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STATUTORY INSTRUMENTS

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**2018 No. 1082**

The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018

PART 3

ADMINISTRATION

CHAPTER 1

Interpretation for this Part

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

**Interpretation for Part 3**

**3.1.** In this Part—

“pre-administration costs” means fees charged, and expenses incurred, by the administrator or another person qualified to act as an insolvency practitioner in relation to the company, before the company entered administration but with a view to it doing so; and

“unpaid pre-administration costs” means pre-administration costs which had not been paid when the company entered administration.

**Proposed administrator’s statement and consent to act**

**3.2.—**(1) References in this Part to a consent to act are to a statement by a proposed administrator headed “Proposed administrator’s statement and consent to act” which contains the following—

- (a) identification details for the company immediately below the heading;
  - (b) a certificate that the proposed administrator is qualified to act as an insolvency practitioner in relation to the company;
  - (c) the proposed administrator’s IP number;
  - (d) the name of the relevant recognised professional body which is the source of the proposed administrator’s authorisation to act;
  - (e) a statement that the proposed administrator consents to act as administrator of the company;
  - (f) a statement whether or not the proposed administrator has had any prior professional relationship with the company and, if so, a short summary of the relationship;
  - (g) the name of the person by whom the appointment is to be made or the applicant in the case of an application to the court for an appointment; and
  - (h) a statement that the proposed administrator is of the opinion that the purpose of the administration is reasonably likely to be achieved in the particular case.
- (2) The consent to act must be authenticated and dated by the proposed administrator.

(3) Where a number of persons are proposed to be appointed to act jointly or concurrently as the administrator of a company, each must make a separate consent to act.

## CHAPTER 2

### Appointment of administrator by Court

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

#### **Administration application (paragraph 12 of Schedule B1)**

**3.3.** An application made by way of petition for an administration order (“administration application”) must be lodged with the court together with a proposed administrator’s consent to act.

#### **Administration application made by the directors**

**3.4.** Where an administration application is made by the directors, it is to be treated as if it were an application by the company.

#### **Administration application by the supervisor of a CVA**

**3.5.** Where notice of an administration application by the supervisor of a CVA in respect of the company has been given to the company in accordance with rule 3.6(e) it is to be treated as if it were an application by the company.

#### **Application**

**3.6.** The applicant must give notice of the administration application to the following (in addition to notifying the persons referred to in paragraph 12(2)(a) to (c) of Schedule B1)—

- (a) any administrative receiver;
- (b) if there is a petition pending for the winding up of the company—
  - (i) the petitioner, and
  - (ii) any provisional liquidator;
- (c) any member State liquidator appointed in main proceedings in relation to the company;
- (d) the Keeper of the Register of Inhibitions and Adjudications;
- (e) the company, if the application is made by anyone other than the company or its directors;
- (f) any supervisor of a CVA in relation to the company;
- (g) the proposed administrator; and
- (h) any other person on whom the court orders that the application be served.

#### **Notice to messengers-at-arms or sheriff officers**

**3.7.** The applicant must as soon as reasonably practicable after lodging the administration application deliver a notice of its being made to—

- (a) any messenger-at-arms or sheriff officer who to the knowledge of the applicant is charged with executing diligence or other legal process against the company or its property; and
- (b) any person who to the knowledge of the applicant has executed diligence against the company or its property.

### **Notice of other insolvency proceedings**

**3.8.** After the administration application has been lodged and until an order is made, it is the duty of the applicant to lodge with the court notice of the existence of any insolvency proceedings in relation to the company, as soon as the applicant becomes aware of them—

- (a) anywhere in the world, in the case of a company registered under the Companies Acts in Scotland;
- (b) in any EEA State (including the United Kingdom), in the case of a company incorporated in an EEA State other than the United Kingdom; or
- (c) in any member State other than Denmark, in the case of a company not incorporated in an EEA State.

### **Intervention by holder of a qualifying floating charge (paragraph 36(1)(b) of Schedule B1)**

**3.9.**—(1) Where the holder of a qualifying floating charge applies to the court under paragraph 36(1)(b) of Schedule B1 to have a specified person appointed as administrator, the holder must produce to the court—

- (a) the written consent of the holder of any prior qualifying floating charge;
- (b) the proposed administrator’s consent to act; and
- (c) sufficient evidence to satisfy the court that the holder is entitled to appoint an administrator under paragraph 14 of Schedule B1.

(2) If an administration order is made appointing the specified person, the expenses of the person who made the administration application and of the applicant under paragraph 36(1)(b) of Schedule B1 are, unless the court orders otherwise, to be paid as an expense of the administration.

### **The hearing**

**3.10.** At the hearing of the administration application, any of the following may appear or be represented—

- (a) the applicant;
- (b) the company;
- (c) one or more of the directors;
- (d) any administrative receiver;
- (e) any person who has presented a petition for the winding up of the company;
- (f) the proposed administrator;
- (g) any member State liquidator appointed in main proceedings in relation to the company;
- (h) the holder of any qualifying floating charge;
- (i) any supervisor of a CVA;
- (j) with the permission of the court, any other person who appears to have an interest which justifies appearance.

### **The order**

**3.11.**—(1) Where the court makes an administration order the court’s order must be headed “Administration order” and must contain the following—

- (a) identification details for the insolvency proceedings;
- (b) the address for service of the applicant;

- (c) details of any other parties (including the company) appearing and by whom represented;
- (d) an order that during the period the administration order is in force the affairs, business and property of the company are to be managed by the administrator;
- (e) the name of the person appointed as administrator;
- (f) an order that that person is appointed as administrator of the company;
- (g) a statement that the court is satisfied either that the EU Regulation does not apply or that it does;
- (h) where the EU Regulation does apply, a statement whether the proceedings are main, secondary, or territorial proceedings;
- (i) the date of the order (and, if the court so orders, the time); and
- (j) such other provisions, if any, as the court thinks just.

(2) Where two or more administrators are appointed, the order must also specify, in terms of paragraph 100(2) of Schedule B1—

- (a) which functions, if any, are to be exercised by those persons appointed acting jointly; and
- (b) which functions, if any, are to be exercised by any or all of the persons appointed.

### **Order on an application under paragraph 37 or 38 of Schedule B1**

**3.12.** Where the court makes an administration order in relation to a company on an application under paragraph 37 or 38 of Schedule B1, the court must also include in the order—

- (a) in the case of a liquidator appointed in a voluntary winding up, the removal of that liquidator from office;
- (b) provision for payment of the expenses of the winding up;
- (c) such provision as the court thinks just relating to—
  - (i) any indemnity given to the liquidator,
  - (ii) the release of the liquidator,
  - (iii) the handling or realisation of any of the company's assets in the hands of, or under the control of the liquidator, and
  - (iv) other matters arising in connection with the winding up; and
- (d) such other provisions, if any, as the court thinks just.

### **Notice of administration order**

**3.13.—**(1) If the court makes an administration order, it must as soon as reasonably practicable deliver two copies of the order certified by the court to the applicant.

(2) The applicant must, as soon as reasonably practicable, deliver a certified copy of the order to the person appointed as administrator.

(3) If the court makes an order under sub-paragraph (d) or (f) of paragraph 13(1) of Schedule B1, it must give directions as to the persons to whom, and how, notice of that order is to be delivered.

### **Notice of dismissal of application for an administration order**

**3.14.** If the court dismisses the administration application under paragraph 13(1)(b) of Schedule B1, the applicant must as soon as reasonably practicable send notice of the court's order dismissing the application to all those to whom the application was notified under rule 3.6.

### **Expenses allowed by the court**

**3.15.** If the court makes an administration order, the expenses of the applicant, and of any other party whose expenses are allowed by the court, are to be regarded as expenses of the administration.

## **CHAPTER 3**

### **Appointment of administrator by holder of floating charge**

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

### **Notice of intention to appoint**

**3.16.—**(1) This rule applies where the holder of a qualifying floating charge (“the appointer”) gives notice under paragraph 15(1)(a) of Schedule B1 of intention to appoint an administrator under paragraph 14 of that Schedule and lodges a copy of the notice with the court under paragraph 44(2) of that Schedule.

(2) The notice lodged with the court must be headed “Notice of intention to appoint an administrator by holder of qualifying floating charge” and must contain the following—

- (a) identification details for the insolvency proceedings;
- (b) the name and address of the appointer;
- (c) a statement that the appointer intends to appoint an administrator of the company;
- (d) the name and address of the proposed administrator;
- (e) a statement that the appointer is the holder of the qualifying floating charge in question and that it is now enforceable;
- (f) details of the charge including the date the charge was created, the date the charge was registered and the maximum amount, if any, secured by the charge;
- (g) a statement that the notice is being given in accordance with paragraph 15(1)(a) of Schedule B1 to the holder of every prior floating charge which satisfies paragraph 14(2) of that Schedule;
- (h) the names and addresses of the holders of such prior floating charges and details of the charges;
- (i) a statement whether the company is or is not subject to insolvency proceedings at the date of the notice, and details of the proceedings if it is;
- (j) a statement whether the company is an Article 1.2 undertaking; and
- (k) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EU proceedings with reasons for the statement.

(3) The notice must be authenticated by the appointer or the appointer’s solicitor and dated.

(4) The lodging of the copy with the court under paragraph 44(2) of Schedule B1 must be done at the same time as notice is given in accordance with paragraph 15(1)(a).

### **Notice of appointment**

**3.17.—**(1) Notice of an appointment under paragraph 14 of Schedule B1 must be headed “Notice of appointment of an administrator by holder of a qualifying floating charge” and must contain—

- (a) identification details for the insolvency proceedings;
- (b) the name and address of the appointer;
- (c) a statement that the appointer has appointed the person named as administrator of the company;

- (d) the name and address of the person appointed as administrator;
  - (e) a statement that a copy of the administrator's consent to act accompanies the notice;
  - (f) a statement that the appointer is the holder of the qualifying floating charge in question and that it is now enforceable;
  - (g) details of the charge including the date of the charge, the date on which it was registered and the maximum amount if any secured by the charge;
  - (h) one of the following statements—
    - (i) that notice has been given in accordance with paragraph 15(1)(a) of Schedule B1 to the holder of every prior floating charge which qualifies as such in terms of paragraph 14(2) of that Schedule, that two business days have elapsed from the date the last such notice was given (if more than one), and—
      - (aa) that a copy of every such notice was lodged with the court under paragraph 44(2) of Schedule B1, and the date of that lodging (or the latest date of lodging if more than one), or
      - (bb) that a copy of every such notice accompanies the notice of appointment but was not lodged with the court under paragraph 44(2) of Schedule B1,
    - (ii) that the holder of every such floating charge to whom notice was given has consented in writing to the making of the appointment and that a copy of every consent accompanies the notice of appointment,
    - (iii) that the holder of every such floating charge has consented in writing to the making of the appointment without notice having been given to all and that a copy of every consent accompanies the notice of appointment, or
    - (iv) that there is no such floating charge;
  - (i) a statement whether the company is or is not subject to insolvency proceedings at the date of the notice, and details of the insolvency proceedings if it is;
  - (j) a statement whether the company is an Article 1.2 undertaking;
  - (k) a statement whether the insolvency proceedings flowing from the appointment will be main, secondary, territorial or non-EU proceedings and the reasons for so stating; and
  - (l) a statement that the appointment is in accordance with Schedule B1.
- (2) Where two or more administrators are appointed the notice must also specify, in terms of paragraph 100(2) of Schedule B1—
- (a) which functions, if any, are to be exercised by those persons acting jointly; and
  - (b) which functions, if any, are to be exercised by any or all of those persons.
- (3) The statutory declaration included in the notice in accordance with paragraph 18(2) of Schedule B1 must be made not more than five business days before the notice is lodged with the court.

### **Lodging of notice with the court**

- 3.18.**—(1) Three copies of the notice of appointment must be lodged with the court, accompanied by—
- (a) the administrator's consent to act; and
  - (b) either—
    - (i) evidence that the appointer has given notice as required by paragraph 15(1)(a) of Schedule B1, or

(ii) copies of the written consent of all those required to give consent in accordance with paragraph 15(1)(b) of Schedule B1.

(2) The court must certify the copies of the notice, endorse them with the date and time of lodging and deliver two of the certified copies to the appointer.

(3) The appointer must as soon as reasonably practicable deliver one of the certified copies to the administrator.

(4) This rule is subject to rules 3.20 and 3.21.

#### **Appointment by floating charge holder after administration application made**

**3.19.**—(1) This rule applies where the holder of a qualifying floating charge, after receiving notice that an administration application has been made, appoints an administrator under paragraph 14 of Schedule B1.

(2) The holder must as soon as reasonably practicable deliver a copy of the notice of appointment to—

- (a) the person making the administration application; and
- (b) the court in which the application has been made.

#### **Appointment taking place out of court business hours: procedure**

**3.20.**—(1) When (but only when) the court is not open for public business, the holder of a qualifying floating charge may lodge a notice of appointment in court in accordance with this rule.

(2) The person making the appointment must lodge the notice with the court by—

- (a) faxing it to the court; or
- (b) where rule 1.42 applies, by electronic means.

(3) Where the notice under paragraph (2) is faxed to the court the person making the appointment must—

- (a) ensure that a fax transmission report is produced by the sending machine which records the date and time of sending; and
- (b) send to the administrator, as soon as reasonably practicable, a copy of the notice of appointment and, where paragraph (2)(a) applies, a copy of the fax transmission report.

(4) The person making the appointment must lodge in court, on the next occasion that the court is open for public business, the original notice of appointment together with the documents required by rule 3.21 and—

- (a) the fax transmission report showing the date and time when the notice was sent; and
- (b) a statement of the full reasons for the out of hours lodging of the notice of appointment, including why it would have been damaging to the company or its creditors not to have so acted.

