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STATUTORY INSTRUMENTS

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**2018 No. 1082**

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

PART 2

COMPANY VOLUNTARY ARRANGEMENTS

CHAPTER 6

*Additional matters concerning and following approval of CVA*

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

**Handover of property etc. to supervisor**

**2.38.**—(1) Where the decision approving a CVA has effect under section 4A or paragraph 36 of Schedule A1, and the supervisor is not the same person as the proposer, the proposer must, as soon as reasonably practicable, do all that is required to put the supervisor in possession of the assets included in the CVA.

(2) Where the company is in administration or liquidation and the supervisor is not the same person as the administrator or liquidator, the supervisor must—

- (a) before taking possession of the assets included in the CVA, deliver to the administrator or liquidator an undertaking to discharge the balance referred to in paragraph (3) out of the first realisation of assets; or
- (b) upon taking possession of the assets included in the CVA, discharge such balance.

(3) The balance is any balance due to the administrator or liquidator—

- (a) by way of fees or expenses properly incurred and payable under the Act or any rules made under section 411 which apply to Scotland; and
- (b) on account of any advances made in respect of the company together with interest on such advances at the official rate at the date on which the company entered administration or went into liquidation.

(4) The administrator or liquidator has a security over the assets included in the CVA in respect of any sums comprising the balance referred to in paragraph (3), subject to deduction from any realisations by the supervisor of the proper costs and expenses of such realisations.

(5) The supervisor must from time to time out of the realisation of assets—

- (a) discharge all cautionary obligations (including guarantees) properly given by the administrator or liquidator for the benefit of the company; and
- (b) pay all the expenses of the administrator or liquidator.

**Revocation or suspension of CVA**

**2.39.**—(1) This rule applies where the court makes an order of revocation or suspension under section 6 or paragraph 38 of Schedule A1(1).

(2) The applicant for the order must deliver a copy of it certified by the court to—

- (a) the proposer; and
- (b) the supervisor (if different).

(3) If the directors are the proposer, a single certified copy of the order may be delivered to the company at its registered office.

(4) If the order includes a direction by the court under section 6(4)(b) or (c) or under paragraph 38(4)(b) or (c) of Schedule A1 for action to be taken, the applicant for the order must deliver a notice that the order has been made to the person who is directed to take such action.

(5) The proposer must—

- (a) as soon as reasonably practicable deliver a notice that the order has been made to all of those persons to whom a notice to consider the matter was delivered or who appear to be affected by the order;
- (b) within five business days of delivery of a copy of the order (or within such longer period as the court may allow), deliver (if applicable) a notice to the court advising that it is intended to make a revised proposal to the company and its creditors, or to invite re-consideration of the original proposal.

(6) The applicant for the order must deliver a copy of the certified copy to the registrar of companies within five business days of the making of the order with a notice which must contain the date on which the CVA took effect.

**Supervisor's accounts and reports**

**2.40.**—(1) The supervisor must keep accounts and records where the CVA authorises or requires the supervisor—

- (a) to carry on the business of the company;
- (b) to realise assets of the company; or
- (c) otherwise to administer or dispose of any of its funds.

(2) The accounts and records which must be kept are of the supervisor's acts and dealings in, and in connection with, the CVA, including in particular records of all receipts and payments of money.

(3) The supervisor must preserve any such accounts and records which were kept by any other person who has acted as supervisor of the CVA and are in the supervisor's possession.

(4) The supervisor must deliver reports on the progress and prospects for the full implementation of the CVA to—

- (a) the registrar of companies;
- (b) the company;
- (c) the creditors bound by the CVA;
- (d) subject to paragraph (10) below, the members; and
- (e) if the company is not in liquidation, the company's auditors (if any) for the time being.

(5) The report delivered to the registrar of companies must be accompanied by a notice which must contain the date on which the CVA took effect.

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(1) Section 6 is amended by paragraph 7 of Schedule 9 to the 2015 Act and paragraph 38(1) to (7) and (9) are amended and (1A) and (4)(c) are inserted by paragraph 9(32) to (42) of that Schedule.

(6) The first report must cover the period of 12 months commencing on the date on which the CVA was approved and a further report must be made for each subsequent period of 12 months.

(7) Each report must be delivered within the period of two months after the end of the 12 month period.

(8) Such a report is not required if the obligation to deliver a final report under rule 2.43 arises in the two month period.

(9) Where the supervisor is authorised or required to do any of the things mentioned in paragraph (1), the report must—

- (a) include or be accompanied by a summary of receipts and payments required to be recorded by virtue of paragraph (2); or
- (b) state that there have been no such receipts and payments.

(10) The court may, on application by the supervisor, dispense with the delivery of such reports or summaries to members, either altogether or on the basis that the availability of the report to members is to be advertised by the supervisor in a specified manner.

#### **Production of accounts and records to Secretary of State**

**2.41.**—(1) The Secretary of State may, during the CVA, or after its full implementation or termination, require the supervisor to produce for inspection (either at the premises of the supervisor or elsewhere)—

- (a) the supervisor’s accounts and records in relation to the CVA; and
- (b) copies of reports and summaries prepared in compliance with rule 2.40.

(2) The Secretary of State may require the supervisor’s accounts and records to be audited and, if so, the supervisor must provide such further information and assistance as the Secretary of State requires for the purposes of audit.

#### **Fees and expenses**

**2.42.** The fees and expenses that may be incurred for the purposes of the CVA are—

- (a) fees for the nominee’s services agreed with the company (or, as the case may be, the administrator or liquidator) and disbursements made by the nominee before the decision approving the CVA takes effect under section 4A or paragraph 36 of Schedule A1;
- (b) fees or expenses which—
  - (i) are sanctioned by the terms of the CVA, or
  - (ii) where they are not sanctioned by the terms of the CVA would be payable, or correspond to those which would be payable, in an administration or winding up.

#### **Termination or full implementation of CVA**

**2.43.**—(1) Not more than 28 days after the termination or full implementation of the CVA the supervisor must deliver a notice that the CVA has been terminated or fully implemented to all the members and those creditors who are bound by the arrangement.

(2) The notice must state the date the CVA took effect, and must be accompanied by a copy of a report by the supervisor which—

- (a) summarises all receipts and payments in relation to the CVA;
- (b) explains any departure from the terms of the CVA as it originally had effect;
- (c) if the CVA has terminated, sets out the reasons why; and

(d) states (if applicable) the amount paid to any unsecured creditors by virtue of section 176A.

(3) The supervisor must, within the period of 28 days mentioned in paragraph (1) send to the registrar of companies and lodge with the court a copy of the notice to creditors and of the supervisor's report.

(4) The supervisor must not vacate office until after the copies of the notice and report have been delivered to the registrar of companies and lodged with the court.