

SCHEDULE 1

PART 1

SUBSTITUTION OF PART 2 OF THE PRINCIPAL RULES

“PART 2

ADMINISTRATION PROCEDURE

CHAPTER 1

PRELIMINARY

Introductory and interpretation

2.1.—(1) In this Part—

- (a) Chapter 2 applies in relation to the appointment of an administrator by the court;
- (b) Chapter 3 applies in relation to the appointment of an administrator by the holder of a qualifying floating charge under paragraph 14;
- (c) Chapter 4 applies in relation to the appointment of an administrator by the company or the directors under paragraph 22;
- (d) The following Chapters apply in all the cases mentioned in sub paragraphs (a) to(c) above:

- Chapter 5: Process of administration;
- Chapter 6: Meetings;
- Chapter 7: The creditors' committee;
- Chapter 8: Functions and remuneration of administrator;
- Chapter 9: Distributions to creditors;
- Chapter 10: Ending administration;
- Chapter 11: Replacing administrator;
- Chapter 12: EC Regulation – conversion of administration to winding up;
- Chapter 13: EC Regulation – member State liquidator.

(2) In this Part of these Rules a reference to a numbered paragraph shall, unless the context otherwise requires, be to the paragraph so numbered in Schedule B1 to the Act.

CHAPTER 2

APPOINTMENT OF ADMINISTRATOR BY COURT

Form of application

2.2.—(1) Where an application is made by way of petition for an administration order to be made in relation to a company, there shall be lodged together with the petition a Statement of the Proposed Administrator

(2) In this Part, references to a Statement of the Proposed Administrator are to a statement by each of the persons proposed to be administrator of a company, in the form required by Rule 7.30 and Schedule 5, stating—

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- (a) that he consents to accept appointment as administrator of that company;
- (b) details of any prior professional relationship that he has had with that company; and
- (c) his opinion that it is reasonably likely that the purpose of administration will be achieved.

(3) The petition shall state whether, in the opinion of the petitioner, (i) the EC Regulation will apply and (ii) if so, whether the proceedings will be main proceedings or territorial proceedings.

Service of petition

2.3.—(1) Notice of a petition under paragraph 12 shall be given by the petitioner to any holder of a qualifying floating charge, and to the following persons

- (a) an administrative receiver, if appointed;
- (b) a member State liquidator, if one has been appointed in main proceedings in relation to the company;
- (c) if a petition for the winding up of the company has been presented but no order for winding up has yet been made, the petitioner under that petition;
- (d) a provisional liquidator, if appointed;
- (e) the person proposed in the petition to be the administrator;
- (f) the registrar of companies;
- (g) the Keeper of the Register of Inhibitions and Adjudications for recording in that register;
- (h) the company, if the application is made by anyone other than the company; and
- (i) the supervisor of a voluntary arrangement under Part I of the Act, if such has been appointed.

(2) Notice of the petition shall also be given to the persons upon whom the court orders that the petition be served.

Application to appoint specified person as administrator by holder of qualifying floating charge

2.4.—(1) This Rule applies where the holder of a qualifying floating charge, who has been given notice of an administration application, applies under paragraph 36(1)(b) to have a specified person appointed as administrator in place of the person proposed in the application.

(2) An application under paragraph 36(1)(b) shall include averments as to the basis upon which the applicant is entitled to make an appointment under paragraph 14, and shall be accompanied by—

- (a) the written consent, in accordance with Rule 2.10(5), of all holders of a prior qualifying floating charge;
- (b) the Statement of the Proposed Administrator
- (c) a copy of the instrument or instruments by which the relevant floating charge was created, including any relevant instrument of alteration; and
- (d) such other documents as the applicant considers might assist the court in determining the application.

(3) If an administration order is made appointing the specified person, the expenses of the original petitioner and of the applicant under this Rule shall, unless the court orders otherwise, be paid as an expense of the administration.

Application where company in liquidation

2.5.—(1) Where an administration application is made under paragraph 37 or 38, the petition shall contain, in addition to those averments required in an application under paragraph 12, averments in relation to—

- (a) the full details of the existing insolvency proceedings, including the name and address of the liquidator, the date he was appointed and by whom; and
- (b) the reasons why administration has subsequently been considered appropriate,

and shall be accompanied by a copy of the order or certificate by which the liquidator was appointed and by such other documents as the petitioner considers might assist the court in determining the application.

(2) Where an administration application is made under paragraph 37, the petition shall contain, in addition to the averments required by paragraph (1) above, averments as to the basis upon which the petitioner is qualified to make an appointment under paragraph 14, and shall be accompanied by a copy of the instrument or instruments by which the relevant floating charge was created, including any relevant instrument of alteration, and by such other documents as the petitioner considers might assist the court in determining the application.

Expenses

2.6. If the court makes an administration order, the expenses of the petitioner, and of any other party whose expenses are allowed by the court, shall be regarded as expenses of the administration.

Administration orders where company in liquidation

2.7. Where the court makes an administration order in relation to a company which is in liquidation, the administration order shall contain consequential provisions, including—

- (a) in the case of a liquidator in a voluntary winding up, his removal from office;
- (b) provisions concerning the release of the liquidator, including his entitlement to recover expenses and to be paid his remuneration;
- (c) provision for payment of the costs of the petitioning creditor in the winding-up;
- (d) provisions regarding any indemnity given to the liquidator;
- (e) provisions regarding the handling or realisation of any of the company's assets under the control of the liquidator; and
- (f) such other provisions as the court shall think fit.