#### **Appointment taking place out of court business hours: content of notice**

**3.21.**—(1) A notice of appointment lodged in accordance with rule 3.20 must be headed “Notice of appointment of an administrator by holder of qualifying floating charge pursuant to paragraphs 14 and 18 of Schedule B1 to the Insolvency Act 1986 and Rule 3.20 of the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018” and must contain—

- (a) identification details for the insolvency proceedings;
- (b) the name and address of the appointer;

- (c) a statement that the appointer has appointed the person named as administrator of the company;
  - (d) the name and address of the person appointed as administrator;
  - (e) a statement that a copy of the administrator's consent to act accompanies the notice;
  - (f) a statement that the appointer is the holder of the qualifying floating charge in question and that it is now enforceable;
  - (g) details of the charge including the date of the charge, the date on which it was registered and the maximum amount, if any, secured by the charge;
  - (h) one of the following statements—
    - (i) that notice has been given in accordance with paragraph 15(1)(a) of Schedule B1 to the holder of every prior floating charge which satisfied paragraph 14(2) of that Schedule, that two business days have elapsed from the date the last such notice was given (if more than one) and—
      - (aa) that a copy of every such notice was lodged with the court under paragraph 44(2) of Schedule B1, and the date of that lodging (or the latest date of lodging if more than one), or
      - (bb) that a copy of every such notice accompanies the notice of appointment but was not lodged with the court under paragraph 44(2) of Schedule B1,
    - (ii) that the holder of every such floating charge to whom notice was given has consented in writing to the making of the appointment and that a copy of every consent accompanies the notice of appointment,
    - (iii) that the holder of every such floating charge has consented in writing to the making of the appointment without notice having been given to all and that a copy of every consent accompanies the notice of appointment, or
    - (iv) that there is no such floating charge;
  - (i) a statement whether the company is or is not subject to insolvency proceedings at the date of the notice, and details of the proceedings if it is;
  - (j) a statement whether the company is an Article 1.2 undertaking;
  - (k) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EU proceedings and the reasons for so stating and that a copy of the statement accompanies the notice of appointment;
  - (l) a statement that the appointment is in accordance with Schedule B1; and
  - (m) an undertaking that the following will be delivered to the court on the next occasion on which the court is open for public business—
    - (i) any document referred to in the notice in accordance with rule 3.20 as accompanying the notice,
    - (ii) the fax transmission report, and
    - (iii) a statement of reasons for the lodging of the notice out of court business hours.
- (2) Where two or more administrators are appointed the notice must also specify, in terms of paragraph 100(2) of Schedule B1—
- (a) which functions, if any, are to be exercised by those persons acting jointly; and
  - (b) which functions, if any, are to be exercised by any or all of those persons.
- (3) The statutory declaration included in the notice in accordance with paragraph 18(2) of Schedule B1 must be made not more than five business days before notice is lodged with the court.



### **Appointment taking place out of court business hours: legal effect**

**3.22.**—(1) The lodging of a notice in accordance with rule 3.20 has the same effect for all purposes as the lodging of a notice of appointment in accordance with rule 3.18.

(2) The appointment—

(a) takes effect either –

(i) from the date and time of the fax transmission, or

(ii) in accordance with rule 1.42(2)

but ceases to have effect if the requirements of rule 3.20(4) are not completed on the next occasion the court is open for public business.

(3) Where any question arises in relation to the date and time that the appointment was lodged with the court, it is a presumption capable of rebuttal that the date and time shown on the appointer’s fax transmission report is the date and time at which the notice was lodged.

## **CHAPTER 4**

### **Appointment of administrator by company or directors**

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

### **Notice of intention to appoint**

**3.23.**—(1) A notice required by paragraph 26(1) of Schedule B1 must be headed “Notice of intention to appoint an administrator by company or directors” and must contain the following—

(a) identification details for the insolvency proceedings;

(b) a statement that the company or the directors, as the case may be, intend to appoint an administrator of the company;

(c) the name and address of the proposed administrator;

(d) the names and addresses of the persons to whom notice is being given in accordance with paragraph 26(1) of Schedule B1;

(e) a statement that each of those persons is or may be entitled to appoint—

(i) an administrative receiver of the company, or

(ii) an administrator of the company under paragraph 14 of Schedule B1;

(f) a statement that the company has not within the preceding 12 months been—

(i) in administration,

(ii) the subject of a moratorium under Schedule A1(1) which ended on a date when no CVA was in force, or

(iii) the subject of a CVA which was made during a moratorium under Schedule A1 and which ended prematurely within the meaning of section 7B;

(g) a statement that in relation to the company there is no—

(i) petition for winding up which has been presented but not yet disposed of,

(ii) administration application which has not yet been disposed of, or

(iii) administrative receiver in office;

(h) a statement whether the company is an Article 1.2 undertaking;

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(1) Relevant amending Acts are paragraph 9 of Schedule 9 to the 2015 Act and paragraph 20 of Schedule 6 to the Deregulation Act 2015 (c.20).

- (i) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EU proceedings and the reasons for so stating;
  - (j) a statement that the notice is accompanied (as appropriate) by either—
    - (i) a copy of the resolution of the company to appoint an administrator, or
    - (ii) a record of the decision of the directors to appoint an administrator; and
  - (k) a statement that if a recipient of the notice who is named in terms of paragraph (e) wishes to consent in writing to the appointment that person may do so but that after five business days have expired from delivery of the notice the appointer may make the appointment although such a recipient has not replied.
- (2) The notice must be accompanied by—
- (a) a copy of the resolution of the company to appoint an administrator, where the company intends to make the appointment; or
  - (b) a record of the decision of the directors, where the directors intend to make the appointment.
- (3) If notice of intention to appoint is given under paragraph 26(1) of Schedule B1, a copy of that notice must be sent at the same time to—
- (a) any messenger-at-arms or sheriff officer who, to the knowledge of the person giving the notice, is instructed to execute diligence or other legal process against the company;
  - (b) any person who, to the knowledge of the person giving the notice, has executed diligence against the company or its property;
  - (c) any supervisor of a CVA; and
  - (d) the company, if the company is not intending to make the appointment.
- (4) The statutory declaration accompanying the notice in accordance with paragraph 27(2) of Schedule B1 must—
- (a) if it is not made by the person making the appointment, indicate the capacity in which the person making the declaration does so; and
  - (b) be made not more than five business days before the notice is lodged with the court.

### **Notice of appointment after notice of intention to appoint**

**3.24.**—(1) Notice of an appointment under paragraph 22 of Schedule B1 (when notice of intention to appoint has been given under paragraph 26) must be headed “Notice of appointment of an administrator by a company (where a notice of intention to appoint has been given)” or “Notice of appointment of an administrator by the directors of a company (where a notice of intention to appoint has been given)” and must contain—

- (a) identification details for the company immediately below the heading;
- (b) a statement that the company has, or the directors have, as the case may be, appointed the person named as administrator of the company;
- (c) the name and address of the person appointed as administrator;
- (d) a statement that a copy of the administrator’s consent to act accompanies the notice;
- (e) a statement that the company is, or the directors are, as the case may be, entitled to make an appointment under paragraph 22 of Schedule B1;
- (f) a statement that the appointment is in accordance with Schedule B1;
- (g) a statement whether the company is an Article 1.2 undertaking;

- (h) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial, or non-EU proceedings and the reasons for so stating;
  - (i) a statement that the company has, or the directors have, as the case may be, given notice of their intention to appoint in accordance with paragraph 26(1) of Schedule B1, that a copy of the notice was lodged with the court, the date of that lodging and either—
    - (i) that five business days have elapsed since notice was given under paragraph 26(1) of Schedule B1, or
    - (ii) that each person to whom the notice was given has consented to the appointment; and
  - (j) the date and time of the appointment by the company or its directors.
- (2) Where two or more administrators are appointed, the notice must also specify in terms of paragraph 100(2) of Schedule B1—
- (a) which functions, if any, are to be exercised by those persons acting jointly; and
  - (b) which functions, if any, are to be exercised by any or all of those persons.
- (3) The statutory declaration included in the notice in accordance with paragraph 29(2) of Schedule B1 must be made not more than five business days before the notice is lodged with the court.
- (4) If the statutory declaration is not made by the person making the appointment it must indicate the capacity in which the person making the declaration does so.

#### **Notice of appointment without prior notice of intention to appoint**

**3.25.**—(1) Notice of an appointment under paragraph 22 of Schedule B1 (when notice of intention to appoint has not been given under paragraph 26) must be headed “Notice of appointment of an administrator by a company (where a notice of intention to appoint has not been given)” or “Notice of appointment of an administrator by the directors of a company (where a notice of intention to appoint has not been given)” and must identify the company immediately below the heading.

- (2) The notice must state the following—
- (a) that the company has, or the directors have, as the case may be, appointed the person specified under sub-paragraph (b) as administrator of the company;
  - (b) the name and address of the person appointed as administrator;
  - (c) that a copy of the administrator’s consent to act accompanies the notice;
  - (d) that the company is or the directors are, as the case may be, entitled to make an appointment under paragraph 22 of Schedule B1;
  - (e) that the appointment is in accordance with Schedule B1;
  - (f) that the company has not within the preceding 12 months been—
    - (i) in administration,
    - (ii) the subject of a moratorium under Schedule A1 which ended on a date when no CVA was in force, or
    - (iii) the subject of a CVA which was made during a moratorium under Schedule A1 and which ended prematurely within the meaning of section 7B;
  - (g) that in relation to the company there is no—
    - (i) petition for winding up which has been presented but not yet disposed of,
    - (ii) administration application which has not yet been disposed of, or
    - (iii) administrative receiver in office;
  - (h) whether the company is an Article 1.2 undertaking;

- (i) whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EU proceedings and the reasons for so stating;
  - (j) that the notice is accompanied by—
    - (i) a copy of the resolution of the company to appoint an administrator, or
    - (ii) a record of the decision of the directors to appoint an administrator; and
  - (k) the date and time of the appointment.
- (3) Where two or more administrators are appointed the notice must also specify in terms of paragraph 100(2) of Schedule B1—
- (a) which functions (if any) are to be exercised by those persons acting jointly; and
  - (b) which functions (if any) are to be exercised by any or all of those persons.
- (4) The statutory declaration included in the notice in accordance with paragraph 29(2) and 30 of Schedule B1 must—
- (a) if the declaration is made on behalf of the person making the appointment, indicate the capacity in which the person making the declaration does so; and
  - (b) be made not more than five business days before the notice is lodged with the court.

#### **Notice of appointment: lodging with the court**

- 3.26.**—(1) Three copies of the notice of appointment in accordance with rule 3.24 or 3.25 must be lodged with the court, accompanied by—
- (a) the administrator’s consent to act; and
  - (b) the written consent of all those persons to whom notice was given in accordance with paragraph 26(1) of Schedule B1 unless the period of notice set out in paragraph 26(1) has expired.
- (2) Where a notice of intention to appoint an administrator has not been given, the copies of the notice of appointment must also be accompanied by—
- (a) a copy of the resolution of the company to appoint an administrator, where the company is making the appointment; or
  - (b) a record of the decision of the directors, where the directors are making the appointment.
- (3) The court must certify the copies, endorse them with the date and time of lodging and deliver two of the certified copies to the appointer.
- (4) The appointer must as soon as reasonably practicable deliver one of the certified copies to the administrator.

## CHAPTER 5

### Notice of administrator’s appointment

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

#### **Publication of administrator’s appointment**

**3.27.**—(1) The notice of appointment, to be published by the administrator as soon as reasonably practicable after appointment under paragraph 46(2)(b) of Schedule B1, must be gazetted and may be advertised in such other manner as the administrator thinks fit.

- (2) The notice of appointment must state the following—
  - (a) that an administrator has been appointed;

- (b) the date of the appointment; and
  - (c) the nature of the business of the company.
- (3) The administrator must, as soon as reasonably practicable after the date specified in paragraph 46(6) of Schedule B1, deliver a notice of the appointment—
- (a) if a receiver has been appointed, to that receiver;
  - (b) if there is pending a petition for the winding up of the company, to the petitioner (and also to the provisional liquidator, if any);
  - (c) to any messenger-at-arms or sheriff officer who, to the administrator’s knowledge, is instructed to execute diligence or other legal process against the company or its property;
  - (d) to any person who, to the administrator’s knowledge, has executed diligence against the company or its property;
  - (e) to the Keeper of the Register of Inhibitions and Adjudications; and
  - (f) to any supervisor of a CVA.
- (4) Where, under Schedule B1 or these Rules, the administrator is required to deliver a notice of the appointment to the registrar of companies or any other person, it must be headed “Notice of administrator’s appointment” and must contain—
- (a) the administrator’s name and address and IP number;
  - (b) identification details for the insolvency proceedings; and
  - (c) a statement that the administrator has been appointed as administrator of the company.
- (5) The notice under paragraph (4) must be authenticated and dated by the administrator.

## CHAPTER 6

### Statement of affairs

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

### Interpretation

**3.28.** In this Chapter—

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

“relevant person” means a person mentioned in paragraph 47(3) of Schedule B1; and

“fixed security”, in relation to any property of a company, means any security, other than a floating charge or a charge having the nature of a floating charge, which on the winding up of the company in Scotland would be treated as an effective security over that property, and (without prejudice to that generality) includes a security over that property, being a heritable security within the meaning of section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970(2).

### Statement of affairs: notice requiring and delivery to the administrator (paragraph 47(1) of Schedule B1)

[Note: see section 234(1) and 235(1) for the application of section 235 to administrators.]

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(2) [1970 c.35](#) is amended by Schedule 12 and 13 of the Abolition of Feudal Tenure etc. (Scotland) Act 2000, asp 5, Schedule 14 of the Title Conditions (Scotland) Act [2003 asp 9](#) and Schedule 5 to the Land Registration etc. (Scotland) Act [2012 asp 5](#).

**3.29.**—(1) A notice under paragraph 47(1) of Schedule B1 must be delivered to each person required to provide a statement of affairs of the company (“statement of affairs”).

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

- (a) require each nominated person to whom the notice is delivered to prepare and submit to the administrator a statement of affairs of the company;
- (b) inform each nominated person of—
  - (i) the names and addresses of all others (if any) to whom the same notice has been delivered,
  - (ii) the requirement to deliver the statement of affairs to the administrator not later than 11 days after receipt of the notice requiring the statement of affairs, and
  - (iii) the effect of paragraph 48(4) of Schedule B1 (penalty for non-compliance) and section 235 (duty to co-operate with the office-holder).

(3) The administrator must inform each nominated person to whom notice is delivered that a document for the preparation of the statement of affairs capable of completion in compliance with rule 3.30 will be supplied if requested.

(4) The nominated person (or one of them, if more than one) must deliver the statement of affairs to the administrator together with a copy of the statement.

**Statement of affairs: content (paragraph 47 of Schedule B1)**

**3.30.**—(1) The statement of affairs must be headed “Statement of affairs” and must—

- (a) identify the company immediately below the heading; and
- (b) state that it is a statement of the affairs of the company on a specified date, being the date on which it entered administration.

(2) The statement of affairs must contain (in addition to the matters required by paragraph 47(2) of Schedule B1)—

- (a) a summary of the assets of the company, setting out the book value and the estimated realisable value of—
  - (i) any assets subject to a fixed security,
  - (ii) any assets subject to a floating charge,
  - (iii) any uncharged assets, and
  - (iv) the total assets available for preferential creditors;
- (b) a summary of the liabilities of the company, setting out—
  - (i) the amount of preferential debts,
  - (ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts,
  - (iii) an estimate of the prescribed part, if applicable,
  - (iv) an estimate of the total assets available to pay debts secured by floating charges,
  - (v) the amount of debts secured by floating charges,
  - (vi) an estimate of the deficiency with respect to debts secured by floating charges or the surplus available after paying the debts secured by fixed security or floating charges,
  - (vii) the amount of unsecured debts (excluding preferential debts),
  - (viii) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts,

- (ix) any issued and called-up capital, and
  - (x) an estimate of the deficiency with respect to, or surplus available to, members of the company;
  - (c) a list of the company's creditors with the further particulars required by paragraph (3) indicating—
    - (i) any creditors under hire-purchase, conditional sale and hiring agreements,
    - (ii) any creditors claiming retention of title over property in the company's possession; and
  - (d) the name and address of each member of the company and the number, nominal value and other details of the shares held by each member.
- (3) The list of creditors required by paragraph 47(2) of Schedule B1 and paragraph (2)(c) of this rule must contain the particulars mentioned in paragraph (4) except where paragraphs (5) and (6) apply.
- (4) The particulars required by paragraph (3) are as follows—
- (a) the name and postal address of the creditor;
  - (b) the amount of the debt owed to the creditor;
  - (c) details of any security held by the creditor;
  - (d) the date on which the security was given; and
  - (e) the value of any such security.
- (5) Paragraph (6) applies where the particulars mentioned in paragraph (4) relate to creditors who are either—
- (a) employees or former employees of the company; or
  - (b) consumers claiming amounts paid in advance for the supply of goods or services.
- (6) Where this paragraph applies—
- (a) the statement of affairs itself must state separately for each of paragraph (5)(a) and (b) the number of such creditors and the total of the debts owed to them; and
  - (b) the particulars required by paragraph (4) must be set out in separate schedules to the statement of affairs for each of paragraphs (5)(a) and (b).

