
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE THIRD GROUP OF PARTS

PART 9

EXAMINATION OF PERSONS CONCERNED IN
COMPANY AND INDIVIDUAL INSOLVENCY

Preliminary

- 9.1.**—(1) The Rules in this Part relate to applications to the court for an order under—
- (a) section 236 (inquiry into company's dealings when it is, or is alleged to be, insolvent), or
 - (b) section 366 (inquiry in bankruptcy, with respect to the bankrupt's dealings).
- (2) The following definitions apply—
- (a) the person in respect of whom an order is applied for is “the respondent”;
 - (b) “the applicable section” is section 236 or section 366, according to whether the affairs of a company or those of a bankrupt or (where the application under section 366 is made by virtue of section 368 a debtor are in question;
 - (c) the company or, as the case may be, the bankrupt or debtor concerned is “the insolvent”.

Form and contents of application

- 9.2.**—(1) The application shall be in writing, and be accompanied by a brief statement of the grounds on which it is made.
- (2) The respondent must be sufficiently identified in the application.
- (3) It shall be stated whether the application is for the respondent—
- (a) to be ordered to appear before the court, or
 - (b) to answer interrogatories (if so, particulars to be given of the matters in respect of which answers are required), or
 - (c) to submit affidavits (if so, particulars to be given of the matters to which he is required to swear), or
 - (d) to produce books, papers or other records (if so, the items in question to be specified),
- or for any two or more of those purposes.
- (4) The application may be made ex parte.

Order for examination, etc

- 9.3.**—(1) The court may, whatever the purpose of the application, make any order which it has power to make under the applicable section.

(2) The court, if it orders the respondent to appear before it, shall specify a venue for his appearance, which shall be not less than 14 days from the date of the order.

(3) If he is ordered to submit affidavits, the order shall specify—

- (a) the matters which are to be dealt with in his affidavits, and
- (b) the time within which they are to be submitted to the court.

(4) If the order is to produce books, papers or other records, the time and manner of compliance shall be specified.

(5) The order must be served forthwith on the respondent; and it must be served personally, unless the court otherwise orders.

Procedure for examination

9.4.—(1) At any examination of the respondent, the applicant may attend in person, or be represented by a solicitor with or without counsel, and may put such questions to the respondent as the court may allow.

(2) Any other person who could have applied for an order under the applicable section in respect of the insolvent's affairs may, with the leave of the court and if the applicant does not object, attend the examination and put questions to the respondent (but only through the applicant).

(3) If the respondent is ordered to answer interrogatories, the court shall direct him as to the questions which he is required to answer, and as to whether his answers (if any) are to be made on affidavit.

(4) Where application has been made under the applicable section on information provided by a creditor of the insolvent, that creditor may, with the leave of the court and if the applicant does not object, attend the examination and put questions to the respondent (but only through the applicant).

(5) The respondent may at his own expense employ a solicitor with or without counsel, who may put to him such questions as the court may allow for the purpose of enabling him to explain or qualify any answers given by him, and may make representations on his behalf.

(6) There shall be made in writing such record of the examination as the court thinks proper. The record shall be read over either to or by the respondent and signed by him at a venue fixed by the court.

(7) The written record may, in any proceedings (whether under the Act or otherwise) be used as evidence against the respondent of any statement made by him in the course of his examination.

Record of examination

9.5.—(1) Unless the court otherwise directs, the written record of the respondent's examination, and any answer given by him to interrogatories, and any affidavits submitted by him in compliance with an order of the court under the applicable section, shall not be filed in court.

(2) The written record, answers and affidavits shall not be open to inspection, without an order of the court, by any person other than—

- (a) the applicant for an order under the applicable section, or
- (b) any person who could have applied for such an order in respect of the affairs of the same insolvent.

(3) Paragraph (2) applies also to so much of the court file as shows the grounds of the application for an order under the applicable section and to any copy of proposed interrogatories.

(4) The court may from time to time give directions as to the custody and inspection of any documents to which this Rule applies, and as to the furnishing of copies of, or extracts from, such documents.

Costs of proceedings under ss.236, 366

9.6.—(1) Where the court has ordered an examination of any person under the applicable section, and it appears to it that the examination was made necessary because information had been unjustifiably refused by the respondent, it may order that the costs of the examination be paid by him.

(2) Where the court makes an order against a person under—

(a) section 237(1) or 367(1) (to deliver up property in his possession which belongs to the insolvent), or

(b) section 237(2) or 367(2) (to pay any amount in discharge of a debt due to the insolvent), the costs of the application for the order may be ordered by the court to be paid by the respondent.

(3) Subject to paragraphs (1) and (2) above, the applicant's costs shall, unless the court otherwise orders, be paid out of the insolvent estate.

(4) A person summoned to attend for examination under this Chapter shall be tendered a reasonable sum in respect of travelling expenses incurred in connection with his attendance. Other costs falling on him are at the court's discretion.

(5) Where the examination is on the application of the official receiver otherwise than in the capacity of liquidator or trustee, no order shall be made for the payment of costs by him.