
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE FIRST GROUP OF PARTS

PART 4

COMPANIES WINDING UP

CHAPTER 5

PROVISIONAL LIQUIDATOR (NO CVL APPLICATION)

Appointment of provisional liquidator

4.25.—(1) An application to the court for the appointment of a provisional liquidator under section 135 may be made by the petitioner, or by a creditor of the company, or by a contributory, or by the company itself, or by the Secretary of State, or by any person who under any enactment would be entitled to present a petition for the winding up of the company.

- (2) The application must be supported by an affidavit stating—
- (a) the grounds on which it is proposed that a provisional liquidator should be appointed;
 - (b) if some person other than the official receiver is proposed to be appointed, that the person has consented to act and, to the best of the applicant's belief, is qualified to act as an insolvency practitioner in relation to the company;
 - (c) whether or not the official receiver has been informed of the application and, if so, has been furnished with a copy of it;
 - (d) whether to the applicant's knowledge—
 - (i) there has been proposed or is in force for the company a voluntary arrangement under Part I of the Act, or
 - (ii) an administrator or administrative receiver is acting in relation to the company, or
 - (iii) a liquidator has been appointed for its voluntary winding up; and
 - (e) the applicant's estimate of the value of the assets in respect of which the provisional liquidator is to be appointed.

(3) The applicant shall send copies of the application and of the affidavit in support to the official receiver, who may attend the hearing and make any representations which he thinks appropriate.

If for any reason it is not practicable to comply with this paragraph, the official receiver must be informed of the application in sufficient time for him to be able to attend.

(4) The court may on the application, if satisfied that sufficient grounds are shown for the appointment, make it on such terms as it thinks fit.

Order of appointment

4.26.—(1) The order appointing the provisional liquidator shall specify the functions to be carried out by him in relation to the company's affairs.

(2) The court shall, forthwith after the order is made, send sealed copies of the order as follows—

- (a) if the official receiver is appointed, two copies to him;
- (b) if a person other than the official receiver is appointed—
 - (i) two copies to that person, and
 - (ii) one copy to the official receiver;

(c) if there is an administrative receiver acting in relation to the company, one copy to him.

(3) Of the two copies of the order sent to the official receiver under paragraph (2)(a), or to another person under paragraph (2)(b)(i), one shall in each case be sent by the recipient to the company or, if a liquidator has been appointed for the company's voluntary winding up, to him.

Deposit

4.27.—(1) Before an order appointing the official receiver as provisional liquidator is issued, the applicant for it shall deposit with him, or otherwise secure to his satisfaction, such sum as the court directs to cover the official receiver's remuneration and expenses.

(2) If the sum deposited or secured subsequently proves to be insufficient, the court may, on application by the official receiver, order that an additional sum be deposited or secured. If the order is not complied with within 2 days after service of it on the person to whom it is directed, the court may discharge the order appointing the provisional liquidator.

(3) If a winding-up order is made after a provisional liquidator has been appointed, any money deposited under this Rule shall (unless it is required by reason of insufficiency of assets for payment of remuneration and expenses of the provisional liquidator) be repaid to the person depositing it (or as that person may direct) out of the assets, in the prescribed order of priority.

Security

4.28.—(1) The following applies where an insolvency practitioner is appointed to be provisional liquidator under section 135.

(2) The cost of providing the security required under the Act shall be paid in the first instance by the provisional liquidator; but—

- (a) if a winding-up order is not made, the person so appointed is entitled to be reimbursed out of the property of the company, and the court may make an order on the company accordingly, and
- (b) if a winding-up order is made, he is entitled to be reimbursed out of the assets in the prescribed order of priority.

Failure to give or keep up security

4.29.—(1) If the provisional liquidator fails to give or keep up his security, the court may remove him, and make such order as it thinks fit as to costs.

(2) If an order is made under this Rule removing the provisional liquidator, or discharging the order appointing him, the court shall give directions as to whether any, and if so what, steps should be taken for the appointment of another person in his place.

Remuneration

4.30.—(1) The remuneration of the provisional liquidator (other than the official receiver) shall be fixed by the court from time to time on his application.

(2) In fixing his remuneration, the court shall take into account—

- (a) the time properly given by him (as provisional liquidator) and his staff in attending to the company's affairs;
- (b) the complexity (or otherwise) of the case;
- (c) any respects in which, in connection with the company's affairs, there falls on the provisional liquidator any responsibility of an exceptional kind or degree;
- (d) the effectiveness with which the provisional liquidator appears to be carrying out, or to have carried out, his duties; and
- (e) the value and nature of the property with which he has to deal.

(3) The provisional liquidator's remuneration (whether the official receiver or another) shall be paid to him, and the amount of any expenses incurred by him reimbursed—

- (a) if a winding-up order is not made, out of the property of the company (and the court may make an order on the company accordingly), and
- (b) if a winding-up order is made, out of the assets, in the prescribed order of priority,

or, in either case (the relevant funds being insufficient), out of the deposit under Rule 4.27.

(4) Where a person other than the official receiver has been appointed provisional liquidator, and the official receiver has taken any steps for the purpose of obtaining a statement of affairs or has performed any other duty under the Rules, he shall pay the official receiver such sum (if any) as the court may direct.

Termination of appointment

4.31.—(1) The appointment of the provisional liquidator may be terminated by the court on his application, or on that of any of the persons specified in Rule 4.25(1).

(2) If the provisional liquidator's appointment terminates, in consequence of the dismissal of the winding-up petition or otherwise, the court may give such directions as it thinks fit with respect to the accounts of his administration or any other matters which it thinks appropriate.

(3) The court may under paragraph (2)—

- (a) direct that any expenses properly incurred by the provisional liquidator during the period of his appointment, including any remuneration to which he is entitled, be paid out of the property of the company, and
- (b) authorise him to retain out of that property such sums as are required for meeting those expenses.

Alternatively, the court may make such order as it thinks fit with respect to those matters.