

## SCHEDULE 1

### PART 3

#### SUBSTITUTION OF CHAPTER 2 OF PART V OF THE PRINCIPAL RULES

26. For Chapter 2 of Part V of the principal Rules there shall be substituted the following Chapters

#### “INDIVIDUAL VOLUNTARY ARRANGEMENTS

##### CHAPTER 2

###### Preliminary

###### **Introductory**

5.02.—(1) The Rules in this Chapter and Chapters 3 to 8 of this Part apply in relation to a voluntary arrangement under Chapter II of Part VIII of the Order.

(2) In this Part –

- (a) Chapter 3 applies in all cases;
- (b) Chapter 4 applies in cases where an application for an interim order is made;
- (c) Chapter 5 applies in cases where no application for an interim order is or is to be made; and
- (d) except where otherwise stated, Chapters 6, 7 and 8 apply in all cases.

[E.R. 5.1]

##### CHAPTER 3

###### Preparation of the Debtor’s Proposal

###### **Preparation of proposal**

5.03 The debtor shall prepare for the intended nominee a proposal on which (with or without amendments to be made under Rule 5.04(3)) to make his report to the court under Article 230 or Article 230A(1).

[E.R. 5.2]

###### **Contents of proposal**

5.04.—(1) The debtor’s proposal shall provide a short explanation why, in his opinion, a voluntary arrangement is desirable, and give reasons why his creditors may be expected to concur with such an arrangement.

(2) The proposal shall set out or otherwise deal with –

- (a) the following matters, so far as within the debtor’s immediate knowledge –
  - (i) his assets, with an estimate of their respective values,
  - (ii) the extent (if any) to which the assets are charged in favour of creditors,

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(1) Article 230A was inserted by Article 5 of, and paragraph 7 of Schedule 3 to, the Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152 (N.I. 6))

- (iii) the extent (if any) to which particular assets are to be excluded from the voluntary arrangement;
  - (b) particulars of any property, other than assets of the debtor himself, which is proposed to be included in the voluntary arrangement, the source of such property and the terms on which it is to be made available for inclusion;
  - (c) the nature and amount of the debtor's liabilities (so far as within his immediate knowledge), the manner in which they are proposed to be met, modified, postponed or otherwise dealt with by means of the voluntary arrangement and (in particular) –
    - (i) how it is proposed to deal with preferential creditors (defined in Article 232(9)) and creditors who are, or claim to be, secured,
    - (ii) how associates of the debtor (being creditors of his) are proposed to be treated under the voluntary arrangement, and
    - (iii) in any case where the debtor is an undischarged bankrupt, whether, to the debtor's knowledge, claims have been made under Article 312 (transactions at an undervalue), Article 313 (preferences) or Article 316 (extortionate credit transactions), or where the debtor is not an undischarged bankrupt, whether there are circumstances which would give rise to the possibility of such claims in the event that he should be adjudged bankrupt,
- and, where any such circumstances are present, whether, and if so how, it is proposed under the voluntary arrangement to make provision for wholly or partly indemnifying the insolvent estate in respect of such claims;
- (d) whether any, and if so what, guarantees have been given of the debtor's debts by other persons, specifying which (if any) of the guarantors are associates of his;
  - (e) the proposed duration of the voluntary arrangement;
  - (f) the proposed dates of distributions to creditors, with estimates of their amounts;
  - (g) how it is proposed to deal with the claims of any person who is bound by the voluntary arrangement by virtue of Article 234(2)(b)(ii)(2);
  - (h) the amount proposed to be paid to the nominee (as such) by way of remuneration and expenses;
  - (j) the manner in which it is proposed that the supervisor of the voluntary arrangement should be remunerated, and his expenses defrayed;
  - (k) whether, for the purposes of the voluntary arrangement, any guarantees are to be offered by any persons other than the debtor, and whether (if so) any security is to be given or sought;
  - (l) the manner in which funds held for the purposes of the voluntary arrangement are to be banked, invested or otherwise dealt with pending distribution to creditors;
  - (m) the manner in which funds held for the purpose of payment to creditors, and not so paid on the termination of the voluntary arrangement, are to be dealt with;
  - (n) if the debtor has any business, the manner in which it is proposed to be conducted during the course of the voluntary arrangement;
  - (o) details of any further credit facilities which it is intended to arrange for the debtor, and how the debts so arising are to be paid;

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(2) Article 234(2)(b) was substituted by Article 5 of, and paragraph 10 of Schedule 3 to, the Insolvency (Northern Ireland) Order 2002 ([S.I. 2002/3152 \(N.I. 6\)](#))

- (p) the functions which are to be undertaken by the supervisor of the voluntary arrangement;
- (q) the name, address and qualification of the person proposed as supervisor of the voluntary arrangement, and confirmation that he is, so far as the debtor is aware, qualified to act as an insolvency practitioner in relation to him or is an authorised person in relation to him; and
- (r) whether the EC Regulation will apply and, if so, whether the proceedings will be main proceedings or territorial proceedings.

