
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE FIRST GROUP OF PARTS

PART 4

COMPANIES WINDING UP

CHAPTER 3

PETITION TO WINDING-UP ORDER (NO CVL APPLICATION)
(NO APPLICATION TO PETITION BY CONTRIBUTORIES)

Presentation and filing of petition

4.7.—(1) The petition, verified by affidavit in accordance with Rule 4.12 below, shall be filed in court.

(2) No petition shall be filed unless there is produced with it the receipt for the deposit payable on presentation.

(3) If the petitioner is other than the company itself, there shall be delivered with the petition—

- (a) one copy for service on the company, and
- (b) one copy to be exhibited to the affidavit verifying service.

(4) There shall in any case be delivered with the petition—

- (a) if the company is in course of being wound up voluntarily, and a liquidator has been appointed, one copy of the petition to be sent to him;
- (b) if an administration order is in force in relation to the company, one copy to be sent to the administrator;
- (c) if an administrative receiver has been appointed in relation to the company, one copy to be sent to him;
- (d) if there is in force for the company a voluntary arrangement under Part I of the Act, one copy for the supervisor of the arrangement; and
- (e) if the company is—

- (i) a recognised bank or licensed institution within the meaning of the Banking Act 1979, or

- (ii) an institution to which sections 16 and 18 of that Act apply as if it were licensed, and the petitioner is not the Bank of England, one copy to be sent to the Bank.

(5) Each of the copies delivered shall have applied to it the seal of the court, and shall be issued to the petitioner.

(6) The court shall fix a venue for the hearing of the petition; and this shall be endorsed on any copy issued to the petitioner under paragraph (5).

Service of petition

4.8.—(1) The following paragraphs apply as regards service of the petition on the company (where the petitioner is other than the company itself); and references to the petition are to a copy of the petition bearing the seal of the court in which it is presented.

(2) Subject as follows, the petition shall be served at the company's registered office, that is to say—

- (a) the place which is specified, in the company's statement delivered under section 10 of the Companies Act as the intended situation of its registered office on incorporation, or
- (b) if notice has been given by the company to the registrar of companies under section 287 of that Act (change of registered office), the place specified in that notice or, as the case may be, in the last such notice.

(3) Service of the petition at the registered office may be effected in any of the following ways—

- (a) it may be handed to a person who there and then acknowledges himself to be, or to the best of the server's knowledge, information and belief is, a director or other officer, or employee, of the company; or
- (b) it may be handed to a person who there and then acknowledges himself to be authorised to accept service of documents on the company's behalf; or
- (c) in the absence of any such person as is mentioned in sub-paragraph (a) or (b), it may be deposited at or about the registered office in such a way that it is likely to come to the notice of a person attending at the office.

(4) If for any reason service at the registered office is not practicable, or the company has no registered office, or it is an unregistered company, the petition may be served at the company's last known principal place of business in England and Wales, or at some place in England and Wales at which it has carried on business, by handing it to such a person as is mentioned in paragraph (3) (a) or (b) above.

(5) In the case of an overseas company, service may be effected in any manner provided for by section 695 of the Companies Act.

(6) If for any reason it is impracticable to effect service as provided by paragraphs (2) to (5), the petition may be served in such other manner as the court may direct.

(7) Application for leave of the court under paragraph (6) may be made *ex parte*, on affidavit stating what steps have been taken to comply with paragraphs (2) to (5), and the reasons why it is impracticable to effect service as there provided.

Proof of service

4.9.—(1) Service of the petition shall be proved by affidavit, specifying the manner of service.

(2) The affidavit shall have exhibited to it—

- (a) a sealed copy of the petition, and
- (b) if substituted service has been ordered, a sealed copy of the order;

and it shall be filed in court immediately after service.

Other persons to receive copies of petition

4.10.—(1) If to the petitioner's knowledge the company is in course of being wound up voluntarily, a copy of the petition shall be sent by him to the liquidator.

(2) If to the petitioner's knowledge an administrative receiver has been appointed in relation to the company, or an administration order is in force in relation to it, a copy of the petition shall be sent by him to the receiver or, as the case may be, the administrator.

