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## STATUTORY INSTRUMENTS

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# 2021 No. 1178

## The Payment and Electronic Money Institution Insolvency (England and Wales) Rules 2021

### PART 3

#### Process of Special Administration

#### CHAPTER 2

#### Statement of proposals

#### **Administrator's proposals**

**26.**—(1) The administrator must under paragraph 49 (or regulation 39 where the FCA has given a direction under regulation 38 which has not been withdrawn) make a statement of proposals, which is required by paragraph 49(4) to be delivered to the registrar of companies, creditors, every customer of whose claim the administrator is aware and who the administrator has a means of contacting, the FCA and members.

(2) In addition to the information required by paragraph 49 (or regulation 39, if applicable), the statement of proposals must include—

- (a) a statement that the proceedings are being held in the court and the court reference number,
- (b) the full name, any other trading names, the registered address and registered number of the institution,
- (c) details of the administrator's appointment (including the date of appointment and details of who applied for the appointment),
- (d) in the case of joint administrators, details of the apportionment of functions,
- (e) the names of the directors and secretary of the institution and details of any shareholdings in the institution they have,
- (f) an account of the circumstances giving rise to the application for the appointment of the administrator,
- (g) if a statement of affairs has been submitted:
  - (i) a copy or summary of it, except so far as an order under rule 22 limits disclosure of it, and excluding any schedule referred to in rule 19(5)(b) or rule 20(3)(a) or the particulars relating to creditors or customers contained in any such schedule, and
  - (ii) any comments which the administrator may have on the statement of affairs,
- (h) if an order limiting the disclosure of the statement of affairs has been made under rule 22, a statement of that fact, as well as—
  - (i) details of who submitted the statement of affairs,
  - (ii) the date of the order for limited disclosure, and
  - (iii) the details or a summary of the details that are not subject to that order,

- (i) subject to sub-paragraphs (j) and (k), if a full statement of affairs is not submitted, or if no statement of affairs is submitted, the name, postal address and the amount of the debt owing to each creditor of the institution including details of any security held and the value of any such security,
- (j) sub-paragraph (k) applies where the particulars required by sub-paragraph (i) relate to creditors who are either—
  - (i) employees or former employees of the institution, or
  - (ii) consumers claiming amounts paid in advance for the supply of goods or services,
- (k) where this paragraph applies—
  - (i) the particulars required under sub-paragraph (i) must state separately for each of sub-paragraphs (j)(i) and (ii) the number of such creditors and the total of the debts owed to them, and
  - (ii) the particulars required by sub-paragraph (i) in respect of such creditors under sub-paragraph (j)(i) and (ii) must be set out in separate schedules,
- (l) subject to sub-paragraph (m), if a full statement of affairs is not submitted, or if no statement of affairs is submitted, the name and (to the extent known to the administrator after making all reasonable enquiries) the contact details of each customer of the institution and each customer's relevant funds claim together with:
  - (i) details as to any security interest held by the institution or another person in respect of the asset pool, and
  - (ii) details of the asset pool and the measures used by the institution to safeguard relevant funds,
- (m) where customers are individuals—
  - (i) the particulars required under sub-paragraph (l) must state separately the number of such customers and the total of the debts owed to them, and
  - (ii) the remaining details required under sub-paragraph (l) in relation to such customers must be set out in a separate schedule,
- (n) if no statement of affairs is submitted, details of the financial position of the institution at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the institution entered special administration), and an explanation as to why there is no statement of affairs,
- (o) the basis upon which it is proposed that the administrator's remuneration should be fixed under rule 163, and, if this basis has already been set, details as to what has been set and any proposals for this to be changed,
- (p) a statement complying with [F1paragraph (6)],
- (q) details of whether (and why) the administrator proposes to apply to the court under section 176A(5) of the IA 1986 (unless the administrator intends to propose a company voluntary arrangement),
- (r) an estimate of the value of the prescribed part for the purposes of section 176A of the IA 1986 (unless the institution intends to propose a company voluntary arrangement) certified as being made to the best of the administrator's knowledge and belief,
- (s) an estimate of the value of the institution's net property (unless the administrator intends to propose a company voluntary arrangement) certified as being made to the best of the administrator's knowledge and belief,
- (t) an explanation of the priority that has been given since the commencement of special administration to the special administration objectives (and where the FCA has given a