(3) With the agreement in writing of the nominee, the debtor's proposal may be amended at any time up to the delivery of the former's report to the court under Article 230 or Article 230A.

*[E.R. 5.3]*

#### **Notice to the intended nominee**

5.05.—(1) The debtor shall give to the intended nominee written notice of his proposal.

(2) The notice, accompanied by a copy of the proposal, shall be delivered either to the intended nominee himself, or to a person authorised to take delivery of documents on his behalf.

(3) If the intended nominee agrees to act, he shall cause a copy of the notice to be endorsed to the effect that it has been received by him on a specified date.

(4) The copy of the notice so endorsed shall be returned by the nominee forthwith to the debtor at an address specified by him in the notice for that purpose.

(5) Where the debtor is an undischarged bankrupt and he gives notice of his proposal to the official receiver and (if any) the trustee, the notice must contain the name and address of the insolvency practitioner or (as the case may be) authorised person who has agreed to act as nominee.

*[E.R. 5.4]*

#### **Statement of Affairs**

5.06.—(1) Subject to paragraph (2), the debtor shall, within 7 days after his proposal is delivered to the nominee, or such longer time as the latter may allow, deliver to the nominee a statement of his (the debtor's) affairs.

(2) Paragraph (1) shall not apply where the debtor is an undischarged bankrupt and he has already delivered a statement of affairs under Article 246 (debtor's petition) or Article 261 (petition other than debtor's) but the nominee may require the debtor to submit a further statement supplementing or amplifying the statement of affairs already submitted.

(3) The statement of affairs shall comprise the following particulars (supplementing or amplifying, so far as is necessary for clarifying the state of the debtor's affairs, those already given in his proposal) –

- (a) a list of his assets, divided into such categories as are appropriate for easy identification, with estimated values assigned to each category;
- (b) in the case of any property on which a claim against the debtor is wholly or partly secured, particulars of the claim and its amount, and of how and when the security was created;
- (c) the names and addresses of the debtor's preferential creditors (as defined in Article 232(9)), with the amounts of their respective claims;

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- (d) the names and addresses of the debtor's unsecured creditors, with the amounts of their respective claims;
- (e) particulars of any debts owed by or to the debtor to or by persons who are associates of his;
- (f) such other particulars (if any) as the nominee may in writing require to be furnished for the purposes of making his report to the court on the debtor's proposal.

(4) Subject to paragraph (5), the statement of affairs shall be made up to a date not earlier than 2 weeks before the date of the notice to the nominee under Rule 5.05.

(5) The nominee may allow an extension of that period to the nearest practicable date (not earlier than 2 months before the date of the notice under Rule 5.05); and if he does so, he shall give his reasons in his report to the court on the debtor's proposal.

(6) The statement shall be certified by the debtor as correct, to the best of his knowledge and belief.

*[E.R. 5.5]*

#### **Additional disclosure for assistance of nominee**

5.07.—(1) If it appears to the nominee that he cannot properly prepare his report on the basis of information in the debtor's proposal and statement of affairs, he may call on the debtor to provide him with –

- (a) further and better particulars as to the circumstances in which, and the reasons why, he is insolvent or (as the case may be) threatened with insolvency;
- (b) particulars of any previous proposals which have been made by him under Part VIII of the Order;
- (c) any further information with respect to his affairs which the nominee thinks necessary for the purposes of his report.

(2) The nominee may call on the debtor to inform him whether and in what circumstances he has at any time –

- (a) been concerned in the affairs of any company (whether or not incorporated in Northern Ireland) which has become insolvent, or
- (b) been adjudged bankrupt, or entered into an arrangement with his creditors.

(3) For the purpose of enabling the nominee to consider the debtor's proposal and prepare his report on it, the latter must give him access to his accounts and records.

