to an earlier date (but not more than two months before the proposal) where that is more practicable.

(5) Section 2(2) was amended by paragraph 3 of Schedule 2 to the Insolvency Act 2000 (c.39) and by paragraph 2 of Schedule 9 to the 2015 Act.

(4) Where the statement is made up to an earlier date, the nominee's report to the court on the proposal must explain why.

(5) The statement of affairs must include a declaration that the information provided in it is, to the best of the proposer's knowledge and belief, accurate and complete.

(6) Where the proposal is made by the directors, only one director need make a declaration in accordance with paragraph (5).

Application to omit information from statement of affairs delivered to creditors

2.6. The nominee, the directors or any person appearing to the court to have an interest, may apply to the court for a direction that specified information be omitted from the statement of affairs, as delivered to the creditors, where disclosure of that information would be likely to prejudice the conduct of the CVA, or might reasonably be expected to lead to violence against any person.

Additional disclosure for assistance of nominee where nominee is not the liquidator or administrator

2.7.—(1) This rule applies where the nominee is not the administrator or the liquidator of the company.

(2) If it appears to the nominee that the nominee's report to the court cannot properly be prepared on the basis of information in the proposal and statement of affairs, the nominee may require the proposer to provide—

- (a) more information about the circumstances in which, and the reasons why, a CVA is being proposed;
- (b) particulars of any previous proposals which have been made in relation to the company under Part 1 of the Act; and
- (c) any further information relating to the company's affairs which the nominee thinks necessary for the purposes of the report.

(3) The nominee may require the proposer to inform the nominee whether, and if so in what circumstances, any person referred to in paragraph (4) has—

- (a) been concerned in the affairs of any other company (whether or not incorporated in Scotland) or limited liability partnership which has been the subject of insolvency proceedings;
- (b) been made bankrupt or had his or her estate sequestrated;
- (c) been the subject of a debt relief order;
- (d) granted a trust deed; or
- (e) entered into an arrangement with creditors.

(4) The persons referred to for the purposes of paragraph (3) are—

- (a) a director or officer of the company; and
- (b) a person who has been a director or officer of the company at any time in the period of two years ending with the date the nominee received the proposal.

(5) The proposer must give the nominee such access to the company's accounts and records as the nominee may require to enable the nominee to consider the proposal and prepare the nominee's report.

Nominee's report on proposal where the nominee is not the liquidator or administrator (section 2(2))

2.8.—(1) The nominee's report must be lodged with the court under section 2(2) accompanied by—

- (a) a copy of the report;
- (b) a copy of the proposal (as amended under rule 2.2(2) if that is the case); and
- (c) a copy of the statement of the company's affairs or a summary of it.

(2) The report must state—

- (a) why the nominee considers the proposal does or does not have a reasonable prospect of being implemented; and
- (b) why the members and the creditors should or should not be invited to consider the proposal.

(3) The court must endorse the nominee's report and the copy of it with the date of lodging and deliver the copy to the nominee.

(4) The nominee must deliver a copy of the report to the company.

Replacement of nominee (section 2(4))

2.9.—(1) A person (other than the nominee) who intends to apply to the court under section 2(4)(6) for the nominee to be replaced must deliver a notice that such an application is intended to be made to the nominee at least five business days before lodging the application with the court.

(2) A nominee who intends to apply under that section to be replaced must deliver a notice that such an application is intended to be made to the person intending to make the proposal at least five business days before lodging the application with the court.

(3) The court must not appoint a replacement nominee unless a statement by the replacement nominee has been lodged with the court confirming that person—

- (a) consents to act; and
- (b) is qualified to act as an insolvency practitioner in relation to the company.

CHAPTER 4**Procedure for a CVA with a Moratorium**

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

Statement of affairs (paragraph 6(1)(b) of Schedule A1)

2.10.—(1) The statement of affairs required by paragraph 6(1)(b) of Schedule A1 must contain the same information as is required by rule 2.5.

(2) The statement must be made up to a date not earlier than two weeks before the date of the proposal.

