
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 347

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

PART 5

WINDING UP BY THE COURT

CHAPTER 7

Special manager

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

Application of this Chapter and interpretation

5.40. This Chapter applies to applications for the appointment of a special manager by a liquidator and by a provisional liquidator (where one has been appointed), and so references to the liquidator are to be read as including a provisional liquidator.

Appointment and remuneration of special manager (section 177)

5.41.—(1) An application by the liquidator under section 177 for the appointment of a special manager must be supported by a report setting out the reasons for the application.

(2) The report must include the liquidator's estimate of the value of the business or property in relation to which the special manager is to be appointed.

(3) The court's order appointing the special manager must specify the duration of the special manager's appointment being one of the following—

- (a) for a fixed period stated in the order;
- (b) until the occurrence of a specified event; or
- (c) until the court makes a further order.

(4) The appointment of a special manager may be renewed by order of the court.

(5) The special manager's remuneration will be fixed from time to time by the court.

(6) The acts of the special manager are valid notwithstanding any defect in the special manager's appointment or qualifications.

Caution

5.42.—(1) The appointment of the special manager does not take effect until the person appointed has found (or, if the court allows, undertaken to find) caution for the appointment to be given to the applicant.

(2) A person appointed as special manager may find caution either specifically for a particular winding up, or generally for any winding up in relation to which that person may be appointed as special manager.

(3) The amount of the caution must be not less than the value of the business or property in relation to which the special manager is appointed, as estimated in the applicant's report under rule 5.41 which accompanied the application for appointment.

(4) When the special manager has found caution for the appointment to be given to the applicant that person must lodge with the court a certificate as to the adequacy of the caution.

(5) The cost of finding the caution must be paid in the first instance by the special manager; but—

- (a) where a winding-up order is not made, the special manager is entitled to be reimbursed out of the property of the company, and the court may order accordingly; and
- (b) where a winding-up order is made, the special manager is entitled to be reimbursed as an expense of the liquidation.

Failure to give or keep up caution

5.43.—(1) If the special manager fails to find the required caution within the time allowed for that purpose by the order of appointment, or any extension of that time that may be allowed, the liquidator must report the failure to the court, which may discharge the order appointing the special manager.

(2) If the special manager fails to keep up the caution, the liquidator must report the failure to the court, which may remove the special manager, and make such order as to expenses as it thinks just.

(3) If the court discharges the order appointing the special manager, or makes an order removing the special manager, the court must give directions as to whether any, and if so what, steps should be taken for the appointment of another special manager.

Accounting

5.44.—(1) The special manager must produce accounts, containing details of the special manager's receipts and payments, for the approval of the liquidator.

(2) The accounts must be for—

- (a) each 3 month period for the duration of the special manager's appointment; and
- (b) any shorter period ending with the termination of the special manager's appointment.

(3) When the accounts have been approved, the special manager's receipts and payments must be added to those of the liquidator.

Termination of appointment

5.45.—(1) The special manager's appointment terminates—

- (a) if the winding-up petition is dismissed; or
- (b) in a case where a provisional liquidator was appointed under section 135, if the appointment is discharged without a winding-up order having been made.

(2) If the liquidator is of the opinion that the appointment of the special manager is no longer necessary or beneficial for the company, the liquidator must apply to the court for directions, and the court may order the special manager's appointment to be terminated.

(3) The liquidator must make the same application if the creditors decide that the appointment should be terminated.