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PARTS 5 AND 6 INSOLVENCY OF INDIVIDUALS; BANKRUPTCY

PART 6

BANKRUPTCY

CHAPTER 10

THE TRUSTEE IN BANKRUPTCY

SECTION A: APPOINTMENT AND ASSOCIATED FORMALITIES

Appointment by creditors' meeting

6.117.—(1) This Rule applies where a person has been appointed trustee by resolution of a creditors' meeting.

(2) The chairman of the meeting shall certify the appointment, but not unless and until the person to be appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Order to act as trustee in relation to the bankrupt, and that he consents so to act.

(3) The trustee's appointment is effective from the date on which the appointment is certified, that date to be endorsed on the certificate.

(4) The chairman of the meeting (if not himself the official receiver) shall send the certificate to the official receiver.

(5) The official receiver shall in any case send the certificate to the trustee and file a copy of it in court.

[E.R.6.120]

Appointment by the court

6.118.—(1) This Rule applies where the court under Article 270(2), (3) or (4) appoints the trustee.

(2) The court's order shall not issue unless and until the person appointed has filed in court a statement to the effect that he is an insolvency practitioner, duly qualified under the Order to be the trustee, and that he consents so to act.

(3) Thereafter, the court shall send 2 copies of the order to the official receiver. One of the copies shall be sealed, and this shall be sent by him to the person appointed as trustee.

(4) The trustee's appointment takes effect from the date of the order.

[E.R.6.121]

Appointment by Department

6.119.—(1) This Rule applies where the official receiver—

- (a) under Article 268 or 273, refers to the Department the need for an appointment of a trustee, or
- (b) under Article 269, applies to the Department to make the appointment.

(2) If the Department makes an appointment it shall send 2 copies of the certificate of appointment to the official receiver, who shall transmit one such copy to the person appointed, and file the other copy in court.

(3) The certificate shall specify the date from which the trustee's appointment is to be effective.

[E.R.6.122]

Authentication of trustee's appointment

6.120. Where a trustee is appointed under Rule 6.117, 6.118 or 6.119, a sealed copy of the order of appointment or (as the case may be) a copy of the certificate of his appointment may in any proceedings be adduced as proof that he is duly authorised to exercise the powers and perform the duties of trustee of the bankrupt's estate.

[E.R.6.123]

Advertisement of appointment

6.121.—(1) Where the trustee is appointed by a creditors' meeting, he shall, forthwith after receiving his certificate of appointment, give notice of his appointment in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the bankrupt's creditors.

(2) The expense of giving the notice shall be borne in the first instance by the trustee; but he is entitled to be reimbursed by the estate, as an expense of the bankruptcy.

(3) Paragraph (2) applies also in the case of the notice or advertisement under Article 269(4) (appointment of trustee by Department), and of the notice or advertisement under Article 270(6) (appointment by the court).

[E.R.6.124]

Hand-over of estate to trustee

6.122.—(1) This Rule applies only where—

- (a) the bankrupt's estate vests in the trustee under Chapter IV of Part IX of the Order, following a period in which the official receiver is the receiver and manager of the estate according to Article 260, or
- (b) the trustee is appointed in succession to the official receiver acting as trustee.

(2) When the trustee's appointment takes effect, the official receiver shall forthwith do all that is required for putting him into possession of the estate.

(3) On taking possession of the estate, the trustee shall discharge any balance due to the official receiver on account of—

- (a) expenses properly incurred by him and payable under the Order or the Rules, and
- (b) any advances made by him in respect of the estate, together with interest on such advances at the rate applicable to a money judgment of the High Court on the date of the bankruptcy order.

(4) Alternatively, the trustee may (before taking office) give to the official receiver a written undertaking to discharge any such balance out of the first realisation of assets.

(5) The official receiver has a charge on the estate in respect of any sums due to him under paragraph (3). But, where the trustee has realised assets with a view to making those payments, the official receiver's charge does not extend in respect of sums deductible by the trustee from the proceeds of realisation, as being expenses properly incurred therein.

(6) The trustee shall from time to time out of the realisation of assets discharge all guarantees properly given by the official receiver for the benefit of the estate, and shall pay all the official receiver's expenses.

(7) The official receiver shall give to the trustee all such information, relating to the affairs of the bankrupt and the course of the bankruptcy, as he (the official receiver) considers to be reasonably required for the effective discharge by the trustee of his duties in relation to the estate.