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

**3.31.**—(1) The administrator may require a relevant person to deliver to the administrator a statement of concurrence.

(2) A statement of concurrence is a statement that that person concurs in the statement of affairs submitted by a nominated person.

(3) The administrator must inform the nominated person who has been required to submit a statement of affairs that the relevant person has been required to deliver a statement of concurrence.

(4) The nominated person must deliver a copy of the statement of affairs to every relevant person who has been required to deliver a statement of concurrence.

(5) A statement of concurrence—

- (a) must identify the company; and
- (b) may be qualified in relation to matters dealt with in the statement of affairs where the relevant person—
  - (i) is not in agreement with the statement of affairs,

- (ii) considers the statement of affairs to be erroneous or misleading, or
- (iii) is without the direct knowledge necessary for concurring with it.

(6) A statement of concurrence must be a statutory declaration made in accordance with the Statutory Declarations Act 1835(3).

(7) The relevant person must deliver the required statement of concurrence together with a copy to the administrator before the end of the period of five business days (or such other period as the administrator may agree) beginning with the day on which the relevant person receives the statement of affairs.

### **Statement of affairs: registrar of companies**

**3.32.**—(1) The administrator must as soon as reasonably practicable deliver to the registrar of companies a copy of—

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

(2) The administrator must not deliver to the registrar of companies with the statement of affairs any schedule required by rule 3.30(6)(b).

(3) The requirement to deliver the statement of affairs is subject to any order of the court made under rule 3.45 that the statement of affairs or a specified part must not be delivered to the registrar of companies.

### **Statement of affairs: release from requirement and extension of time**

**3.33.**—(1) The power of the administrator under paragraph 48(2) of Schedule B1 to revoke a requirement to provide a statement of affairs or to extend the period within which it must be submitted may be exercised upon the administrator's own initiative or at the request of a nominated person who has been required to provide it.

(2) The nominated person may apply to the court if the administrator refuses that person's request for a revocation or extension.

(3) On receipt of an application, the court may, if it is satisfied that no sufficient cause is shown for it, dismiss it without giving notice to any party other than the applicant.

(4) The applicant must, at least 14 days before any hearing, deliver to the administrator a notice stating the venue with a copy of the application and of any evidence on which the applicant intends to rely.

(5) The administrator may do either or both of the following—

- (a) lodge a report of any matters which the administrator thinks ought to be drawn to the court's attention; or
- (b) appear and be heard on the application.

(6) If a report is lodged, the administrator must deliver a copy of it to the applicant not later than five business days before the hearing.

(7) Copies of any order made on the application must be certified by the court and delivered by the court to the applicant and the administrator.

(8) The expenses of an application under this rule must be paid by the applicant in any event, but the court may order that an allowance of all or part of them be payable as an expense of the administration.

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(3) [1835 c.62](#). There are amendments to this Act which are not relevant to this instrument.



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

**3.34.**—(1) The administrator must pay as an expense of the administration any expenses which the administrator considers to have been reasonably incurred by —

- (a) a nominated person in making a statement of affairs and a statutory declaration; or
- (b) a relevant person in making a statement of concurrence.

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

## **CHAPTER 7**

### **Administrator’s proposals**

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

### **Administrator’s proposals: additional content**

**3.35.**—(1) The administrator’s statement of proposals (which is required by paragraph 49(4) to be sent to the registrar of companies, creditors and members) must identify the insolvency proceedings and, in addition to the matters set out in paragraph 49, contain—

- (a) any other trading names of the company;
- (b) details of the administrator’s appointment, including—
  - (i) the date of the appointment,
  - (ii) the person making the application or appointment, and
  - (iii) where a number of persons have been appointed as administrators, details of the matters set out in paragraph 100(2) of Schedule B1 relating to the exercise of their functions;
- (c) the names of the directors and secretary of the company and details of any shareholdings in the company which they may have;
- (d) an account of the circumstances giving rise to the appointment of the administrator;
- (e) the date the proposals were sent to the creditors;
- (f) if a statement of the company’s affairs has been submitted—
  - (i) a copy or summary of it, except so far as an order under rule 3.44 or 3.45 limits disclosure of it, and excluding any schedule referred to in rule 3.30(6)(b), or the particulars relating to individual creditors contained in any such schedule,
  - (ii) details of who provided the statement of affairs, and
  - (iii) any comments which the administrator may have upon the statement of affairs;
- (g) if an order under rule 3.45 or 3.46 has been made—
  - (i) a statement of that fact, and
  - (ii) the date of the order;
- (h) if no statement of affairs has been submitted—
  - (i) the details of the financial position of the company at the latest practicable date (which must, unless the court orders otherwise, be a date not earlier than that on which the company entered administration), and
  - (ii) an explanation as to why there is no statement of affairs;
- (i) a full list of the company’s creditors in accordance with paragraph (2) if either—
  - (i) no statement of affairs has been submitted, or

- (ii) a statement of affairs has been submitted but it does not include such a list, or the administrator believes the list included is less than full;
  - (j) a statement of—
    - (i) how it is envisaged the purpose of the administration will be achieved, and
    - (ii) how it is proposed that the administration will end, including, where it is proposed that the administration will end by the company moving to a creditors' voluntary winding up—
      - (aa) details of the proposed liquidator,
      - (bb) where applicable, the declaration required by section 231, and
      - (cc) a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator in accordance with paragraph 83(7)(a) of Schedule B1 and rule 3.60(6)(b);
  - (k) a statement of either—
    - (i) the method by which the administrator has decided to seek a decision by creditors as to whether they approve the proposals, or
    - (ii) the administrator's reasons for not seeking a decision by creditors;
  - (l) the manner in which the affairs and business of the company—
    - (i) have, since the date of the administrator's appointment, been managed and financed, including, where any assets have been disposed of, the reasons for the disposals and the terms upon which the disposals were made, and
    - (ii) will, if the administrator's proposals are approved, continue to be managed and financed;
  - (m) a statement whether the proceedings are main, secondary, territorial or non-EU proceedings; and
  - (n) any other information that the administrator thinks necessary to enable creditors to decide whether or not to approve the proposals.
- (2) The list of creditors required by paragraph (1)(i) must contain the details required by paragraph (3) except where paragraphs (4) and (5) apply.
- (3) The particulars required by paragraph (2) are as follows and must be given in this order—
- (a) the name and postal address of the creditor;
  - (b) the amount of the debt owed to the creditor;
  - (c) details of any security held by the creditor;
  - (d) the date on which any such security was given; and
  - (e) the value of any such security;
- (4) This paragraph applies where the particulars required by paragraph (3) relate to creditors who are either—
- (a) employees or former employees of the company; or
  - (b) consumers claiming amounts paid in advance for the supply of goods and services.
- (5) Where paragraph (4) applies—
- (a) the list of creditors required by paragraph (1)(i) must state separately for each of paragraphs (4)(a) and (b) the number of the creditors and the total debts owed to them;
  - (b) the particulars required by paragraph (3) in respect of such creditors must be set out in separate schedules to the list of creditors for each of paragraphs (4)(a) and (b); and

- (c) the administrator must not deliver any such schedule to the registrar of companies with the statement of proposals.
- (6) Except where the administrator proposes a CVA in relation to the company, the statement made by the administrator under paragraph 49 of Schedule B1 must also include—
  - (a) to the best of the administrator’s knowledge and belief, an estimate of the value of—
    - (i) the prescribed part (whether or not the administrator might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts), and
    - (ii) the company’s net property (as defined in section 176A(6)); and
  - (b) a statement whether the administrator proposes to make an application to the court under section 176A(5) and if so the reason for the application.
- (7) The administrator may exclude from an estimate under paragraph (6)(a) information the disclosure of which could seriously prejudice the commercial interests of the company.
- (8) If the exclusion of such information affects the calculation of an estimate, the report must say so.
- (9) The document containing the statement of proposals must include a statement of the basis on which it is proposed that the administrator’s remuneration should be fixed by a decision in accordance with Chapter 14 of Part 3 of these Rules.
- (10) Where applicable, the document containing the statement of proposals must include—
  - (a) a statement of any pre-administration costs charged or incurred by the administrator or, to the administrator’s knowledge, by any other person qualified to act as an insolvency practitioner in relation to the company;
  - (b) a statement that the payment of any unpaid pre-administration costs as an expense of the administration is—
    - (i) subject to approval under rule 3.52, and
    - (ii) not part of the proposals subject to approval under paragraph 53(4) of Schedule B1.

**Administrator’s proposals: statement of pre-administration costs**

- 3.36.** A statement of pre-administration costs under rule 3.35(10)(a) must include—
- (a) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made;
  - (b) details of the work done for which the fees were charged and expenses incurred;
  - (c) an explanation of why the work was done before the company entered administration and how it had been intended to further the achievement of an objective in paragraph 3(1) of Schedule B1 in accordance with sub-paragraphs (2) to (4) of that paragraph;
  - (d) a statement of the amount of the pre-administration costs, setting out separately—
    - (i) the fees charged by the administrator,
    - (ii) the expenses incurred by the administrator,
    - (iii) the fees charged (to the administrator’s knowledge) by any other person qualified to act as an insolvency practitioner in relation to the company (and, if more than one, by each separately), and

- (iv) the expenses incurred (to the administrator's knowledge) by any other person qualified to act as an insolvency practitioner in relation to the company (and, if more than one, by each separately);
- (e) a statement of the amounts of pre-administration costs which have already been paid (set out separately as under sub-paragraph (d));
- (f) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person set out separately as under sub-paragraph (d);
- (g) a statement of the amounts of unpaid pre-administrations costs (set out separately as under sub-paragraph (d)); and
- (h) a statement that the payment of unpaid pre-administration costs as an expense of the administration is—
  - (i) subject to approval under rule 3.52, and
  - (ii) not part of the proposals subject to approval under paragraph 53 of Schedule B1.

**Advertising administrator's proposals and notices of extension of time for delivery of proposals (paragraph 49 of Schedule B1)**

- 3.37.—**(1) A notice published by the administrator under paragraph 49(6) of Schedule B1 must—
- (a) identify the insolvency proceedings and contain the registered office of the company;
  - (b) be advertised in such manner as the administrator thinks fit; and
  - (c) be published as soon as reasonably practicable after the administrator has delivered the statement of proposals to the company's creditors but not later than eight weeks (or such other period as may be agreed by the creditors or as the court may order) from the date on which the company entered administration.
- (2) Where the court orders, on an application by the administrator under paragraph 107 of Schedule B1, an extension of the period in paragraph 49(5) of Schedule B1 for delivering copies of the statement of proposals, the administrator must as soon as reasonably practicable after the making of the order deliver a notice of the extension to—
- (a) the creditors of the company;
  - (b) the members of the company of whose address the administrator is aware; and
  - (c) the registrar of companies.
- (3) The notice must—
- (a) identify the insolvency proceedings;
  - (b) state the date to which the court has ordered an extension; and
  - (c) contain the registered office of the company.
- (4) The administrator is taken to comply with paragraph (2)(b) if the administrator publishes a notice complying with paragraph (5).
- (5) The notice must—
- (a) contain the information required by paragraph (3);
  - (b) be advertised in such manner as the administrator thinks fit;
  - (c) state that members may request in writing a notice of the extension, and state the address to which to write; and
  - (d) be published as soon as reasonably practicable after the administrator has delivered the notice of the extension to the company's creditors.

### **Seeking approval of the administrator's proposals**

**3.38.**—(1) This rule applies where the administrator is required by paragraph 51 of Schedule B1(5) to seek approval from the company's creditors of the statement of proposals.

(2) The statement of proposals delivered under paragraph 49(4) of Schedule B1(6) must be accompanied by a notice to the creditors of the decision procedure in accordance with rule 5.8.

(3) The administrator may seek approval from the creditors using the deemed consent procedure in which case the statement of proposals delivered under paragraph 49(4) must be accompanied by a notice complying with the requirements of rule 5.7.

(4) Where the administrator has made a statement under paragraph 52(1) and has not sought a decision on approval from creditors, the proposal will be deemed to have been approved unless a decision has been requested under paragraph 52(2)(7).

(5) Where under paragraph (4) the proposal is deemed to have been approved the administrator must, as soon as reasonably practicable after the expiry of the period for requisitioning a decision set out in rule 5.17(2), deliver a notice of the date of deemed approval to the registrar of companies, the court and any creditor to whom the administrator has not previously delivered the proposal.

(6) The notice must contain—

- (a) identification details for the insolvency proceedings;
- (b) the name of the administrator;
- (c) the date the administrator was appointed; and
- (d) the date on which the statement of proposals was delivered to the creditors.

(7) A copy of the statement of proposals, with the statements required by rule 3.35(5) must accompany the notice given to the court and to any creditors to whom a copy of the statement of proposals has not previously been delivered.

### **Invitation to creditors to form a creditors' committee**

**3.39.**—(1) Where the administrator is required to seek a decision from the company's creditors under paragraph 51 of Schedule B1, the administrator must at the same time deliver to the creditors a notice inviting them to decide whether a creditors' committee should be established if sufficient creditors are willing to be members of the committee.

(2) The notice must also invite nominations for members of the committee, such nominations to be received by the administrator by a date to be specified in the notice.

(3) The notice must state that any nominations—

- (a) must be delivered to the administrator by the specified date; and
- (b) can only be accepted if the administrator is satisfied as to the creditor's eligibility under rule 3.74.

(4) A notice under this rule must also be delivered to the creditors at any other time when the administrator seeks a decision by creditors and a creditors' committee has not already been established at that time.

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(5) Paragraph 51 and the preceding heading are inserted for Scotland by paragraph 1 of Schedule 16 to the Enterprise Act 2002 (c.40).

(6) Paragraph 49 is amended by paragraph 10(2) of Schedule 9 to the 2015 Act.

(7) Paragraph 52(2) is amended by paragraph 10(6) of Schedule 9 to the 2015 Act.

