
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE FIRST GROUP OF PARTS

PART 2

ADMINISTRATION PROCEDURE

CHAPTER 5

THE ADMINISTRATOR

Fixing of remuneration

- 2.47.**—(1) The administrator is entitled to receive remuneration for his services as such.
- (2) The remuneration shall be fixed either—
- (a) as a percentage of the value of the property with which he has to deal, or
 - (b) by reference to the time properly given by the insolvency practitioner (as administrator) and his staff in attending to matters arising in the administration.
- (3) It is for the creditors' committee (if there is one) to determine whether the remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.
- (4) In arriving at that determination, the committee shall have regard to the following matters—
- (a) the complexity (or otherwise) of the case,
 - (b) any respects in which, in connection with the company's affairs, there falls on the administrator any responsibility of an exceptional kind or degree,
 - (c) the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties as such, and
 - (d) the value and nature of the property with which he has to deal.
- (5) If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.
- (6) If not fixed as above, the administrator's remuneration shall, on his application, be fixed by the court.
- (7) Rule 4.128(2) and (3) in Part 4 of the Rules (remuneration of joint liquidators; solicitors' profit costs) applies to an administrator as it applies to a liquidator, with any necessary modifications.

Recourse to meeting of creditors

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

Recourse to the court

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

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

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

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

Creditors' claim that remuneration is excessive

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

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

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

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

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

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

Disposal of charged property, etc

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

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

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

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

Abstract of receipts and payments

2.52.—(1) The administrator shall—

(a) within 2 months after the end of 6 months from the date of his appointment, and of every subsequent period of 6 months, and
(b) within 2 months after he ceases to act as administrator,
send to the court, and to the registrar of companies, and to each member of the creditors' committee, the requisite accounts of the receipts and payments of the company.

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

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

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

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

Resignation

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

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

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

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

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

Administrator deceased

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

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

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

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

Order filling vacancy

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