*[E.R. 5.6]*

## **CHAPTER 4**

### **Cases in which an application for an Interim Order is made**

#### **Application for interim order**

5.08.—(1) An application to the court for an interim order under Part VIII of the Order shall be accompanied by an affidavit of the following matters –

- (a) the reasons for making the application;
- (b) particulars of any execution or other legal process or levying of any distress which, to the debtor's knowledge, has been commenced against him;

- (c) that he is an undischarged bankrupt or (as the case may be) that he is able to petition for his own bankruptcy;
- (d) that no previous application for an interim order has been made by or in respect of the debtor in the period of 12 months ending with the date of the affidavit; and
- (e) that the nominee under the proposal (naming him) is willing to act in relation to the proposal and is a person who is either qualified to act as an insolvency practitioner in relation to the debtor or is authorised to act as nominee in relation to him.

(2) A copy of the notice to the intended nominee under Rule 5.05, endorsed to the effect that he agrees so to act, and a copy of the debtor's proposal given to the nominee under that Rule, shall be exhibited to the affidavit.

(3) On receiving the application and affidavit, the court shall fix a venue for the hearing of the application.

(4) The applicant shall give at least 2 days' notice of the hearing date –

- (a) where the debtor is an undischarged bankrupt, to the bankrupt, the official receiver and the trustee (whichever of those three is not himself the applicant),
- (b) where the debtor is not an undischarged bankrupt, to any person who (to the debtor's knowledge) has presented a bankruptcy petition against him, and
- (c) in either case, to the nominee who has agreed to act in relation to the debtor's proposal.

[E.R. 5.7]

### **Hearing of the application**

5.09.—(1) Any of the persons who have been given notice under Rule 5.08(4) may appear or be represented at the hearing of the application.

(2) The court, in deciding whether to make an interim order on the application, shall take into account any representations made by or on behalf of any of those persons (in particular, whether an order should be made containing such provision as is referred to in Article 229(3) and (4)).

(3) If the court makes an interim order, it shall fix a venue for consideration of the nominee's report. Subject to paragraph (4), the date for that consideration shall not be later than that on which the interim order ceases to have effect under Article 229(6).

(4) An order under Article 230(4) extending the period for which the interim order has effect shall include a provision extending the time for filing the nominee's report to a date not less than 2 days before the date of expiration of that extended period and alter the venue fixed for consideration of the nominee's report to the last mentioned date.

(5) If an order is made under paragraph (4), the nominee shall give at least 2 day's notice thereof to the debtor and any other person to whom the notice of the hearing of the application for the interim order was given pursuant to Rule 5.08(4).

[E.R. 5.9]

### **Action to follow making of order**

5.10.—(1) Where an interim order is made, the court shall –

- (a) send at least 2 sealed copies of the order to the person who applied for it; and that person shall serve one of the copies on the nominee under the debtor's proposal, and

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- (b) forthwith give to the Enforcement of Judgments Office notice of the making of the order and of the date the interim order ceases to have effect by sending to that Office a sealed copy of the order.

[Form 5.2]

- (2) The applicant shall also forthwith give notice of the making of the order to any person who was given notice of the hearing pursuant to Rule 5.08(4) and was not present or represented at it.

[E.R. 5.10]

### **Nominee's report on the proposal**

5.11.—(1) Where the nominee makes his report to the court under Article 230, he shall deliver 2 copies of it to the court not less than 2 days before the interim order ceases to have effect.

- (2) With his report the nominee shall deliver –

- (a) a copy of the debtor's proposal (with amendments, if any, authorised under Rule 5.04 (3)); and
- (b) a copy or summary of any statement of affairs provided by the debtor.

(3) If the nominee makes known his opinion that the debtor's proposal has a reasonable prospect of being approved and implemented, and that a meeting of the debtor's creditors should be summoned under Article 231, his report shall have annexed to it his comments on the debtor's proposal.

(4) If the nominee's opinion is otherwise than under paragraph (3), he shall give his reasons for that opinion.

(5) The court shall upon receipt of the report cause one copy of the report to be endorsed with the date of its filing in court and returned to the nominee.

(6) Any creditor of the debtor is entitled, at all reasonable times on any business day, to inspect the file.

(7) Where the debtor is an undischarged bankrupt, the nominee shall send to the official receiver and (if any) the trustee –

- (a) a copy of the debtor's proposal,
- (b) a copy of his (the nominee's) report and his comments accompanying it (if any), and
- (c) a copy or summary of the debtor's statement of affairs.

(8) Where the debtor is not an undischarged bankrupt, the nominee shall send a copy of each of the documents referred to in paragraph (7) to any person who has presented a bankruptcy petition against the debtor.

[E.R. 5.11]

### **Replacement of nominee**

5.12.—(1) Where the debtor intends to apply to the court under Article 230(3) for the nominee to be replaced, he shall give to the nominee and the proposed new nominee at least 7 days' notice of his application, together with a copy of the supporting affidavit.