(8) The trustee shall also be furnished with any report of the official receiver under Chapter 6.

[E.R.6.125]

SECTION B: RESIGNATION AND REMOVAL; VACATION OF OFFICE

Creditors' meeting to receive trustee's resignation

6.123.—(1) Before resigning his office, the trustee must call a meeting of creditors for the purpose of receiving his resignation. The notice summoning the meeting shall indicate that this is the purpose, or one of the purposes, of it, and shall draw the attention of creditors to Rule 6.132 with respect to the trustee's release.

(2) A copy of the notice shall at the same time also be sent to the official receiver.

(3) The notice to creditors under paragraph (1) must be accompanied by an account of the trustee's administration of the bankrupt's estate, including—

- (a) a summary of his receipts and payments and
- (b) a statement by him that he has reconciled his account with that which is held by the Department in respect of the bankruptcy.

(4) Subject to paragraph (5), the trustee may only proceed under this Rule on grounds of ill health or because—

- (a) he intends ceasing to be in practice as an insolvency practitioner, or
- (b) there is some conflict of interest or change of personal circumstances which precludes or makes impracticable the further discharge by him of the duties of trustee.

(5) Where two or more persons are acting as trustee jointly, any one of them may proceed under this Rule (without prejudice to the continuation in office of the other or others) on the ground that, in his opinion and that of the other or others, it is no longer expedient that there should continue to be the present number of joint trustees.

(6) If there is no quorum present at the meeting summoned to receive the trustee's resignation, the meeting is deemed to have been held, a resolution is deemed to have been passed that the trustee's resignation be accepted and the creditors are deemed not to have resolved against the trustee having his release.

(7) Where paragraph (6) applies, any reference in the Rules to a resolution that the trustee's resignation be accepted is replaced by a reference to the making of a written statement, signed by the person who, had there been a quorum present, would have been chairman of the meeting, that no quorum was present and that the trustee may resign.

[E.R.6.126]

Action following acceptance of resignation

6.124.—(1) This Rule applies where a meeting is summoned to receive the trustee's resignation.

(2) If the chairman of the meeting is other than the official receiver, and there is passed at the meeting any of the following resolutions—

- (a) that the trustee's resignation be accepted,
- (b) that a new trustee be appointed,
- (c) that the resigning trustee be not given his release,

the chairman shall, within 3 days, send to the official receiver a copy of the resolution.

(3) If it has been resolved to accept the trustee's resignation, the chairman shall send to the official receiver a certificate to that effect.

(4) If the creditors have resolved to appoint a new trustee, the certificate of his appointment shall also be sent to the official receiver within that time; and Rule 6.120 shall be complied with in respect of it.

(5) If the trustee's resignation is accepted, the notice of it required by Article 271 (6) shall be given by him forthwith after the meeting; and he shall send a copy of the notice to the official receiver.

(6) The notice under Article 271(6) shall be accompanied by a copy of the account sent to creditors under Rule 6.123(3).

(7) The official receiver shall file a copy of the notice in court.

(8) The trustee's resignation is effective as from the date on which the official receiver files the copy notice in court, that date to be endorsed on the copy notice.

[E.R.6.127]

Leave to resign granted by the court

6.125.—(1) If at a creditors' meeting summoned to accept the trustee's resignation it is resolved that it be not accepted, the court may, on the trustee's application, make an order giving him leave to resign.

(2) The court's order under this Rule may include such provision as it thinks fit with respect to matters arising in connection with the resignation, and shall determine the date from which the trustee's release is effective.

(3) The court shall send 2 sealed copies of the order to the trustee, who shall send one of the copies forthwith to the official receiver.

(4) On sending notice of his resignation to the court, as required by Article 271(6), the trustee shall send a copy of it to the official receiver.

[E.R.6.128]

Meeting of creditors to remove trustee

6.126.—(1) Where a meeting of creditors is summoned for the purpose of removing the trustee, the notice summoning it shall indicate that this is the purpose, or one of the purposes, of the meeting; and the notice shall draw the attention of creditors to Article 272(3) with respect to the trustee's release.

(2) A copy of the notice shall at the same time also be sent to the official receiver.

(3) At the meeting, a person other than the trustee or his nominee may be elected to act as chairman; but if the trustee or his nominee is chairman and a resolution has been proposed for the

trustee's removal, the chairman shall not adjourn the meeting without the consent of at least one-half (in value) of the creditors present (in person or by proxy) and entitled to vote.

