
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE FIRST GROUP OF PARTS

PART 2

ADMINISTRATION PROCEDURE

CHAPTER 1

APPLICATION FOR, AND MAKING OF, THE ORDER

Affidavit to support petition

2.1.—(1) Where it is proposed to apply to the court by petition for an administration order to be made in relation to a company, an affidavit complying with Rule 2.3 below must be prepared and sworn, with a view to its being filed in court in support of the petition.

(2) If the petition is to be presented by the company or by the directors, the affidavit must be made by one of the directors, or the secretary of the company, stating himself to make it on behalf of the company or, as the case may be, on behalf of the directors.

(3) If the petition is to be presented by creditors, the affidavit must be made by a person acting under the authority of them all, whether or not himself one of their number. In any case there must be stated in the affidavit the nature of his authority and the means of his knowledge of the matters to which the affidavit relates.

(4) If the petition is to be presented by the supervisor of a voluntary arrangement under Part I of the Act, it is to be treated as if it were a petition by the company.

Independent report on company's affairs

2.2.—(1) There may be prepared, with a view to its being exhibited to the affidavit in support of the petition, a report by an independent person to the effect that the appointment of an administrator for the company is expedient.

(2) The report may be by the person proposed as administrator, or by any other person having adequate knowledge of the company's affairs, not being a director, secretary, manager, member, or employee of the company.

(3) The report shall specify the purposes which, in the opinion of the person preparing it, may be achieved for the company by the making of an administration order, being purposes particularly specified in section 8(3).

Contents of affidavit

2.3.—(1) The affidavit shall state—

- (a) the deponent's belief that the company is, or is likely to become, unable to pay its debts and the grounds of that belief; and

- (b) which of the purposes specified in section 8(3) is expected to be achieved by the making of an administration order.
- (2) There shall in the affidavit be provided a statement of the company's financial position, specifying (to the best of the deponent's knowledge and belief) assets and liabilities, including contingent and prospective liabilities.
- (3) Details shall be given of any security known or believed to be held by creditors of the company, and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver. If an administrative receiver has been appointed, that fact shall be stated.
- (4) If any petition has been presented for the winding up of the company, details of it shall be given in the affidavit, so far as within the immediate knowledge of the deponent.
- (5) If there are other matters which, in the opinion of those intending to present the petition for an administration order, will assist the court in deciding whether to make such an order, those matters (so far as lying within the knowledge or belief of the deponent) shall also be stated.
- (6) If a report has been prepared for the company under Rule 2.2, that fact shall be stated. If not, an explanation shall be provided why not.

Form of petition

- 2.4.**—(1) If presented by the company or by the directors, the petition shall state the name of the company and its address for service, which (in the absence of special reasons to the contrary) is that of the company's registered office.
- (2) If presented by a single creditor, the petition shall state his name and address for service.
 - (3) If the petition is presented by the directors, it shall state that it is so presented under section 9; but from and after presentation it is to be treated for all purposes as the petition of the company.
 - (4) If the petition is presented by two or more creditors, it shall state that it is so presented (naming them); but from and after presentation it is to be treated for all purposes as the petition of one only of them, named in the petition as petitioning on behalf of himself and other creditors. An address for service for that one shall be specified.
 - (5) The petition shall specify the name and address of the person proposed to be appointed as administrator; and it shall be stated that, to the best of the petitioner's knowledge and belief, the person is qualified to act as an insolvency practitioner in relation to the company.
 - (6) There shall be exhibited to the affidavit in support of the petition—
 - (a) a copy of the petition;
 - (b) a written consent by the proposed administrator to accept appointment, if an administration order is made; and
 - (c) if a report has been prepared under Rule 2.2, a copy of it.

Filing of petition

- 2.5.**—(1) The petition and affidavit shall be filed in court, with a sufficient number of copies for service and use as provided by Rule 2.6.
- (2) Each of the copies delivered shall have applied to it the seal of the court and be issued to the petitioner; and on each copy there shall be endorsed the date and time of filing.
 - (3) The court shall fix a venue for the hearing of the petition and this also shall be endorsed on each copy of the petition issued under paragraph (2).
 - (4) After the petition is filed, it is the duty of the petitioner to notify the court in writing of any winding-up petition presented against the company, as soon as he becomes aware of it.

