
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE THIRD GROUP OF PARTS

PART 7

COURT PROCEDURE AND PRACTICE

CHAPTER 1

APPLICATIONS

Preliminary

7.1. This Chapter applies to any application made to the court under the Act or Rules except a petition for—

- (a) an administration order under Part II,
- (b) a winding-up order under Part IV, or
- (c) a bankruptcy order under Part IX

of the Act.

Interpretation

7.2.—(1) In this Chapter, except in so far as the context otherwise requires—

“originating application” means an application to the court which is not an application in pending proceedings before the court; and

“ordinary application” means any other application to the court.

(2) Every application shall be in the form appropriate to the application concerned.

Form and contents of application

7.3.—(1) Each application shall be in writing and shall state—

- (a) the names of the parties;
- (b) the nature of the relief or order applied for or the directions sought from the court;
- (c) the names and addresses of the persons (if any) on whom it is intended to serve the application or that no person is intended to be served;
- (d) where the Act or Rules require that notice of the application is to be given to specified persons, the names and addresses of all those persons (so far as known to the applicant); and
- (e) the applicant's address for service.

(2) An originating application shall set out the grounds on which the applicant claims to be entitled to the relief or order sought.

(3) The application must be signed by the applicant if he is acting in person or, when he is not so acting, by or on behalf of his solicitor.

Filing and service of application

7.4.—(1) The application shall be filed in court, accompanied by one copy and a number of additional copies equal to the number of persons who are to be served with the application.

(2) Subject as follows in this Rule and the next, or unless the Rule under which the application is brought provides otherwise, or the court otherwise orders, upon the presentation of the documents mentioned in paragraph (1) above, the court shall fix a venue for the application to be heard.

(3) Unless the court otherwise directs, the applicant shall serve a sealed copy of the application, endorsed with the venue for the hearing, on the respondent named in the application (or on each respondent if more than one).

(4) The court may give any of the following directions—

- (a) that the application be served upon persons other than those specified by the relevant provision of the Act or Rules;
- (b) that the giving of notice to any person may be dispensed with;
- (c) that notice be given in some way other than that specified in paragraph (3).

(5) Unless the provision of the Act or Rules under which the application is made provides otherwise, and subject to the next paragraph, the application must be served at least 14 days before the date fixed for the hearing.

(6) Where the case is one of urgency, the court may (without prejudice to its general power to extend or abridge time limits)—

- (a) hear the application immediately, either with or without notice to, or the attendance of, other parties, or
- (b) authorise a shorter period of service than that provided for by paragraph (5);

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the court thinks fit.

Other hearings ex parte

7.5.—(1) Where the relevant provisions of the Act or Rules do not require service of the application on, or notice of it to be given to, any person, the court may hear the application ex parte.

(2) Where the application is properly made ex parte, the court may hear it forthwith, without fixing a venue as required by Rule 7.4(2).

(3) Alternatively, the court may fix a venue for the application to be heard, in which case Rule 7.4 applies (so far as relevant).

Hearing of application

7.6.—(1) Unless allowed or authorised to be made otherwise, every application before the registrar shall, and every application before the judge may, be heard in chambers.

(2) Unless either—

- (a) the judge has given a general or special direction to the contrary, or
- (b) it is not within the registrar's power to make the order required,

the jurisdiction of the court to hear and determine the application may be exercised by the registrar, and the application shall be made to the registrar in the first instance.

(3) Where the application is made to the registrar he may refer to the judge any matter which he thinks should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the registrar with such directions as he thinks fit.

(4) Nothing in this Rule precludes an application being made directly to the judge in a proper case.

Use of affidavit evidence

7.7.—(1) In any proceedings evidence may be given by affidavit unless by any provision of the Rules it is otherwise provided or the court otherwise directs; but the court may, on the application of any party, order the attendance for cross-examination of the person making the affidavit.

(2) Where, after such an order has been made, the person in question does not attend, his affidavit shall not be used in evidence without the leave of the court.

Filing and service of affidavits

7.8.—(1) Unless the provision of the Act or Rules under which the application is made provides otherwise, or the court otherwise allows—

- (a) if the applicant intends to rely at the first hearing on affidavit evidence, he shall file the affidavit or affidavits (if more than one) in court and serve a copy or copies on the respondent, not less than 14 days before the date fixed for the hearing, and
- (b) where a respondent to an application intends to oppose it and to rely for that purpose on affidavit evidence, he shall file the affidavit or affidavits (if more than one) in court and serve a copy or copies on the applicant, not less than 7 days before the date fixed for the hearing.

(2) Any affidavit may be sworn by the applicant or by the respondent or by some other person possessing direct knowledge of the subject matter of the application.

Use of reports

7.9.—(1) A report may be filed in court instead of an affidavit—

- (a) in any case, by the official receiver (whether or not he is acting in any capacity mentioned in sub-paragraph (b)), or a deputy official receiver, or
- (b) unless the application involves other parties or the court otherwise orders, by—
 - (i) an administrator, a liquidator or a trustee in bankruptcy,
 - (ii) a provisional liquidator or an interim receiver,
 - (iii) a special manager, or
 - (iv) an insolvency practitioner appointed under section 273(2).

(2) In any case where a report is filed instead of an affidavit, the report shall be treated for the purposes of Rule 7.8(1) and any hearing before the court as if it were an affidavit.

(3) Any report filed by the official receiver in accordance with the Act or the Rules is prima facie evidence of any matter contained in it.

Adjournment of hearing; directions

7.10.—(1) The court may adjourn the hearing of an application on such terms (if any) as it thinks fit.

(2) The court may at any time give such directions as it thinks fit as to—

- (a) service or notice of the application on or to any person, whether in connection with the venue of a resumed hearing or for any other purpose;
- (b) whether particulars of claim and defence are to be delivered and generally as to the procedure on the application;
- (c) the manner in which any evidence is to be adduced at a resumed hearing and in particular (but without prejudice to the generality of this sub-paragraph) as to—
 - (i) the taking of evidence wholly or in part by affidavit or orally;
 - (ii) the cross-examination either before the judge or registrar on the hearing in court or in chambers, of any deponents to affidavits;
 - (iii) any report to be given by the official receiver or any person mentioned in Rule 7.9(1)(b);
- (d) the matters to be dealt with in evidence.