**Notice of extension of time to seek approval**

**3.40.**—(1) Where the court orders an extension to the period set out in paragraph 51(2) of Schedule B1, the administrator must deliver a notice of the extension as soon as reasonably practicable to each person mentioned in paragraph 49(4) of Schedule B1.

(2) The notice must contain identification details for the insolvency proceedings and the date to which the court has ordered an extension.

(3) The administrator is taken to have complied with paragraph (1) as regards members of the company if the administrator publishes a notice complying with paragraph (4).

(4) The notice must—

- (a) be advertised in such a manner as the administrator thinks fit;
- (b) state that members may request in writing a copy of the notice of the extension, and state the address to which to write; and
- (c) be published as soon as reasonably practicable after the administrator has delivered the notice of the extension to the company's creditors.

**Notice of the creditors' decision on the administrator's proposals (paragraph 53(2))**

**3.41.**—(1) In addition to delivering a report to the court and the registrar of companies (in accordance with paragraph 53(2) of Schedule B1) the administrator must deliver a report to—

- (a) the company's creditors (accompanied by a copy of the statement of proposals, with the statement required by rule 3.35(10)(a), if it has not previously been delivered to the creditor); and
- (b) every other person to whom a copy of the statement of proposals was delivered.

(2) A report mentioned in paragraph (1) must contain—

- (a) identification details for the insolvency proceedings;
- (b) details of decisions taken by the creditors including details of any modifications to the proposals which were approved by the creditors; and
- (c) the date such decisions were made.

(3) A copy of the statement of proposals, with any statements required by rule 3.35(9) and (10), must accompany the report to the court.

**Administrator's proposals: revision**

**3.42.**—(1) Where paragraph 54(1) of Schedule B1(8) applies, the statement of the proposed revision which is required to be delivered to the creditors must be delivered together with a notice of the decision procedure in accordance with rule 5.8.

(2) The statement must identify the insolvency proceedings and include—

- (a) any other trading names of the company;
- (b) details of the administrator's appointment, including—
  - (i) the date of appointment, and
  - (ii) the person making the application or appointment;
- (c) the names of the directors and secretary of the company and details of any shareholdings in the company which they may have;
- (d) a summary of the original proposals and the reason or reasons for proposing a revision;

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(8) Paragraph 54 is amended by paragraph 10(11) to (16) of Schedule 9 to the 2015 Act.

- (e) details of the proposed revision, including details of the administrator’s assessment of the likely impact of the proposed revision upon creditors generally or upon each class of creditors;
  - (f) where the proposed revision relates to the ending of the administration by a creditors’ voluntary winding up and the nomination of a person to be the proposed liquidator of the company—
    - (i) details of the proposed liquidator,
    - (ii) where applicable, the declaration required by section 231, and
    - (iii) a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator in accordance with paragraph 83(7)(a) of Schedule B1 and rule 3.60(6)(b); and
  - (g) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions.
- (3) The administrator may seek a decision using the deemed consent procedure in which case the statement of the proposed revision must be accompanied by a notice which complies with rule 5.7.
- (4) The period within which, subject to paragraph 54(3) of Schedule B1, the administrator must send a copy of the statement to every member of the company of whose address the administrator is aware is five business days after sending the statement of the proposed revision to the creditors.
- (5) Notice under paragraph 54(3) and (4) of Schedule B1 must—
- (a) be advertised in such manner as the administrator thinks fit as soon as reasonably practicable after the administrator has sent the statement to the creditors; and
  - (b) state that members may request in writing a copy of the proposed revision, and state the address to which to write.
- (6) A copy of the statement of revised proposals under rule 3.43(3) must be delivered to the registrar of companies not later than five days after the report under rule 3.43(1) is delivered.

**Notice of result of creditors’ decision on revised proposals (paragraph 54(6))**

- 3.43.—**(1) In addition to delivering a report to the court and the registrar of companies (in accordance with paragraph 54(6) of Schedule B1) the administrator must deliver a report to—
- (a) the company’s creditors (accompanied by a copy of the original statement of proposals and the revised statement of proposals if the administrator had not delivered notice of the decision procedure or deemed consent procedure to the creditor); and
  - (b) every other person to whom a copy of the original statement of proposals was delivered.
- (2) A report mentioned in paragraph (1) must contain—
- (a) identification details for the insolvency proceedings;
  - (b) the date of the revised proposals;
  - (c) details of decisions taken by the creditors including details of any modifications to the revised proposals which were approved by the creditors; and
  - (d) the date such decisions were made.
- (3) A copy of the statement of revised proposals must accompany the notice to the court.

**CHAPTER 8**

**Limited disclosure of statements of affairs and proposals**

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

### **Application of Chapter**

**3.44.** This Chapter applies to the disclosure of information which would be likely to prejudice the conduct of the administration or might reasonably be expected to lead to violence against any person.

### **Orders limiting disclosure of statement of affairs etc.**

**3.45.—**(1) If the administrator thinks that the circumstances in rule 3.44 apply in relation to the disclosure of—

- (a) the whole or part of the statement of affairs;
- (b) any of the matters specified in rule 3.35(1)(h) and (i); or
- (c) a statement of concurrence,

the administrator may apply to the court for an order in relation to the particular document or a specified part of it.

(2) The court may order that the whole of or a specified part of a document referred to in paragraph (1)(a) to (c) must not be delivered to the registrar of companies or, in the case of the statement of proposals, to creditors or members of the company.

(3) The administrator must as soon as reasonably practicable deliver to the registrar of companies—

- (a) a copy of the order;
- (b) the statement of affairs, the statement of proposals and any statement of concurrence to the extent provided by the order; and
- (c) if the order relates to the statement of proposals, an indication of the nature of the matter in relation to which the order was made.

(4) If the order relates to the statement of proposals, the administrator must as soon as reasonably practicable also deliver to the creditors and members of the company—

- (a) the statement of proposals to the extent provided by the order; and
- (b) an indication of the nature of the matter in relation to which the order was made.

### **Order for disclosure by administrator**

**3.46.—**(1) A creditor may apply to the court for an order that the administrator disclose any of the following in relation to which an order has been made under rule 3.45(2)—

- (a) a statement of affairs;
- (b) a specified part of it;
- (c) a part of a statement of proposals; or
- (d) a statement of concurrence.

(2) The application must be supported by written evidence in the form of an affidavit.

(3) The applicant must deliver to the administrator notice of the application at least three business days before the hearing.

(4) In an order for disclosure, the court may include conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances or such other matters as it thinks just.



### **Discharge or variation of order for limited disclosure**

**3.47.**—(1) If there is a material change in circumstances rendering an order for limited disclosure under rule 3.45(2) wholly or partially unnecessary, the administrator must, as soon as reasonably practicable after the change, apply to the court for the order to be discharged or varied.

(2) If the court makes such an order, the administrator must as soon as reasonably practicable deliver to the registrar of companies—

- (a) a copy of the order; and
- (b) the statement of affairs, the statement of proposals and any statement of concurrence to the extent provided by the order.

(3) If the order relates to the statement of proposals, the administrator must as soon as reasonably practicable also deliver to the creditors and members the statement of proposals to the extent allowed by the order.

### **Publication etc. of statement of affairs or statements of proposals**

**3.48.**—(1) If, after the administrator has sent a statement of proposals under paragraph 49(4) of Schedule B1, a statement of affairs is delivered to the registrar of companies in accordance with rule 3.47(2) as the result of the discharge or variation of an order, the administrator must deliver to the creditors a copy or summary of the statement of affairs as delivered to the registrar of companies.

(2) The administrator is taken to comply with the requirements for delivery to members of the company in rule 3.45(4) or 3.47(3) if the administrator publishes the required notice.

(3) The required notice must—

- (a) be advertised in such manner as the administrator thinks fit;
- (b) state that members can request in writing—
  - (i) a copy of the statement of proposals to the extent provided by the order, and
  - (ii) an indication of the nature of the matter in relation to which the order was made;
- (c) state the address to which such a written request is to be made; and
- (d) be published as soon as reasonably practicable after the administrator has delivered the statement of proposals to the extent provided by the order to the company's creditors.

## **CHAPTER 9**

### **Disposal of secured property**

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

### **Disposal of secured property**

**3.49.**—(1) This rule applies where the administrator applies to the court under paragraph 71 or 72 of Schedule B1 for authority to dispose of—

- (a) property which is subject to a security other than a floating charge; or
- (b) goods in the possession of the company under a hire-purchase agreement.

(2) The court must fix a venue for the hearing of the application.

(3) As soon as reasonably practicable after the court has done so, the administrator must deliver notice of the venue to the holder of the security or the owner of the goods.

(4) If an order is made under paragraph 71 or 72 of Schedule B1, the court must deliver two copies of the order certified by the court to the administrator.

- (5) The administrator must deliver—
- (a) one of the certified copies to the holder of the security or the owner of the goods; and
  - (b) a copy of the certified order to the registrar of companies.

## CHAPTER 10

### Expenses of the Administration

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

#### **Expenses**

**3.50.**—(1) All fees, costs, charges and other expenses incurred in the course of the administration are to be treated as expenses of the administration.

(2) The expenses associated with the prescribed part must be paid out of the prescribed part.

(3) The cost of the caution required by section 390(3) for the proper performance of the administrator's functions is an expense of the administration.

#### **Order of priority**

**3.51.**—(1) Where there is a former administrator, the former administrator's remuneration and expenses as determined in accordance with rule 3.98 are payable in priority to the expenses in this rule.

(2) Subject to paragraph (1) and to any court order under paragraph (3) the expenses of the administration are payable in the following order of priority—

- (a) expenses properly incurred by the administrator in performing the administrator's functions;
- (b) the cost of any caution provided by the administrator in accordance with the Act or these Rules;
- (c) where an administration order was made, the expenses of the applicant and any person appearing on the hearing of the application whose expenses were allowed by the court;
- (d) where the administrator was appointed otherwise than by order of the court—
  - (i) the costs and expenses of the appointer in connection with the making of the appointment, and
  - (ii) the costs and expenses incurred by any other person in giving notice of intention to appoint an administrator;
- (e) any amount payable to a person in respect of assistance in the preparation of a statement of affairs or statement of concurrence;
- (f) any allowance made by order of the court in respect of the costs on an application for release from the obligation to submit a statement of affairs or deliver a statement of concurrence;
- (g) any necessary disbursements by the administrator in the course of the administration (including any costs referred to in Articles 30 or 59 of the EU Regulation and expenses incurred by members of the creditors' committee or their representatives and allowed for by the administrator under rule 3.90 but not including any payment of corporation tax in circumstances referred to in sub-paragraph (j) below);
- (h) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the company, as required or authorised under the Act or these Rules;

- (i) the administrator's remuneration the basis of which has been fixed under Chapter 14 of this Part of these Rules and unpaid pre-administration costs approved under rule 3.52; and
- (j) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company (irrespective of the person by whom the realisation is effected).

(3) If the assets are insufficient to satisfy the liabilities, the court may make an order as to the payment out of the assets of the expenses incurred in the administration in such order of priority as the court thinks just.

### **Pre-administration costs**

**3.52.**—(1) Where the administrator has made a statement of pre-administration costs under rule 3.35(10)(a), the creditors' committee may determine whether and to what extent the unpaid pre-administration costs set out in the statement are approved for payment.

(2) Paragraph (3) applies where—

- (a) there is no creditors' committee;
- (b) there is a creditors' committee but it does not make the necessary determination; or
- (c) the creditors' committee does make the necessary determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient.

(3) When this paragraph applies, determination of whether and to what extent the unpaid pre-administration costs are approved for payment must be—

- (a) by a decision of the creditors through a decision procedure other than in a case falling in sub-paragraph (b); or
- (b) in a case where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1, by-
  - (i) the consent of each of the secured creditors, or
  - (ii) if the administrator has made, or intends to make, a distribution to preferential creditors, by
    - (aa) the consent of each of the secured creditors, and
    - (bb) a decision of the preferential creditors in a decision procedure.

(4) The administrator must call a meeting of the creditors' committee or seek a decision of creditors by a decision procedure if so requested for the purposes of paragraphs (1) to (3) by another insolvency practitioner who has charged fees or incurred expenses as pre-administration costs; and the administrator must deliver notice of the meeting or decision procedure (to creditors or preferential creditors as the case may be) within 28 days of receipt of the request.

(5) The administrator (where the fees were charged or expenses incurred by the administrator) or other insolvency practitioner (where the fees were charged or expenses incurred by that practitioner) may apply to the court for a determination of whether and to what extent the unpaid pre-administration costs are approved for payment if either—

- (a) there is no determination under paragraph (1) or (3); or
- (b) there is such a determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient.

(6) Where there is a creditors' committee the administrator or other insolvency practitioner must deliver at least 14 days' notice of the hearing to the members of the committee and the committee may nominate one or more of its members to appear, or be represented, and to be heard on the application.

(7) If there is no creditors' committee, notice of the application must be delivered to such one or more of the company's creditors as the court may direct, and those creditors may nominate one or more of their number to appear or be represented, and to be heard on the application.

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

(9) Where the administrator fails to call a meeting of the creditors' committee or seek a decision of creditors in accordance with paragraph (4), the other insolvency practitioner may apply to the court for an order requiring the administrator to do so.

## CHAPTER 11

### Extension and ending of administration

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

#### Interpretation

**3.53.** "Final progress report" means in this Chapter, and in Chapter 14, a progress report which includes a summary of—

- (a) the administrator's proposals;
- (b) any major amendments to, or deviations from, those proposals;
- (c) the steps taken during the administration; and
- (d) the outcome.

#### Application to extend an administration and extension by consent (paragraph 76(2) of Schedule B1)

**3.54.—**(1) This rule applies where an administrator makes an application to the court for an order, or delivers a notice to the creditors requesting their consent, to extend the administrator's term of office under paragraph 76(2) of Schedule B1.

(2) The application or the notice must state the reasons why the administrator is seeking an extension.

(3) A request to the creditors may contain or be accompanied by a notice that if the extension is granted a notice of the extension will be made available for viewing and downloading on a website and that no other notice will be delivered to the creditors.

(4) Where the result of a request to the creditors is to be made available for viewing and downloading on a website, the notice must comply with the requirements for use of a website to deliver documents set out in rule 1.44(2)(a) to (c), (3) and (4) with any necessary modifications and rule 1.44(5)(a) applies to determine the time of delivery of the document.

(5) Where the court makes an order extending the administrator's term of office, the administrator must as soon as reasonably practicable deliver to the creditors a notice of the order together with the reasons for seeking the extension given in the application to the court.

(6) Where the administrator's term of office has been extended with the consent of creditors, the administrator must as soon as reasonably practicable deliver a notice of the extension to the creditors except where paragraph (3) applies.

(7) The notice which paragraph 78(5)(b) of Schedule B1 requires to be delivered to the registrar of companies must also identify the insolvency proceedings.

**Notice of automatic end of administration (paragraph 76 of Schedule B1)**

**3.55.**—(1) This rule applies where—

- (a) the appointment of an administrator has ceased to have effect, and
- (b) the administrator is not required by any other rule to give notice of that fact.