Service of petition

2.6.—(1) In the following paragraphs of this Rule, references to the petition are to a copy of the petition issued by the court under Rule 2.5(2) together with the affidavit in support of it and the documents (other than the copy petition) exhibited to the affidavit.

(2) The petition shall be served—

- (a) on any person who has appointed an administrative receiver for the company, or has the power to do so;
- (b) if an administrative receiver has been appointed, on him;
- (c) if there is pending a petition for the winding up of the company, on the petitioner (and also on the provisional liquidator, if any); and
- (d) on the person proposed as administrator.

(3) If the petition for the making of an administration order is presented by creditors of the company, the petition shall be served on the company.

Manner in which service to be effected

2.7.—(1) Service of the petition in accordance with Rule 2.6 shall be effected by the petitioner, or his solicitor, or by a person instructed by him or his solicitor, not less than 5 days before the date fixed for the hearing.

(2) Service shall be effected as follows—

- (a) on the company (subject to paragraph (3) below), by delivering the documents to its registered office;
- (b) on any other person (subject to paragraph (4)), by delivering the documents to his proper address;
- (c) in either case, in such other manner as the court may direct.

(3) If delivery to the company's registered office is not practicable, service may be effected by delivery to its last known principal place of business in England and Wales.

(4) For the purposes of paragraph (2)(b), a person's proper address is any which he has previously notified as his address for service; but if he has not notified any such address, service may be effected by delivery to his usual or last known address.

(5) Delivery of documents to any place or address may be made by leaving them there, or sending them by first class post.

Proof of service

2.8.—(1) Service of the petition shall be verified by affidavit, specifying the date on which, and the manner in which, service was effected.

(2) The affidavit, with a sealed copy of the petition exhibited to it, shall be filed in court forthwith after service, and in any event not less than one day before the hearing of the petition.

The hearing

2.9.—(1) At the hearing of the petition, any of the following may appear or be represented—

- (a) the petitioner;
- (b) the company;
- (c) any person who has appointed an administrative receiver, or has the power to do so;
- (d) if an administrative receiver has been appointed, he;

- (e) any person who has presented a petition for the winding up of the company;
- (f) the person proposed for appointment as administrator; and
- (g) with the leave of the court, any other person who appears to have an interest justifying his appearance.

(2) If the court makes an administration order, the costs of the petitioner, and of any person appearing whose costs are allowed by the court, are payable as an expense of the administration.

Notice and advertisement of administration order

2.10.—(1) If the court makes an administration order, it shall forthwith give notice to the person appointed as administrator.

(2) Forthwith after the order is made, the administrator shall advertise its making once in the Gazette, and once in such newspaper as he thinks most appropriate for ensuring that the order comes to the notice of the company's creditors.

(3) The administrator shall also forthwith give notice of the making of the order—

- (a) to any person who has appointed an administrative receiver, or has power to do so;
- (b) if an administrative receiver has been appointed, to him;
- (c) if there is pending a petition for the winding up of the company, to the petitioner (and also to the provisional liquidator, if any); and
- (d) to the registrar of companies.

(4) Two sealed copies of the order shall be sent by the court to the administrator, one of which shall be sent by him to the registrar of companies in accordance with section 21(2).

(5) If under section 9(4) the court makes any other order, it shall give directions as to the persons to whom, and how, notice of it is to be given.

CHAPTER 2

STATEMENT OF AFFAIRS AND PROPOSALS TO CREDITORS

Notice requiring statement of affairs

2.11.—(1) If the administrator determines to require a statement of the company's affairs to be made out and submitted to him in accordance with section 22, he shall send notice to each of the persons whom he considers should be made responsible under that section, requiring them to prepare and submit the statement.

(2) The persons to whom the notice is sent are referred to in this Chapter as “the deponents”.