(3) However the nominee may allow the statement to be made up to an earlier date (but no more than two months before the date of the proposal) where that is more practicable.

(4) Where the statement is made up to an earlier date, the nominee's statement to the directors on the proposal must explain why.

(6) Section 2(4) was amended by paragraph 20 of Schedule 6 to the Deregulation Act 2015 (c.20).

(5) The statement of affairs must include a declaration that the information provided in it is, to the best of the knowledge and belief of at least one of the directors, accurate and complete.

Application to omit information from a statement of affairs

2.11. The nominee, the directors or any person appearing to the court to have an interest, may apply to the court for a direction that specified information be omitted from the statement of affairs, as delivered to the creditors, where disclosure of that information would be likely to prejudice the conduct of the CVA, or might reasonably be expected to lead to violence against any person.

The nominee's statement (paragraph 6(2) of Schedule A1)

2.12.—(1) The nominee must submit to the directors the statement required by paragraph 6(2)(7) of Schedule A1 within 28 days of the submission to the nominee of the proposal.

- (2) The statement must—
 - (a) include the name and address of the nominee; and
 - (b) be authenticated and dated by the nominee.
- (3) A statement which contains an opinion on all the matters referred to in paragraph 6(2) must—
 - (a) explain why the nominee has formed that opinion; and
 - (b) if the nominee is willing to act, be accompanied by a statement of the nominee's consent to act in relation to the proposed CVA.
- (4) The statement of the nominee's consent must—
 - (a) include the name and address of the nominee;
 - (b) state that the nominee is qualified to act as an insolvency practitioner in relation to the company; and
 - (c) be authenticated and dated by the nominee.

Documents lodged with court to obtain moratorium (paragraph 7(1) of Schedule A1)

2.13.—(1) The statement of the company's affairs which the directors lodge with the court under paragraph 7(1)(b) of Schedule A1 must be the same as the statement they submit to the nominee under paragraph 6(1)(b) of that Schedule.

- (2) The statement required by paragraph 7(1)(c) of that Schedule that the company is eligible for a moratorium must—
 - (a) be made by the directors;
 - (b) state that the company meets the requirements of paragraph 3 of Schedule A1 and is not a company which falls within paragraph 2(2) of that Schedule; and
 - (c) be authenticated and dated by the directors.
- (3) The statement required by paragraph 7(1)(d) of Schedule A1 that the nominee has consented to act must be in the same terms as the statement referred to in rule 2.12(3)(b).
- (4) The statement of the nominee's opinion required by paragraph 7(1)(e)(8) of that Schedule—
 - (a) must be the same as the statement of opinion required by paragraph 6(2) of that Schedule; and
 - (b) must be lodged with the court not later than ten business days after it was submitted to the directors.

(7) Paragraph 6(2) is amended by paragraph 9(2) of Schedule 9 to the 2015 Act.

(8) Paragraph 7(1)(e) is amended by paragraph 9(3) of Schedule 9 to the 2015 Act.

(5) A statement from the nominee whether the proceedings will be main, secondary, territorial or non-EU proceedings with reasons for so stating must also be lodged with the court.

(6) The documents lodged with the court under paragraph 7(1) of Schedule A1, together with the statement required by paragraph (5) of this rule, must be accompanied by four copies of a schedule, authenticated and dated by the directors, identifying the company and listing all the documents lodged.

(7) The court must endorse the copies of the schedule with the date on which the documents were lodged and deliver three copies of the endorsed schedule to the directors.

Notice and advertisement of beginning of moratorium

2.14.—(1) The directors must, as soon as reasonably practicable, after delivery to them of the endorsed copies of the schedule deliver two copies of the schedule referred to in rule 2.13(6) to the nominee and one to the company.

(2) After delivery of the copies of the schedule, the nominee—

- (a) must, as soon as reasonably practicable, gazette a notice of the coming into force of the moratorium; and
- (b) may advertise the notice in such other manner as the nominee thinks fit.

(3) The notice must specify—

- (a) the nature of the business of the company;
- (b) that a moratorium under section 1A has come into force; and
- (c) the date on which it came into force.