- direction under regulation 38, an explanation as to how this has dictated the priority given to a particular objective),
- (u) the manner in which the affairs and business of the institution have been managed and financed since the date of the administrator’s appointment (including the reasons for and terms of any disposal of assets),
  - (v) details as to the order in which the administrator aims to pursue the special administration objectives and the manner in which the affairs and business of the institution will be managed and financed if the administrator’s proposals are approved,
  - (w) details of any reconciliation undertaken by the administrator (whether under regulation 13 or otherwise),
  - (x) details of the steps taken by the administrator to constitute any asset pool,
  - (y) whether the administrator expects a dividend to be paid to creditors and an estimate of the amount of this dividend,
  - (z) how it is proposed that the special administration shall end, in accordance with Objective 3 as set out in regulation 12(4), and
  - (aa) any other information which the administrator thinks necessary to enable creditors and customers to decide whether or not to approve the statement of proposals.
- (3) Subject to paragraph (4), the administrator must not—
- (a) disclose any schedule or any of the details contained in any schedule provided under paragraph (2)(k)(ii) or paragraph (2)(m)(ii) to any person,
  - (b) send or deliver any schedule provided under paragraph (2)(k)(ii) or paragraph (2)(m)(ii) with a statement of proposals or revised statement of proposals to any person (including the registrar of companies).
- (4) Following a written request from the FCA, the administrator must, as soon as is reasonably practicable, send or deliver to the FCA a copy of any schedule provided under paragraph (2)(k)(ii) or paragraph (2)(m)(ii).
- (5) In this Part—
- (a) “pre-administration costs” are—
    - (i) fees charged, and
    - (ii) expenses incurred,by the administrator, or another person qualified to act as an insolvency practitioner, before the institution entered special administration but with a view to its doing so, and
  - (b) “unpaid pre-administration costs” are pre-administration costs which had not been paid when the institution entered special administration.
- (6) A statement of pre-administration costs complies with this paragraph if it includes—
- (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 institution entered special administration and how it would further the achievement of the special administration objectives,
  - (d) a statement of the amount of the pre-administration costs, setting out separately—
    - (i) the costs incurred in connection with the pursuit of Objective 1,
    - (ii) the costs incurred in connection with the pursuit of Objectives 2 and 3,

- (iii) the fees charged by the administrator,
  - (iv) the expenses incurred by the administrator,
  - (v) the fees charged (to the administrator's knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately), and
  - (vi) the expenses incurred (to the administrator's knowledge) by any other person qualified to act as an insolvency practitioner (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),
  - (g) a statement of the amounts of unpaid pre-administration costs (set out separately as under sub-paragraph (d)), and
  - (h) a statement that the payment of unpaid pre-administration costs as an expense of the special administration is—
    - (i) subject to approval under rule 100, and
    - (ii) not part of the proposals subject to approval under paragraph 53.
- (7) The statement of proposals—
- (a) may exclude information the disclosure of which could seriously prejudice the commercial interests of the institution, and
  - (b) must include a statement of any exclusion.
- (8) In addition to the standard contents, a notice published by the administrator under paragraph 49(6) must:
- (a) identify the proceedings,
  - (b) be advertised in such manner as the administrator thinks fit, and
  - (c) be published as soon as is reasonably practicable after the administrator has delivered the statement of proposals to the institution's creditors and customers but no later than eight weeks (or such other period as may be agreed by the creditors and customers or as the court may order) from the date on which the institution entered special administration.
- (9) In addition to the standard contents, a notice published by the administrator under paragraph 49 that the statement of proposals is to be provided free of charge to a payment system operator must:
- (a) identify the proceedings,
  - (b) include a statement confirming that a copy of the statement of proposals will also be provided free of charge to the Payment Systems Regulator if it applies in writing to a specified address,
  - (c) be advertised in such a manner as the administrator thinks fit, and
  - (d) be published as soon as is reasonably practicable after the administrator has delivered the statement of proposals to the institution's creditors and customers but no later than eight weeks (or such other period as may be agreed by the creditors and customers or as the court may order) from the date on which the institution entered special administration.
- (10) Following an application by the administrator under paragraph 107, where the court orders an extension of the period of time in paragraph 49(5), the administrator must as soon as is possible after the order has been made deliver a notice of the extension to—
- (a) every creditor of the institution of whose address the administrator is aware,

