Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 4

TRUSTEES AND COMMISSIONERS

Replacement trustees

65 Discharge of original trustee

(1) On receiving a copy of the determination of AiB sent under section 63(5)(c)(i) the original trustee may apply to AiB for a certificate of discharge.

(2) The original trustee must send notice of the application to the debtor, to all creditors known to the original trustee and to the replacement trustee and must inform the debtor—

(a) that the debtor, the replacement trustee or any creditor may, in relation to the application, make written representations to AiB within 14 days after such notification,

(b) that the audited accounts of the original trustee's intromissions (if any) with the debtor's estate are available for inspection at the original trustee's office and that a copy of those accounts has been sent to the replacement trustee, and

(c) of the effect mentioned in subsection (11).

(3) On the expiry of the 14 days mentioned in subsection (2)(a) AiB must, after considering any representations duly made to AiB—

(a) grant or refuse to grant the certificate of discharge, and

(b) notify accordingly (in addition to the original trustee) the debtor, the replacement trustee and all creditors who have made such representations.

(4) The original trustee, the replacement trustee, the debtor or any creditor who has made representations by virtue of subsection (2)(a) may apply to AiB for a review of a determination under subsection (3).

(5) Any application under subsection (4) must be made within 14 days beginning with the day on which that determination is issued.

(6) If an application under subsection (4) is made, AiB must—

(a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and

(b) confirm, amend or revoke the determination (whether or not granting a certificate of discharge) within 28 days beginning with that day.

(7) The original trustee, the replacement trustee, the debtor or any creditor who has made representations by virtue of subsection (2)(a) may, within 14 days after a decision under subsection (6)(b), appeal to the sheriff against that decision.

(8) If, on such appeal, the sheriff determines that a certificate of discharge which has been refused should be granted the sheriff must order AiB to grant it.

(9) The sheriff clerk must send a copy of the sheriff's decree to AiB.

(10) The decision of the sheriff on an appeal under subsection (7) is final.

(11) The grant of a certificate of discharge under this section by AiB has the effect of discharging the original trustee from all liability (other than liability arising from fraud) to the creditors, or to the debtor, in respect of any act or omission of the original trustee in exercising the functions conferred on the original trustee by this Act.

(12) This section does not apply where AiB is the original trustee.