(4) The nominee must, as soon as reasonably practicable, deliver a notice of the coming into force of the moratorium to—

- (a) the registrar of companies;
- (b) the company; and
- (c) any petitioning creditor of whose address the nominee is aware.

(5) The notice must specify—

- (a) the date on which the moratorium came into force; and
- (b) the court with which the documents to obtain the moratorium were lodged.

(6) The nominee must deliver a notice of the coming into force of the moratorium and the date on which it came into force to—

- (a) any messenger-at-arms or sheriff officer who to the knowledge of the nominee is charged with executing diligence against the company or its property; and
- (b) the Keeper of the Register of Inhibitions and Adjudications.

Notice of continuation of moratorium where physical meeting of creditors is summoned (paragraph 8(3B) of Schedule A1)

2.15.—(1) This rule applies where under paragraph 8(3B)(b) and (3C) of Schedule A1(9) the moratorium continues after the initial period of 28 days referred to in paragraph 8(3) of that Schedule because a physical meeting of the company's creditors is first summoned to take place after the end of that period.

(9) Paragraph 8 is amended by paragraph 9(4) and (5) of Schedule 9 to the 2015 Act.

(2) The nominee must lodge with the court and deliver to the registrar of companies a notice of the continuation as soon as reasonably practicable after summoning such a meeting of the company's creditors.

(3) The notice must—

- (a) identify the company;
- (b) give the name and address of the nominee;
- (c) state the date on which the notice of the meeting was sent to the creditors under rule 5.6;
- (d) state the date for which the meeting is summoned;
- (e) state that under paragraph 8(3B)(b) and (3C) of Schedule A1 the moratorium will be continued to that date; and
- (f) be authenticated and dated by the nominee.

Notice of decision extending or further extending a moratorium (paragraph 36 of Schedule A1)

2.16.—(1) This rule applies where the moratorium is extended, or further extended, by a decision which takes effect under paragraph 36(10) of Schedule A1.

(2) The nominee must, as soon as reasonably practicable, lodge with the court and deliver to the registrar of companies a notice of the decision.

(3) The notice must—

- (a) identify the company;
- (b) give the name and address of the nominee;
- (c) state the date on which the moratorium was extended or further extended;
- (d) state the new expiry date of the moratorium; and
- (e) be authenticated and dated by the nominee.

Notice of court order extending, further extending, renewing or continuing a moratorium (paragraph 34(2) of Schedule A1)

2.17. Where the court makes an order extending, further extending, renewing or continuing a moratorium, the nominee must, as soon as reasonably practicable, deliver to the registrar of companies a notice stating the new expiry date of the moratorium.

Advertisement of end of a moratorium (paragraph 11(1) of Schedule A1)

2.18.—(1) After the moratorium ends, the nominee—

- (a) must, as soon as reasonably practicable, gazette a notice of its coming to an end; and
- (b) may advertise the notice in such other manner as the nominee thinks fit.

(2) The notice must specify—

- (a) the nature of the company's business;
- (b) that a moratorium under section 1A has ended; and
- (c) the date on which it came to an end.

(3) The nominee must, as soon as reasonably practicable,—

(10) Sub-paragraphs (2), (3), (4)(a) and (5)(a) of paragraph 36 are amended by paragraph 9(28) and (29) of Schedule 9 to the 2015 Act.

- (a) lodge with the court a notice specifying the date on which the moratorium ended; and
- (b) deliver such a notice to—
 - (i) the registrar of companies,
 - (ii) the company,
 - (iii) all the creditors, and
 - (iv) the Keeper of the Register of Inhibitions and Adjudications.

Disposal of secured property etc. during a moratorium

2.19.—(1) This rule applies where the company applies to the court under paragraph 20 of Schedule A1 for permission to dispose of—

- (a) property subject to a security, or
- (b) goods under a hire-purchase agreement.

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

(3) The company must, as soon as reasonably practicable, deliver a notice of the venue to the holder of the security or the owner of the goods under the agreement.