(3) The notice shall inform each of the deponents—

- (a) of the names and addresses of all others (if any) to whom the same notice has been sent;
- (b) of the time within which the statement must be delivered;
- (c) of the effect of section 22(6) (penalty for non-compliance); and
- (d) of the application to him, and to each of the other deponents, of section 235 (duty to provide information, and to attend on the administrator if required).

(4) The administrator shall, on request, furnish each deponent with instructions for the preparation of the statement and with the forms required for that purpose.

Verification and filing

2.12.—(1) The statement of affairs shall be in FORM 2.9, shall contain all the particulars required by that form and shall be verified by affidavit by the deponents (using the same form).

(2) The administrator may require any of the persons mentioned in section 22(3) to submit an affidavit of concurrence, stating that he concurs in the statement of affairs.

(3) An affidavit of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the affidavit is not in agreement with the deponents, or he considers the statement to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.

(4) The statement of affairs shall be delivered to the administrator by the deponent making the affidavit of verification (or by one of them, if more than one), together with a copy of the verified statement.

(5) Every affidavit of concurrence shall be delivered by the person who makes it, together with a copy.

(6) The administrator shall file the verified copy of the statement, and the affidavits of concurrence (if any) in court.

Limited disclosure

2.13.—(1) Where the administrator thinks that it would prejudice the conduct of the administration for the whole or part of the statement of affairs to be disclosed, he may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it.

(2) The court may on the application order that the statement or, as the case may be, the specified part of it, be not filed in court, or that it is to be filed separately and not be open to inspection otherwise than with leave of the court.

(3) The court's order may include directions as to the delivery of documents to the registrar of companies and the disclosure of relevant information to other persons.

Release from duty to submit statement of affairs; extension of time

2.14.—(1) The power of the administrator under section 22(5) to give a release from the obligation imposed by that section, or to grant an extension of time, may be exercised at the administrator's own discretion, or at the request of any deponent.

(2) A deponent may, if he requests a release or extension of time and it is refused by the administrator, apply to the court for it.

(3) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for an ex parte hearing, of which he has been given at least 7 days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the deponent accordingly.

(4) The deponent shall, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which he (the deponent) intends to adduce in support of it.

(5) The administrator may appear and be heard on the application; and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the court's attention.

If such a report is filed, a copy of it shall be sent by the administrator to the deponent, not later than 5 days before the hearing.

(6) Sealed copies of any order made on the application shall be sent by the court to the deponent and the administrator.

(7) On any application under this Rule the applicant's costs shall be paid in any event by him and, unless the court otherwise orders, no allowance towards them shall be made out of the assets.

Expenses of statement of affairs

2.15.—(1) A deponent making the statement of affairs and affidavit shall be allowed, and paid by the administrator out of his receipts, any expenses incurred by the deponent in so doing which the administrator considers reasonable.

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

(3) Nothing in this Rule relieves a deponent from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the administrator.

Statement to be annexed to proposals

2.16. There shall be annexed to the administrator's proposals, when sent to the registrar of companies under section 23 and laid before the creditors' meeting to be summoned under that section, a statement by him showing—

- (a) details relating to his appointment as administrator, the purposes for which an administration order was applied for and made, and any subsequent variation of those purposes;
- (b) the names of the directors and secretary of the company;
- (c) an account of the circumstances giving rise to the application for an administration order;
- (d) if a statement of affairs has been submitted, a copy or summary of it, with the administrator's comments, if any;
- (e) if no statement of affairs has been submitted, details of the financial position of the company at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that of the administration order);
- (f) the manner in which the affairs of the company will be managed and its business financed, if the administrator's proposals are approved; and
- (g) such other information (if any) as the administrator thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.

Notice to members of proposals to creditors

2.17. The manner of publishing—

- (a) under section 23(2)(b), notice to members of the administrator's proposals to creditors, and
- (b) under section 25(3)(b), notice to members of substantial revisions of the proposals,

shall be by gazetting; and the notice shall also in either case be advertised once in the newspaper in which the administration order was advertised.

CHAPTER 3

CREDITORS' AND COMPANY MEETINGS

SECTION A: CREDITORS' MEETINGS

Meeting to consider administrator's proposals

2.18.—(1) Notice of the creditors' meeting to be summoned under section 23(1) shall be given to all the creditors of the company who are identified in the statement of affairs, or are known to the administrator and had claims against the company at the date of the administration order.