(2) The former administrator must, as soon as reasonably practicable, and in any event within five business days of the date on which the appointment has ceased, deliver to the registrar of companies and lodge with the court a notice accompanied by a final progress report.

(3) The notice must be headed “Notice of automatic end of administration” and identify the company immediately below the heading.

(4) The notice must contain—

- (a) identification details for the insolvency proceedings;
- (b) the former administrator’s name and address;
- (c) a statement that that person had been appointed administrator of the company;
- (d) the date of the appointment;
- (e) the name of the person who made the appointment or the administration application, as the case may be;
- (f) the date on which the appointment ceased to have effect;
- (g) a statement that the appointment has ceased to have effect; and
- (h) a statement that a copy of the final progress report accompanies the notice.

(5) The notice must be authenticated by the administrator and dated.

(6) A copy of the notice and accompanying final progress report must be delivered as soon as reasonably practicable to—

- (a) the directors of the company; and
- (b) all other persons to whom notice of the administrator’s appointment was delivered.

(7) A former administrator who defaults in complying with this rule is guilty of an offence.

**Notice of end of administration when purposes achieved (paragraph 80(2) of Schedule B1)**

**3.56.**—(1) Where an administrator who was appointed under paragraph 14 or 22 of Schedule B1 thinks that the purpose of administration has been sufficiently achieved, the notice (“notice of end of administration”) which the administrator may lodge with the court and deliver to the registrar of companies under paragraph 80(2) of Schedule B1 must be headed “Notice of end of administration” and identify the company immediately below the heading.

(2) The notice must contain—

- (a) identification details for the insolvency proceedings;
- (b) the administrator’s name and address;
- (c) a statement that that person has been appointed administrator of the company;
- (d) the date of the appointment;
- (e) the name of the person who made the appointment or the administration application, as the case may be;
- (f) a statement that the administrator thinks that the purpose of the administration has been sufficiently achieved;
- (g) a statement that a copy of the final progress report accompanies the notice; and

- (h) a statement that the administrator is lodging the notice with the court and delivering a copy to the registrar of companies.
- (3) The notice must be authenticated by the administrator and dated.
- (4) The notice must be accompanied by a final progress report.
- (5) The notice lodged with the court must also be accompanied by a copy of the notice.
- (6) The court must endorse the notice and the copy with the date and time of lodging, certify the copy and deliver it to the administrator.
- (7) The prescribed period within which the administrator, under paragraph 80(4)(9) of Schedule B1, must send a copy of the notice to the creditors is five business days from the lodging of the notice.
- (8) The copy of the notice sent to creditors must be accompanied by the final progress report.
- (9) The administrator must within the same period deliver a copy of the notice and the final progress report to all other persons (other than the creditors and the registrar of companies) to whom notice of the administrator's appointment was delivered.
- (10) The administrator is taken to have complied with the requirement in paragraph 80(4) of Schedule B1 to give notice to the creditors if, within five business days of lodging the notice with the court, the administrator gazettes a notice which—
  - (a) states that the administration has ended, and the date on which it ended;
  - (b) undertakes that the administrator will provide a copy of the notice of end of administration to any creditor of the company who applies in writing; and
  - (c) specifies the address to which to write.
- (11) The Gazette notice may be advertised in such other manner as the administrator thinks fit.

#### **Administrator's application for order ending administration (paragraph 79 of Schedule B1)**

**3.57.—(1)** An application to court by the administrator under paragraph 79 of Schedule B1(10) for an order ending an administration must be accompanied by—

- (a) a progress report for the period since—
    - (i) the last progress report (if any), or
    - (ii) if there has been no previous progress report, the date on which the company entered administration;
  - (b) a statement indicating what the administrator thinks should be the next steps for the company (if applicable); and
  - (c) where the administrator makes the application because of a requirement decided by the creditors, a statement indicating with reasons whether or not the administrator agrees with the requirement.
- (2) Where the application is made other than because of a requirement by a decision of the creditors—
- (a) the administrator must, at least five business days before the application is made, deliver notice of the administrator's intention to apply to court to—
    - (i) the person who made the administration application or appointment, and
    - (ii) the creditors; and
  - (b) the application must be accompanied by—
    - (i) a statement that notice has been delivered to the creditors, and

(9) Paragraph 80(4) is amended by paragraph 10(3) of Schedule 9 to the 2015 Act.

(10) Paragraph 79(2)(c) is amended by paragraph 10(29) of Schedule 9 to the 2015 Act.

(ii) copies of any response from creditors to that notice.

(3) Where the application is in conjunction with a petition under section 124 for an order to wind up the company, the administrator must, at least five business days before the application is made, deliver notice to the creditors as to whether the administrator intends to seek appointment as liquidator.

### **Creditors' application for order ending administration (paragraph 81 of Schedule B1)**

**3.58.**—(1) Where a creditor applies to the court under paragraph 81 of Schedule B1 for an order ending an administration, a copy of the application must be delivered, not less than five business days before the date fixed for the hearing, to—

- (a) the administrator;
- (b) the person who made the administration application or appointment; and
- (c) where the appointment was made under paragraph 14 of Schedule B1, the holder of the floating charge by virtue of which the appointment was made (if different to (b)).

(2) Any of those persons may appear at the hearing of the application.

(3) Where the court makes an order under paragraph 81 of Schedule B1 ending the administration, the court must deliver a copy of the order to the administrator.

### **Notice by administrator of court order**

**3.59.** Where the court makes an order ending the administration, the administrator must as soon as reasonably practicable deliver a copy of the order and of the final progress report to—

- (a) the registrar of companies;
- (b) the directors of the company; and
- (c) all other persons to whom notice of the administrator's appointment was delivered.

### **Moving from administration to creditors' voluntary winding up (paragraph 83 of Schedule B1)**

**3.60.**—(1) This rule applies where the administrator delivers to the registrar of companies a notice under paragraph 83(3) of Schedule B1(11) of moving from administration to creditors' voluntary winding up.

(2) The notice must contain—

- (a) identification details for the insolvency proceedings;
- (b) the name of the person who made the appointment or the administration application, as the case may be; and
- (c) the name and IP number of the proposed liquidator.

(3) The notice to the registrar of companies must be accompanied by a copy of the administrator's final progress report.

(4) A copy of the notice and the final progress report must be sent as soon as reasonably practicable after delivery of the notice to all those persons to whom notice of the administrator's appointment was delivered in addition to the creditors (as required by paragraph 83(5)(b)).

(5) The person who ceases to be administrator on the registration of the notice must inform the person who becomes liquidator of anything which happens after the date of the final progress report

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(11) Sub-paragraphs (1)(b) and (2)(b) are amended by section 128(3) and sub-paragraphs (5)(b) and (8)(d) are amended by paragraphs 10(31) and (32) of Schedule 9 to the 2015 Act.

and before the registration of the notice which the administrator would have included in the final report had it happened before the date of the report.

(6) For the purposes of paragraph 83(7)(a) of Schedule B1, a person is nominated by the creditors as liquidator by—

- (a) their approval of the statement of the proposed liquidator in the administrator’s proposals or revised proposals; or
- (b) their nomination of a different person, through a decision procedure, before their approval of the proposals or revised proposals.

(7) Where the creditors nominate a different person, the nomination must, where applicable, include the declaration required by section 231.

### **Moving from administration to dissolution (paragraph 84 of Schedule B1)**

**3.61.**—(1) This rule applies where the administrator delivers to the registrar of companies a notice under paragraph 84(1) of Schedule B1 of moving from administration to dissolution.

(2) The notice must contain identification details for the insolvency proceedings.

(3) As soon as reasonably practicable after sending the notice, the administrator must deliver a copy of the notice to all persons to whom notice of the administrator’s appointment was delivered (in addition to the creditors mentioned in paragraph 84(5)(b) of Schedule B1(12)).

(4) A final progress report must accompany the notice to the registrar of companies and every copy filed or otherwise delivered.

(5) Where a court makes an order under paragraph 84(7) of Schedule B1 it must, where the applicant is not the administrator, deliver a copy of the order to the administrator.

(6) The administrator must deliver a copy of the order to the registrar of companies with the notice required by paragraph 84(8) of Schedule B1.

## CHAPTER 12

### Replacing the administrator

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

### **Grounds for resignation**

**3.62.**—(1) The administrator may resign—

- (a) on grounds of ill health;
- (b) because of the intention to cease to practise as an insolvency practitioner; or
- (c) because the further discharge of the duties of administrator is prevented or made impractical by—
  - (i) a conflict of interest, or
  - (ii) a change of personal circumstances.

(2) The administrator may, with the permission of the court, resign on other grounds.

### **Notice of intention to resign**

**3.63.**—(1) The administrator must give at least five business days’ notice of intention—

- (a) to resign in a case falling within rule 3.62(1); or

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(12) Paragraph 84(5)(b) is amended by paragraph 10(33) of Schedule 9 to the 2015 Act.



- (b) to apply for the court's permission to resign in a case falling within rule 3.62(2).
- (2) The notice must contain—
  - (a) identification details for the insolvency proceedings;
  - (b) the date of the appointment of the administrator; and
  - (c) the name of the person who made the appointment or the administration application, as the case may be.
- (3) The notice must also contain—
  - (a) the date with effect from which the administrator intends to resign; or
  - (b) where the administrator was appointed by an administration order, the date on which the administrator intends to lodge with the court an application for permission to resign.
- (4) Notice must be delivered—
  - (a) to any continuing administrator of the company;
  - (b) to the creditors' committee (if any);
  - (c) if there is neither a continuing administrator nor a creditors' committee, to—
    - (i) the company, and
    - (ii) the company's creditors;
  - (d) to the member State liquidator appointed in relation to the company (if there is one);
  - (e) where the administrator was appointed by the holder of a qualifying floating charge under paragraph 14 of Schedule B1, to—
    - (i) the person who appointed the administrator, and
    - (ii) all holders of prior qualifying floating charges;
  - (f) where the administrator was appointed by the company or the directors of the company under paragraph 22 of Schedule B1, to—
    - (i) the appointer, and
    - (ii) all holders of qualifying floating charges.
- (5) The notice must be accompanied by a summary of the administrator's receipts and payments.

**Notice of resignation (paragraph 87 of Schedule B1)**

- 3.64.—(1)** A resigning administrator must, within five business days of delivering the notice under paragraph 87(2) of Schedule B1, deliver a copy of the notice to—
- (a) the registrar of companies;
  - (b) all persons, other than the person who made the appointment, to whom notice of intention to resign was delivered under rule 3.63; and
  - (c) except where the appointment was by administration order, lodge a copy of the notice with the court.
- (2) The notice must contain—
- (a) identification details for the insolvency proceedings;
  - (b) the date of the appointment of the administrator; and
  - (c) the name of the person who made the appointment or the administration application, as the case may be.
- (3) The notice must state—
- (a) the date from which the resignation is to have effect; and

(b) where the resignation is with the permission of the court, the date on which permission was given.

(4) Where an administrator was appointed by an administration order, notice of resignation under paragraph 87(2)(a) of Schedule B1 must be given by lodging the notice with the court.

### **Application to court to remove administrator from office**

**3.65.**—(1) An application for an order under paragraph 88 of Schedule B1 that the administrator be removed from office must state the grounds on which the order is requested.

(2) A copy of the application must be delivered, not less than five business days before the date fixed for the hearing—

- (a) to the administrator;
  - (b) to the person who—
    - (i) made the application for the administration order, or
    - (ii) appointed the administrator;
  - (c) to the creditors' committee (if any);
  - (d) to any continuing administrator of the company; and
  - (e) where there is neither a creditors' committee nor a continuing administrator appointed, to the company and the creditors, including any floating charge holders.
- (3) The court must deliver to the applicant a copy of any order removing the administrator.
- (4) The applicant must deliver a copy of the order—
- (a) as soon as reasonably practicable, and in any event within five business days of the copy order being delivered, to the administrator; and
  - (b) within five business days of the copy order being delivered, to—
    - (i) all other persons to whom notice of the application was delivered, and
    - (ii) the registrar of companies.

### **Notice of vacation of office when administrator ceases to be qualified to act**

**3.66.** An administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the company and gives notice in accordance with paragraph 89 of Schedule B1 must also deliver notice to the registrar of companies.

### **Deceased administrator**

**3.67.**—(1) If the administrator dies a notice of the fact and date of death must be lodged with the court.

- (2) The notice must be lodged as soon as reasonably practicable by one of the following—
- (a) a surviving administrator;
  - (b) a member of the deceased administrator's firm (if the deceased was a member or employee of a firm);
  - (c) an officer of the deceased administrator's company (if the deceased was an officer or employee of a company); or
  - (d) the executor of the deceased administrator.

(3) If such a notice has not been lodged within the 21 days following the administrator's death, any other person may lodge the notice.

(4) The person who lodges the notice must also deliver a notice to the registrar of companies which contains—

- (a) identification details for the insolvency proceedings;
- (b) the name of the person who made the appointment or the administration application, as the case may be;
- (c) the date of the appointment of the administrator; and
- (d) the fact and date of death.

### **Application to replace**

**3.68.**—(1) Where an application to court is made under paragraph 91(1) or 95 of Schedule B1 to appoint a replacement administrator, the application must be accompanied by the proposed replacement administrator's consent to act.

(2) Where the application is made under paragraph 91(1), a copy of the application must be delivered—

- (a) to the person who made the application for the administration order;
- (b) to any person who has appointed a receiver of the company;
- (c) to any person who is or may be entitled to appoint a receiver of the company;
- (d) to any person who is or may be entitled to appoint an administrator of the company under paragraph 14 of Schedule B1;
- (e) to any receiver of the company;
- (f) if there is pending a petition for the winding up of the company, to—
  - (i) the petitioner, and
  - (ii) any provisional liquidator;
- (g) to any member State liquidator appointed in main proceedings in relation to the company;
- (h) to the company, if the application is made by anyone other than the company;
- (i) to any supervisor of any CVA in relation to the company; and
- (j) to the proposed administrator.

(3) Rules 3.10, 3.11 and 3.13(1) and (2) apply to applications made under paragraph 91(1) and 95 of Schedule B1, with any necessary modifications.

### **Appointment of replacement or additional administrator**

**3.69.** Where a replacement administrator is appointed or an additional administrator is appointed to act—

- (a) the following apply—
  - (i) rule 3.17 the requirement as to the heading in paragraph (1) and paragraphs (1)(a) to (f), and (2),
  - (ii) rule 3.18 paragraphs (1)(a) and (b)(ii), (2) and (3),
  - (iii) rule 3.24 paragraphs (1)(a) to (d) and (2),
  - (iv) rule 3.25 paragraphs (1), (2)(a) to (c) and (3),
  - (v) rule 3.26 paragraphs (1)(a), (3) and (4), and
  - (vi) rule 3.27 paragraphs (1), (2)(a) and (b), (3) and (4).

