
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE FIRST GROUP OF PARTS

PART 4

COMPANIES WINDING UP

CHAPTER 6

STATEMENT OF AFFAIRS AND OTHER INFORMATION

Notice requiring statement of affairs

4.32. (NO CVL APPLICATION)

(1) The following applies where the official receiver determines to require a statement of the company's affairs to be made out and submitted to him in accordance with section 131.

(2) He shall send notice to each of the persons whom he considers should be made responsible under that section, requiring them to prepare and submit the statement.

(3) The persons to whom that notice is sent are referred to in this Chapter as “the deponents”.

(4) The notice shall inform each of the deponents—

(a) of the names and addresses of all others (if any) to whom the same notice has been sent;

(b) of the time within which the statement must be delivered;

(c) of the effect of section 131(7) (penalty for non-compliance); and

(d) of the application to him, and to each of the other deponents, of section 235 (duty to provide information, and to attend on the official receiver if required).

(5) The official receiver shall, on request, furnish a deponent with instructions for the preparation of the statement and with the forms required for that purpose.

Verification and filing

4.33. (NO CVL APPLICATION)

(1) The statement of affairs shall be in Form 4.17, shall contain all the particulars required by that form and shall be verified by affidavit by the deponents (using the same form).

(2) The official receiver may require any of the persons mentioned in section 131(3) to submit an affidavit of concurrence, stating that he concurs in the statement of affairs.

(3) An affidavit of concurrence made under paragraph (2) may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the affidavit is not in agreement with the deponents, or he considers the statement to be erroneous or misleading, or he is without the direct knowledge necessary for concurring in the statement.

(4) The statement of affairs shall be delivered to the official receiver by the deponent making the affidavit of verification (or by one of them, if more than one), together with a copy of the verified statement.

(5) Every affidavit of concurrence shall be delivered to the official receiver by the person who makes it, together with a copy.

(6) The official receiver shall file the verified copy of the statement and the affidavits of concurrence (if any) in court.

(7) The affidavit may be sworn before an official receiver or a deputy official receiver, or before an officer of the Department or the court duly authorised in that behalf.

Statement of affairs

4.34-CVL.—(1) This Rule applies with respect to the statement of affairs made out by the liquidator under section 95(3) or (as the case may be) by the directors under section 99(1).

(2) Where it is made out by the liquidator, the statement of affairs shall be delivered by him to the registrar of companies within 7 days after the creditors' meeting summoned under section 95(2).

(3) Where it is made out by the directors under section 99(1), the statement of affairs shall be delivered by them to the liquidator, when appointed; and he shall, within 7 days, deliver it to the registrar of companies.

Limited disclosure

4.35. (NO CVL APPLICATION)

(1) Where the official receiver thinks that it would prejudice the conduct of the liquidation for the whole or part of the statement of affairs to be disclosed, he may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it.

(2) The court may on the application order that the statement or, as the case may be, the specified part of it be not filed, or that it is to be filed separately and not be open to inspection otherwise than with leave of the court.

Release from duty to submit statement of affairs; extension of time

4.36. (NO CVL APPLICATION)

(1) The power of the official receiver under section 131(5) to give a release from the obligation imposed by that section, or to grant an extension of time, may be exercised at the official receiver's own discretion, or at the request of any deponent.

(2) A deponent may, if he requests a release or extension of time and it is refused by the official receiver, apply to the court for it.

(3) 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.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the deponent accordingly.

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

(5) The official receiver may appear and be heard on the application; and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the court's attention.

If such a report is filed, a copy of it shall be sent by the official receiver to the deponent, not later than 5 days before the hearing.

(6) Sealed copies of any order made on the application shall be sent by the court to the deponent and the official receiver.

(7) On any application under this Rule the applicant's costs shall be paid in any event by him and, unless the court otherwise orders, no allowance towards them shall be made out of the assets.

Expenses of statement of affairs

4.37. (NO CVL APPLICATION)

(1) If any deponent cannot himself prepare a proper statement of affairs, the official receiver may, at the expense of the assets, employ some person or persons to assist in the preparation of the statement.

(2) At the request of any deponent, made on the grounds that he cannot himself prepare a proper statement, the official receiver may authorise an allowance, payable out of the assets, towards expenses to be incurred by the deponent in employing some person or persons to assist him in preparing it.

