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STATUTORY INSTRUMENTS

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**1986 No. 1925**

**The Insolvency Rules 1986**

THE SECOND GROUP OF PARTS

PART 6

BANKRUPTCY

CHAPTER 3

BANKRUPTCY PETITION (DEBTOR'S)

**Preliminary**

**6.37.** The Rules in this Chapter relate to a debtor's petition, and the making of a bankruptcy order thereon.

**Identification of debtor**

**6.38.—**(1) The petition shall state the following matters with respect to the debtor—

- (a) his name, place of residence and occupation (if any);
- (b) the name or names in which he carries on business, if other than his true name, and whether, in the case of any business of a specified nature, he carries it on alone or with others;
- (c) the nature of his business, and the address or addresses at which he carries it on;
- (d) any name or names, other than his true name, in which he has carried on business in the period in which any of his bankruptcy debts were incurred and, in the case of any such business, whether he has carried it on alone or with others; and
- (e) any address or addresses at which he has resided or carried on business during that period, and the nature of that business.

(2) The particulars of the debtor given under this Rule determine the full title of the proceedings.

(3) If the debtor has at any time used a name other than the one given under paragraph (1)(a), that fact shall be stated in the petition.

**Admission of insolvency**

**6.39.—**(1) The petition shall contain the statement that the petitioner is unable to pay his debts, and a request that a bankruptcy order be made against him.

(2) If within the period of 5 years ending with the date of the petition the petitioner has been adjudged bankrupt, or has made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs, or he has entered into any voluntary arrangement or been subject to an administration order under Part VI of the County Courts Act 1984, particulars of these matters shall be given in the petition.

### **Court in which petition to be filed**

- 6.40.**—(1) In the following cases, the petition shall be presented to the High Court—
- (a) if the debtor has resided or carried on business in the London insolvency district for the greater part of the 6 months immediately preceding the presentation of the petition, or for a longer period in those 6 months than in any other insolvency district, or
  - (b) if the debtor is not resident in England and Wales.
- (2) In any other case, the petition shall (subject to paragraph (3) below), be presented to the debtor's own county court, which is—
- (a) the county court for the insolvency district in which he has resided or carried on business for the longest period in those 6 months, or
  - (b) if he has for the greater part of those 6 months carried on business in one insolvency district and resided in another, the county court for that in which he has carried on business, or
  - (c) if he has during those 6 months carried on business in more than one insolvency district, the county court for that in which is, or has been for the longest period in those 6 months, his principal place of business.
- (3) If, in a case not falling within paragraph (1), it is more expedient for the debtor with a view to expediting his petition, it may be presented to whichever county court is specified by Schedule 2 to the Rules as being, in relation to the debtor's own county court, the nearest full-time court.
- (4) The petition shall contain sufficient information to establish that it is brought in the appropriate court.

### **Statement of affairs**

- 6.41.**—(1) The petition shall be accompanied by a statement of the debtor's affairs, verified by affidavit.
- (2) Section B of Chapter 5 below applies with respect to the statement of affairs.

### **Procedure for presentation and filing**

- 6.42.**—(1) The petition and the statement of affairs shall be filed in court, together with three copies of the petition, and two copies of the statement. No petition shall be filed unless there is produced with it the receipt for the deposit payable on presentation.
- (2) The court may hear the petition forthwith. If it does not do so, it shall fix a venue for the hearing.
- (3) Of the three copies of the petition delivered—
- (a) one shall be returned to the petitioner, endorsed with any venue fixed;
  - (b) another, so endorsed, shall be retained by the court, to be sent to the official receiver if he is appointed interim receiver or a bankruptcy order is made; and
  - (c) the remaining copy shall be retained by the court, to be sent to an insolvency practitioner (if appointed under section 273(2)).
- (4) Of the two copies of the statement of affairs—
- (a) one shall be retained by the court, to be sent to the official receiver if he is appointed interim receiver or a bankruptcy order is made; and
  - (b) the other shall be retained by the court to be sent to the insolvency practitioner (if appointed).
- (5) The affidavit verifying the debtor's statement of affairs may be sworn before an officer of the court duly authorised in that behalf.