- (b) the replacement or additional administrator must deliver notice of the appointment to the registrar of companies; and
- (c) all documents must clearly identify the appointment as of a replacement administrator or an additional administrator.

#### **Administrator’s duties on vacating office**

**3.70.**—(1) An administrator who ceases to be in office as a result of removal, resignation or ceasing to be qualified to act as an insolvency practitioner in relation to the company must as soon as reasonably practicable deliver to the person succeeding as administrator—

- (a) the assets (after deduction of any expenses properly incurred and distributions made by the departing administrator);
  - (b) the records of the administration, including correspondence, statements of claim and documentary evidence of debt and other documents relating to the administration while it was within the responsibility of the departing administrator; and
  - (c) the company’s records.
- (2) An administrator who makes default in complying with this rule is guilty of an offence.

## **CHAPTER 13**

### **Creditors’ Committees**

[Notes: (1) a document required by the Act or these Rules must also contain the standard contents set out in Part 1;

(2) see sections 215 and 362 of the Financial Services and Markets Act 2000(13) for the rights of persons appointed by a scheme manager, the Financial Conduct Authority and the Prudential Regulation Authority to attend committees and make representations.]

#### **Scope**

**3.71.** This Chapter applies to the establishment and operation of a creditors’ committee in an administration (“creditors’ committee”).

#### **Functions of a creditors’ committee**

**3.72.** In addition to any functions conferred on a creditors’ committee by any provision of the Act or any other provision of these Rules, the creditors’ committee is to—

- (a) assist the administrator in discharging the administrator’s functions; and
- (b) act in relation to the administrator in such manner as may from time to time be agreed.

#### **Number of members of a creditors’ committee**

**3.73.** A creditor’s committee must have at least three members but not more than five members.

#### **Eligibility for membership of creditors’ committee**

**3.74.**—(1) A creditor is eligible to be a member of a creditors’ committee if—

- (a) the person has submitted a statement of claim and, where not dispensed with under rules 5.26(2) or 3.105(2), documentary evidence of debt;
- (b) the debt is not fully secured; and

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(13) 2000 c.8.

- (c) neither of the following apply—
  - (i) the claim has been wholly rejected for voting purposes; or
  - (ii) the claim has been wholly rejected for the purpose of distribution or dividend.
- (2) A body corporate or a partnership may be a member of a creditors' committee, but it cannot act otherwise than by a representative appointed under rule 3.84.

### **Establishment of creditors' committees**

**3.75.**—(1) Where creditors decide that a creditors' committee should be established, the convener or chair of the decision procedure or the convener of the deemed consent process, if not the administrator, must—

- (a) as soon as reasonably practicable deliver a notice of the decision to the administrator; and
  - (b) where a decision has also been made as to membership of the creditors' committee, inform the administrator of the names and addresses of the persons elected to be members of the creditors' committee.
- (2) Before a person may act as a member of the creditors' committee that person must agree to do so.
- (3) A person's proxy-holder attending a meeting establishing the creditors' committee or, in the case of a corporation or partnership, its duly appointed representative, may give such agreement (unless the proxy or instrument conferring authority contains a statement to the contrary).
- (4) Where a decision has been made to establish a creditors' committee but not as to its membership, the administrator must seek a decision from the creditors as to membership of the creditors' committee.
- (5) The creditors' committee is not established (and accordingly cannot act) until the administrator has sent a notice of its membership in accordance with paragraph (9).
- (6) The notice must contain the following—
- (a) a statement that the creditors' committee has been duly constituted;
  - (b) identification details for any company that is a member of the creditors' committee;
  - (c) the full name and address of each member that is not a company.
- (7) The notice must be authenticated and dated by the administrator.
- (8) The administrator must, as soon as reasonably practicable, deliver the notice after the minimum number of persons required by rule 3.73 have agreed to act as members and been elected.
- (9) The administrator must, as soon as reasonably practicable, deliver the notice to the registrar of companies.

### **Notice of change of membership of a committee**

**3.76.**—(1) If there is a change in membership of the creditors' committee, the administrator must deliver a notice to the registrar of companies, as soon as reasonably practicable.

- (2) The notice must contain—
- (a) the date of the original notice in respect of the constitution of the committee and the date of the last notice of membership given under this rule (if any);
  - (b) a statement that this notice of membership replaces the previous notice;
  - (c) identification details for any company that is a member of the committee;
  - (d) the full name and address of any member that is not a company;

- (e) a statement whether any member has become a member since the issue of the previous notice;
  - (f) the identification details for a company or otherwise the full name of any member named in the previous notice who is no longer a member and the date the membership ended.
- (3) The notice must be authenticated and dated by the administrator.

#### **Vacancies: members of creditors' committee**

**3.77.**—(1) This rule applies if there is a vacancy among the members of a creditors' committee or where the number of members of the committee is fewer than the maximum allowed.

- (2) A vacancy need not be filled if—
  - (a) the administrator and a majority of the remaining members agree; and
  - (b) the total number of members does not fall below three.
- (3) The administrator may appoint a creditor, who is qualified under rule 3.74 to be a member of the committee, to fill a vacancy or as an additional member of the committee, if—
  - (a) the remaining members of the committee (provided that there are at least two) agree in accordance with paragraph (4) to the appointment; and
  - (b) the creditor agrees to act.
- (4) Where there are only two remaining members of the committee, both must agree to the appointment, otherwise a majority must agree.
- (5) Alternatively, the administrator may seek a decision by creditors to appoint a creditor (with that creditor's consent) to fill the vacancy.
- (6) Where the vacancy is filled by an appointment made by a decision of creditors which is not chaired or convened by the administrator, the chair or convener must report the appointment to the administrator.

#### **Resignation**

**3.78.** A member of a creditors' committee may resign by informing the administrator in writing.

#### **Termination of membership**

- 3.79.** A person's membership of a creditors' committee is automatically terminated if that person—
- (a) becomes bankrupt or that person's estate is sequestrated, in which case the trustee in bankruptcy or the trustee in sequestration, as the case may be, replaces the person bankrupt or sequestrated as a member of the committee;
  - (b) grants a trust deed for the benefit of creditors;
  - (c) makes a composition with creditors;
  - (d) is a person to whom a moratorium under a debt relief order applies;
  - (e) neither attends nor is represented at three consecutive meetings (unless it is resolved at the third of those meetings that this rule is not to apply in that person's case);
  - (f) has ceased to satisfy the criteria set out in rule 3.74 for eligibility to be a member of the creditors' committee; or
  - (g) ceases to be a creditor or is found never to have been a creditor.

## **Removal**

**3.80.** A member of a creditors' committee may be removed by a decision of the creditors through a decision procedure.

## **Meetings of creditors' committee**

**3.81.—**(1) Meetings of the creditors' committee must be held when and where determined by the administrator.

(2) The administrator must call a first meeting of the creditors' committee to take place within six weeks of the creditors' committee's establishment.

(3) After the calling of the first meeting, the administrator must call a meeting—

(a) if so requested by a member of the creditors' committee or a member's 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 creditors' committee has previously resolved that a meeting be held on that date.

(4) The administrator must give five business days' notice of the venue of a meeting to each member of the creditors' committee (or a member's representative, if designated for that purpose), except where the requirement for notice has been waived by or on behalf of a member.

(5) Waiver may be signified either at or before the meeting.

## **The chair at meetings**

**3.82.** The chair at a meeting of a creditors' committee must be the administrator or an appointed person.

## **Quorum**

**3.83.** A meeting of a creditors' committee is duly constituted if due notice of it has been delivered to all the members, and at least two of the members are in attendance or represented.

## **Committee members' representatives**

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

(2) A person acting as a committee member's representative must hold a letter of authority entitling that person to act (either generally or specifically) and authenticated by or on behalf of the committee member.

(3) A proxy or an instrument conferring authority (in respect of a person authorised to represent a body corporate or a partnership) is to be treated as a letter of authority to act generally (unless the proxy or instrument conferring authority contains a statement to the contrary).

(4) The chair at a meeting of the committee may call on a person claiming to act as a committee member's representative to produce a letter of authority, and may exclude that person if no letter of authority is produced at or by the time of the meeting or it appears to the chair that the authority is deficient.

(5) A committee member may not be represented by—

(a) another member of the committee;

(b) a person who is at the same time representing another committee member;

(c) a body corporate;

- (d) a partnership;
  - (e) an undischarged bankrupt;
  - (f) a person whose estate has been sequestrated and who has not been discharged;
  - (g) a person who has granted a trust deed for the benefit of creditors;
  - (h) a person who has made a composition with creditors;
  - (i) a person to whom a moratorium period under a debt relief order applies;
  - (j) a person who is subject to a company directors disqualification order or a company directors disqualification undertaking; or
  - (k) a person who is subject to a bankruptcy restrictions order (including an interim order), a bankruptcy restrictions undertaking, a debt relief restrictions order (including an interim order) or a debt relief restrictions undertaking.
- (6) Where a representative authenticates any document on behalf of a committee member the fact that the representative authenticates as a representative must be stated below the authentication.

### **Voting rights and resolutions**

**3.85.**—(1) At a meeting of the committee, each member (whether the member is in attendance or is represented by a representative) has one vote.

(2) A resolution is passed when a majority of the members attending or represented have voted in favour of it.

(3) Every resolution passed must be recorded in writing and authenticated by the chair, either separately or as part of the minutes of the meeting.

### **Resolutions by correspondence**

**3.86.**—(1) The administrator may seek to obtain the agreement of the creditors' committee to a resolution by delivering to every member (or the member's representative designated for the purpose) details of the proposed resolution.

(2) The details must be set out in such a way that the recipient may indicate agreement or dissent and where there is more than one resolution may indicate agreement to or dissent from each one separately.

(3) A member of the creditors' committee may, within five business days from the delivery of details of the proposed resolution, require the administrator to summon a meeting of the creditors' committee to consider the matters raised by the proposed resolution.

(4) In the absence of such a request, the resolution is passed by the creditors' committee if a majority of the members (excluding a member or member's representative who is to participate directly or indirectly in a transaction) deliver notice to the administrator that they agree with the resolution.

### **Remote attendance at meetings of creditors' committee**

**3.87.**—(1) Where the administrator considers it appropriate, a meeting of a creditors' committee may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(2) A person attends such a meeting who is able to exercise that person's right to speak and vote at the meeting.



(3) A person is able to exercise the right to speak at a meeting when that person is in a position to communicate during the meeting to all those attending the meeting any information or opinions which that person has on the business of the meeting.

(4) A person is able to exercise the right to vote at a meeting when—

- (a) that person is able to vote, during the meeting, on resolutions or determinations put to the vote at the meeting; and
- (b) that person's vote can be taken into account in determining whether or not such resolutions or determinations are passed at the same time as the votes of all the other persons attending the meeting.

(5) Where such a meeting is to be held the administrator must make whatever arrangements the administrator considers appropriate to—

- (a) enable those attending the meeting to exercise their rights to speak or vote; and
- (b) verify the identity of those attending the meeting and to ensure the security of any electronic means used to enable attendance.

(6) A requirement in these Rules to specify a place for the meeting may be satisfied by specifying the arrangements the administrator proposes to enable persons to exercise their rights to speak or vote where in the reasonable opinion of the administrator—

- (a) a meeting will be attended by persons who will not be present together at the same place; and
- (b) it is unnecessary or inexpedient to specify a place for the meeting.

(7) In making the arrangements referred to in paragraph (6) and in forming the opinion referred to in paragraph (6)(b), the administrator must have regard to the legitimate interests of the creditors' committee members or their representatives attending the meeting in the efficient despatch of the business of the meeting.

(8) Where the notice of a meeting does not specify a place for the meeting the administrator must specify a place for the meeting if at least one member of the creditors' committee requests the administrator to do so in accordance with rule 3.88.

### **Procedure for requests that a place for a meeting should be specified**

**3.88.**—(1) This rule applies to a request to the administrator under rule 3.87 to specify a place for the meeting.

(2) The request must be made within three business days of the date on which the administrator delivered the notice of the meeting in question.

(3) Where the administrator considers that the request has been properly made in accordance with this rule, the administrator must—

- (a) deliver notice to all those previously given notice of the meeting—
  - (i) that it is to be held at a specified place, and
  - (ii) as to whether the date and time are to remain the same or not;
- (b) fix a venue for the meeting, the date of which must be not later than seven business days after the original date for the meeting; and
- (c) give three business days' notice of the venue to all those previously given notice of the meeting.

(4) The notices required by sub-paragraphs (a) and (c) may be delivered at the same or different times.

(5) Where the administrator has specified a place for the meeting in response to a request under rule 3.87(8), the chair of the meeting must attend the meeting by being present in person at that place.

### **Notice requiring administrator to attend the creditors' committee (paragraph 57(3)(a) of Schedule B1)**

[Note: in an administration paragraph 57(3) of Schedule B1 enables the creditors' committee to require the administrator to provide the committee with information]

**3.89.**—(1) This rule applies where a creditors' committee in an administration resolves under paragraph 57(3)(a) of Schedule B1 to require the attendance of the administrator.

(2) The notice delivered to the administrator requiring the administrator's attendance must be—

- (a) accompanied by a copy of the resolution; and
- (b) authenticated by a member of the creditors' committee.

(3) A member's representative may authenticate the notice for the member.

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

(5) Where the administrator so attends, the creditors' committee may elect one of their number to be chair of the meeting in place of the administrator or the appointed person.

### **Expenses of members etc.**

**3.90.**—(1) The administrator must pay, as an expense of the administration, the reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in attending the creditors' committee's meetings or otherwise on the creditors' committee's business.

(2) The requirement for the administrator to pay the expenses does not apply to a meeting of the committee held within six weeks of a previous meeting, unless the meeting is summoned by the administrator.

### **Dealings by creditors' committee members and others**

**3.91.**—(1) Membership of the creditors' committee does not prevent a person from dealing with the company provided that a transaction is in good faith and for value.

(2) The court may, on the application of an interested person—

- (a) set aside a transaction which appears to it to be contrary to this rule; and
- (b) make such other order about the transaction as it thinks just, including an order requiring a person to whom this rule applies to account for any profit obtained from the transaction and compensate the company for any resultant loss.

### **Formal defects**

**3.92.** The acts of a creditors' committee are valid notwithstanding any defect in the appointment, election or qualifications of a member of the creditors' committee or a committee member's representative or in the formalities of its establishment.

## CHAPTER 14

### Reporting and Remuneration

#### **Progress reports**

**3.93.**—(1) The administrator must—

- (a) within six weeks after the end of each accounting period; and
- (b) within six weeks after the administrator ceases to act as administrator,

send to the court and to the registrar of companies, and to each creditor, a progress report.

(2) For the purposes of this Chapter, “accounting period” in relation to an administration is to be construed as follows:

- (a) the first accounting period is the period of six months beginning with the date on which the company entered administration; and
- (b) any subsequent accounting period is the period of six months beginning with the end of the last accounting period except that—
  - (i) where the administrator and the creditors’ committee agree, or
  - (ii) where there is no creditors’ committee, the court determines,

the accounting period is to be such other period beginning with the end of the last accounting period as may be agreed or, as the case may be determined, it is to be that other period.