(3) Any such request by the deponent shall be accompanied by an estimate of the expenses involved; and the official receiver shall only authorise the employment of a named person or a named firm, being in either case approved by him.

(4) An authorisation given by the official receiver under this Rule shall be subject to such conditions (if any) as he thinks fit to impose with respect to the manner in which any person may obtain access to relevant books and papers.

(5) Nothing in this Rule relieves a deponent from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the official receiver or the liquidator.

(6) Any payment out of the assets under this Rule shall be made in the prescribed order of priority.

(7) Paragraphs (2) to (6) of this Rule may be applied, on application to the official receiver by any deponent, in relation to the making of an affidavit of concurrence.

Expenses of statement of affairs

4.38-CVL.—(1) Payment may be made out of the company's assets, either before or after the commencement of the winding up, of any reasonable and necessary expenses of preparing the statement of affairs under section 99.

Any such payment is an expense of the liquidation.

(2) Where such a payment is made before the commencement of the winding up, the director presiding at the creditors' meeting held under section 98 shall inform the meeting of the amount of the payment and the identity of the person to whom it was made.

(3) The liquidator appointed under section 100 may make such a payment (subject to the next paragraph); but if there is a liquidation committee, he must give the committee at least 7 days' notice of his intention to make it.

(4) Such a payment shall not be made by the liquidator to himself, or to any associate of his, otherwise than with the approval of the liquidation committee, the creditors, or the court.

(5) This Rule is without prejudice to the powers of the court under Rule 4.219 (voluntary winding up superseded by winding up by the court).

Submission of accounts

4.39. (NO CVL APPLICATION)

(1) Any of the persons specified in section 235(3) shall, at the request of the official receiver, furnish him with accounts of the company of such nature, as at such date, and for such period, as he may specify.

(2) The period specified may begin from a date up to 3 years preceding the date of the presentation of the winding-up petition, or from an earlier date to which audited accounts of the company were last prepared.

(3) The court may, on the official receiver's application, require accounts for any earlier period.

(4) Rule 4.37 applies (with the necessary modifications) in relation to accounts to be furnished under this Rule as it applies in relation to the statement of affairs.

(5) The accounts shall, if the official receiver so requires, be verified by affidavit and (whether or not so verified) delivered to him within 21 days of the request under paragraph (1), or such longer period as he may allow.

(6) Two copies of the accounts and (where required) the affidavit shall be delivered to the official receiver by whoever is required to furnish them; and the official receiver shall file one copy in court (with the affidavit, if any).

Submission of accounts

4.40-CVL.—(1) Any of the persons specified in section 235(3) shall, at the request of the liquidator, furnish him with accounts of the company of such nature, as at such date, and for such period, as he may specify.

(2) The specified period for the accounts may begin from a date up to 3 years preceding the date of the resolution for winding up, or from an earlier date to which audited accounts of the company were last prepared.

(3) The accounts shall, if the liquidator so requires, be verified by affidavit and (whether or not so verified) delivered to him, with the affidavit if required, within 21 days from the request under paragraph (1), or such longer period as he may allow.

Expenses of preparing accounts

4.41-CVL.—(1) Where a person is required under Rule 4.40-CVL to furnish accounts, the liquidator may, with the sanction of the liquidation committee (if there is one) and at the expense of the assets, employ some person or persons to assist in the preparation of the accounts.

(2) At the request of the person subject to the requirement, the liquidator may, with that sanction, authorise an allowance, payable out of the assets, towards expenses to be incurred by that person in employing others to assist him in preparing the accounts.

(3) Any such request shall be accompanied by an estimate of the expenses involved; and the liquidator shall only authorise the employment of a named person or a named firm, being in either case approved by him.

Further disclosure

4.42. (NO CVL APPLICATION)

(1) The official receiver may at any time require the deponents, or any one or more of them, to submit (in writing) further information amplifying, modifying or explaining any matter contained in the statement of affairs, or in accounts submitted in pursuance of the Act or the Rules.

(2) The information shall, if the official receiver so directs, be verified by affidavit, and (whether or not so verified) delivered to him within 21 days of the requirement under paragraph (1), or such longer period as he may allow.

(3) Two copies of the documents containing the information and (where verification is directed) the affidavit shall be delivered by the deponent to the official receiver, who shall file one copy in court (with the affidavit, if any).