(4) Where the chairman of the meeting is other than the official receiver, and there is passed at the meeting any of the following resolutions—

- (a) that the trustee be removed,
- (b) that a new trustee be appointed,
- (c) that the removed trustee be not given his release,

the chairman shall, within 3 days, send to the official receiver a copy of the resolution.

(5) If it has been resolved to remove the trustee, the chairman shall send to the official receiver a certificate to that effect.

(6) If the creditors have resolved to appoint a new trustee, the certificate of his appointment shall also be sent to the official receiver within 3 days of the passing of the resolution; and Rule 6.117 shall be complied with in respect of it.

[E.R.6.129]

Court's power to regulate meeting under Rule 6.126

6.127. Where a meeting under Rule 6.126 is to be held, or is proposed to be summoned, the court may on the application of any creditor give directions as to the mode of summoning it, the sending out and return of forms of proxy, the conduct of the meeting, and any other matter which appears to the court to require regulation or control.

[E.R.6.130]

Procedure on removal

6.128.—(1) Where the creditors have resolved that the trustee be removed, the official receiver shall file the certificate of removal in court.

(2) The resolution is effective as from the date on which the official receiver files the certificate of removal in court, and that date shall be endorsed on the certificate.

(3) A copy of the certificate, so endorsed, shall be sent by the official receiver to the trustee who has been removed and, if a new trustee has been appointed, to him.

(4) The official receiver shall not file the certificate in court until the Department has certified to him that the removed trustee has reconciled his account with that held by the Department in respect of the bankruptcy.

[E.R.6.131]

Removal of trustee by the court

6.129.—(1) This Rule applies where application is made to the court for the removal of the trustee, or for an order directing the trustee to summon a meeting of creditors for the purpose of removing him.

(2) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for an ex parte hearing, of which he has been given at least 7 days' notice.

(3) If the application is not dismissed under paragraph (2), the court shall fix a venue for it to be heard.

(4) The applicant shall, at least 14 days before the hearing date, send to the trustee and the official receiver notice stating the venue so fixed; and the notice shall be accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

(5) Subject to any contrary order of the court, the costs of the application do not fall on the estate.

(6) Where the court removes the trustee—

(a) it shall send copies of the order of removal to him and to the official receiver;

(b) the order may include such provision as the court thinks fit with respect to matters arising in connection with the removal; and

(c) if the court appoints a new trustee, Rule 6.118 applies.

[E.R.6.132]

Removal of trustee by Department

6.130.—(1) If the Department decides to remove the trustee, it shall before doing so notify the trustee and the official receiver of its decision and the grounds of it, and specify a period within which the trustee may make representations against implementation of the decision.

(2) If the Department directs the removal of the trustee, it shall forthwith—

(a) file notice of its decision in court, and

(b) send notice to the trustee and the official receiver.

(3) If the trustee is removed by direction of the Department, the court may make any such order in his case as it would have power to make if he had been removed by itself.

[E.R.6.133]

Advertisement of resignation or removal

6.131. Where a new trustee is appointed in place of one who has resigned or been removed, the new trustee shall, in the advertisement of his appointment, state that his predecessor has resigned or, as the case may be, been removed and (if it be the case) that he has been given his release.

[E.R.6.134]

Release of resigning or removed trustee

6.132.—(1) Where the trustee's resignation is accepted by a meeting of creditors which has not resolved against his release, he has his release from when his resignation is effective under Rule 6.124.

(2) Where the trustee is removed by a meeting of creditors which has not resolved against his release, that fact shall be stated in the certificate of removal.

(3) Where—

(a) the trustee resigns, and the creditors' meeting called to receive his resignation has resolved against his release, or

(b) he is removed by a creditors' meeting which has so resolved, or is removed by the court, he must apply to the Department for his release.

(4) When the Department gives the release, it shall so certify, and send the certificate to the official receiver, to be filed in court.

(5) A copy of the certificate shall be sent by the Department to the former trustee, whose release is effective from the date of the certificate.

[E.R.6.135]

SECTION C: RELEASE ON COMPLETION OF ADMINISTRATION

Release of official receiver

6.133.—(1) The official receiver shall, before giving notice to the Department under Article 272(2) (that the administration of the estate is for practical purposes complete), send out notice of his intention to do so to all creditors who have proved their debts, and to the bankrupt.

