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STATUTORY INSTRUMENTS

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**2018 No. 1082**

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

PART 3

ADMINISTRATION

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

**Order of priority**

**3.51.**—(1) Where there is a former administrator, the former administrator's remuneration and expenses as determined in accordance with rule 3.98 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 caution provided by the administrator in accordance with the Act or these Rules;
- (c) where an administration order was made, the expenses of the applicant and any person appearing on the hearing of the application whose expenses 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 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 3.90 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 Chapter 14 of this Part of these Rules 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.

### **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 other than in a case falling in sub-paragraph (b); 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 (to creditors or preferential creditors as the case may be) 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) 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 expenses 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 of creditors in accordance with paragraph (4), the other insolvency practitioner may apply to the court for an order requiring the administrator to do so.