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STATUTORY INSTRUMENTS

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**1986 No. 1925**

The Insolvency Rules 1986

THE FIRST GROUP OF PARTS

PART 4

COMPANIES WINDING UP

CHAPTER 11

THE LIQUIDATOR

*SECTION A: APPOINTMENT AND ASSOCIATED FORMALITIES*

**Appointment by creditors or contributories**

**4.100.** (NO CVL APPLICATION)

(1) This Rule applies where a person is appointed as liquidator either by a meeting of creditors or by a meeting of contributories.

(2) The chairman of the meeting shall certify the appointment, but not unless and until the person appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.

(3) Where the chairman of the meeting is not the official receiver, he shall send the certificate to him.

(4) The official receiver shall in any case file a copy of the certificate in court; and the liquidator's appointment is effective as from the date on which the official receiver files the copy certificate in court, that date to be endorsed on the copy certificate.

(5) The certificate, so endorsed, shall be sent by the official receiver to the liquidator.

**Appointment by creditors or by the company**

**4.101-CVL.**—(1) This Rule applies where a person is appointed as liquidator either by a meeting of creditors or by a meeting of the company.

(2) Subject as follows, the chairman of the meeting shall certify the appointment, but not unless and until the person appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act; the liquidator's appointment is effective from the date of the certificate.

(3) The chairman shall send the certificate forthwith to the liquidator, who shall keep it as part of the records of the liquidation.

(4) Paragraphs (2) and (3) need not be complied with in the case of a liquidator appointed by a company meeting and replaced by another liquidator appointed on the same day by a creditors' meeting.

### **Appointment by the court**

#### **4.102. (NO CVL APPLICATION)**

(1) This Rule applies where the liquidator is appointed by the court under section 139(4) (different persons nominated by creditors and contributories) or section 140 (liquidation following administration or voluntary arrangement).

(2) The court's order shall not issue unless and until the person appointed has filed in court a statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.

(3) Thereafter, the court shall send 2 copies of the order to the official receiver. One of the copies shall be sealed, and this shall be sent to the person appointed as liquidator.

(4) The liquidator's appointment takes effect from the date of the order.

(5) The liquidator shall, within 28 days of his appointment, give notice of it to all creditors and contributories of the company of whom he is aware in that period. Alternatively, if the court allows, he may advertise his appointment in accordance with the court's directions.

(6) In his notice or advertisement under this Rule the liquidator shall—

- (a) state whether he proposes to summon meetings of creditors and contributories for the purpose of establishing a liquidation committee, or proposes to summon only a meeting of creditors for that purpose, and
- (b) if he does not propose to summon any such meeting, set out the powers of the creditors under the Act to require him to summon one.

### **Appointment by the court**

**4.103-CVL.—**(1) This Rule applies where the liquidator is appointed by the court under section 100(3) or 108.

(2) The court's order shall not issue unless and until the person appointed has filed in court a statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.

(3) Thereafter, the court shall send a sealed copy of the order to the liquidator, whose appointment takes effect from the date of the order.

(4) Not later than 28 days from his appointment, the liquidator shall give notice of it to all creditors of the company of whom he is aware in that period. Alternatively, if the court allows, he may advertise his appointment in accordance with the court's directions.

### **Appointment by Secretary of State**

#### **4.104. (NO CVL APPLICATION)**

(1) This Rule applies where the official receiver applies to the Secretary of State to appoint a liquidator in place of himself, or refers to the Secretary of State the need for an appointment.

(2) If the Secretary of State makes an appointment, he shall send two copies of the certificate of appointment to the official receiver, who shall transmit one such copy to the person appointed, and file the other in court.

(3) The certificate shall specify the date from which the liquidator's appointment is to be effective.

### **Authentication of liquidator's appointment**

**4.105.** A copy of the certificate of the liquidator's appointment or (as the case may be) a sealed copy of the court's order, may in any proceedings be adduced as proof that the person appointed is

duly authorised to exercise the powers and perform the duties of liquidator in the company's winding up.

### **Appointment to be advertised and registered**

**4.106.**—(1) Subject as follows, where the liquidator is appointed by a creditors' or contributories' meeting, or by a meeting of the company, he shall, on receiving his certificate of appointment, give notice of his appointment in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the company's creditors and contributories.

(2-CVL) Paragraph (1) need not be complied with in the case of a liquidator appointed by a company meeting and replaced by another liquidator appointed on the same day by a creditors' meeting.

(3) The expense of giving notice under this Rule shall be borne in the first instance by the liquidator; but he is entitled to be reimbursed out of the assets, as an expense of the liquidation.

The same applies also in the case of the notice or advertisement required where the appointment is made by the court or the Secretary of State.

(4) In the case of a winding up by the court, the liquidator shall also forthwith notify his appointment to the registrar of companies.

This applies however the liquidator is appointed.

### **Hand-over of assets to liquidator**

#### **4.107. (NO CVL APPLICATION)**

(1) This Rule applies only where the liquidator is appointed in succession to the official receiver acting as liquidator.

(2) When the liquidator's appointment takes effect, the official receiver shall forthwith do all that is required for putting him into possession of the assets.

(3) On taking possession of the assets, the liquidator shall discharge any balance due to the official receiver on account of—

- (a) expenses properly incurred by him and payable under the Act or the Rules, and
- (b) any advances made by him in respect of the assets, together with interest on such advances at the rate specified in section 17 of the Judgments Act 1838 at the date of the winding-up order.

(4) Alternatively, the liquidator may (before taking office) give to the official receiver a written undertaking to discharge any such balance out of the first realisation of assets.

(5) The official receiver has a charge on the assets in respect of any sums due to him under paragraph (3). But, where the liquidator has realised assets with a view to making those payments, the official receiver's charge does not extend in respect of sums deductible by the liquidator from the proceeds of realisation, as being expenses properly incurred therein.

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

(7) The official receiver shall give to the liquidator all such information relating to the affairs of the company and the course of the winding up as he (the official receiver) considers to be reasonably required for the effective discharge by the liquidator of his duties as such.

(8) The liquidator shall also be furnished with a copy of any report made by the official receiver under Chapter 7 of this Part of the Rules.