
STATUTORY INSTRUMENTS

1986 No. 1915

The Insolvency (Scotland) Rules 1986

PART I

COMPANY VOLUNTARY ARRANGEMENTS

CHAPTER 2

PROPOSAL BY DIRECTORS

Preparation of proposal

1.2. The directors shall prepare for the intended nominee a proposal on which (with or without amendments to be made under Rule 1.3 below) to make his report to the court under section 2.

Contents of proposal

1.3.—(1) The directors' proposal shall provide a short explanation why, in their opinion, a voluntary arrangement under Part I of the Act is desirable, and give reasons why the company's creditors may be expected to concur with such an arrangement.

(2) The following matters shall be stated, or otherwise dealt with, in the directors' proposal -

- (a) the following matters, so far as within the directors' immediate knowledge -
 - (i) the company's assets, with an estimate of their respective values;
 - (ii) the extent (if any) to which the assets are subject to any security in favour of any creditors;
 - (iii) the extent (if any) to which particular assets of the company are to be excluded from the voluntary arrangement;
- (b) particulars of any property other than assets of the company itself, which is proposed to be included in the arrangement, the source of such property and the terms on which it is to be made available for inclusion;
- (c) the nature and amount of the company's liabilities (so far as within the directors' immediate knowledge), the manner in which they are proposed to be met, modified, postponed or otherwise dealt with by means of the arrangement, and (in particular) -
 - (i) how it is proposed to deal with preferential creditors (defined in section 386) and creditors who are, or claim to be, secured;
 - (ii) how persons connected with the company (being creditors) are proposed to be treated under the arrangement; and
 - (iii) whether there are, to the directors' knowledge, any circumstances giving rise to the possibility, in the event that the company should go into liquidation, of claims under -
 - section 242 (gratuitous alienations),
 - section 243 (unfair preferences),

section 244 (extortionate credit transactions), or
section 245 (floating charges invalid);

and, where any such circumstances are present, whether, and if so how, it is proposed under the voluntary arrangement to make provision for wholly or partly indemnifying the company in respect of such claims;

- (d) whether any, and if so what, cautionary obligations (including guarantees) have been given of the company's debts by other persons, specifying which (if any) of the cautioners are persons connected with the company;
- (e) the proposed duration of the voluntary arrangement;
- (f) the proposed dates of distributions to creditors, with estimates of their amounts;
- (g) the amount proposed to be paid to the nominee (as such) by way of remuneration and expenses;
- (h) the manner in which it is proposed that the supervisor of the arrangement should be remunerated and his expenses defrayed;
- (i) whether, for the purposes of the arrangement, any cautionary obligations (including guarantees) are to be offered by directors, or other persons, and whether (if so) any security is to be given or sought;
- (j) the manner in which funds held for the purposes of the arrangement are to be banked, invested or otherwise dealt with pending distribution to creditors;
- (k) the manner in which funds held for the purpose of payment to creditors, and not so paid on the termination of the arrangement, are to be dealt with;
- (l) the manner in which the business of the company is being and is proposed to be conducted during the course of the arrangement;
- (m) details of any further credit facilities which it is intended to arrange for the company and how the debts so arising are to be paid;
- (n) the functions which are to be undertaken by the supervisor of the arrangement;
- (o) the name, address and qualification of the person proposed as supervisor of the voluntary arrangement, and confirmation that he is (so far as the directors are aware) qualified to act as an insolvency practitioner in relation to the company.

(3) With the agreement in writing of the nominee, the directors' proposal may be amended at any time up to delivery of the former's report to the court under section 2(2).

Notice to intended nominee

1.4.—(1) The directors shall give to the intended nominee written notice of their proposal.

(2) The notice, accompanied by a copy of the proposal, shall be delivered either to the nominee himself, or to a person authorised to take delivery of documents on his behalf.

(3) If the intended nominee agrees to act, he shall cause a copy of the notice to be endorsed to the effect that it has been received by him on a specified date; and the period of 28 days referred to in section 2(2) then runs from that date.

(4) The copy of the notice so endorsed shall be returned by the nominee forthwith to the directors at an address specified by them in the notice for that purpose.

