
STATUTORY INSTRUMENTS

2018 No. 1082

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

PART 3

ADMINISTRATION

CHAPTER 2

Appointment of administrator by Court

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

Administration application (paragraph 12 of Schedule B1)

3.3. An application made by way of petition for an administration order (“administration application”) must be lodged with the court together with a proposed administrator’s consent to act.

Administration application made by the directors

3.4. Where an administration application is made by the directors, it is to be treated as if it were an application by the company.

Administration application by the supervisor of a CVA

3.5. Where notice of an administration application by the supervisor of a CVA in respect of the company has been given to the company in accordance with rule 3.6(e) it is to be treated as if it were an application by the company.

Application

3.6. The applicant must give notice of the administration application to the following (in addition to notifying the persons referred to in paragraph 12(2)(a) to (c) of Schedule B1)—

- (a) any administrative receiver;
- (b) if there is a petition pending for the winding up of the company—
 - (i) the petitioner, and
 - (ii) any provisional liquidator;
- (c) any member State liquidator appointed in main proceedings in relation to the company;
- (d) the Keeper of the Register of Inhibitions and Adjudications;
- (e) the company, if the application is made by anyone other than the company or its directors;
- (f) any supervisor of a CVA in relation to the company;
- (g) the proposed administrator; and

- (h) any other person on whom the court orders that the application be served.

Notice to messengers-at-arms or sheriff officers

3.7. The applicant must as soon as reasonably practicable after lodging the administration application deliver a notice of its being made to—

- (a) any messenger-at-arms or sheriff officer who to the knowledge of the applicant is charged with executing diligence or other legal process against the company or its property; and
- (b) any person who to the knowledge of the applicant has executed diligence against the company or its property.

Notice of other insolvency proceedings

3.8. After the administration application has been lodged and until an order is made, it is the duty of the applicant to lodge with the court notice of the existence of any insolvency proceedings in relation to the company, as soon as the applicant becomes aware of them—

- (a) anywhere in the world, in the case of a company registered under the Companies Acts in Scotland;
- (b) in any EEA State (including the United Kingdom), in the case of a company incorporated in an EEA State other than the United Kingdom; or
- (c) in any member State other than Denmark, in the case of a company not incorporated in an EEA State.

Intervention by holder of a qualifying floating charge (paragraph 36(1)(b) of Schedule B1)

3.9.—(1) Where the holder of a qualifying floating charge applies to the court under paragraph 36(1)(b) of Schedule B1 to have a specified person appointed as administrator, the holder must produce to the court—

- (a) the written consent of the holder of any prior qualifying floating charge;
- (b) the proposed administrator's consent to act; and
- (c) sufficient evidence to satisfy the court that the holder is entitled to appoint an administrator under paragraph 14 of Schedule B1.

(2) If an administration order is made appointing the specified person, the expenses of the person who made the administration application and of the applicant under paragraph 36(1)(b) of Schedule B1 are, unless the court orders otherwise, to be paid as an expense of the administration.

The hearing

3.10. At the hearing of the administration application, any of the following may appear or be represented—

- (a) the applicant;
- (b) the company;
- (c) one or more of the directors;
- (d) any administrative receiver;
- (e) any person who has presented a petition for the winding up of the company;
- (f) the proposed administrator;
- (g) any member State liquidator appointed in main proceedings in relation to the company;
- (h) the holder of any qualifying floating charge;

- (i) any supervisor of a CVA;
- (j) with the permission of the court, any other person who appears to have an interest which justifies appearance.

The order

3.11.—(1) Where the court makes an administration order the court's order must be headed "Administration order" and must contain the following—

- (a) identification details for the insolvency proceedings;
- (b) the address for service of the applicant;
- (c) details of any other parties (including the company) appearing and by whom represented;
- (d) an order that during the period the administration order is in force the affairs, business and property of the company are to be managed by the administrator;
- (e) the name of the person appointed as administrator;
- (f) an order that that person is appointed as administrator of the company;
- (g) a statement that the court is satisfied either that the EU Regulation does not apply or that it does;
- (h) where the EU Regulation does apply, a statement whether the proceedings are main, secondary, or territorial proceedings;
- (i) the date of the order (and, if the court so orders, the time); and
- (j) such other provisions, if any, as the court thinks just.

(2) Where two or more administrators are appointed, the order must also specify, in terms of paragraph 100(2) of Schedule B1—

- (a) which functions, if any, are to be exercised by those persons appointed acting jointly; and
- (b) which functions, if any, are to be exercised by any or all of the persons appointed.

Order on an application under paragraph 37 or 38 of Schedule B1

3.12. Where the court makes an administration order in relation to a company on an application under paragraph 37 or 38 of Schedule B1, the court must also include in the order—

- (a) in the case of a liquidator appointed in a voluntary winding up, the removal of that liquidator from office;
- (b) provision for payment of the expenses of the winding up;
- (c) such provision as the court thinks just relating to—
 - (i) any indemnity given to the liquidator,
 - (ii) the release of the liquidator,
 - (iii) the handling or realisation of any of the company's assets in the hands of, or under the control of the liquidator, and
 - (iv) other matters arising in connection with the winding up; and
- (d) such other provisions, if any, as the court thinks just.

Notice of administration order

3.13.—(1) If the court makes an administration order, it must as soon as reasonably practicable deliver two copies of the order certified by the court to the applicant.

(2) The applicant must, as soon as reasonably practicable, deliver a certified copy of the order to the person appointed as administrator.

(3) If the court makes an order under sub-paragraph (d) or (f) of paragraph 13(1) of Schedule B1, it must give directions as to the persons to whom, and how, notice of that order is to be delivered.

Notice of dismissal of application for an administration order

3.14. If the court dismisses the administration application under paragraph 13(1)(b) of Schedule B1, the applicant must as soon as reasonably practicable send notice of the court's order dismissing the application to all those to whom the application was notified under rule 3.6.

Expenses allowed by the court

3.15. If the court makes an administration order, the expenses of the applicant, and of any other party whose expenses are allowed by the court, are to be regarded as expenses of the administration.