(3) An administrator who fails to deliver a progress report within the time periods referred to in paragraph (1) is guilty of an offence.

(4) The court may, on the application of the administrator, extend either or both of the periods of six weeks referred to in paragraph (1) of this rule.

#### **Progress reports: content**

**3.94.**—(1) The administrator’s progress report must include—

- (a) identification details for the insolvency proceedings;
- (b) identification and contact details for the administrator;
- (c) the date of appointment of the administrator and any changes in the administrator in accordance with paragraphs (4) and (5);
- (d) details of any extensions to the initial period of appointment;
- (e) details of progress during the period of the report in accordance with paragraph (2);
- (f) details of what assets remain to be realised;
- (g) where a distribution is to be made in accordance with Chapter 15 in respect of an accounting period, the scheme of division; and
- (h) any other relevant information for the creditors.

(2) The details of the progress during the period of the report must include—

- (a) a receipts and payments account stating what assets of the company have been realised, for what value, and what payments have been made to creditors, in the form of a summary showing—
  - (i) receipts and payments during the relevant accounting period, or
  - (ii) where the administrator has ceased to act, receipts and payments during the period from the end of the last accounting period to the time when the administrator ceased

to act (or, where the administrator has made no previous progress report, receipts and payments in the period since the administrator's appointment); or

- (b) where—
  - (i) no claim for outlays and remuneration is submitted under rule 3.95, or
  - (ii) a claim for outlays and remuneration is submitted under rule 3.95 but no determination fixing the amount of outlays and remuneration in accordance with rule 3.96(1) has been made in respect of such a claim—
    - (aa) a receipts and payments account which meets the requirements of paragraph (2)(a),
    - (bb) an estimate of the remuneration due to the administrator during the accounting period together with the basis or bases set out in rule 3.97 on which the estimate is based,
    - (cc) where remuneration due is not yet determined from the immediately preceding accounting period, an estimate of the remuneration due during that period, and
    - (dd) any outlays incurred.
- (3) The receipts and payments account in a final progress report must include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A.
- (4) A change in the administrator is only required to be shown in the next report after the change.
- (5) However if the current administrator is seeking the repayment of pre-administration expenses from a former administrator, the change in administrator must continue to be shown until the next report after the claim is settled.
- (6) This rule is without prejudice to the requirements of Chapter 15.

#### **Administrator's outlays and remuneration: claims**

**3.95.**—(1) Where an administrator intends to submit a claim for the outlays reasonably incurred by the administrator and for remuneration within two weeks after the end of an accounting period, the administrator must submit to the creditors' committee or, if there is no creditors' committee, make available to creditors for the purposes of a decision procedure in respect of that period—

- (a) the administrator's accounts of their intrusions with the company's assets;
- (b) where funds are available after making allowance for contingencies, a scheme of division of the divisible funds; and
- (c) a claim for—
  - (i) any outlays reasonably incurred by the administrator, and
  - (ii) the administrator's remuneration.

(2) The administrator may, at any time within two weeks after the end of an accounting period, in respect of the previous accounting period, submit to a creditors' committee, or if there is no creditors' committee, seek approval from creditors through a decision procedure for—

- (a) the administrator's accounts of its intrusions with the company's assets for audit (such accounts of intrusions may include or consist of a progress report in terms of rules 3.93 and 3.94);
- (b) the outlays reasonably incurred by the administrator; and
- (c) the administrator's remuneration.

(3) The administrator may, at any time before the end of an accounting period submit to the creditors' committee or, if there is no creditors' committee, seek approval from creditors through a decision procedure for, an interim claim in respect of that period—

- (a) for the outlays reasonably incurred by the administrator; and
- (b) for the administrator's remuneration.

(4) If the administrator submits such an interim claim, the creditors' committee, or the creditors by decision procedure as the case may be may issue an interim determination in relation to the amount of the outlays and remuneration payable to the administrator, and where they do so, they must take into account that interim determination when issuing their determination under paragraph 3.96(1)(a)(ii).

### **Administrator's outlays and remuneration: determination**

**3.96.**—(1) Within six weeks after the end of an accounting period—

- (a) the creditors' committee or, if there is no creditors' committee, the creditors through a decision procedure—
  - (i) may audit the accounts submitted or made available under rule 3.95(1)(a), and
  - (ii) must issue a determination fixing the amount of the outlays and remuneration payable to the administrator; and
- (b) the administrator must make the accounts submitted for audit, scheme of division and determination of the amount fixed under paragraph (1)(a)(ii) available for the inspection by the members of the company and the creditors.

(2) If the administrator's remuneration and outlays have been fixed by determination of the creditors' committee in accordance with paragraph (1)(a)(ii) and the administrator considers the amount to be insufficient, the administrator may request that it be increased by decision of the creditors by decision procedure.

(3) If the creditors' committee fails to issue a determination in accordance with paragraph (1)(a)(ii), the administrator must seek a decision of the creditors through decision procedure (except in a case under paragraph (6)) and they must issue a determination in accordance with paragraph (1)(a)(ii).

(4) If the creditors fail to issue a determination by decision procedure in accordance with paragraph (3) then the administrator must submit the claim to the court and the court must issue a determination.

(5) In a case where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1, a decision under paragraph (2) or a decision under rule 3.101 is taken to be passed if (and only if) passed by the approval of—

- (a) each secured creditor of the company; or
- (b) if the administrator has made, or proposes to make, a distribution to preferential creditors—
  - (i) each secured creditor of the company, and
  - (ii) a decision of the preferential creditors in a decision procedure.

(6) In a case where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1, if there is no creditor's committee, or the committee does not make the requisite determination in accordance with rule 3.96(1)(a)(ii) or 3.96(3), the administrator's remuneration and outlays may be fixed (in accordance with this rule) by the approval of—

- (a) each secured creditor of the company; or
- (b) if the administrator has made, or proposes to make, a distribution to preferential creditors—

- (i) each secured creditor of the company, and
- (ii) a decision of the preferential creditors in a decision procedure.

(7) In fixing the amount of the administrator's remuneration and outlays in respect of any accounting period, the creditors' committee or, as the case may be, the creditors by decision procedure, may take into account any adjustment which the creditors' committee or the creditors may wish to make in the amount of the remuneration and outlays fixed in respect of any earlier accounting period.

#### **Administrator's remuneration: basis of remuneration**

**3.97.**—(1) The basis of the administrator's remuneration must be fixed—

- (a) as a percentage of the value of the company's property with which the administrator has to deal;
- (b) by reference to the work which was reasonably undertaken by the administrator and the administrator's staff in attending to matters arising in the administration; or
- (c) as a set amount.

(2) The basis of remuneration may be one or a combination of the bases set out in paragraph (1) and different bases or percentages agreed may be fixed in respect of different things done by the administrator or administrator's staff.

#### **Former administrator's outlays and remuneration**

**3.98.** For the purposes of paragraph 99 of Schedule B1, the former administrator's outlays and remuneration comprise those items set out in rule 3.51.

#### **Appeal against fixing of remuneration.**

**3.99.**—(1) If the administrator considers that the remuneration or outlays fixed for the administrator by the creditors' committee, or by decision of the creditors (including remuneration or outlays fixed under rule 3.96(6)) is insufficient, the administrator may apply to the court for an order increasing their amount or rate.

(2) The administrator must give at least 14 days' notice of the administrator's 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 the administrator's application must 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 and heard.

(4) The court may order the expenses of the administrator's application, including the expenses of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the administration.

#### **Creditor's claim that remuneration is excessive**

**3.100.**—(1) If the administrator's remuneration and outlays have been fixed by the creditors' committee or by the creditors, any creditor or creditors of the company representing in value at least 25 percent of the creditors may apply to the court not later than eight weeks after the end of an accounting period for an order that the administrator's remuneration or outlays be reduced on the grounds that they are, in all the circumstances, excessive.

(2) The court may make an order fixing the remuneration or outlays at a reduced amount or rate.

(3) The court may order the expenses of the creditor making the application to be paid as an expense of the administration.

### **Remuneration of joint administrators**

**3.101.** Where there are joint administrators—

- (a) it is for them to agree between themselves as to how the remuneration or outlays payable should be apportioned;
- (b) if they cannot agree as to how the remuneration or outlays payable should be apportioned, any one of them may refer the issue for determination—
  - (i) by the court, or
  - (ii) by resolution of the creditors' committee or a meeting of creditors.

## **CHAPTER 15**

### **Claims by and distributions to Creditors**

#### **Application and interpretation of Chapter**

**3.102.**—(1) This Chapter applies in any case where the administrator proposes to make a distribution to creditors or any class of them.

(2) Where the distribution is to a particular class of creditors, references in this Chapter are to be treated as, so far as the context requires, references to that class of creditors only.

#### **Payments of dividends**

**3.103.**—(1) On the final determination of the remuneration under rules 3.95 to 3.100 the administrator must, subject to rule 3.117, pay to the creditors their dividends in accordance with the scheme of division.

(2) Any dividend—

- (a) allocated to a creditor which is not cashed or uplifted; or
- (b) dependent on a claim in respect of which an amount has been set aside under rule 3.117(7) or (8);

must be held by the administrator in an appropriate bank or institution in the name of the Accountant of Court and the deposit receipts transmitted to the Accountant of Court.

(3) If a creditor's claim is revalued, the administrator may—

- (a) in paying any dividend to that creditor, make such adjustment to it as the administrator considers necessary to take account of that revaluation; or
- (b) require the creditor to repay to the administrator the whole or part of a dividend already paid to the creditor.

#### **New administrator appointed**

**3.104.**—(1) If a new administrator is appointed in place of another, the former administrator must, as soon as reasonably practicable, transmit to the new administrator all the creditors' claims which the former administrator has received, together with an itemised list of them.

(2) The new administrator must authenticate the list by way of receipt for the creditors' claims and return it to the former administrator.

(3) From then on, all creditors' claims must be sent to and retained by the new administrator.

### Submission of claims

**3.105.**—(1) A creditor, in order to obtain an adjudication as to the creditor's entitlement to a dividend (so far as funds are available) out of the assets of the company in respect of any accounting period, must submit the creditor's claim to the administrator not later than eight weeks before the end of the accounting period.

(2) A creditor must submit a claim by producing to the administrator—

- (a) a statement of claim as described in paragraph (3); and
- (b) documentary evidence of debt.

but the administrator may dispense with the requirement of sub-paragraph (b) in respect of any debt or any class of debt.

(3) The statement of claim must—

- (a) be made out by, or under the direction of, the creditor and dated and authenticated by the creditor or a person authorised on the creditor's behalf;
- (b) state the creditor's name and address;
- (c) if the creditor is a company, identify the company;
- (d) state the name and address of any person authorised to act on behalf of the creditor;
- (e) state the total amount as at the date of the administration order claimed in respect of all debts;
- (f) state whether or not the claim includes any outstanding uncapitalised interest;
- (g) contain particulars of how and when the debt was incurred by the company;
- (h) contain particulars of any security held, the date on which it was given and the value which the creditor puts on it;
- (i) include details of any retention of title in relation to goods to which the debt relates;
- (j) state the nature and amount of any preference under Schedule 6 to the Act<sup>(14)</sup> claimed in respect of the debt;
- (k) in the case of a member State liquidator creditor, specify and give details of underlying claims in respect of which the creditor is claiming;
- (l) include any details of any document by reference to which the debt can be substantiated; and
- (m) state the name, postal address and authority of the person authenticating the statement of claim and documentary evidence of debt (if someone other than the creditor).

(4) A claim submitted by a creditor, which has been accepted in whole or in part by the administrator for the purpose of drawing a dividend in respect of any accounting period, is to be deemed to have been resubmitted for the purpose of obtaining an adjudication as to the creditor's entitlement to a dividend in respect of an accounting period or, as the case may be, any subsequent accounting period.

(5) A creditor who has submitted a claim may at any time submit a further claim specifying a different amount for the claim, provided that a secured creditor is not entitled to produce a further claim specifying a different value for the security at any time after the administrator has required the creditor to discharge, or convey or assign, the security under rule 3.113.

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(14) Amendments have been made to Schedule 6 which are not relevant to this instrument.



### **False claims or evidence**

**3.106.**—(1) If a creditor produces under rule 3.105 a statement of claim or documentary evidence of debt or other evidence which is false—

- (a) the creditor is guilty of an offence unless the creditor shows that the creditor neither knew nor had reason to believe that the statement of claim or documentary evidence of debt or other evidence was false;
- (b) the company is guilty of an offence if the company—
  - (i) knew or became aware that the statement of claim or documentary evidence of debt or other evidence was false; and
  - (ii) failed as soon as practicable after acquiring such knowledge to report it to the administrator.

### **Evidence of claims**

**3.107.**—(1) The administrator, for the purpose of being satisfied as to the validity or amount of a claim submitted by a creditor under rule 3.105, may require—

- (a) the creditor to produce further evidence; or
- (b) any other person who the administrator believes can produce relevant evidence, to produce such evidence.

(2) If the creditor or other person refuses or delays to produce such evidence as required under paragraph (1), the administrator may apply to the court for an order requiring the creditor or other person to attend for private examination before the court.

(3) On an application to it under paragraph (2) above the court may make an order requiring the creditor or other person to attend for private examination before it on a date (being not earlier than eight days nor later than 16 days after the date of the order) and at a time specified in the order.

(4) If a creditor or other person is for any good reason prevented from attending for examination, the court may grant a commission to take the examination (the commissioner being in this rule referred to as an “examining commissioner”).

(5) At any private examination under paragraph (2) or where the court grants a commission to take the examination under paragraph (4), a solicitor or counsel may act on behalf of the administrator, or the administrator may appear on the administrator’s own behalf.

(6) The examination, whether before the court or an examining commissioner, must be taken on oath.

(7) A person who fails without reasonable excuse to comply with an order made under paragraph (2) is guilty of an offence.

(8) References in this rule to a creditor in a case where the creditor is one of the following entities—

- (a) a trust;
- (b) a partnership (including a dissolved partnership);
- (c) a body corporate or an unincorporated body;
- (d) a limited partnership (including a dissolved partnership) within the meaning of the Limited Partnerships Act 1907,

are to be construed, unless the context otherwise requires, as references to a person representing the entity.

### **Adjudication of claims**

**3.108.**—(1) Where funds are available for payment of a dividend out of the company's assets in respect of an accounting period, the administrator for the purpose of determining who is entitled to such a dividend must—

- (a) not later than four weeks before the end of the period, accept or reject every claim submitted or deemed to have been re-submitted under rule 3.105; and
- (b) at the same time make a decision on any matter requiring to be specified under paragraph (4)(a) or (b).

(2) On accepting or rejecting, under paragraph (1) above, every claim submitted or deemed to have been re-submitted, the administrator must, as soon as is reasonably practicable, send a list of every claim so accepted or rejected (including the amount of each claim and whether it has been accepted or rejected) to every creditor known to the administrator.