(2) No appointment of a replacement nominee shall be made by the court unless there is filed in court a statement by the replacement nominee indicating his consent to act.

[E.R. 5.12]

## Consideration of nominee's report

5.13.—(1) At the hearing by the court to consider the nominee's report, any of the persons who have been given notice under Rule 5.08(4) may appear or be represented.

(2) Rule 5.10 applies to any order made by the court at the hearing.

[E.R. 5.13]

## CHAPTER 5

### Cases where no Interim Order is to be obtained

#### Nominee's report to the court

5.14.—(1) The nominee shall deliver 2 copies of his report to the court under Article 230A within 14 days (or such longer period as the court may allow) after receiving from the debtor the document and statement mentioned in Article 230A(2) but the court shall not consider the report unless an application is made under the Order or these Rules in relation to the debtor's proposal.

(2) With his report the nominee shall deliver –

- (a) a copy of the debtor's proposal (with amendments, if any, authorised under Rule 5.04(3));
- (b) a copy or summary of any statement of affairs provided by the debtor; and
- (c) a copy of the notice referred to in Rule 5.05(3),

together with 2 copies of Form 5.5 listing the documents referred to in sub-paragraphs (a) to (c) and containing a statement that no application for an interim order under Article 226 is to be made.

(3) If the nominee makes known his opinion that the debtor's proposal has a reasonable prospect of being approved and implemented, and that a meeting of the debtor's creditors should be summoned under Article 231, his report shall have annexed to it his comments on the debtor's proposal.

(4) If the nominee's opinion is otherwise than under paragraph (3), he shall give his reasons for that opinion,

(5) The court shall upon receipt of the report and Form 5.5 cause one copy of the form to be endorsed with the date of its filing in court and returned to the nominee.

(6) Any creditor of the debtor is entitled, at all reasonable times on any business day, to inspect the file.

(7) Where the debtor is an undischarged bankrupt, the nominee shall send to the official receiver and (if any) the trustee –

- (a) a copy of the debtor's proposal,
- (b) a copy of his (the nominee's) report and his comments accompanying it (if any), and
- (c) a copy or summary of the debtor's statement of affairs.

(8) Where the debtor is not an undischarged bankrupt, the nominee shall send a copy of each of the documents referred to in paragraph (7) to any person who has presented a bankruptcy petition against the debtor.

(9) The filing in court of the report under Article 230A shall constitute an insolvency proceeding for the purpose of Rules 7.24 and 7.26.

[E.R. 5.14]

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## **Applications to the court**

5.15.—(1) Where the debtor intends to apply to the court under Article 230A(4)(a) or (b) for the nominee to be replaced, he shall give to the nominee and the proposed new nominee at least 7 days' notice of the application, together with a copy of the supporting affidavit.

(2) Where the nominee intends to apply to the court under Article 230A(4)(b) for his replacement as nominee, he shall give to the debtor at least 7 days' notice of the application.

(3) No appointment of a replacement nominee shall be made by the court unless there is filed in court a statement by the replacement nominee indicating his consent to act.

[E.R. 5.16]

## CHAPTER 6

### Creditors' Meetings

#### **Summoning of creditors' meeting**

5.16.—(1) If in his report the nominee states that, in his opinion, a meeting of creditors should be summoned to consider the debtor's proposal, the date on which the meeting is to be held shall be —

(a) in a case where an interim order has not been obtained, not less than 14 days and not more than 28 days from that on which the nominee's report is filed in court under Rule 5.14; and

(b) in a case where an interim order is in force, not less than 14 days from the date on which the nominee's report is filed in court nor more than 28 days from that on which the report is considered by the court.

(2) Notices calling the meeting shall be sent by the nominee, at least 14 days before the day fixed for it to be held, to all the creditors specified in the debtor's statement of affairs, and any other creditors of whom the nominee is otherwise aware.

(3) Each notice sent under this Rule shall state that the nominee's report has been filed in court and shall state the effect of Rule 5.22(1), (3) and (4) (requisite majorities); and with it there shall be sent —

(a) a copy of the proposal,

(b) a copy of the statement of affairs or, if the nominee thinks fit, a summary of it (the summary to include a list of the creditors and the amounts of their debts), and

(c) the nominee's comments on the proposal.

[E.R. 5.17]

#### **Creditors' meeting: supplementary**

5.17.—(1) Subject to paragraph (2), in fixing the venue for the creditors' meeting, the nominee shall have regard to the convenience of creditors.

(2) The meeting shall be summoned for commencement between 10.00 and 16.00 hours on a business day.