Statement of affairs

1.5.—(1) The directors shall, within 7 days after their proposal is delivered to the nominee, or within such longer time as he may allow, deliver to him a statement of the company's affairs.

(2) The statement shall comprise the following particulars (supplementing or amplifying, so far as is necessary for clarifying the state of the company's affairs, those already given in the directors' proposal): -

- (a) a list of the company's assets, divided into such categories as are appropriate for easy identification, with estimated values assigned to each category;
- (b) in the case of any property on which a claim against the company is wholly or partly secured, particulars of the claim and its amount and of how and when the security was created;
- (c) the names and addresses of the company's preferential creditors (defined in section 386), with the amounts of their respective claims;
- (d) the names and addresses of the company's unsecured creditors, with the amounts of their respective claims;
- (e) particulars of any debts owed by or to the company to or by persons connected with it;
- (f) the names and addresses of the company's members and details of their respective shareholdings; and
- (g) such other particulars (if any) as the nominee may in writing require to be furnished for the purposes of making his report to the court on the directors' proposal.

(3) The statement of affairs shall be made up to a date not earlier than 2 weeks before the date of the notice given by the directors to the nominee under Rule 1.4. However the nominee may allow an extension of that period to the nearest practicable date (not earlier than 2 months before the date of the notice under Rule 1.4); and if he does so, he shall give his reasons in his report to the court on the directors' proposal.

(4) The statement shall be certified as correct, to the best of their knowledge and belief, by two or more directors of the company or by the company secretary and at least one director (other than the secretary himself).

Additional disclosure for assistance of nominee

1.6.—(1) If it appears to the nominee that he cannot properly prepare his report on the basis of information in the directors' proposal and statement of affairs, he may call on the directors to provide him with -

- (a) further and better particulars as to the circumstances in which, and the reasons why, the company is insolvent or (as the case may be) threatened with insolvency;
- (b) particulars of any previous proposals which have been made in respect of the company under Part I of the Act;
- (c) any further information with respect to the company's affairs which the nominee thinks necessary for the purposes of his report.

(2) The nominee may call on the directors to inform him, with respect to any person who is, or at any time in the 2 years preceding the notice under Rule 1.4 has been, a director or officer of the company, whether and in what circumstances (in those 2 years or previously) that person -

- (a) has been concerned in the affairs of any other company (whether or not incorporated in Scotland) which has become insolvent, or
- (b) has had his estate sequestrated, granted a trust deed for his creditors, been adjudged bankrupt or compounded or entered into an arrangement with his creditors.

(3) For the purpose of enabling the nominee to consider their proposal and prepare his report on it, the directors must give him access to the company's accounts and records.

Nominee's report on the proposal

1.7.—(1) With his report to the court under section 2 the nominee shall lodge -

- (a) a copy of the directors' proposal (with amendments, if any, authorised under Rule 1.3(3));
- (b) a copy or summary of the company's statement of affairs.

(2) If the nominee makes known his opinion that meetings of the company and its creditors should be summoned under section 3, his report shall have annexed to it his comments on the proposal. If his opinion is otherwise, he shall give his reasons for that opinion.

(3) The nominee shall send a copy of his report and of his comments (if any) to the company. Any director, member or creditor of the company is entitled, at all reasonable times on any business day, to inspect the report and comments.

Replacement of nominee

1.8. Where any person intends to apply to the court under section 2(4) for the nominee to be replaced he shall give to the nominee at least 7 days' notice of his application.

Summoning of meetings under section 3

1.9.—(1) If in his report the nominee states that in his opinion meetings of the company and its creditors should be summoned to consider the directors' proposal, the date on which the meetings are to be held shall be not less than 14, nor more than 28 days from the date on which he lodged his report in court under section 2.

(2) The notice summoning the meeting shall specify the court in which the nominee's report under section 2 has been lodged and with each notice there shall be sent -

- (a) a copy of the directors' proposal;
- (b) a copy of the statement of affairs or, if the nominee thinks fit, a summary of it (the summary to include a list of creditors and the amount of their debts); and
- (c) the nominee's comments on the proposal.