(2) Notice of the meeting shall also (unless the court otherwise directs) be given by advertisement in the newspaper in which the administration order was advertised.

(3) . Notice to attend the meeting shall be sent out at the same time to any directors or officers of the company (including persons who have been directors or officers in the past) whose presence at the meeting is, in the administrator's opinion, required.

(4) If at the meeting there is not the requisite majority for approval of the administrator's proposals (with modifications, if any), the chairman may, and shall if a resolution is passed to that effect, adjourn the meeting for not more than 14 days.

Creditors' meetings generally

2.19.—(1) This Rule applies to creditors' meetings summoned by the administrator under—

- (a) section 14(2)(b) (general power to summon meetings of creditors);
- (b) section 17(3) (requisition by creditors; direction by the court);
- (c) section 23(1) (to consider administrator's proposals); or
- (d) section 25(2)(b) (to consider substantial revisions).

(2) In fixing the venue for the meeting, the administrator shall have regard to the convenience of creditors.

(3) The meeting shall be summoned for commencement between 10.00 and 16.00 hours on a business day, unless the court otherwise directs.

(4) At least 21 days' notice of the meeting shall be given to all creditors who are known to the administrator and had claims against the company at the date of the administration order; and the notice shall specify the purpose of the meeting and contain a statement of the effect of Rule 2.22(1) (entitlement to vote).

(5) With the notice summoning the meeting there shall be sent out forms of proxy.

(6) If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chairman, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(7) The meeting may from time to time be adjourned, if the chairman thinks fit, but not for more than 14 days from the date on which it was fixed to commence.

The chairman at meetings

2.20.—(1) At any meeting of creditors summoned by the administrator, either he shall be chairman, or a person nominated by him in writing to act in his place.

(2) A person so nominated must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the company, or

- (b) an employee of the administrator or his firm who is experienced in insolvency matters.

Meeting requisitioned by creditors

2.21.—(1) Any request by creditors to the administrator for a meeting of creditors to be summoned shall be accompanied by—

- (a) a list of the creditors concurring with the request, showing the amounts of their respective claims in the administration;
- (b) from each creditor concurring, written confirmation of his concurrence; and
- (c) a statement of the purpose of the proposed meeting.

This paragraph does not apply if the requisitioning creditor's debt is alone sufficient, without the concurrence of other creditors.

(2) The administrator shall, if he considers the request to be properly made in accordance with section 17(3), fix a venue for the meeting, not more than 35 days from his receipt of the request, and give at least 21 days' notice of the meeting to creditors.

(3) The expenses of summoning and holding a meeting at the instance of any person other than the administrator shall be paid by that person, who shall deposit with the administrator security for their payment.

(4) The sum to be deposited shall be such as the administrator may determine, and he shall not act without the deposit having been made.

(5) The meeting may resolve that the expenses of summoning and holding it are to be payable out of the assets of the company, as an expense of the administration.

(6) To the extent that any deposit made under this Rule is not required for the payment of expenses of summoning and holding the meeting, it shall be repaid to the person who made it.

Entitlement to vote

2.22.—(1) Subject as follows, at a meeting of creditors in administration proceedings a person is entitled to vote only if—

- (a) he has given to the administrator, not later than 12.00 hours on the business day before the day fixed for the meeting, details in writing of the debt which he claims to be due to him from the company, and the claim has been duly admitted under the following provisions of this Rule, and
- (b) there has been lodged with the administrator any proxy which he intends to be used on his behalf.

Details of the debt must include any calculation for the purposes of Rules 2.24 to 2.27.

(2) The chairman of the meeting may allow a creditor to vote, notwithstanding that he has failed to comply with paragraph (1)(a), if satisfied that the failure was due to circumstances beyond the creditor's control.

(3) The administrator or, if other, the chairman of the meeting may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim.

(4) Votes are calculated according to the amount of a creditor's debt as at the date of the administration order, deducting any amounts paid in respect of the debt after that date.