(3) If to the petitioner's knowledge there is in force for the company a voluntary arrangement under Part I of the Act, a copy of the petition shall be sent by him to the supervisor of the voluntary arrangement.

(4) If the company is a recognised bank or a licensed institution within the meaning of the Banking Act 1979, or an institution to which sections 16 and 18 of that Act apply as if it were a licensed institution, a copy of the petition shall be sent by the petitioner to the Bank of England.

This does not apply if the petitioner is the Bank of England itself.

(5) A copy of the petition which is required by this Rule to be sent shall be despatched on the next business day after the day on which the petition is served on the company.

Advertisement of petition

4.11.—(1) Unless the court otherwise directs, the petition shall be advertised once in the Gazette.

(2) The advertisement must be made to appear—

- (a) if the petitioner is the company itself, not less than 7 business days before the day appointed for the hearing, and
- (b) otherwise, not less than 7 business days after service of the petition on the company, nor less than 7 business days before the day so appointed.

(3) The court may, if compliance with paragraph (2) is not reasonably practicable, direct that advertisement of the petition be made to appear in a specified London morning newspaper, or other newspaper, instead of in the Gazette.

(4) The advertisement of the petition must state—

- (a) the name of the company and the address of its registered office, or—
 - (i) in the case of an unregistered company, the address of its principal place of business;
 - (ii) in the case of an oversea company, the address at which service of the petition was effected;
- (b) the name and address of the petitioner;
- (c) where the petitioner is the company itself, the address of its registered office or, in the case of an unregistered company, of its principal place of business;
- (d) the date on which the petition was presented;
- (e) the venue fixed for the hearing of the petition;
- (f) the name and address of the petitioner's solicitor (if any); and
- (g) that any person intending to appear at the hearing (whether to support or oppose the petition) must give notice of his intention in accordance with Rule 4.16.

(5) If the petition is not duly advertised in accordance with this Rule, the court may dismiss it.

Verification of petition

4.12.—(1) The petition shall be verified by an affidavit that the statements in the petition are true, or are true to the best of the deponent's knowledge, information and belief.

(2) If the petition is in respect of debts due to different creditors, the debts to each creditor must be separately verified.

(3) The petition shall be exhibited to the affidavit verifying it.

- (4) The affidavit shall be made—
- (a) by the petitioner (or if there are two or more petitioners, any one of them), or
 - (b) by some person such as a director, company secretary or similar company officer, or a solicitor, who has been concerned in the matters giving rise to the presentation of the petition, or
 - (c) by some responsible person who is duly authorised to make the affidavit and has the requisite knowledge of those matters.
- (5) Where the deponent is not the petitioner himself, or one of the petitioners, he must in the affidavit identify himself and state—
- (a) the capacity in which, and the authority by which, he makes it, and
 - (b) the means of his knowledge of the matters sworn to in the affidavit.
- (6) The affidavit is prima facie evidence of the statements in the petition to which it relates.
- (7) An affidavit verifying more than one petition shall include in its title the names of the companies to which it relates and shall set out, in respect of each company, the statements relied on by the petitioner; and a clear and legible photocopy of the affidavit shall be filed with each petition which it verifies.

Persons entitled to copy of petition

4.13. Every director, contributory or creditor of the company is entitled to be furnished by the solicitor for the petitioner (or by the petitioner himself, if acting in person) with a copy of the petition within 2 days after requiring it, on payment of the appropriate fee.

Certificate of compliance

4.14.—(1) The petitioner or his solicitor shall, at least 5 days before the hearing of the petition, file in court a certificate of compliance with the Rules relating to service and advertisement.

- (2) The certificate shall show—
- (a) the date of presentation of the petition,
 - (b) the date fixed for the hearing, and
 - (c) the date or dates on which the petition was served and advertised in compliance with the Rules.

A copy of the advertisement of the petition shall be filed in court with the certificate.

(3) Non-compliance with this Rule is a ground on which the court may, if it thinks fit, dismiss the petition.