(4) If an order is made, the court must deliver two copies of the order certified by the court to the company and the company must, as soon as reasonably practicable, deliver one of them to the holder or owner.

Withdrawal of nominee's consent to act (paragraph 25(5) of Schedule A1)

2.20.—(1) A nominee who withdraws consent to act must lodge with the court and deliver a notice under paragraph 25(5) of Schedule A1 as soon as reasonably practicable.

(2) The notice must—

- (a) identify the company;
- (b) give the name and address of the nominee;
- (c) specify the date on which the nominee withdrew consent;
- (d) state, with reference to the circumstances mentioned in paragraph 25(2) of that Schedule, why the nominee withdrew consent; and
- (e) be authenticated and dated by the nominee.

Application to the court to replace the nominee (paragraph 28 of Schedule A1)

2.21.—(1) Directors who intend to make an application under paragraph 28(11) of Schedule A1 for the nominee to be replaced must deliver a notice of the intention to make the application to the nominee at least five business days before lodging the application with the court.

(2) A nominee who intends to make an application under that paragraph to be replaced must deliver notice of the intention to make the application to the directors at least five business days before lodging the application with the court.

(3) The court must not appoint a replacement nominee unless a statement by the replacement nominee has been lodged with the court confirming that that person—

- (a) consents to act, and
- (b) is qualified to act as an insolvency practitioner in relation to the company.

(11) Paragraph 28(1) is amended by paragraph 20(2)(e)(i) of Schedule 6 to the Deregulation Act 2015 (c.20).

Notice of appointment of replacement nominee

2.22.—(1) A person appointed as a replacement nominee must as soon as reasonably practicable—

- (a) deliver a notice of the appointment to the registrar of companies and the former nominee; and
 - (b) where the appointment is not by the court, lodge a notice of the appointment with the court.
- (2) The notice of the appointment must—
- (a) identify the company;
 - (b) give the name and address of the replacement nominee;
 - (c) specify the date on which the replacement nominee was appointed to act; and
 - (d) be authenticated and dated by the replacement nominee.

Applications to court to challenge nominee’s actions etc. (paragraphs 26 and 27 of Schedule A1)

2.23. A person intending to make an application to the court under paragraph 26 or 27 of Schedule A1 must deliver a notice of the intention to make the application to the nominee at least five business days before lodging the application with the court.

CHAPTER 5

Consideration of the proposal by the company members and creditors

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

Consideration of proposal: common requirements (section 3)

2.24.—(1) The nominee must invite the members of the company to consider a proposal by summoning a meeting of the company as required by section 3.

(2) The nominee must invite the creditors to consider the proposal by way of a decision procedure.

(3) The nominee must examine whether there is jurisdiction to open the proceedings and must specify in the nominee’s comments on the proposal required by paragraphs (4)(d)(iii) and (6)(a)(iii) whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating.

(4) In the case of the members, the nominee must deliver to every person whom the nominee believes to be a member a notice which must—

- (a) identify the insolvency proceedings;
- (b) state the purpose of, and venue for, the meeting;
- (c) state the effect of the following—
 - (i) rule 2.34 about members’ voting rights,
 - (ii) rule 2.35 about the requisite majority of members for passing resolutions, and
 - (iii) rule 5.32 about rights of appeal; and
- (d) be accompanied by—
 - (i) a copy of the proposal,
 - (ii) a copy of the statement of affairs, or if the nominee thinks fit, a summary including a list of creditors with the amounts of their debts,

- (iii) the nominee's comments on the proposal, unless the nominee is the administrator or liquidator,
- (iv) details of each resolution to be voted on and
- (v) a blank proxy.

(5) In the case of the creditors, the nominee must deliver to each creditor a notice which complies with rule 5.8 so far as is relevant.

(6) The notice delivered under paragraph (5) must also—

- (a) be accompanied by—
 - (i) a copy of the proposal,
 - (ii) a copy of the statement of affairs or, if the nominee thinks fit, a summary including a list of creditors with the amounts of their debts, and
 - (iii) the nominee's comments on the proposal, unless the nominee is the administrator or liquidator; and
- (b) state how a creditor may propose a modification to the proposal, and how the nominee will deal with such a proposal for a modification.