(2) The notice shall in each case be accompanied by a summary of the official receiver's receipts and payments as trustee.

(3) The Department, when it has under Article 272(2) determined the date from which the official receiver is to have his release, shall give notice to the court that it has done so. The notice shall be accompanied by the summary referred to in paragraph (2).

[E.R.6.136]

Final meeting of creditors

6.134.—(1) Where the trustee is other than the official receiver, he shall give at least 28 days' notice of the final meeting of creditors to be held under Article 304. The notice shall be sent to all creditors who have proved their debts, and to the bankrupt.

(2) The trustee's report laid before the meeting under that Article shall include—

(a) a summary of his receipts and payments, and

(b) a statement by him that he has reconciled his account with that which is held by the Department in respect of the bankruptcy.

(3) At the final meeting, the creditors may question the trustee with respect to any matter contained in his report, and may resolve against him having his release.

(4) The trustee shall give notice to the court that the final meeting has been held; and the notice shall state whether or not the creditors have resolved against his release, and be accompanied by a copy of the report laid before the final meeting. A copy of the notice shall be sent by the trustee to the official receiver.

(5) If there is no quorum present at the final meeting, the trustee shall report to the court that a final meeting was summoned in accordance with the Rules, but there was no quorum present; and the final meeting is then deemed to have been held, and the creditors not to have resolved against the trustee having his release.

(6) If the creditors at the final meeting have not so resolved, the trustee is released when the notice under paragraph (4) is filed in court. If they have so resolved, the trustee must obtain his release from the Department, as provided by Rule 6.132.

[E.R.6.137]

SECTION D: REMUNERATION

Fixing of remuneration

6.135.—(1) The trustee is entitled to receive remuneration for his services as such.

(2) The remuneration shall be fixed either—

(a) as a percentage of the value of the assets in the bankrupt's estate which are realised or distributed, or of the one value and the other in combination, or

- (b) by reference to the time properly given by the responsible insolvency practitioner (as trustee) and his staff in attending to matters arising in the bankruptcy.
- (3) Where the trustee is other than the official receiver, it is for the creditors' committee (if there is one) to determine whether his remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.
- (4) In arriving at that determination, the committee shall have regard to the following matters—
- (a) the complexity (or otherwise) of the case,
 - (b) any respects in which, in connection with the administration of the estate, there falls on the responsible insolvency practitioner (as trustee) any responsibility of an exceptional kind or degree,
 - (c) the effectiveness with which the responsible insolvency practitioner appears to be carrying out, or to have carried out, his duties as trustee, and
 - (d) the value and nature of the assets in the estate with which the trustee has to deal.
- (5) If there is no creditors' committee, or the committee does not make the requisite determination, the trustee's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.
- (6) If not fixed under paragraphs (2) to (5), the trustee's remuneration shall be on the scale laid down for the official receiver by general regulations.

[E.R.6.138]

Other matters affecting remuneration

6.136.—(1) Where the trustee sells assets on behalf of a secured creditor, he is entitled to take for himself, out of the proceeds of sale, a sum by way of remuneration equivalent to the remuneration chargeable in corresponding circumstances by the official receiver under general regulations.

(2) Where there are joint trustees, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred—

- (a) to the court, for settlement by order, or
- (b) to the creditors' committee or a meeting of creditors, for settlement by resolution.

(3) If the trustee is a solicitor and employs his own firm, or any partner in it, to act on behalf of the estate, profit costs shall not be paid unless this is authorised by the creditors' committee, the creditors or the court.

[E.R.6.139]

Recourse of trustee to meeting of creditors

6.137. If the trustee's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

[E.R.6.140]

Recourse to the court

6.138.—(1) If the trustee considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors, or as under Rule 6.135(6), is insufficient, he may apply to the court for an order increasing its amount or rate.

(2) The trustee shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

(3) If there is no creditors' committee, the trustee's notice of his application shall be sent to such one or more of the bankrupt's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

(4) The court may, if it appears to be a proper case, order the costs of the trustee's application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid out of the estate.

[E.R.6.141]

Creditor's claim that remuneration is excessive

6.139.—(1) Any creditor of the bankrupt may, with the concurrence of at least 25 per cent. in value of the creditors (including himself), apply to the court for an order that the trustee's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

(2) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for an ex parte hearing, of which he has been given at least 7 days' notice.

