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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 347**

**The Insolvency (Scotland) (Receivership  
and Winding up) Rules 2018**

**PART 2**

**RECEIVERSHIP**

**CHAPTER 4**

**Statement of Affairs**

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

**Interpretation**

**2.6.** In this Chapter—

“nominated person” means a relevant person who has been required by the receiver to make out and deliver to the receiver a statement of affairs; and

“relevant person” means a person mentioned in section 66(3).

**Requirement to provide a statement of affairs (section 66(1))(1)**

**2.7.—(1)** A requirement under section 66(1) for a nominated person to make out and submit to the receiver a statement of the affairs of the company must be made by a notice delivered to such a person.

(2) The notice must be headed “Notice requiring statement of affairs” and must—

- (a) identify the company immediately below the heading;
- (b) identify the receiver;
- (c) state the date of the receiver’s appointment;
- (d) state the name of the nominated person;
- (e) require the nominated person to prepare and submit to the receiver a statement of the affairs of the company on a specified date, being the date of the receiver’s appointment;
- (f) inform each nominated person of—
  - (i) the name and address of any other nominated person to whom a notice has been delivered;
  - (ii) the date by which the statement must be delivered to the receiver; and
  - (iii) the effect of section 66(6) (penalty for non-compliance).

(3) The receiver must inform each nominated person that a document for the preparation of the statement of affairs capable of completion in compliance with rule 2.8 can be supplied if requested.

**Statement of affairs: contents and delivery (section 66(2))(2)**

**2.8.—**(1) The statement of affairs must be headed “Statement of affairs” and must state that it is a statement of the affairs of the company on a specified date, being the date of the receiver’s appointment.

(2) The statement of affairs must contain, in addition to the matters required by section 66(2)—

(a) a summary of the assets of the company, setting out the book value and the estimated realisable value of—

- (i) any assets specifically secured;
- (ii) any assets subject to a floating charge;
- (iii) any assets not secured;
- (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 floating charges;
- (vii) the amount of unsecured debts (excluding preferential debts and any deficiency with respect to debts secured by floating charges);
- (viii) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts (excluding preferential debts and any deficiency with respect to debts secured by fixed securities and floating charges);
- (ix) any issued and called-up capital;
- (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 (as required by section 66(2)) with the further particulars required by paragraph (3) indicating—

- (i) any creditors under hire-purchase or conditional sale agreements;
- (ii) any creditors who are consumers claiming amounts paid in advance for the supply of goods or services; and
- (iii) any creditors claiming retention of title over property in the company’s possession.

(3) The particulars required by this paragraph are as follows and must be given in this order—

- (a) the name and postal address;
- (b) the amount of the debt owed to the creditor;
- (c) details of any security held by the creditor;

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(2) Section 66(2) is prospectively amended by [S.S.I. 2016/141](#), article 4. Rule 2.8 is included in the Rules by virtue of article 2 of [S.S.I. 2017/209](#) - see section 70 and 71 of the Act.

- (d) the date the security was given; and
  - (e) the value of the security.
- (4) Paragraph (5) applies where the particulars required by paragraph (3) 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.
- (5) Where this paragraph applies—
- (a) the statement of affairs must state separately for each of paragraph (4)(a) and (b) the number of such creditors and the total of the debts owed to them; and
  - (b) the particulars required by paragraph (3) must be set out in separate schedules to the statement of affairs for each of paragraph (4)(a) and (b).
- (6) The statutory declaration required by section 66(2)(3) must be a statutory declaration that the information provided in the statement of affairs is, to the best of the nominated person's knowledge and belief, accurate and complete.
- (7) The nominated person who makes the statutory declaration required by section 66(2) and paragraph (6) (or one of them, if more than one) must deliver the statement of affairs to the receiver.

#### **Statement of affairs: statement of concurrence**

- 2.9.**—(1) The receiver may require a relevant person to deliver to the receiver a statement of concurrence.
- (2) A statement of concurrence is a statement that the relevant person concurs in the statement of affairs submitted by a nominated person.
- (3) The receiver 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 to be erroneous or misleading; or
    - (iii) is without the direct knowledge necessary for concurring in it.
- (6) A statement of concurrence must contain a statutory declaration by the relevant person required to submit it that the information provided in the statement of concurrence is, to the best of the relevant person's knowledge and belief, accurate and complete.
- (7) The relevant person must deliver the required statement of concurrence to the receiver before the end of the period of 5 business days (or such other period as the receiver may agree) beginning with the day on which the relevant person receives the statement of affairs.

#### **Statement of affairs: expenses**

- 2.10.**—(1) The receiver must pay as an expense of the receivership the expenses which the receiver considers to have been reasonably incurred by—

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(3) Section 66(2) is prospectively amended to require a statutory declaration by [S.S.I. 2016/141](#), article 4.

- (a) a nominated person in making a statement of affairs and statutory declaration; or
  - (b) a relevant person in making a statement of concurrence.
- (2) Any decision by the receiver under this rule is subject to appeal to the court.

**Limited disclosure**

**2.11.**—(1) This rule applies where the receiver thinks that disclosure of the whole or part of a statement of affairs or a statement of concurrence would be likely to prejudice the conduct of the receivership or might reasonably be expected to lead to violence against any person.

(2) The receiver may apply to the court for an order of limited disclosure in respect of the whole or any specified part of the—

- (a) statement of affairs; or
- (b) the statement of concurrence.

(3) The court may order that the whole or any specified part of the statement of affairs or the statement of concurrence must not be entered in the sederunt book.

(4) The court’s order of limited disclosure may include directions regarding the disclosure of information in the statement of affairs or statement of concurrence to other persons.

(5) A creditor who seeks disclosure of the statement of affairs or statement of concurrence or a specified part of it in relation to which an order has been made under this Rule may apply to the court for an order that the receiver disclose that statement of affairs or statement of concurrence or specified part of it.

(6) The court may attach to an order for disclosure any conditions as to confidentiality, duration and scope of the order in any material change of circumstances, and other matters as it sees fit.

(7) If there is a material change in circumstances rendering the limit on disclosure unnecessary, the receiver must, as soon as reasonably practicable after the change, apply to the court for the order to be discharged or varied.