(5) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

Admission and rejection of claims

2.23.—(1) At any creditors' meeting the chairman has power to admit or reject a creditor's claim for the purpose of his entitlement to vote; and the power is exercisable with respect to the whole or any part of the claim.

(2) The chairman's decision under this Rule, or in respect of any matter arising under Rule 2.22, is subject to appeal to the court by any creditor.

(3) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained.

(4) If on an appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks just.

(5) In the case of the meeting summoned under section 23 to consider the administrator's proposals, an application to the court by way of appeal under this Rule against a decision of the chairman shall not be made later than 28 days after the delivery of the administrator's report in accordance with section 24(4).

(6) Neither the administrator nor any person nominated by him to be chairman is personally liable for costs incurred by any person in respect of an appeal to the court under this Rule, unless the court makes an order to that effect.

Secured creditors

2.24. At a meeting of creditors a secured creditor is entitled to vote only in respect of the balance (if any) of his debt after deducting the value of his security as estimated by him.

Holders of negotiable instruments

2.25. A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing—

- (a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands, and
- (b) to estimate the value of the security and, for the purpose of his entitlement to vote, to deduct it from his claim.

Retention of title creditors

2.26. For the purpose of entitlement to vote at a creditors' meeting in administration proceedings, a seller of goods to the company under a retention of title agreement shall deduct from his claim the value, as estimated by him, of any rights arising under that agreement in respect of goods in possession of the company.

Hire-purchase, conditional sale and chattel leasing agreements

2.27.—(1) Subject as follows, an owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to him by the company as at the date of the administration order.

(2) In calculating the amount of any debt for this purpose, no account shall be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has

become exercisable solely by virtue of the presentation of the petition for an administration order or any matter arising in consequence of that, or of the making of the order.

Resolutions and minutes

2.28.—(1) At a creditors' meeting in administration proceedings, a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of it.

(2) The chairman of the meeting shall cause minutes of its proceedings to be entered in the company's minute book.

(3) The minutes shall include a list of the creditors who attended (personally or by proxy) and, if a creditors' committee has been established, the names and addresses of those elected to be members of the committee.

Administrator's report

2.29. Any report by the administrator of the result of creditors' meetings held under section 23 or 25 shall have annexed to it details of the proposals which were considered by the meeting in question and of the modifications which were so considered.

Notices to creditors

2.30.—(1) Within 14 days of the conclusion of a meeting of creditors to consider the administrator's proposals or revised proposals, the administrator shall send notice of the result of the meeting (including, where appropriate, details of the proposals as approved) to every creditor who received notice of the meeting under the Rules, and to any other creditor of whom the administrator has since become aware.

(2) Within 14 days of the end of every period of 6 months beginning with the date of approval of the administrator's proposals or revised proposals, the administrator shall send to all creditors of the company a report on the progress of the administration.

(3) On vacating office the administrator shall send to creditors a report on the administration up to that time.

This does not apply where the administration is immediately followed by the company going into liquidation, nor when the administrator is removed from office by the court or ceases to be qualified as an insolvency practitioner.

SECTION B: COMPANY MEETINGS

Venue and conduct of company meeting

2.31.—(1) Where the administrator summons a meeting of members of the company, he shall fix a venue for it having regard to their convenience.

(2) The chairman of the meeting shall be the administrator or a person nominated by him in writing to act in his place.

(3) A person so nominated must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the company, or
- (b) an employee of the administrator or his firm who is experienced in insolvency matters.

(4) If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chairman, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(5) Subject as above, the meeting shall be summoned and conducted as if it were a general meeting of the company summoned under the company's articles of association, and in accordance with the applicable provisions of the Companies Act.

(6) The chairman of the meeting shall cause minutes of its proceedings to be entered in the company's minute book.

CHAPTER 4

THE CREDITORS' COMMITTEE

Constitution of committee

2.32.—(1) Where it is resolved by a creditors' meeting to establish a creditors' committee for the purposes of the administration, the committee shall consist of at least 3 and not more than 5 creditors of the company elected at the meeting.