(7) A notice delivered under paragraph (4) or (5) may also state that the results of the consideration of the proposal will be made available for viewing and downloading on a website and that no other notice will be delivered to the creditors or members (as the case may be).

(8) Where the results of the consideration of the proposal are to be made available for viewing and downloading on a website the nominee must comply with the requirements for use of a website to deliver a document set out in rule 1.44(2)(a) to (c), (3) and (4) with any necessary adaptations and rule 1.44(5)(a) applies to determine the time of delivery of the results of the consideration of the proposal.

Members' consideration at a meeting

2.25.—(1) The nominee must have regard to the convenience of those invited to attend when fixing the venue for a meeting (including the resumption of an adjourned meeting).

(2) The date of the meeting (except where the nominee is the administrator or liquidator of the company) must not be more than 28 days from the date on which—

- (a) the nominee's report was lodged with the court under rule 2.8; or
- (b) the moratorium came into force.

Creditors' consideration by a decision procedure

2.26. Where the nominee is inviting the creditors to consider the proposal by a decision procedure, the decision date must be not less than 14 days from the date of delivery of the notice and not more than 28 days from the date on which—

- (a) the nominee's report is lodged with the court under rule 2.8; or
- (b) the moratorium came into force.

Timing of decisions on proposal

2.27.—(1) The decision date for the creditors' decision procedure may be on the same day as, or on a different day to, the meeting of the company.

(2) The creditors' decision on the proposal must be made before the members' decision.

(3) The members' decision must be made not later than five business days after the creditors' decision.

(4) For the purpose of this rule, the timing of the members' decision is either the date and time of the meeting of the company or, where the members are using the written resolution procedure, the deadline for receipt of members' votes.

Creditors' approval of modified proposal

2.28.—(1) This rule applies where a decision is sought from the creditors following notice to the nominee of proposed modifications to the proposal from the company's directors under paragraph 31(7)(12) of Schedule A1.

(2) The decision must be sought by a decision procedure with a decision date within 14 days of the date on which the directors gave notice to the nominee of the modifications.

(3) The creditors must be given at least seven days' notice of the decision date.

Notice of members' meeting and attendance of officers

2.29.—(1) A notice under rule 2.24(4) summoning a meeting of the company must be delivered at least 14 days before the day fixed for the meeting to all the members and to—

- (a) every officer or former officer of the company whose presence the nominee thinks is required; and
- (b) all other directors of the company.

(2) Every officer or former officer who receives such a notice stating that the nominee thinks that person's attendance is required, is required to attend the meeting.

Requisition of physical meeting by creditors

2.30.—(1) This rule applies where the creditors requisition a physical meeting to consider a proposal (with or without modifications) in accordance with section 246ZE(13) and rule 5.6.

(2) The meeting must take place within 14 days of the date on which one of the thresholds under section 246ZE(7) has been met or surpassed.

(3) A notice summoning a meeting of the creditors must be delivered to the creditors at least seven days before the day fixed for the meeting.

Non-receipt of notice by members

2.31. Where in accordance with the Act or these Rules the members are invited to consider a proposal, the consideration is presumed to have taken place even if not everyone to whom the notice is to be delivered receives it.

Proposal for alternative supervisor

2.32.—(1) If, in response to a notice inviting the creditors to consider the proposal other than at a meeting, a creditor proposes that a person other than the nominee be appointed as supervisor, that person's consent to act and confirmation that that person is qualified to act as an insolvency practitioner in relation to the company must be delivered to the nominee by the decision date.

(2) Where the members of the company are using the written resolution procedure and a member proposes that a person other than the nominee be appointed as supervisor, that person's consent to

(12) Paragraph 31(7) is amended by paragraph 9(18) and (19) of Schedule 9 to the 2015 Act.

(13) Section 246ZE is inserted by section 122 of the 2015 Act.

act and confirmation that that person is qualified to act as an insolvency practitioner in relation to the company must be delivered to the nominee by the deadline for receipt of members' votes.

