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## STATUTORY INSTRUMENTS

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# 1986 No. 1925

## The Insolvency Rules 1986

### THE FIRST GROUP OF PARTS

#### PART 3

#### ADMINISTRATIVE RECEIVERSHIP

#### CHAPTER 1

#### APPOINTMENT OF ADMINISTRATIVE RECEIVER

##### **Acceptance of appointment**

**3.1.**—(1) Where a person is appointed as the sole or joint administrative receiver of a company's property under powers contained in an instrument, the appointee, if he accepts the appointment, shall within 7 days confirm his acceptance in writing to the appointer.

(2) If two or more persons are appointed jointly as administrative receivers, each of them shall confirm acceptance on his own behalf; but the appointment is effective only when all those jointly appointed have complied with this Rule.

(3) Confirmation under this Rule may be given on the appointee's behalf by a person whom he has duly authorised to give it.

(4) In confirming his acceptance, the appointee shall state—

- (a) the time and date of his receipt of notice of the appointment, and
- (b) the time and date of his acceptance.

##### **Notice and advertisement of appointment**

**3.2.**—(1) This Rule relates to the notice which a person is required by section 46(1) to send and publish, when appointed as administrative receiver.

(2) The following matters shall be stated in the notice—

- (a) the registered name of the company, as at the date of the appointment, and its registered number;
- (b) any other name with which the company has been registered in the 12 months preceding that date;
- (c) any name under which the company has traded at any time in those 12 months, if substantially different from its then registered name;
- (d) the name and address of the administrative receiver, and the date of his appointment;
- (e) the name of the person by whom the appointment was made;
- (f) the date of the instrument conferring the power under which the appointment was made, and a brief description of the instrument;

(g) a brief description of the assets of the company (if any) in respect of which the person appointed is not made the receiver.

(3) The administrative receiver shall cause notice of his appointment to be advertised once in the Gazette, and once in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the company's creditors.

(4) The advertisement shall state all the matters specified in subparagraphs (a) to (e) of paragraph (2) above.

## CHAPTER 2

### STATEMENT OF AFFAIRS AND REPORT TO CREDITORS

#### **Notice requiring statement of affairs**

**3.3.**—(1) If the administrative receiver determines to require a statement of the company's affairs to be made out and submitted to him in accordance with section 47, 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 47(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 administrative receiver if required).

(4) The administrative receiver 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**

**3.4.**—(1) The statement of affairs shall be in Form 3.2, shall contain all the particulars required by that form and shall be verified by affidavit by the deponents (using the same form).

(2) The administrative receiver may require any of the persons mentioned in section 47(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 receiver 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 administrative receiver shall retain the verified copy of the statement and the affidavits of concurrence (if any) as part of the records of the receivership.

#### **Limited disclosure**

**3.5.**—(1) Where the administrative receiver thinks that it would prejudice the conduct of the receivership 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 a 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 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**

**3.6.**—(1) The power of the administrative receiver under section 47(5) to give a release from the obligation imposed by that section, or to grant an extension of time, may be exercised at the receiver'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 receiver, 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 receiver 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 receiver 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 receiver 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 receiver.

(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 under the administrative receiver's control.

### **Expenses of statement of affairs**

**3.7.**—(1) A deponent making the statement of affairs and affidavit shall be allowed, and paid by the administrative receiver out of his receipts, any expenses incurred by the deponent in so doing which the receiver thinks reasonable.

(2) Any decision by the receiver 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 receiver.

### **Report to creditors**

**3.8.**—(1) If under section 48(2) the administrative receiver determines not to send a copy of his report to creditors, but to publish notice under paragraph (b) of that subsection, the notice shall be published in the newspaper in which the receiver's appointment was advertised.

(2) If he proposes to apply to the court to dispense with the holding of the meeting of unsecured creditors (otherwise required by section 48(2)), he shall in his report to creditors or (as the case may be) in the notice published as above, state the venue fixed by the court for the hearing of the application.

(3) Subject to any order of the court under Rule 3.5, the copy of the receiver's report which under section 48(1) is to be sent to the registrar of companies shall have attached to it a copy of any statement of affairs under section 47, and copies of any affidavits of concurrence.