- (b) every customer of the institution who the administrator has a means of contacting and of whose relevant funds claim the administrator is aware,
  - (c) the members of the institution of whose address the administrator is aware,
  - (d) any relevant payment system operator,
  - (e) the registrar of companies, and
  - (f) the FCA.
- (11) A notice under paragraph (10) 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 institution.
- (12) The administrator is taken to have complied with paragraph (10)(c) if the administrator publishes a notice which:
- (a) contains the standard contents,
  - (b) contains the information in paragraph (9),
  - (c) is advertised in such a manner as the administrator thinks fit,
  - (d) states that the member may request in writing a copy of the notice of the extension, and states the address to which to write, and
  - (e) is published as soon as is reasonably practicable after the administrator has delivered the notice of the extension to the institution's creditors and customers.
- (13) The administrator is taken to have complied with paragraph (10)(d) if the administrator publishes a notice which:
- (a) contains the standard contents,
  - (b) contains the information in paragraph 9,
  - (c) is advertised in such a manner as the administrator thinks fit,
  - (d) states that the payment system operator may request in writing a copy of the notice of the extension free of charge, and states the address to which to write, and
  - (e) is published as soon as is reasonably practicable after the administrator has delivered the notice of the extension to the institution's creditors and customers.

#### Textual Amendments

- F1** Words in [rule 26\(2\)\(p\)](#) substituted (10.8.2022) by [The Payment and Electronic Money Institution Insolvency \(England and Wales\) \(Amendment\) Rules 2022 \(S.I. 2022/847\)](#), [rules 1\(2\), 2\(3\)](#)

#### Commencement Information

- I1** Rule 26 in force at 12.11.2021, see [rule 2](#)

### Limited disclosure of the statement of proposals

27.—(1) Where the administrator thinks that it would prejudice the conduct of the special administration (or might reasonably be expected to lead to violence against any person) for any of the matters specified in [rule 26\(2\)\(i\) to \(n\)](#) to be disclosed, the administrator may apply to the court for an order of limited disclosure in respect of any specified part of the statement of proposals.

(2) The court may, on such application, order that some or all of the specified part of the statement must not be sent to the registrar of companies or to creditors, customers or members of the company

as otherwise required by paragraph 49(4) or to a payment system operator or to the Payment Systems Regulator.

(3) The administrator must as soon as is reasonably practicable deliver to the persons specified in paragraph (2) the statement of proposals (to the extent provided by the order) and an indication of the nature of the matter in relation to which the order was made.

(4) The administrator must also deliver a copy of the order to the registrar of companies.

(5) A creditor who seeks disclosure of a part of the statement of proposals in relation to which an order has been made under this rule may apply to the court for an order that the administrator disclose it, and the application must be supported by written evidence in the form of a witness statement.

(6) The applicant must give the administrator notice of the application at least three business days before the hearing.

(7) The court may make any order for disclosure subject to [<sup>F2</sup>such] conditions as to:

(a) confidentiality,

(b) duration,

(c) the scope of the order in the event of any change of circumstances, or

[<sup>F3</sup>(d) other matters,

as it thinks just.]

(8) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the administrator must, as soon as is reasonably practicable after the change, apply to the court for the order or any part of it to be rescinded.

(9) The administrator must, as soon as is reasonably practicable after the making of an order under paragraph (7), deliver to the persons specified in paragraph (2) a copy of the statement of proposals to the extent provided by the order.

(10) The provisions of CPR Part 31 do not apply to an application under this rule.

#### Textual Amendments

**F2** Word in rule 27(7) substituted (10.8.2022) by [The Payment and Electronic Money Institution Insolvency \(England and Wales\) \(Amendment\) Rules 2022 \(S.I. 2022/847\)](#), rules 1(2), **2(4)(a)**

**F3** Rule 27(7)(d) and words substituted for rule 27(7)(d) (10.8.2022) by [The Payment and Electronic Money Institution Insolvency \(England and Wales\) \(Amendment\) Rules 2022 \(S.I. 2022/847\)](#), rules 1(2), **2(4)(b)**

#### Commencement Information

**I2** Rule 27 in force at 12.11.2021, see [rule 2](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Payment and Electronic Money Institution Insolvency (England and Wales) Rules 2021, CHAPTER 2.