Leave for petitioner to withdraw

4.15. If at least 5 days before the hearing the petitioner, on an ex parte application, satisfies the court that—

- (a) the petition has not been advertised, and
- (b) no notices (whether in support or in opposition) have been received by him with reference to the petition, and
- (c) the company consents to an order being made under this Rule,

the court may order that the petitioner has leave to withdraw the petition on such terms as to costs as the parties may agree.

Notice of appearance

4.16.—(1) Every person who intends to appear on the hearing of the petition shall give to the petitioner notice of his intention in accordance with this Rule.

(2) The notice shall specify—

- (a) the name and address of the person giving it, and any telephone number and reference which may be required for communication with him or with any other person (to be also specified in the notice) authorised to speak or act on his behalf;
- (b) whether his intention is to support or oppose the petition; and
- (c) the amount and nature of his debt.

(3) The notice shall be sent to the petitioner at the address shown for him in the court records, or in the advertisement of the petition required by Rule 4.11; or it may be sent to his solicitor.

(4) The notice shall be sent so as to reach the addressee not later than 16.00 hours on the business day before that which is appointed for the hearing (or, where the hearing has been adjourned, for the adjourned hearing).

(5) A person failing to comply with this Rule may appear on the hearing of the petition only with the leave of the court.

List of appearances

4.17.—(1) The petitioner shall prepare for the court a list of the persons (if any) who have given notice under Rule 4.16, specifying their names and addresses and (if known to him) their respective solicitors.

(2) Against the name of each creditor in the list it shall be stated whether his intention is to support the petition, or to oppose it.

(3) On the day appointed for the hearing of the petition, a copy of the list shall be handed to the court before the commencement of the hearing.

(4) If any leave is given under Rule 4.16(5), the petitioner shall add to the list the same particulars in respect of the person to whom leave has been given.

Affidavit in opposition

4.18.—(1) If the company intends to oppose the petition, its affidavit in opposition shall be filed in court not less than 7 days before the date fixed for the hearing.

(2) A copy of the affidavit shall be sent by the company to the petitioner, forthwith after filing.

Substitution of creditor or contributory for petitioner

4.19.—(1) This Rule applies where a person petitions and is subsequently found not entitled to do so, or where the petitioner—

- (a) fails to advertise his petition within the time prescribed by the Rules or such extended time as the court may allow, or
- (b) consents to withdraw his petition, or to allow it to be dismissed, consents to an adjournment, or fails to appear in support of his petition when it is called on in court on the day originally fixed for the hearing, or on a day to which it is adjourned, or
- (c) appears, but does not apply for an order in the terms of the prayer of his petition.

(2) The court may, on such terms as it thinks just, substitute as petitioner any creditor or contributory who in its opinion would have a right to present a petition, and who is desirous of prosecuting it.

(3) An order of the court under this Rule may, where a petitioner fails to advertise his petition within the time prescribed by these Rules, or consents to withdraw his petition, be made at any time.

Notice and settling of winding-up order

4.20.—(1) When a winding-up order has been made, the court shall forthwith give notice of the fact to the official receiver.

(2) The petitioner and every other person who has appeared on the hearing of the petition shall, not later than the business day following that on which the order is made, leave at the court all the documents required for enabling the order to be completed forthwith.

(3) It is not necessary for the court to appoint a venue for any person to attend to settle the order, unless in any particular case the special circumstances make an appointment necessary.

Transmission and advertisement of order

4.21.—(1) When the winding-up order has been made, 3 copies of it, sealed with the seal of the court, shall be sent forthwith by the court to the official receiver.

(2) The official receiver shall cause a sealed copy of the order to be served on the company by prepaid letter addressed to it at its registered office (if any) or, if there is no registered office, at its principal or last known principal place of business.

Alternatively, the order may be served on such other person or persons, or in such other manner, as the court directs.

(3) The official receiver shall forward to the registrar of companies the copy of the order which by section 130(1) is directed to be so forwarded by the company.

(4) The official receiver shall forthwith—

(a) cause the order to be gazetted, and

(b) advertise the order in such local newspaper as the official receiver may select.