(2) Any creditor of the company is eligible to be a member of the committee, so long as his claim has not been rejected for the purpose of his entitlement to vote.

(3) A body corporate may be a member of the committee, but it cannot act as such otherwise than by a representative appointed under Rule 2.37 below.

Formalities of establishment

2.33.—(1) The creditors' committee does not come into being, and accordingly cannot act, until the administrator has issued a certificate of its due constitution.

(2) No person may act as a member of the committee unless and until he has agreed to do so; and the administrator's certificate of the committee's due constitution shall not issue unless and until at least 3 of the persons who are to be members of it have agreed to act.

(3) As and when the others (if any) agree to act, the administrator shall issue an amended certificate.

(4) The certificate, and any amended certificate, shall be filed in court by the administrator.

(5) If after the first establishment of the committee there is any change in its membership, the administrator shall report the change to the court.

Functions and meetings of the committee

2.34.—(1) The creditors' committee shall assist the administrator in discharging his functions, and act in relation to him in such manner as may be agreed from time to time.

(2) Subject as follows, meetings of the committee shall be held when and where determined by the administrator.

(3) The administrator shall call a first meeting of the committee not later than 3 months after its first establishment; and thereafter he shall call a meeting—

(a) if so requested by a member of the committee or his representative (the meeting then to be held within 21 days of the request being received by the administrator), and

(b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

(4) The administrator shall give 7 days' written notice of the venue of any meeting to every member of the committee (or his representative designated for that purpose), unless in any case the requirement of notice has been waived by or on behalf of any member.

Waiver may be signified either at or before the meeting.

The chairman at meetings

2.35.—(1) Subject to Rule 2.44(3), the chairman at any meeting of the creditors' committee shall be the administrator or a person nominated by him in writing to act.

(2) A person so nominated must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the company, or
- (b) an employee of the administrator or his firm who is experienced in insolvency matters.

Quorum

2.36. A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least 2 members are present or represented.

Committee-members' representatives

2.37.—(1) A member of the committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.

(2) A person acting as a committee-member's representative must hold a letter of authority entitling him so to act (either generally or specially) and signed by or on behalf of the committee-member.

(3) The chairman at any meeting of the committee may call on a person claiming to act as a committee-member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

(4) No member may be represented by a body corporate, or by a person who is an undischarged bankrupt, or is subject to a composition or arrangement with his creditors.

(5) No person shall—

- (a) on the same committee, act at one and the same time as representative of more than one committee-member, or
- (b) act both as a member of the committee and as representative of another member.

(6) Where a member's representative signs any document on the member's behalf, the fact that he so signs must be stated below his signature.

Resignation

2.38. A member of the committee may resign by notice in writing delivered to the administrator.

Termination of membership

2.39.—(1) Membership of the creditors' committee is automatically terminated if the member—

- (a) becomes bankrupt, or compounds or arranges with his creditors, or
- (b) at 3 consecutive meetings of the committee is neither present nor represented (unless at the third of those meetings it is resolved that this Rule is not to apply in his case), or
- (c) ceases to be, or is found never to have been, a creditor.

(2) However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.

Removal

2.40. A member of the committee may be removed by resolution at a meeting of creditors, at least 14 days' notice having been given of the intention to move that resolution.

Vacancies

2.41.—(1) The following applies if there is a vacancy in the membership of the creditors' committee.

(2) The vacancy need not be filled if the administrator and a majority of the remaining members of the committee so agree, provided that the total number of members does not fall below the minimum required under Rule 2.32.

(3) The administrator may appoint any creditor (being qualified under the Rules to be a member of the committee) to fill the vacancy, if a majority of the other members of the committee agree to the appointment, and the creditor concerned consents to act.

Procedure at meetings

2.42.—(1) At any meeting of the creditors' committee, each member of it (whether present himself, or by his representative) has one vote; and a resolution is passed when a majority of the members present or represented have voted in favour of it.

(2) Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting.

(3) A record of each resolution shall be signed by the chairman and placed in the company's minute book.

Resolutions by post

2.43.—(1) In accordance with this Rule, the administrator may seek to obtain the agreement of members of the creditors' committee to a resolution by sending to every member (or his representative designated for the purpose) a copy of the proposed resolution.

