
STATUTORY INSTRUMENTS

2018 No. 1082

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

PART 2

COMPANY VOLUNTARY ARRANGEMENTS

CHAPTER 3

Procedure for a CVA without a moratorium

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

Procedure for proposal where the nominee is not the liquidator or the administrator (section 2)

2.4.—(1) This rule applies where the nominee is not the same person as the liquidator or the administrator.

(2) A nominee who consents to act must deliver a notice of that consent to the proposer as soon as reasonably practicable after the proposal has been submitted to the nominee under section 2(3).

(3) The notice must state the date the nominee received the proposal.

(4) The period of 28 days in which the nominee must submit a report to the court under section 2(2)(1) begins on the date the nominee received the proposal as stated in the notice.

Statement of affairs (section 2(3))

2.5.—(1) The statement of the company's affairs required by section 2(3) must contain the following information—

- (a) a list of the company's assets, divided into such categories as are appropriate for easy identification, and with each category given an estimated value;
- (b) in the case of any property on which a claim against the company is wholly or partly secured, particulars of the claim, and of how and when the security was created;
- (c) the names and addresses of the preferential creditors, with the amounts of their respective claims;
- (d) the names and addresses of the unsecured creditors with the amounts of their respective claims;
- (e) particulars of any debts owed by the company to persons connected with it;
- (f) particulars of any debts owed to the company by persons connected with it;

(1) Section 2(2) was amended by paragraph 3 of Schedule 2 to the Insolvency Act 2000 (c.39) and by paragraph 2 of Schedule 9 to the 2015 Act.

- (g) the names and addresses of the company's members, with details of their respective shareholdings; and
 - (h) any other particulars that the nominee in writing requires to be provided for the purposes of making the nominee's report on the proposal to the court.
- (2) The statement must be made up to a date not earlier than two weeks before the date of the proposal.
- (3) However the nominee may allow the statement to be made up to an earlier date (but not more than two months before the proposal) where that is more practicable.
- (4) Where the statement is made up to an earlier date, the nominee's report to the court on the proposal must explain why.
- (5) The statement of affairs must include a declaration that the information provided in it is, to the best of the proposer's knowledge and belief, accurate and complete.
- (6) Where the proposal is made by the directors, only one director need make a declaration in accordance with paragraph (5).

Application to omit information from statement of affairs delivered to creditors

2.6. The nominee, the directors or any person appearing to the court to have an interest, may apply to the court for a direction that specified information be omitted from the statement of affairs, as delivered to the creditors, where disclosure of that information would be likely to prejudice the conduct of the CVA, or might reasonably be expected to lead to violence against any person.

Additional disclosure for assistance of nominee where nominee is not the liquidator or administrator

2.7.—(1) This rule applies where the nominee is not the administrator or the liquidator of the company.

(2) If it appears to the nominee that the nominee's report to the court cannot properly be prepared on the basis of information in the proposal and statement of affairs, the nominee may require the proposer to provide—

- (a) more information about the circumstances in which, and the reasons why, a CVA is being proposed;
 - (b) particulars of any previous proposals which have been made in relation to the company under Part 1 of the Act; and
 - (c) any further information relating to the company's affairs which the nominee thinks necessary for the purposes of the report.
- (3) The nominee may require the proposer to inform the nominee whether, and if so in what circumstances, any person referred to in paragraph (4) has—
- (a) been concerned in the affairs of any other company (whether or not incorporated in Scotland) or limited liability partnership which has been the subject of insolvency proceedings;
 - (b) been made bankrupt or had his or her estate sequestrated;
 - (c) been the subject of a debt relief order;
 - (d) granted a trust deed; or
 - (e) entered into an arrangement with creditors.
- (4) The persons referred to for the purposes of paragraph (3) are—
- (a) a director or officer of the company; and

(b) a person who has been a director or officer of the company at any time in the period of two years ending with the date the nominee received the proposal.

(5) The proposer must give the nominee such access to the company's accounts and records as the nominee may require to enable the nominee to consider the proposal and prepare the nominee's report.

Nominee's report on proposal where the nominee is not the liquidator or administrator (section 2(2))

2.8.—(1) The nominee's report must be lodged with the court under section 2(2) accompanied by—

- (a) a copy of the report;
- (b) a copy of the proposal (as amended under rule 2.2(2) if that is the case); and
- (c) a copy of the statement of the company's affairs or a summary of it.

(2) The report must state—

- (a) why the nominee considers the proposal does or does not have a reasonable prospect of being implemented; and
- (b) why the members and the creditors should or should not be invited to consider the proposal.

(3) The court must endorse the nominee's report and the copy of it with the date of lodging and deliver the copy to the nominee.

(4) The nominee must deliver a copy of the report to the company.

Replacement of nominee (section 2(4))

2.9.—(1) A person (other than the nominee) who intends to apply to the court under section 2(4)(2) for the nominee to be replaced must deliver a notice that such an application is intended to be made to the nominee at least five business days before lodging the application with the court.

(2) A nominee who intends to apply under that section to be replaced must deliver a notice that such an application is intended to be made to the person intending to make the proposal at least five business days before lodging the application with the court.

(3) The court must not appoint a replacement nominee unless a statement by the replacement nominee has been lodged with the court confirming that person—

- (a) consents to act; and
- (b) is qualified to act as an insolvency practitioner in relation to the company.