(4) If the statement of affairs or affidavits of concurrence, if any, have not been submitted to the receiver by the time he sends a copy of his report to the registrar of companies, he shall send a copy of the statement and any affidavits of concurrence as soon thereafter as he receives them.

## CHAPTER 3

### CREDITORS' MEETING

#### **Procedure for summoning meeting under s.48(2)**

**3.9.**—(1) In fixing the venue for a meeting of creditors summoned under section 48(2), the administrative receiver shall have regard to the convenience of the persons who are invited to attend.

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

(3) At least 14 days' notice of the venue shall be given to all creditors of the company who are identified in the statement of affairs, or are known to the receiver and had claims against the company at the date of his appointment.

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

(5) The notice shall include a statement to the effect that creditors whose claims are wholly secured are not entitled to attend or be represented at the meeting.

(6) Notice of the venue shall also be published in the newspaper in which the receiver's appointment was advertised.

(7) The notice to creditors and the newspaper advertisement shall contain a statement of the effect of Rule 3.11(1) below (voting rights).

#### **The chairman at the meeting**

**3.10.**—(1) The chairman at the creditors' meeting shall be the receiver, 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 receiver or his firm who is experienced in insolvency matters.

#### **Voting rights**

**3.11.**—(1) Subject as follows, at the creditors' meeting a person is entitled to vote only if—

- (a) he has given to the receiver, not later than 12.00 hours on the business day before the day fixed for the meeting, details in writing of the debt that 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 administrative receiver any proxy which the creditor intends to be used on his behalf.

(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 receiver 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 appointment of the receiver, after deducting any amounts paid in respect of that 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.

(6) 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.

(7) 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.

### **Admission and rejection of claim**

**3.12.—**(1) At the 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 3.11, 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) Neither the receiver 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.

### **Quorum**

**3.13.—**(1) The creditors' meeting is not competent to act unless there are present in person or by proxy at least 3 creditors (or all of the creditors, if their number does not exceed 3), being in either case entitled to vote.

(2) One person constitutes a quorum if—

- (a) he is himself a creditor or representative under section 375 of the Companies Act, with entitlement to vote, and he holds a number of proxies sufficient to ensure that, with his own vote, paragraph (1) is complied with, or
- (b) being the chairman or any other person, he holds that number of proxies.

### **Adjournment**

**3.14.**—(1) The creditors' meeting shall not be adjourned, even if no quorum is present, unless the chairman decides that it is desirable; and in that case he shall adjourn it to such date, time and place as he thinks fit.

(2) Rule 3.9(1) and (2) applies, with necessary modifications, to any adjourned meeting.

(3) If there is no quorum, and the meeting is not adjourned, it is deemed to have been duly summoned and held.

### **Resolutions and minutes**

**3.15.**—(1) At the creditors' meeting, 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 a record to be made of the proceedings, and kept as part of the records of the receivership.

(3) The record 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.

## **CHAPTER 4**

### **THE CREDITORS' COMMITTEE**

#### **Constitution of committee**

**3.16.**—(1) Where it is resolved by the creditors' meeting to establish a creditors' committee, 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 3.21 below.

#### **Formalities of establishment**

**3.17.**—(1) The creditors' committee does not come into being, and accordingly cannot act, until the administrative receiver 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 receiver'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 receiver shall issue an amended certificate.

(4) The certificate, and any amended certificate, shall be sent by the receiver to the registrar of companies.

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

#### **Functions and meetings of the committee**

**3.18.**—(1) The creditors' committee shall assist the administrative receiver 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 receiver.

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

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

(4) The receiver shall give 7 days' written notice of the venue of any meeting to every member (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**

**3.19.**—(1) Subject to Rule 3.28(3), the chairman at any meeting of the creditors' committee shall be the administrative receiver, 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 receiver or his firm who is experienced in insolvency matters.

### **Quorum**

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

### **Committee-members' representatives**

**3.21.**—(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**

**3.22.** A member of the committee may resign by notice in writing delivered to the administrative receiver.

## **Termination of membership**

**3.23.—(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**

**3.24.** 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**

**3.25.—(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 administrative receiver 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 3.16.