(2) Where the administrator makes use of the procedure allowed by this Rule, he shall send out to members of the committee or their representatives (as the case may be) a statement incorporating the resolution to which their agreement is sought, each resolution (if more than one) being sent out in a separate document.

(3) Any member of the committee may, within 7 business days from the date of the administrator sending out a resolution, require him to summon a meeting of the committee to consider the matters raised by the resolution.

(4) In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the administrator is notified in writing by a majority of the members that they concur with it.

(5) A copy of every resolution passed under this Rule, and a note that the committee's concurrence was obtained, shall be placed in the company's minute book.

Information from administrator

2.44.—(1) Where the committee resolves to require the attendance of the administrator under section 26(2), the notice to him shall be in writing signed by the majority of the members of the committee for the time being. A member's representative may sign for him.

(2) The meeting at which the administrator's attendance is required shall be fixed by the committee for a business day, and shall be held at such time and place as he determines.

(3) Where the administrator so attends, the members of the committee may elect any one of their number to be chairman of the meeting, in place of the administrator or a nominee of his.

Expenses of members

2.45.—(1) Subject as follows, the administrator shall out of the assets of the company defray any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in relation to their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the administration.

(2) Paragraph (1) does not apply to any meeting of the committee held within 3 months of a previous meeting, unless the meeting in question is summoned at the instance of the administrator.

Members' dealings with the company

2.46.—(1) Membership of the committee does not prevent a person from dealing with the company while the administration order is in force, provided that any transactions in the course of such dealings are in good faith and for value.

(2) The court may, on the application of any person interested, set aside any transaction which appears to it to be contrary to the requirements of this Rule, and may give such consequential directions as it thinks fit for compensating the company for any loss which it may have incurred in consequence of the transaction.

CHAPTER 5

THE ADMINISTRATOR

Fixing of remuneration

2.47.—(1) The administrator is entitled to receive remuneration for his services as such.

(2) The remuneration shall be fixed either—

- (a) as a percentage of the value of the property with which he has to deal, or
- (b) by reference to the time properly given by the insolvency practitioner (as administrator) and his staff in attending to matters arising in the administration.

(3) It is for the creditors' committee (if there is one) to determine whether the remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.

(4) In arriving at that determination, the committee shall have regard to the following matters—

- (a) the complexity (or otherwise) of the case,
- (b) any respects in which, in connection with the company's affairs, there falls on the administrator any responsibility of an exceptional kind or degree,
- (c) the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties as such, and
- (d) the value and nature of the property with which he has to deal.

(5) If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.

(6) If not fixed as above, the administrator's remuneration shall, on his application, be fixed by the court.

(7) Rule 4.128(2) and (3) in Part 4 of the Rules (remuneration of joint liquidators; solicitors' profit costs) applies to an administrator as it applies to a liquidator, with any necessary modifications.

Recourse to meeting of creditors

2.48. If the administrator's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

Recourse to the court

2.49.—(1) If the administrator considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors, is insufficient, he may apply to the court for an order increasing its amount or rate.

(2) The administrator shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

(3) If there is no creditors' committee, the administrator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

(4) The court may, if it appears to be a proper case, order the costs of the administrator's application, including the costs of any member of the creditors' committee appearing on it, or any creditor so appearing, to be paid as an expense of the administration.

Creditors' claim that remuneration is excessive

2.50.—(1) Any creditor of the company may, with the concurrence of at least 25 per cent. in value of the creditors (including himself), apply to the court for an order that the administrator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

(2) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; but it shall not do so unless the applicant has had an opportunity to attend the court for an ex parte hearing, of which he has been given at least 7 days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly.

(3) The applicant shall, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

(4) If the court considers the application to be well-founded, it shall make and order fixing the remuneration at a reduced amount or rate.

(5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the administration.

Disposal of charged property, etc

2.51.—(1) The following applies where the administrator applies to the court under section 15(2) for authority to dispose of property of the company which is subject to a security, or goods in the possession of the company under an agreement, to which that subsection relates.