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

[Form 8.1]

[E.R. 5.18]

### The chairman at the meeting

5.18.—(1) Subject to paragraph (2), the nominee shall be chairman of the creditors' meeting.

(2) If for any reason the nominee is unable to attend, he may nominate another person to act as chairman in his place; but a person so nominated must be –

- (a) a person qualified to act as an insolvency practitioner in relation to the debtor;
- (b) an authorised person in relation to the debtor; or
- (c) an employee of the nominee or his firm who is experienced in insolvency matters.

[E.R. 5.19]

### The chairman as proxy-holder

5.19. The chairman shall not by virtue of any proxy held by him vote to increase or reduce the amount of the remuneration or expenses of the nominee or the supervisor of the proposed voluntary arrangement, unless the proxy specifically directs him to vote in that way.

[E.R. 5.20]

### Entitlement to vote

5.20.—(1) Subject to paragraphs (2) and (3) and Rule 5.21, every creditor who has notice of the creditors' meeting is entitled to vote at the meeting or any adjournment of it.

(2) A creditor's entitlement to vote is calculated as follows –

- (a) where the debtor is not an undischarged bankrupt and an interim order is in force, by reference to the amount of the debt owed to him as at the date of the interim order;
- (b) where the debtor is not an undischarged bankrupt and an interim order is not in force, by reference to the amount of the debt owed to him at the date of the meeting; and
- (c) where the debtor is an undischarged bankrupt, by reference to the amount of the debt owed to him as at the date of the bankruptcy order.

(3) A creditor may vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained, and for the purposes of voting (but not otherwise) his debt shall be valued at £1 unless the chairman agrees to put a higher value on it.

[E.R. 5.21]

### Procedure for admission of creditors' claims for voting purposes

5.21.—(1) Subject to paragraphs (2) to (8), at the creditors' meeting the chairman shall ascertain the entitlement of persons wishing to vote and shall admit or reject their claims accordingly.

(2) The chairman may admit or reject a claim in whole or in part.

(3) The chairman's decision on any matter under this Rule or under paragraph (3) of Rule 5.20 is subject to appeal to the court by any creditor or by the debtor.

(4) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

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(5) Subject to paragraph (6), if on an appeal the chairman's decision is reversed or varied, or votes are declared invalid, the court may order another meeting to be summoned, or make such order as it thinks just.

(6) The court's power to make an order under paragraph (5) is exercisable only if it considers that the circumstances giving rise to the appeal are such as give rise to unfair prejudice or material irregularity.

(7) An application to the court by way of appeal against the chairman's decision shall not be made after the end of the period of 28 days beginning with the first day on which the report required by Article 233 is made to the court.

(8) The chairman is not personally liable for any costs incurred by any person in respect of an appeal under this Rule.

/E.R. 5.22]

### **Requisite majorities**

5.22.—(1) Subject to paragraphs (3) to (7), at the creditors' meeting for any resolution to pass approving any proposal or modification there must be a majority in excess of three-quarters in value of the creditors present in person or by proxy and voting on the resolution.

(2) The same applies in respect of any other resolution proposed at the meeting, but substituting one-half for three-quarters.

(3) In the following cases there is to be left out of account a creditor's vote in respect of any claim or part of a claim –

(a) where written notice of the claim was not given, either at the meeting or before it, to the chairman or the nominee;

(b) where the claim or part of the claim is secured;

(c) where the claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing –

(i) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the debtor, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands, and

(ii) to estimate the value of the security and (for the purpose of entitlement to vote, but not of any distribution under the voluntary arrangement) to deduct it from his claim.

(4) Any resolution is invalid if those voting against it include more than half in value of the creditors, counting in these latter only those –

(a) who have notice of the meeting;

(b) whose votes are not to be left out of account under paragraph (3); and

(c) who are not, to the best of the chairman's belief, associates of the debtor.

(5) It is for the chairman of the meeting to decide whether under this Rule –

(a) a vote is to be left out of account in accordance with paragraph (3), or

(b) a person is an associate of the debtor for the purposes of paragraph (4)(c);

and, in relation to the second of these cases, the chairman is entitled to rely on the information provided by the debtor's statement of affairs or otherwise in accordance with this Part.

(6) If the chairman uses a proxy contrary to Rule 5.19, his vote with that proxy does not count towards any majority under this Rule.

(7) The chairman's decision on any matter under this Rule is subject to appeal to the court by any creditor or by the debtor and paragraphs (5) to (8) of Rule 5.21 apply as regards such an appeal.