(3) The receiver 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**

**3.26.—(1)** At any meeting of the 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 kept as part of the records of the receivership.

## **Resolutions by post**

**3.27.—(1)** In accordance with this Rule, the administrative receiver 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 receiver 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 receiver 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 receiver 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 kept with the records of the receivership.

### **Information from receiver**

**3.28.**—(1) Where the committee resolves to require the attendance of the administrative receiver under section 49(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 receiver'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 receiver so attends, the members of the committee may elect any one of their number to be chairman of the meeting, in place of the receiver or any nominee of his.

### **Expenses of members**

**3.29.**—(1) Subject as follows, the administrative receiver 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 receivership.

(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 administrative receiver.

### **Members' dealings with the company**

**3.30.**—(1) Membership of the committee does not prevent a person from dealing with the company while the receiver is acting, provided that any transactions in the course of such dealings are entered into in good faith and for value.

(2) The court may, on the application of any person interested, set aside a 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 ADMINISTRATIVE RECEIVER (MISCELLANEOUS)**

#### **Disposal of charged property**

**3.31.**—(1) The following applies where the administrative receiver applies to the court under section 43(1) for authority to dispose of property of the company which is subject to a security.

(2) The court shall fix a venue for the hearing of the application, and the receiver shall forthwith give notice of the venue to the person who is the holder of the security.

(3) If an order is made under section 43(1), the receiver shall forthwith give notice of it to that person.

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

### **Abstract of receipts and payments**

**3.32.**—(1) The administrative receiver shall—

- (a) within 2 months after the end of 12 months from the date of his appointment, and of every subsequent period of 12 months, and
- (b) within 2 months after he ceases to act as administrative receiver,

send to the registrar of companies, to the company and to the person by whom he was appointed, and to each member of the creditors' committee (if there is one), the requisite accounts of his receipts and payments as receiver.

(2) The court may, on the receiver's application, extend the period of 2 months referred to in paragraph (1).

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

- (a) receipts and payments during the relevant period of 12 months, or
- (b) where the receiver has ceased to act, receipts and payments during the period from the end of the last 12-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 administrative receiver).

(4) This Rule is without prejudice to the receiver's duty to render proper accounts required otherwise than as above.

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

### **Resignation**

**3.33.**—(1) Subject as follows, before resigning his office the administrative receiver shall give at least 7 days' notice of his intention to do so—

- (a) the person by whom he was appointed, and
- (b) the company or, if it is then in liquidation, its liquidator.

(2) A notice given under this Rule shall specify the date on which the receiver intends his resignation to take effect.

(3) No notice is necessary if the receiver resigns in consequence of the making of an administration order.

### **Receiver deceased**

**3.34.** If the administrative receiver dies, the person by whom he was appointed shall, forthwith on his becoming aware of the death, give notice of it to—

- (a) the registrar of companies, and
- (b) the company or, if it is in liquidation, the liquidator.

### **Vacation of office**

**3.35.**—(1) The administrative receiver, on vacating office on completion of the receivership, or in consequence of his ceasing to be qualified as an insolvency practitioner, shall forthwith give notice of his doing so—

- (a) if the company is in liquidation, to the liquidator, and
- (b) in any case, to the members of the creditors' committee (if any).

(2) Where the receiver's office is vacated, the notice to the registrar of companies which is required by section 45(4) may be given by means of an indorsement on the notice required by section 405(2) of the Companies Act (notice for the purposes of the register of charges).

## CHAPTER 6

### VAT BAD DEBT RELIEF

#### **Issue of certificate of insolvency**

**3.36.**—(1) In accordance with this Rule, it is the duty of the administrative receiver to issue a certificate in the terms of paragraph (b) of section 22(3) of the Value Added Tax Act 1983<sup>(1)</sup> (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 administrative receiver and the date of his appointment; and
- (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**

**3.37.**—(1) Notice of the issue of the certificate shall be given by the administrative receiver 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**

**3.38.**—(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 administrative receiver, on vacating office, to bring this Rule to the attention of the directors or (as the case may be) any successor of his as receiver.

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(1) As amended by section 32 of the Finance Act 1985 (c.54).