(3) If the application is not dismissed under paragraph (2), the court shall fix a venue for it to be heard.

(4) The applicant shall, at least 14 days before the hearing date, send to the trustee a notice stating the venue so fixed; and the notice shall be accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

(5) If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

(6) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and do not fall on the estate.

[E.R.6.142]

SECTION E: SUPPLEMENTARY PROVISIONS

Trustee deceased

6.140.—(1) Subject to paragraph (2), where the trustee (other than the official receiver) has died, it is the duty of his personal representatives to give notice of the fact to the official receiver, specifying the date of the death.

(2) Paragraph (1) does not apply if notice has been given under paragraphs (3) or (4).

(3) If the deceased trustee was a partner in a firm, notice may be given to the official receiver by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Department for the authorisation of insolvency practitioners.

(4) Notice of the death may be given by any person producing to the official receiver the relevant death certificate or a copy of it.

(5) The official receiver shall give notice to the court, for the purpose of fixing the date of the deceased trustee's release in accordance with Article 272(3)(a).

[E.R.6.143]

Loss of qualification as insolvency practitioner

6.141.—(1) This Rule applies where the trustee vacates office, under Article 271(5), on his ceasing to be qualified to act as an insolvency practitioner in relation to the bankrupt.

(2) The trustee vacating office shall forthwith give notice of his doing so to the official receiver, who shall give notice to the Department.

(3) The official receiver shall file in court a copy of his notice under paragraph (2).

(4) Rule 6.132 applies as regards the trustee obtaining his release, as if he had been removed by the court.

[E.R.6.144]

Notice to official receiver of intention to vacate office

6.142.—(1) Where the trustee intends to vacate office, whether by resignation or otherwise, he shall give notice of his intention to the official receiver together with notice of any creditors' meeting to be held in respect of his vacation of office, including any meeting to receive his resignation.

(2) The notice to the official receiver must be given at least 21 days before any such creditors' meeting.

(3) Where there remains in the bankrupt's estate any property which has not been realised, applied, distributed or otherwise fully dealt with in the bankruptcy, the trustee shall include in his notice to the official receiver details of the nature of that property, its value (or the fact that it has no value), its location, any action taken by the trustee to deal with that property or any reason for his not dealing with it, and the current position in relation to it.

[E.R.6.145]

Trustee's duties on vacating office

6.143.—(1) Where the trustee ceases to be in office as such, in consequence of removal, resignation or cesser of qualification as an insolvency practitioner, he is under obligation forthwith to deliver up to the person succeeding him as trustee the assets of the estate (after deduction of any expenses properly incurred, and distributions made, by him) and further to deliver up to that person—

(a) the records of the bankruptcy, including correspondence, proofs and other related papers appertaining to the bankruptcy while it was within his responsibility, and

(b) the bankrupt's books, papers and other records.

(2) When the administration of the bankrupt's estate is for practical purposes complete, the trustee shall forthwith file in court all proofs remaining with him in the proceedings.

[E.R.6.146]

Power of court to set aside certain transactions

6.144.—(1) If in the administration of the estate the trustee enters into any transaction with a person who is an associate of his, the court may, on the application of any person interested, set the transaction aside and order the trustee to compensate the estate for any loss suffered in consequence of it.

(2) This does not apply if either—

(a) the transaction was entered into with the prior consent of the court, or

(b) it is shown to the court's satisfaction that the transaction was for value, and that it was entered into by the trustee without knowing, or having any reason to suppose, that the person concerned was an associate.

(3) Nothing in this Rule is to be taken as prejudicing the operation of any rule of law or equity with respect to a trustee's dealings with trust property, or the fiduciary obligations of any person.

[E.R.6.147]

Rule against solicitation

6.145.—(1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the trustee in obtaining proxies or procuring his appointment, it may order that no remuneration out of the estate be allowed to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the court under this Rule overrides any resolution of the creditors' committee or the creditors, or any other provision of the Rules relating to the trustee's remuneration.

[E.R.6.148]

Enforcement of trustee's obligations to official receiver

6.146.—(1) The court may, on the application of the official receiver, make such orders as it thinks necessary for enforcement of the duties of the trustee under Article 278(3) (information and assistance to be given; production and inspection of books and records relating to the bankruptcy).

(2) An order of the court under this Rule may provide that all costs of and incidental to the official receiver's application shall be borne by the trustee.

[E.R.6.149]