[E.R. 5.23]

#### **Proceedings to obtain agreement on the proposal**

5.23.—(1) On the day on which the creditors' meeting is held, it may from time to time be adjourned.

(2) If on that day the requisite majority for the approval of the voluntary arrangement (with or without modifications) has not been obtained, the chairman may, and shall if it is so resolved, adjourn the meeting for not more than 14 days.

(3) If there are subsequently further adjournments, the final adjournment shall not be to a day later than 14 days after that on which the meeting was originally held.

(4) If the meeting is adjourned under paragraph (2), notice of the fact shall be given by the chairman forthwith to the court.

(5) If following any final adjournment of the meeting the proposal (with or without modifications) is not agreed to, it is deemed rejected.

[E.R. 5.24]

### **CHAPTER 7**

#### **Implementation of the Voluntary Arrangement**

#### **Resolutions to follow approval**

5.24.—(1) If the voluntary arrangement is approved (with or without modifications), a resolution may be taken by the creditors, where two or more individuals are appointed to act as supervisor, on the question whether acts to be done in connection with the voluntary arrangement may be done by any one of them, or must be done by both or all.

(2) If at the creditors' meeting a resolution is moved for the appointment of some person other than the nominee to be supervisor of the voluntary arrangement, there must be produced to the chairman, at or before the meeting –

(a) that person's written consent to act (unless he is present and then and there signifies his consent), and

(b) his written confirmation that he is qualified to act as an insolvency practitioner in relation to the debtor or is an authorised person in relation to the debtor.

[E.R. 5.25]

#### **Hand-over of property, etc. to supervisor**

5.25.—(1) Forthwith after the approval of the voluntary arrangement, the debtor or, where the debtor is an undischarged bankrupt, the official receiver or the debtor's trustee, shall do all that is required for putting the supervisor into possession of the assets included in the voluntary arrangement.

(2) On taking possession of the assets in any case where the debtor is an undischarged bankrupt, the supervisor shall discharge any balance due to the official receiver and (if other) the trustee by way of remuneration or on account of –

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- (a) costs properly incurred and payable under the Order or the Rules, and
- (b) any advances made in respect of the insolvent estate, together with interest on such advances at the rate applicable to a money judgment of the High Court at the date of the bankruptcy order.

(3) Alternatively where the debtor is an undischarged bankrupt, the supervisor must, before taking possession, give the official receiver or the trustee a written undertaking to discharge any such balance out of the first realisation of assets.

(4) Where the debtor is an undischarged bankrupt, the official receiver and (if other) the trustee has a charge on the assets included in the voluntary arrangement in respect of any sums due under paragraph (2) until they have been discharged, subject only to the deduction from realisations by the supervisor of the proper costs of realisation.

(5) Any sums due to the official receiver take priority over those due to a trustee.

(6) The supervisor shall from time to time out of the realisation of assets discharge all guarantees properly given by the official receiver or the trustee for the benefit of the estate, and shall pay all their expenses.

*[E.R. 5.26]*

### **Report of creditors' meeting**

5.26.—(1) A report of the creditors' meeting shall be prepared by the chairman of the meeting.

(2) The report shall –

- (a) state whether the proposal for a voluntary arrangement was approved or rejected and, if approved, with what (if any) modifications;
- (b) set out the resolutions which were taken at the meeting, and the decision on each one;
- (c) list the creditors (with their respective values) who were present or represented at the meeting, and how they voted on each resolution;
- (d) state whether, in the opinion of the supervisor,
  - (i) the EC Regulation applies to the voluntary arrangement, and
  - (ii) if so, whether the proceedings are main proceedings or territorial proceedings; and
- (e) include such further information (if any) as the chairman thinks it appropriate to make known to the court.

(3) A copy of the chairman's report shall, within 4 days of the meeting being held, be filed in court; and the court shall cause that copy to be endorsed with the date of filing.

(4) The persons to whom notice of the result is to be given, under Article 233(1), are all those who were sent notice of the meeting under this Part and any other creditor of whom the chairman is aware, and where the debtor is an undischarged bankrupt, the official receiver and (if any) the trustee.

(5) The notice shall be sent immediately after a copy of the chairman's report is filed in court under paragraph (3).

(6) In a case where no interim order has been obtained the court shall not consider the chairman's report unless an application is made to the court under the Order or the Rules in relation to it.

*[E.R. 5.27]*

## **Register of voluntary arrangements**

5.27.—(1) The Department shall maintain a register of voluntary arrangements, and shall enter in it all such matters as are reported to it in pursuance of Rules 5.28 and 5.33 and orders of suspension made under Article 236 reported to it in pursuance of Rule 5.29.