(3) Where the administrator rejects a claim, the administrator must without delay notify the creditor giving reasons for the rejection.

(4) Where the administrator accepts or rejects a claim, the administrator must specify for that claim—

- (a) the amount of the claim accepted;
- (b) the category of debt, and the value of any security, as decided by the administrator; and
- (c) if rejecting the claim, the reasons for doing so.

(5) Any member of the company or any creditor may, if dissatisfied with the acceptance or rejection of any claim (or, in relation to such acceptance or rejection with a decision in respect of any matter requiring to be specified under paragraph (4)(a) or (b)) appeal to the court not later than 14 days before the end of the accounting period.

(6) Any reference in this rule to the acceptance or rejection of a claim is to be construed as a reference to the acceptance or rejection of the claim in whole or in part.

### **Entitlement to draw a dividend**

**3.109.**—(1) A creditor who has had that creditor's claim accepted in whole or in part by the administrator under rule 3.108(1) or on appeal under rule 3.108(5) is entitled to payment out of the company's assets of a dividend in respect of the accounting period for the purposes of which the claim is accepted.

(2) Such entitlement to payment arises only in so far as the company has funds available to make that payment, having regard to rule 3.115.

### **Liabilities and rights of obligants**

**3.110.**—(1) Where a creditor has an obligant bound to the creditor along with the company for the whole or part of the debt, the obligant is not freed or discharged from liability for the debt by reason of the dissolution of the company or the creditor's voting or drawing a dividend or assenting to or not opposing—

- (a) the dissolution of the company; or
- (b) any composition with creditors.

(2) Paragraph (3) applies where—

- (a) a creditor has had a claim accepted in whole or in part; and
- (b) the obligant holds a security over any part of the company's assets.

(3) The obligant must account to the administrator so as to put the company's assets in the same position as if the obligant had paid the debt to the creditor and thereafter had had the obligant's claim accepted in whole or in part in the administration after deduction of the value of the security.

(4) The obligant may require and obtain at the obligant's own expense from the creditor an assignation of the debt on payment of the amount of the debt, and on that being done may in respect of the debt submit a claim, and vote and draw a dividend, if otherwise legally entitled to do so.

(5) Paragraph (4) is without prejudice to any right, under any rule of law, of an obligant who has paid the debt.

(6) In this rule an "obligant" includes a cautioner.

### **Amount which may be claimed generally**

**3.111.**—(1) Subject to the provisions of this rule and rules 3.112 and 3.113 the amount in respect of which a creditor is entitled to claim is the accumulated sum of principal and any interest which is due on the debt as at the date on which the company entered administration.

(2) If a debt does not depend on a contingency but would not be payable but for the administration until after the date on which the company entered administration, the amount of the claim is to be calculated as if the debt were payable on the date on which the company entered administration but subject to the deduction of interest at the rate specified in paragraph (4) from that date until the date for payment of the debt.

(3) In calculating the amount of a creditor's claim, the creditor must deduct any discount (other than any discount for immediate or early settlement) which is allowable by contract or course of dealing between the creditor and the company or by the usage of trade.

(4) The rate of interest referred to in paragraph (2) is to be whichever is the greater of—

- (a) the official rate at the date the company entered administration; or
- (b) the rate applicable to that debt apart from the administration.

(5) Where the administration was immediately preceded by a liquidation, the reference to the date on which the company entered administration in paragraph (1) and the second reference to that date in paragraph (2) are to be construed as references to the date the company went into liquidation.

### **Debts depending on contingency**

**3.112.**—(1) Subject to paragraph (2), the amount which a creditor is entitled to claim is not to include a debt in so far as its existence or amount depends on a contingency.

(2) On an application by the creditor—

- (a) to the administrator; or
- (b) if there is no administrator, to the court,

the administrator or court must put a value on the debt in so far as it is contingent.

(3) Where under paragraph (2) a value is put on the debt—

- (a) the amount in respect of which the creditor is then entitled to claim is to be that value but no more;
- (b) where the contingent debt is an annuity, a cautioner may not then be sued for more than that value.

(4) Any interested person may appeal to the court against a valuation under paragraph (2) by the administrator, and the court may affirm or vary that valuation.

### Secured debts

**3.113.**—(1) In calculating the amount of a secured creditor's claim the secured creditor is to deduct the value of any security as estimated by the secured creditor.

(2) If the secured creditor surrenders, or undertakes in writing to surrender, a security for the benefit of the company's assets, the secured creditor is not required to deduct the value of that security.

(3) The administrator may, at any time after the expiry of 12 weeks from the date on which the company entered administration, require a secured creditor at the expense of the company's assets to discharge the security or convey or assign it to the administrator on payment to the creditor of the value specified by the creditor.

(4) Where under paragraph (3) the administrator makes payment to the creditor, the amount in respect of which the creditor is then entitled to claim is to be any balance of the creditor's debt remaining after receipt of such payment.

(5) In calculating the amount of the claim of a creditor whose security has been realised the creditor must deduct the amount (less the expenses of realisation) which the creditor has received, or is entitled to receive, from the realisation.

### Claims in foreign currency

**3.114.**—(1) A creditor may state the amount of his or her claim in a currency other than sterling where—

- (a) the creditor's claim is constituted by decree or other order made by a court ordering the company to pay to the creditor a sum expressed in a currency other than sterling; or
- (b) where it is not so constituted, the creditor's claim arises from a contract or bill of exchange in terms of which payment is or may be required to be made by the company to the creditor in a currency other than sterling.

(2) Where under paragraph (1) a claim is stated in a currency other than sterling the administrator must convert it into sterling at a single rate for each currency determined by the administrator by reference to the exchange rates prevailing in the London market at the close of business on the date on which the company entered administration or, if the administration was immediately preceded by a liquidation, on the date on which the company went into liquidation.

### Order of priority in distribution

**3.115.**—(1) The funds of the company's assets must be distributed by the administrator to meet the following expenses and debts in the order in which they are mentioned—

- (a) the expenses of the administration;
- (b) any preferential debts within the meaning of section 386(15) (excluding any interest which has been accrued thereon to the date on which the company entered administration);
- (c) ordinary debts, that is to say a debt which is neither a secured debt nor a debt mentioned in any other sub-paragraph of this paragraph;
- (d) interest at the official rate, between the date on which the company entered administration and the date of payment, on—
  - (i) the preferential debts, and
  - (ii) the ordinary debts; and

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(15) Section 386 was amended by paragraph 18 of schedule 8 of the Pensions Schemes Act 1993 (c.48), section 13(2) of the Financial Services (Banking Reform) Act 2013 (c.33), S.I. 2003/2093, S.I. 2014/3486 and S.I. 2015/486.

- (e) any postponed debt.
- (2) In paragraph (1)—
  - (a) “postponed debt” means—
    - (i) a creditor’s right to any alienation which has been reduced or restored to the company’s assets under section 242 or to the proceeds of the sale of such an alienation,
    - (ii) a claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000(16) (restitution orders), unless it is also a claim arising by virtue of sub-paragraph (b) of that section (a person who has suffered loss etc.), or
    - (iii) in administration, a claim which by virtue of the Act or any other enactment is a claim the payment of which is to be postponed;
  - (b) in sub-paragraph (d), where the administration was immediately preceded by a winding up, the reference to the date on which the company entered administration is to be construed as the date the company went into liquidation.
- (3) The expenses of the administration mentioned in paragraph (1)(a) are payable in the order of priority mentioned in rule 3.116.
- (4) Subject to section 175—
  - (a) any debt falling within either of paragraphs (1)(b) or (c) is to have the same priority as any other debt falling within the same sub-paragraph; and
  - (b) where the funds of the company’s assets are inadequate to enable such debts to be paid in full, they are to abate in equal proportions.
- (5) Any surplus remaining, after all expenses and debts mentioned in paragraph (1) have been paid in full, must (unless the articles of the company provide otherwise) be distributed among the members according to their rights and interests in the company.
- (6) Nothing in this rule affects—
  - (a) the right of a secured creditor which is preferable to the rights of the administrator; or
  - (b) any preference of the holder of a lien over a title deed or other document which the administrator has taken into his or her possession or control in accordance with paragraph 67 of Schedule B1.

### **Order of priority of expenses of administration**

- 3.116.**—(1) Subject to rule 3.51 the expenses of the administration are payable out of the assets in the following order of priority—
- (a) any outlays properly chargeable or incurred by the administrator in carrying out its functions in the administration, except those outlays specifically mentioned in the following sub-paragraphs;
  - (b) the cost, or proportionate cost, of any caution provided by an administrator in accordance with the Act or these Rules;
  - (c) the expenses of the applicant in the administration, and of any person appearing in the petition whose expenses are allowed by the court;
  - (d) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the company, as required or authorised by or under the Act or these Rules;
  - (e) the remuneration of the administrator determined in accordance with rules 3.95 to 3.101;

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(16) 2000 c.8. Section 382(1) was amended by paragraph 21(2) of Schedule 9 to the Financial Services Act 2012 (c.21).

- (f) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company (without regard to whether the realisation is effected by the administrator, a secured creditor or otherwise).

### **Estate to be distributed in respect of the accounting periods**

**3.117.**—(1) The administrator must make up accounts of the administrator’s intromissions with the company’s assets in respect of each accounting period.

(2) In this rule, “accounting period” is to be construed as follows—

- (a) the first accounting period is the period of six months beginning with the date on which the company entered administration; and
- (b) any subsequent accounting period is the period of six months beginning with the end of the last accounting period except that—
  - (i) where the administrator and the creditors’ committee agree; or
  - (ii) where there is no creditors’ committee, the court determines,

the accounting period is to be such other period beginning with the end of the last accounting period as may be agreed or, as the case may be determined, it is to be that other period.

(3) An agreement or determination under paragraph (2)(b)—

- (a) may be made in respect of one or more than one accounting period;
- (b) may be made before the beginning of the accounting period in relation to which it has effect and, in any event, is not to have effect unless made before the day on which such accounting period would, but for the agreement or determination, have ended;
- (c) may provide for different accounting periods to be of different durations.

(4) The administrator may make a distribution to secured or preferential creditors or, where the administrator has the permission of the court, to unsecured creditors only if-

- (a) the administrator has sufficient funds for the purpose;
- (b) the administrator does not intend to give notice pursuant to paragraph 83 of Schedule B1(17);
- (c) the administrator’s statement of proposals, as approved by the creditors under paragraph 53(1) or 54(5) of Schedule B1(18), contains a proposal to make a distribution to the class of creditors in question, and
- (d) the payment of a dividend is consistent with the functions and duties of the administrator and any proposals made by the administrator or which the administrator intends to make.

(5) The administrator may pay—

- (a) the expenses of the administration mentioned in rule 3.116(1)(a), other than the administrator’s own remuneration, at any time;
- (b) the preferential debts within the meaning of section 386 at any time but only with the consent of the creditors’ committee or, if there is no creditors’ committee, of the court.

(6) If the administrator—

- (a) is not ready to pay a dividend in respect of an accounting period; or
- (b) considers it would be inappropriate to pay such a dividend because the expenses of doing so would be disproportionate to the amount of the dividend,

(17) Paragraph 83 is amended by section 128(3) of the 2015 Act.

(18) Paragraph 53 is amended by paragraph 10(8) to (10) of Schedule 9 to the 2015 Act. Paragraph 54 is amended by paragraph 10(11) to (16) of Schedule 9 to the 2015 Act.

the administrator may postpone such payment to a date not later than the time for payment of a dividend in respect of the next accounting period.

(7) Where an appeal is taken under rule 3.108(5) against the acceptance or rejection of a creditor's claim, the administrator must at the time of payment of dividends and until the appeal is determined, set aside an amount which would be sufficient, if the determination in the appeal were to provide for the claim being accepted in full, to pay a dividend in respect of that claim.

(8) Where a creditor—

(a) has failed to produce evidence in support of a claim earlier than eight weeks before the end of an accounting period on being required by the administrator to do so under rule 3.107; and

(b) has given a reason for such failure which is acceptable to the administrator,

the administrator must set aside, for such time as is reasonable to enable the creditor to produce that evidence or any other evidence that will enable the administrator to be satisfied under rule 3.107 an amount which would be sufficient, if the claim were accepted in full, to pay a dividend in respect of that claim.

(9) Where a creditor submits a claim to the administrator later than eight weeks before the end of an accounting period but more than eight weeks before the end of a subsequent accounting period in respect of which, after making allowance for contingencies, funds are available for the payment of a dividend, the administrator must, if accepting the claim in whole or in part, pay to the creditor—

(a) the same dividend or dividends as has or have already been paid to creditors of the same class in respect of any accounting period or periods; and

(b) whatever dividend may be payable to that creditor in respect of the said subsequent accounting period

provided that paragraph (a) above is without prejudice to any dividend which has already been paid.

(10) In the declaration of and payment of a dividend, no payments are to be made more than once by virtue of the same debt.

(11) Subject to any notification by the person entitled to a dividend given to the administrator that the person wishes the dividend to be paid to another person, or has assigned that entitlement to another person, where both a creditor and a member State liquidator have had a claim accepted in relation to the same debt, payment is only to be made to the creditor.

### **Small debts**

**3.118.**—(1) A creditor is deemed to have submitted a claim for the purposes of adjudication of entitlement to and payment of a dividend but not otherwise where—

(a) the debt is a small debt;

(b) notice has been delivered to the creditor under rule 3.119; and

(c) the creditor has not advised the administrator that the debt is incorrect or not owed in response to the notice.

(2) In this rule “small debt” means a debt (being the total amount owed to a creditor) which does not exceed £1,000 (which amount is prescribed for the purposes of paragraph 13A(19) of Schedule 8 to the Act and paragraph 18A(20) of Schedule 9 to the Act.

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(19) Paragraph 13A is inserted by section 131 of the 2015 Act.

(20) Paragraph 18A is inserted by section 132 of the 2015 Act.

**Contents of notice to be delivered to creditors owed small debts etc.**

**3.119.**—(1) The administrator may treat a debt, which is a small debt according to the accounting records or the statement of affairs of the company, as if it were accepted under rule 3.108 for the purpose of paying a dividend.

(2) Where the administrator intends to treat such a debt as if it were accepted under rule 3.108 for the purpose of payment of a dividend, the administrator must not later than 12 weeks before the end of the accounting period deliver to the creditor a notice.

(3) The notice must—

- (a) state the amount of the debt which the administrator believes to be owed to the creditor according to the accounting records or statement of affairs of the company;
- (b) state that the administrator will treat the debt which is stated in the notice, being for £1,000 or less, as accepted for the purpose of payment of a dividend unless the creditor advises the administrator that the amount of the debt is incorrect or that no debt is owed;
- (c) require the creditor to notify the administrator by not later than eight weeks before the end of the accounting period if the amount of the debt is incorrect or if no debt is owed; and
- (d) inform the creditor that where the creditor advises the administrator that the amount of the debt is incorrect the creditor must also submit not later than eight weeks before the end of the accounting period a statement of claim and documentary evidence of debt (see rule 3.105) in order to receive a dividend.