(3) If, at either a meeting of the company or the creditors to consider the proposal, a resolution is moved for the appointment of a person other than the nominee to be supervisor, the person moving the resolution must produce to the chair at or before the meeting—

- (a) confirmation that the person proposed as supervisor is qualified to act as an insolvency practitioner in relation to the company; and
- (b) that person's written consent to act (unless that person is present at the meeting and there signifies consent to act).

Chair at meetings

2.33. The chair of a meeting under this Part must be the nominee or an appointed person.

Members' voting rights

2.34.—(1) A member is entitled to vote according to the rights attaching to the member's shares in accordance with the articles of the company.

(2) A member's shares include any other interest that person may have as a member of the company.

(3) The value of a member for the purposes of voting is determined by reference to the number of votes conferred on that member by the company's articles.

Requisite majorities of members

2.35.—(1) A resolution is passed by members by the written resolution procedure or at a meeting of the company when a majority (in value) of those voting have voted in favour of it.

(2) This is subject to any express provision to the contrary in the company's articles.

(3) A resolution is not passed by written resolution unless at least one member has voted in favour of it.

Notice of order made under section 4A(6) or paragraph 36(5) of Schedule A1

2.36.—(1) This rule applies where the court makes an order under section 4A(6)(14) or paragraph 36(5)(15) of Schedule A1.

(2) The member who applied for the order must deliver a copy of it certified by the court to—

- (a) the proposer; and
- (b) the supervisor (if different).

(3) If the directors are the proposer a single certified copy may be delivered to the company at its registered office.

(4) The supervisor, or the proposer where there is no supervisor, must as soon as reasonably practicable deliver a notice that the order has been made to every person who had received a notice to vote on the matter or who is affected by the order.

(5) The member who applied for the order must, within five business days of the date the order is made, deliver a copy of the certified copy to the registrar of companies.

(14) Section 4A was added by the Insolvency Act 2000 (c.45), Schedule 2, paragraph 5. Subsections (2), (3), (4)(a) and (6)(a) are relevantly amended by paragraph 5 of Schedule 9 to the 2015 Act.

(15) Paragraph 36 is amended by paragraph 9(28) and (29) of Schedule 9 to the 2015 Act.

Report of consideration of proposal under section 4(6) and (6A) or paragraph 30(3) and (4) of Schedule A1

2.37.—(1) A report, or reports as the case may be, must be prepared of the consideration of a proposal under section 4(6) and (6A)(16) or paragraph 30(3)(17) and (4) of Schedule A1 by the convener or, in the case of a meeting, the chair.

(2) The report must—

- (a) state whether the proposal was approved or rejected and whether by the creditors alone or by both the creditors and members and, in either case, whether any approval was met with any modifications;
- (b) list the creditors and members who voted or attended or who were represented at a meeting or decision procedure (as applicable) used to consider the proposal, setting out (with their respective values) how they voted on each resolution or whether they abstained;
- (c) identify which of those creditors were considered to be connected with the company;
- (d) if the proposal was approved, state with reasons whether the proceedings are main, secondary, territorial or non-EU proceedings; and
- (e) include such further information as the nominee or the chair thinks it appropriate to make known to the court.

(3) A copy of the report must be lodged with the court within four business days of the date of the company meeting.

(4) The court must endorse the copy of the report with the date of lodging.

(5) The chair (in the case of a company meeting) or otherwise the convener must give notice of the result of the consideration of the proposal to everyone who was invited to consider the proposal or to whom notice of a decision procedure or meeting was delivered as soon as reasonably practicable after a copy of the report is lodged with the court.

(6) Where the decision approving the CVA has effect under section 4A or paragraph 36 of Schedule A1 with or without modifications, the supervisor must as soon as reasonably practicable deliver a copy of the convener's report or, in the case of a meeting, the chair's report, to the registrar of companies.