(2) The court shall fix a venue for the hearing of the application, and the administrator shall forthwith give notice of the venue to the person who is the holder of the security or, as the case may be, the owner under the agreement.

(3) If an order is made under section 15(2), the administrator shall forthwith give notice of it to that person or owner.

(4) The court shall send 2 sealed copies of the order to the administrator, who shall send one of them to that person or owner.

Abstract of receipts and payments

2.52.—(1) The administrator shall—

- (a) within 2 months after the end of 6 months from the date of his appointment, and of every subsequent period of 6 months, and
- (b) within 2 months after he ceases to act as administrator,

send to the court, and to the registrar of companies, and to each member of the creditors' committee, the requisite accounts of the receipts and payments of the company.

(2) The court may, on the administrator's application, extend the period of 2 months mentioned above.

(3) The accounts are to be in the form of an abstract showing—

- (a) receipts and payments during the relevant period of 6 months, or
- (b) where the administrator has ceased to act, receipts and payments during the period from the end of the last 6-month period to the time when he so ceased (alternatively, if there has been no previous abstract, receipts and payments in the period since his appointment as administrator).

(4) If the administrator makes default in complying with this Rule, he is liable to a fine and, for continued contravention, to a daily default fine.

Resignation

2.53.—(1) The administrator may give notice of his resignation on grounds of ill health or because—

- (a) he intends ceasing to be in practice as an insolvency practitioner, or
- (b) there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by him of the duties of administrator.

(2) The administrator may, with the leave of the court, give notice of his resignation on grounds other than those specified in paragraph (1).

(3) The administrator must give to the persons specified below at least 7 days' notice of his intention to resign, or to apply for the court's leave to do so—

- (a) if there is a continuing administrator of the company, to him;
- (b) if there is no such administrator, to the creditors' committee; and
- (c) if there is no such administrator and no creditors' committee, to the company and its creditors.

Administrator deceased

2.54.—(1) Subject as follows, where the administrator has died, it is the duty of his personal representatives to give notice of the fact to the court, specifying the date of the death.

This does not apply if notice has been given under any of the following paragraphs of this Rule.

(2) If the deceased administrator was a partner in a firm, notice may be given by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners.

(3) Notice of the death may be given by any person producing to the court the relevant death certificate or a copy of it.

Order filling vacancy

2.55. Where the court makes an order filling a vacancy in the office of administrator, the same provisions apply in respect of giving notice of, and advertising, the order as in the case of the original appointment of an administrator.

CHAPTER 6

VAT BAD DEBT RELIEF

Issue of certificate of insolvency

2.56.—(1) In accordance with this Rule, it is the duty of the administrator to issue a certificate in the terms of paragraph (b) of section 22(3) of the Value Added Tax Act 1983(a)(1) (which specifies the circumstances in which a company is deemed insolvent for the purposes of that section forthwith upon his forming the opinion described in that paragraph.

(2) There shall in the certificate be specified—

- (a) the name of the company and its registered number;
- (b) the name of the administrator and the date of his appointment;
- (c) the date on which the certificate is issued.

(3) The certificate shall be intitled “CERTIFICATE OF INSOLVENCY FOR THE PURPOSES OF SECTION 22(3)(b) OF THE VALUE ADDED TAX ACT 1983”.

Notice to creditors

2.57.—(1) Notice of the issue of the certificate shall be given by the administrator within 3 months of his appointment or within 2 months of issuing the certificate, whichever is the later, to all of the company's unsecured creditors of whose address he is then aware and who have, to his knowledge, made supplies to the company, with a charge to value added tax, at any time before his appointment.

(2) Thereafter, he shall give the notice to any such creditor of whose address and supplies to the company he becomes aware.

(3) He is not under obligation to provide any creditor with a copy of the certificate.

Preservation of certificate with company's records

2.58.—(1) The certificate shall be retained with the company's accounting records, and section 222 of the Companies Act (where and for how long records are to be kept) shall apply to the certificate as it applies to those records.

(2) It is the duty of the administrator, on vacating office, to bring this Rule to the attention of the directors or (as the case may be) any successor of his as administrator.