(2) Where the Department has received notice of the making of a revocation order or that an arrangement has been fully implemented in pursuance of Rules 5.29 or 5.33 or has otherwise received written notice of the termination of an arrangement from the supervisor and –

- (a) the revocation order under Article 236 was made prior to 2nd February 2004, or
- (b) the final completion or termination of the arrangement occurred more than 2 years prior to 2nd February 2004,

the Department shall delete from the register all matters entered in it relating to such arrangement.

(3) Where the Department receives notice under Rule 5.29(5) of the making of a revocation order in respect of an individual voluntary arrangement of which entry is made in the register, the Department shall delete from the register all matters entered in it relating to that arrangement.

(4) Where the Department receives notice under Rule 5.33(3) of the full implementation or termination of an individual voluntary arrangement of which entry is made in the register, the Department shall, on the expiry of 2 years after the final completion or termination of such individual voluntary arrangement, delete from the register all matters entered in it relating to that arrangement.

(5) The register shall be open to public inspection.

*[E.R. 5.28]*

## **Reports to Department**

5.28.—(1) Immediately after the chairman of the creditors' meeting has filed in court a report that the meeting has approved the voluntary arrangement, he shall report to the Department the following details of the voluntary arrangement –

- (a) the name and address of the debtor;
- (b) the date on which the voluntary arrangement was approved by the creditors; and
- (c) the name and address of the supervisor.

(2) A person who is appointed to act as supervisor of a voluntary arrangement (whether in the first instance or by way of replacement of another person previously appointed) shall forthwith give written notice to the Department of his appointment.

(3) If he vacates office as supervisor, he shall forthwith give written notice of that fact to the Department.

*[E.R. 5.29]*

## **Revocation or suspension of the voluntary arrangement**

5.29.—(1) This Rule applies where the court makes an order of revocation or suspension under Article 236.

(2) The person who applied for the order shall serve sealed copies of it –

- (a) in a case where the debtor is an undischarged bankrupt, on the debtor, the official receiver and the trustee;

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- (b) in any other case, on the debtor; and
  - (c) in either case, on the supervisor of the voluntary arrangement.
- (3) If the order includes a direction by the court under Article 236(4)(b) for any further creditors' meeting to be summoned, notice shall also be given (by the person who applied for the order) to whoever is, in accordance with the direction, required to summon the meeting.
- (4) The debtor or (where the debtor is an undischarged bankrupt) the trustee or (if there is no trustee) the official receiver shall –
- (a) forthwith after receiving a copy of the court's order, give notice of it to all persons who were sent notice of the creditors' meeting which approved the voluntary arrangement or who, not having been sent that notice, are affected by the order;
  - (b) within 7 days of their receiving a copy of the order (or within such longer period as the court may allow), give notice to the court whether it is intended to make a revised proposal to creditors, or to invite reconsideration of the original proposal.
- (5) The person on whose application the order of revocation or suspension was made shall, within 7 days after the making of the order, give written notice of it to the Department and shall, in the case of an order of suspension, within 7 days of the expiry of any suspension order, give written notice of such expiry to the Department.

[E.R. 5.30]

### **Supervisor's accounts and reports**

- 5.30.—(1) Where the voluntary arrangement authorises or requires the supervisor –
- (a) to carry on the debtor's business or to trade on his behalf or in his name, or
  - (b) to realise assets of the debtor or (in a case where the debtor is an undischarged bankrupt) belonging to the estate, or
  - (c) otherwise to administer or dispose of any funds of the debtor or the estate,
- he shall keep accounts and records of his acts and dealings in and in connection with the voluntary arrangement, including in particular records of all receipts and payments of money.
- (2) Subject to paragraph (3), the supervisor shall, not less often than once in every 12 months beginning with the date of his appointment, prepare an abstract of such receipts and payments, and send copies of it, accompanied by his report on the progress and efficacy of the arrangement, to –
- (a) the court,
  - (b) the debtor, and
  - (c) all those of the debtor's creditors who are bound by the voluntary arrangement.
- (3) If in any period of 12 months the supervisor has made no payments and had no receipts, he shall at the end of that period send a statement to that effect accompanied by his report to all who are specified in paragraph (2)(a) to (c).
- (4) An abstract provided under paragraph (2) shall relate to a period beginning with the date of the supervisor's appointment or (as the case may be) the day following the end of the last period for which an abstract was prepared under this Rule; and copies of the abstract shall be sent out, as required by paragraph (2), within the 2 months following the end of the period to which the abstract relates.
- (5) If the supervisor is not authorised as mentioned in paragraph (1), he shall, not less often than once in every 12 months beginning with the date of his appointment, send to all

those specified in paragraph 2(a) to (c) a report on the progress and efficacy of the voluntary arrangement.