CHAPTER 6

Additional matters concerning and following approval of CVA

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

Handover of property etc. to supervisor

2.38.—(1) Where the decision approving a CVA has effect under section 4A or paragraph 36 of Schedule A1, and the supervisor is not the same person as the proposer, the proposer must, as soon as reasonably practicable, do all that is required to put the supervisor in possession of the assets included in the CVA.

(2) Where the company is in administration or liquidation and the supervisor is not the same person as the administrator or liquidator, the supervisor must—

(16) Section 4(6) is amended by paragraph 4(4) of Schedule 9 to the 2015 Act and section 6A is inserted by paragraph 4(7) of that Schedule.

(17) Paragraph 30(3) is amended by paragraph 9(12) of Schedule 9 to the 2015 Act and paragraph 30(4) is inserted by paragraph 9(13) of that Schedule.

- (a) before taking possession of the assets included in the CVA, deliver to the administrator or liquidator an undertaking to discharge the balance referred to in paragraph (3) out of the first realisation of assets; or
 - (b) upon taking possession of the assets included in the CVA, discharge such balance.
- (3) The balance is any balance due to the administrator or liquidator—
- (a) by way of fees or expenses properly incurred and payable under the Act or any rules made under section 411 which apply to Scotland; and
 - (b) on account of any advances made in respect of the company together with interest on such advances at the official rate at the date on which the company entered administration or went into liquidation.
- (4) The administrator or liquidator has a security over the assets included in the CVA in respect of any sums comprising the balance referred to in paragraph (3), subject to deduction from any realisations by the supervisor of the proper costs and expenses of such realisations.
- (5) The supervisor must from time to time out of the realisation of assets—
- (a) discharge all cautionary obligations (including guarantees) properly given by the administrator or liquidator for the benefit of the company; and
 - (b) pay all the expenses of the administrator or liquidator.

Revocation or suspension of CVA

2.39.—(1) This rule applies where the court makes an order of revocation or suspension under section 6 or paragraph 38 of Schedule A1(**18**).

- (2) The applicant for the order must deliver a copy of it certified by the court to—
 - (a) the proposer; and
 - (b) the supervisor (if different).
- (3) If the directors are the proposer, a single certified copy of the order may be delivered to the company at its registered office.
- (4) If the order includes a direction by the court under section 6(4)(b) or (c) or under paragraph 38(4)(b) or (c) of Schedule A1 for action to be taken, the applicant for the order must deliver a notice that the order has been made to the person who is directed to take such action.
- (5) The proposer must—
 - (a) as soon as reasonably practicable deliver a notice that the order has been made to all of those persons to whom a notice to consider the matter was delivered or who appear to be affected by the order;
 - (b) within five business days of delivery of a copy of the order (or within such longer period as the court may allow), deliver (if applicable) a notice to the court advising that it is intended to make a revised proposal to the company and its creditors, or to invite re-consideration of the original proposal.
- (6) The applicant for the order must deliver a copy of the certified copy to the registrar of companies within five business days of the making of the order with a notice which must contain the date on which the CVA took effect.

(18) Section 6 is amended by paragraph 7 of Schedule 9 to the 2015 Act and paragraph 38(1) to (7) and (9) are amended and (1A) and (4)(c) are inserted by paragraph 9(32) to (42) of that Schedule.

Supervisor's accounts and reports

2.40.—(1) The supervisor must keep accounts and records where the CVA authorises or requires the supervisor—

- (a) to carry on the business of the company;
- (b) to realise assets of the company; or
- (c) otherwise to administer or dispose of any of its funds.

(2) The accounts and records which must be kept are of the supervisor's acts and dealings in, and in connection with, the CVA, including in particular records of all receipts and payments of money.

(3) The supervisor must preserve any such accounts and records which were kept by any other person who has acted as supervisor of the CVA and are in the supervisor's possession.

(4) The supervisor must deliver reports on the progress and prospects for the full implementation of the CVA to—

- (a) the registrar of companies;
- (b) the company;
- (c) the creditors bound by the CVA;
- (d) subject to paragraph (10) below, the members; and
- (e) if the company is not in liquidation, the company's auditors (if any) for the time being.

