
STATUTORY INSTRUMENTS

2018 No. 1082

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

PART 3

ADMINISTRATION

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;

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

“fixed security”, in relation to any property of a company, means any security, other than a floating charge or a charge having the nature of a floating charge, which on the winding up of the company in Scotland would be treated as an effective security over that property, and (without prejudice to that generality) includes a security over that property, being a heritable security within the meaning of section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970 ^{M1}.

Marginal Citations

M1 1970 c.35 is amended by Schedule 12 and 13 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000, asp 5, Schedule 14 of the Title Conditions (Scotland) Act 2003 asp 9 and Schedule 5 to the Land Registration etc. (Scotland) Act 2012 asp 5.

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 notice under paragraph 47(1) of Schedule B1 must be delivered to each person required to provide a statement of affairs of the company (“statement of affairs”).

(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 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,
 - (ii) the requirement to deliver the statement of affairs to the administrator not later than 11 days after receipt of the notice requiring the statement of affairs, and
 - (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 together with a copy of the statement.

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

- 3.30.—**(1) The statement of 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) [^{F1}the following and, in addition, where paragraph (2B) applies, the information specified in that paragraph] —
- (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 security,
 - (ii) any assets subject to a floating charge,
 - (iii) any uncharged assets, and
 - (iv) the total 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 security 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, conditional sale and hiring agreements,
 - (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.

[^{F2}(2A) Paragraph (2B) applies if a moratorium under Part A1 of the Act is, or has been, in force for the company at any time within the period of 12 weeks ending with the day on which it entered administration.

(2B) Where this paragraph applies the statement of affairs must identify which of the debts owed by the company are—

- (a) moratorium debts; or
- (b) priority pre-moratorium debts

within the meaning given by section 174A.

(2C) Where paragraph (2B) applies—

- (a) Sub-paragraph 2(a)(iv) has effect as if the references to preferential creditors included references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A; and
- (b) Sub-paragraph 2(b)(i), (ii), (vii) has effect as if the reference to the preferential debt including references to moratorium debts and priority pre-moratorium debts within the meaning given by section 174A.]

(3) The list of creditors required by paragraph 47(2) of Schedule B1 and paragraph (2)(c) of this rule must contain the particulars mentioned in 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 mentioned in 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).

Textual Amendments

- F1** Words in rule 3.30(2) inserted (1.10.2021) by [The Insolvency \(Scotland\) \(Company Voluntary Arrangements and Administration\) \(Amendment\) Rules 2021 \(S.I. 2021/1026\)](#), rules 1, **22(2)** (with rules 4, 5)
- F2** Rules 3.30(2A)-(2C) inserted (1.10.2021) by [The Insolvency \(Scotland\) \(Company Voluntary Arrangements and Administration\) \(Amendment\) Rules 2021 \(S.I. 2021/1026\)](#), rules 1, **22(3)** (with rules 4, 5)

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 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 deliver 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) A statement of concurrence must be a statutory declaration made in accordance with the Statutory Declarations Act 1835 ^{M2}.

(7) 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.

Marginal Citations

- M2** [1835 c.62](#). There are amendments to this Act which are not relevant to this instrument.

Statement of affairs: registrar of companies

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

(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) 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.

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

- (a) lodge 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.

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

(7) Copies of any order made on the application must be certified by the court and delivered by the court to the applicant and the administrator.

(8) The expenses of an application under this rule 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 administrator must pay as an expense of the administration any expenses which the administrator considers to have been reasonably incurred by —

- (a) a nominated person in making a statement of affairs and a statutory declaration; or
- (b) a relevant person in making a statement of concurrence.

(2) Any decision by the administrator under this rule is subject to appeal to the court.

Changes to legislation:

There are currently no known outstanding effects for the The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018, CHAPTER 6.