### **Notice to Chief Land Registrar**

**6.43.** When the petition is filed, the court shall forthwith send to the Chief Land Registrar notice of the petition, for registration in the register of pending actions.

### **Report of insolvency practitioner**

**6.44.—**(1) If the court under section 273(2) appoints an insolvency practitioner to act in the debtor's case, it shall forthwith—

- (a) send to the person appointed—
  - (i) a sealed copy of the order of appointment, and
  - (ii) copies of the petition and statement of affairs,
- (b) fix a venue for the insolvency practitioner's report to be considered, and
- (c) send notice of the venue to the insolvency practitioner and the debtor.

(2) The insolvency practitioner shall file his report in court with one copy, and send one copy of it to the debtor, so as to be in his hands not less than 3 days before the date fixed for consideration of the report.

(3) The debtor is entitled to attend when the report is considered, and shall attend if so directed by the court. If he attends, the court shall hear any representations which he makes with respect to any of the matters dealt with in the report.

(4) If the official receiver is appointed interim receiver or a bankruptcy order is made, a copy of the insolvency practitioner's report, the debtor's petition and his statement of affairs shall be sent by the court to the official receiver.

### **Settlement and content of bankruptcy order**

**6.45.—**(1) The bankruptcy order shall be settled by the court.

(2) The order shall—

- (a) state the date of the presentation of the petition on which the order is made, and the date and time of the making of the order, and
- (b) contain a notice requiring the bankrupt, forthwith after the service of the order on him, to attend on the official receiver at the place stated in the order.

(3) Subject to section 346 (effect of bankruptcy on enforcement procedures), the order may include provision staying any action or proceeding against the bankrupt.

(4) Where the bankrupt is represented by a solicitor, the order shall be endorsed with the latter's name, address, telephone number and reference.

### **Action to follow making of order**

**6.46.—**(1) At least two sealed copies of the bankruptcy order shall be sent forthwith by the court to the official receiver, who shall forthwith send one of them to the bankrupt.

(2) Subject to the next paragraph, the official receiver shall—

- (a) send notice of the making of the order to the Chief Land Registrar, for registration in the register of writs and orders affecting land,
- (b) cause the order to be advertised in such local paper as the official receiver thinks fit, and
- (c) cause notice of the order to be gazetted.

(3) The court may, on the application of the bankrupt or a creditor, order the official receiver to suspend action under paragraph (2), pending a further order of the court.

An application under this paragraph shall be supported by an affidavit stating the grounds on which it is made.

(4) Where an order is made under paragraph (3), the applicant shall forthwith deliver a copy of it to the official receiver.

#### **Amendment of title of proceedings**

**6.47.**—(1) At any time after the making of the bankruptcy order, the official receiver or the trustee may apply to the court for an order amending the full title of the proceedings.

(2) Where such an order is made, the official receiver shall forthwith send notice of it to the Chief Land Registrar, for corresponding amendment of the register; and, if the court so directs, he shall also—

- (a) cause notice of the order to be gazetted, and
- (b) cause notice of the order to be advertised in such local paper as the official receiver thinks appropriate.

#### **Certificate of summary administration**

**6.48.**—(1)

(1) If the court under section 275 issues a certificate for the summary administration of the bankrupt's estate, the certificate may be included in the bankruptcy order.

(2) If the certificate is not so included, the court shall forthwith send copies of it to the official receiver and the bankrupt.

#### **Duty of official receiver in summary administration**

**6.49.**—(1) Where a trustee has been appointed, the official receiver shall send a copy of the certificate of summary administration (whether or not included in the bankruptcy order) to him.

(2) Within 12 weeks after the issue of the certificate the official receiver shall (insofar as he has not already done so) give notice to creditors of the making of the bankruptcy order.

#### **Revocation of certificate of summary administration**

**6.50.**—(1) The court may under section 275(3) revoke a certificate for summary administration, either of its own motion or on the application of the official receiver.

(2) If the official receiver applies for the certificate to be revoked, he shall give at least 14 days' notice of the application to the bankrupt.

(3) If the court revokes the certificate, it shall forthwith give notice to the official receiver and the bankrupt.

(4) If at the time of revocation there is a trustee other than the official receiver, the official receiver shall send a copy of the court's notice to him.