(5) The report delivered to the registrar of companies must be accompanied by a notice which must contain the date on which the CVA took effect.

(6) The first report must cover the period of 12 months commencing on the date on which the CVA was approved and a further report must be made for each subsequent period of 12 months.

(7) Each report must be delivered within the period of two months after the end of the 12 month period.

(8) Such a report is not required if the obligation to deliver a final report under rule 2.43 arises in the two month period.

(9) Where the supervisor is authorised or required to do any of the things mentioned in paragraph (1), the report must—

- (a) include or be accompanied by a summary of receipts and payments required to be recorded by virtue of paragraph (2); or
- (b) state that there have been no such receipts and payments.

(10) The court may, on application by the supervisor, dispense with the delivery of such reports or summaries to members, either altogether or on the basis that the availability of the report to members is to be advertised by the supervisor in a specified manner.

Production of accounts and records to Secretary of State

2.41.—(1) The Secretary of State may, during the CVA, or after its full implementation or termination, require the supervisor to produce for inspection (either at the premises of the supervisor or elsewhere)—

- (a) the supervisor's accounts and records in relation to the CVA; and
- (b) copies of reports and summaries prepared in compliance with rule 2.40.

(2) The Secretary of State may require the supervisor's accounts and records to be audited and, if so, the supervisor must provide such further information and assistance as the Secretary of State requires for the purposes of audit.

Fees and expenses

2.42. The fees and expenses that may be incurred for the purposes of the CVA are—

- (a) fees for the nominee's services agreed with the company (or, as the case may be, the administrator or liquidator) and disbursements made by the nominee before the decision approving the CVA takes effect under section 4A or paragraph 36 of Schedule A1;
- (b) fees or expenses which—
 - (i) are sanctioned by the terms of the CVA, or
 - (ii) where they are not sanctioned by the terms of the CVA would be payable, or correspond to those which would be payable, in an administration or winding up.

Termination or full implementation of CVA

2.43.—(1) Not more than 28 days after the termination or full implementation of the CVA the supervisor must deliver a notice that the CVA has been terminated or fully implemented to all the members and those creditors who are bound by the arrangement.

(2) The notice must state the date the CVA took effect, and must be accompanied by a copy of a report by the supervisor which—

- (a) summarises all receipts and payments in relation to the CVA;
- (b) explains any departure from the terms of the CVA as it originally had effect;
- (c) if the CVA has terminated, sets out the reasons why; and
- (d) states (if applicable) the amount paid to any unsecured creditors by virtue of section 176A.

(3) The supervisor must, within the period of 28 days mentioned in paragraph (1) send to the registrar of companies and lodge with the court a copy of the notice to creditors and of the supervisor's report.

(4) The supervisor must not vacate office until after the copies of the notice and report have been delivered to the registrar of companies and lodged with the court.

CHAPTER 7**Time recording information**

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

Provision of information

2.44.—(1) This rule applies where the remuneration of the nominee or the supervisor has been fixed on the basis of the time spent.

- (2) A person who is acting, or has acted within the previous two years, as—
 - (a) the nominee in relation to a proposal; or
 - (b) the supervisor in relation to a CVA,

must, within 28 days of receipt of a request from a person mentioned in paragraph (3), deliver free of charge to that person a statement complying with paragraphs (4) and (5).

- (3) The persons are—
 - (a) any director of the company; and
 - (b) where the proposal has been approved, any creditor or member.
- (4) The statement must cover the period which—

- (a) in the case of a person who has ceased to act as nominee or supervisor in relation to a company, begins with the date of appointment as nominee or supervisor and ends with the date of ceasing to act; and
 - (b) in any other case, consists of one or more complete periods of six months beginning with the date of appointment and ending most nearly before the date of receiving the request.
- (5) The statement must set out—
- (a) the total number of hours spent on the matter during that period by the nominee or supervisor, and any staff;
 - (b) for each grade of staff engaged on the matter, the average hourly rate at which work carried out by staff in that grade is charged; and
 - (c) the number of hours spent on the matter by each grade of staff during that period.