



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 16

ACCOUNTANT IN BANKRUPTCY

Appointment

199 Accountant in Bankruptcy

- (1) The Accountant in Bankruptcy (in this Act referred to as “AiB”) is appointed by the Scottish Ministers and is an officer of the court.
- (2) The Scottish Ministers may appoint a member of the staff of AiB—
 - (a) to be Depute Accountant in Bankruptcy, and
 - (b) as Depute Accountant in Bankruptcy, to exercise all the functions of AiB at any time when AiB is unable to do so.

Functions

200 Supervisory functions of Accountant in Bankruptcy

- (1) AiB has, in the administration of sequestration and personal insolvency, the following general functions—
 - (a) as regards interim trustees (not being AiB), trustees in sequestrations (not being AiB), trustees under protected trust deeds and commissioners—
 - (i) supervision of the performance by them of the functions conferred on them by this Act, or by any other enactment or by any rule of law, and
 - (ii) the investigation of any complaints made against them,
 - (b) the determination of debtor applications,
 - (c) the maintenance of a register (in this Act referred to as the “register of insolvencies”), in such form as may be prescribed,
 - (d) the preparation of an annual report, and
 - (e) such other functions as may from time to time be conferred on AiB by the Scottish Ministers.

Status: This is the original version (as it was originally enacted).

- (2) The register of insolvencies is to contain particulars of—
- (a) persons who are the subject of notices under sections 195(1) and 196(1),
 - (b) estates which have been sequestrated,
 - (c) trust deeds sent to AiB for registration,
 - (d) bankruptcy restrictions orders and interim bankruptcy restrictions orders,
 - (e) the winding up and receivership of business associations which the Court of Session has jurisdiction to wind up, and
 - (f) any other document specified in regulations made under subsection (1) or any other enactment.
- (3) The annual report must be presented to the Scottish Ministers and the Court of Session and must contain—
- (a) statistical information relating to—
 - (i) the state of all sequestrations of which particulars have been registered in the register of insolvencies during the year to which the report relates,
 - (ii) the winding up and receivership of business associations of which particulars have been registered in the register of insolvencies during the year to which the report relates,
 - (b) particulars of trust deeds registered as protected trust deeds in that year, and
 - (c) particulars of the performance of AiB’s functions under this Act.
- (4) If it appears to AiB that a person mentioned in subsection (1)(a) has failed, without reasonable excuse, to perform a duty imposed on that person by any provision of this Act, or by any other enactment or by any rule of law, AiB must report the matter to the sheriff who, after hearing the person on the matter, may—
- (a) remove the person from office,
 - (b) censure the person, or
 - (c) make such other order as the circumstances of the case may require.
- (5) Subsection (6) applies where AiB has reasonable grounds to suspect that an offence has been committed—
- (a) by a person mentioned in subsection (1)(a) in the performance of the person’s functions under this Act or any other enactment or any rule of law,
 - (b) in relation to a sequestration, by the debtor in respect of the debtor’s assets, the debtor’s dealings with them or the debtor’s conduct in relation to the debtor’s business or financial affairs, or
 - (c) in relation to a sequestration, by a person other than the debtor in that person’s dealings with the debtor, the interim trustee or the trustee in the sequestration in respect of the debtor’s assets or the debtor’s business or financial affairs.
- (6) AiB must report the matter to the Lord Advocate.
- (7) AiB must—
- (a) make the register of insolvencies available for inspection at all reasonable times, and
 - (b) provide any person, on request, with a certified copy of an entry in the register.
- (8) Regulations under subsection (1)(c) may in particular prescribe circumstances where information need not be included in the register of insolvencies if, in the opinion of

AiB, inclusion of the information would be likely to jeopardise the safety or welfare of any person.

- (9) In subsections (2) and (3), “business association” has the meaning given in section C2 of Part 2 of schedule 5 of the Scotland Act 1998.

201 Performance of certain functions of Accountant in Bankruptcy

- (1) The functions of AiB, other than functions conferred by section 200, may be carried out on AiB’s behalf by any member of AiB’s staff authorised by AiB to do so.
- (2) Without prejudice to subsection (1), AiB may appoint, on such terms and conditions as AiB considers appropriate, such persons as AiB considers fit to perform on AiB’s behalf any of AiB’s functions in respect of the sequestration of the estate of any debtor.
- (3) A person appointed under subsection (2) must comply with such general or specific directions as AiB may from time to time give to such person as to the performance of those functions.
- (4) AiB may pay a person so appointed such fee as AiB may consider appropriate.

202 Further duty of Accountant in Bankruptcy

AiB is, on receiving any notice under section 109(1) of the Insolvency Act 1986 in relation to a community interest company, to forward a copy of that notice to the Regulator of Community Interest Companies.

Directions to Accountant in Bankruptcy

203 Directions to Accountant in Bankruptcy

- (1) The Scottish Ministers may, after consultation with the Lord President of the Court of Session, give AiB general directions as to the performance of AiB’s functions under this Act.
- (2) Directions under this section may be given in respect of—
- (a) all cases, or
 - (b) any class or description of cases,
- but are not to be given in respect of a particular case.
- (3) AiB must comply with any directions given under this section.

Conduct of proceedings in the sheriff court

204 Conduct of proceedings in the sheriff court

- (1) A person authorised by AiB may conduct civil proceedings in the sheriff court in relation to a function of AiB (including the functions listed in section 200).
- (2) In subsection (1), “civil proceedings” are proceedings which are not in respect of an offence.

Fees for Accountant in Bankruptcy

205 Fees for Accountant in Bankruptcy

- (1) The Scottish Ministers may prescribe—
 - (a) the fees and outlays to be payable to AiB in respect of the exercise of any of AiB’s functions under this Act,
 - (b) the time at or by which, and the manner in which, such fees and outlays are to be paid, and
 - (c) the circumstances, if any, in which AiB may allow—
 - (i) exemption from payment, or
 - (ii) the remission or modification of payment,of any such fees or outlays.
- (2) The Secretary of State may prescribe by regulations—
 - (a) the fees and outlays to be payable to AiB in respect of the exercise of any of AiB’s functions under the Insolvency Act 1986,
 - (b) the time at or by which, and the manner in which, such fees and outlays are to be paid, and
 - (c) the circumstances, if any, in which AiB may allow—
 - (i) exemption from payment, or
 - (ii) the remission or modification of payment,of any such fees or outlays.