(6) The court may, on application by the supervisor, vary the dates on which the obligation to send abstracts or reports arises.

[E.R. 5.31]

### **Production of accounts and records to Department**

5.31.—(1) The Department may at any time during the course of the voluntary arrangement or after its completion require the supervisor to produce for inspection –

- (a) his records and accounts in respect of the voluntary arrangement, and
- (b) copies of abstracts and reports prepared in compliance with Rule 5.30.

(2) The Department may require production either at the premises of the supervisor or elsewhere; and it is the duty of the supervisor to comply with any requirement imposed on him under this Rule.

(3) The Department may cause any accounts and records produced to it under this Rule to be audited; and the supervisor shall give to the Department such further information and assistance as it needs for the purposes of its audit.

[E.R. 5.32]

### **Costs**

5.32. The costs that may be incurred for any purposes of the voluntary arrangement are –

- (a) any disbursements made by the nominee prior to the approval of the voluntary arrangement, and any remuneration for his services as such agreed between himself and the debtor, the official receiver or the trustee;
- (b) any costs which –
  - (i) are sanctioned by the terms of the voluntary arrangement, or
  - (ii) would be payable, or correspond to those which would be payable, in the debtor's bankruptcy.

[E.R. 5.33]

### **Completion or termination of the arrangement**

5.33.—(1) Not more than 28 days after the final completion or termination of the voluntary arrangement, the supervisor shall send to all creditors of the debtor who are bound by the voluntary arrangement, and to the debtor, a notice that the voluntary arrangement has been fully implemented or (as the case may be) terminated.

(2) With the notice there shall be sent to each of those persons a copy of a report by the supervisor summarising all receipts and payments made by him in pursuance of the voluntary arrangement, and explaining any difference in the actual implementation of it as compared with the proposal as approved by the creditors' meeting or (in the case of termination of the arrangement) explaining the reasons why the arrangement has not been implemented in accordance with the proposal as approved by the creditors' meeting.

(3) The supervisor shall, within the 28 days mentioned in paragraph (1), send to the Department and to the court a copy of the notice under paragraph (1), together with a copy of the report under paragraph (2), and shall not vacate office until after such copies have been sent.

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(4) The court may, on application by the supervisor, extend the period of 28 days under paragraphs (1) and (3).

[*E.R. 5.34*]

## CHAPTER 8

### EC Regulation: Conversion of Voluntary Arrangement into Bankruptcy

#### **Application for conversion of voluntary arrangement into bankruptcy**

5.34.—(1) Where a member State liquidator proposes to apply to the court for conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of a voluntary arrangement into a bankruptcy, an affidavit complying with Rule 5.35 must be prepared and sworn, and filed in court in support of the application.

(2) An application of the kind referred to in paragraph (1) shall be by originating application.

(3) The application and the affidavit required under this Rule shall be served upon –

- (a) the debtor; and
- (b) the supervisor.

[*E.R. 5.35*]

#### **Contents of affidavit**

5.35.—(1) The affidavit shall state –

- (a) that main proceedings have been opened in relation to the debtor in a member State other than the United Kingdom;
- (b) the deponent's belief that the conversion of the voluntary arrangement into a bankruptcy would prove to be in the interests of the creditors in the main proceedings; and
- (c) all other matters that, in the opinion of the member State liquidator, would assist the court –
  - (i) in deciding whether to make an order under Rule 5.36, and
  - (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) An affidavit under this Rule shall be sworn by, or on behalf of, the member State liquidator.

[*E.R. 5.36*]

#### **Power of court**

5.36.—(1) On hearing an application for conversion of a voluntary arrangement into a bankruptcy, the court may make such order as it thinks fit.

(2) If the court makes an order for conversion of a voluntary arrangement into a bankruptcy under paragraph (1), the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Where the court makes an order for conversion of a voluntary arrangement into a bankruptcy under paragraph (1), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the bankrupt's estate.

[E.R. 5.37]

**Notices to be given to member State liquidator**

5.37.—(1) This Rule applies where a member State liquidator has been appointed in relation to the debtor.

(2) Where the supervisor is obliged to give notice to, or provide a copy of a document (including an order of the court) to, the court or the official receiver, the supervisor shall give notice or provide copies, as appropriate, to the member State liquidator.

[E.R. 5.38]”.