Notice of dismissal of application for an administration order

2.8. If the court dismisses the petition under paragraph 13(1)(b), the petitioner shall as soon as reasonably practicable send notice of the court's order dismissing the petition to all those to whom the petition was notified under Rule 2.3

CHAPTER 3

APPOINTMENT OF ADMINISTRATOR BY HOLDER OF FLOATING CHARGE

Notice of intention to appoint

2.9. For the purposes of paragraph 44(2), a notice of intention to appoint shall be in the form required by Rule 7.30 and Schedule 5, and shall be lodged in court at the same time as it is sent in accordance with paragraph 15(1) to the holder of any prior qualifying floating charge

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Notice of appointment

2.10.—(1) The notice of appointment under paragraph 14 shall be in the form required by Rule 7.30 and Schedule 5

(2) Subject to Rule 2.12, there shall be lodged together with the notice of appointment—

(a) the Statement of the Proposed Administrator; and

(b) either—

(i) evidence that the person making the appointment has fulfilled the requirements of paragraph 15(1)(a); or

(ii) copies of the written consent of all those required to give consent in accordance with paragraph 15(1)(b).

(3) The statutory declaration required by paragraph 18(2) shall be made no earlier than 5 days before the notice of appointment is lodged.

(4) The holder of a prior floating charge may indicate his consent by completing the section provided on the form of notice of intention to appoint and returning to the person making the appointment a copy of that form.

(5) Where the holder of a prior floating charge does not choose to use the form of notice of intention to appoint to indicate his consent or no such form has been sent to him, his written consent shall include—

(a) details of the name, registered address and registered number of the company in respect of which the appointment is proposed to be made;

(b) details of the charge held including the date it was registered and, where applicable, any financial limit and any deeds of priority;

(c) the name and address of the floating charge holder consenting to the proposed appointment;

(d) the name and address of the holder of the qualifying floating charge who is proposing to make the appointment;

(e) the date that notice of intention to appoint was given;

(f) the name of the proposed administrator; and

(g) a statement of consent to the proposed appointment.

(6) Where the holder of a qualifying floating charge receives notice of an administration application and makes an appointment under paragraph 14, he shall as soon as reasonably practicable send a copy of the notice of appointment to the petitioner and to the court in which the petition has been lodged.

Notice to administrator

2.11. The person making the appointment shall, as soon as reasonably practicable, send to the administrator a copy of the notice of appointment, certified by the clerk of court and endorsed with the date and time of presentation of the principal notice.

Appointment taking place out of court business hours

2.12.—(1) The holder of a qualifying floating charge may lodge a notice of appointment under paragraph 14 in court in accordance with this Rule when (and only when) the court is not open for public business.

(2) A notice of appointment lodged under this Rule shall be in the form required by Rule 7.30 and Schedule 5

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(3) The person making the appointment shall lodge the notice by sending it by fax to the court, and shall ensure that a fax transmission report is produced by the sending machine which records the date and time of the fax transmission.

(4) The person making the appointment shall send to the administrator, as soon as reasonably practicable, a copy of the notice of appointment and of the fax transmission report.

(5) The appointment shall take effect from the date and time of the fax transmission.

(6) The person making the appointment shall lodge in court, on the next day that the court is open for public business, the principal notice of appointment together with the documents required by Rule 2.10(2) and—

(a) the fax transmission report showing the date and time at which the notice was sent; and

(b) a statement of the full reasons for the out of hours lodging of the notice of appointment, including why it would have been damaging to the company or its creditors not to have so acted.

(7) The administrator's appointment shall cease to have effect if the requirements of paragraph (6) of this Rule are not met within the time set out in that paragraph.

(8) Where any question arises in respect of the date and time that the notice of appointment was lodged in court it shall be a presumption capable of rebuttal that the date and time shown on the fax transmission report is the date and time at which the notice was so lodged.

CHAPTER 4

APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS

Notice of intention to appoint

2.13.—(1) A notice of intention to appoint given under paragraph 26 shall be in the form required by Rule 7.30 and Schedule 5 and shall be given by the company or the directors, as the case may be, to any holder of a qualifying floating charge.

(2) A copy of the notice of intention to appoint shall at the same time be sent—

(a) to the supervisor of any voluntary arrangement under Part I of the Act; and

(b) where the notice is given by the directors (other than as agents of the company), to the company.

Timing of statutory declaration

2.14. The statutory declaration required by paragraph 27(2) shall be made not more than 5 business days before the notice is lodged in court.

Resolution or decision to appoint

2.15. The person making the appointment shall lodge together with the notice of intention to appoint either a copy of the resolution of the company to appoint an administrator (where the company proposes to make the appointment) or a record of the decision of the directors (where the directors propose to make the appointment).

Notice of appointment

2.16.—(1) The notice of appointment referred to in paragraph 29 shall be in the form required by Rule 7.30 and Schedule 5.

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(2) The statutory declaration required by paragraph 29(2) shall be made no earlier than 5 days before the notice is lodged.

(3) There shall be lodged together with the notice of appointment the Statement of the Proposed Administrator and, unless the period of notice set out in paragraph 26(1) has expired, the written consent of all those persons to whom notice was given in accordance with that paragraph

Appointment where no notice of intention to appoint has been given

2.17. Where a notice of intention to appoint an administrator has not been given, there shall be lodged together with the notice of appointment either a copy of the resolution of the company to appoint an administrator (where the company proposes to make the appointment) or a record of the decision of the directors (where the directors propose to make the appointment).

Notice to administrator

2.18. The person making the appointment shall, as soon as reasonably practicable, send to the administrator a copy of the notice of appointment, certified by the clerk of court and endorsed with the date and time of presentation of the principal notice.

CHAPTER 5

PROCESS OF ADMINISTRATION

Notification and advertisement of administrator's appointment

2.19.—(1) As soon as is reasonably practicable, the administrator shall advertise his appointment once in the Edinburgh Gazette and once in a newspaper circulating in the area where the company has its principal place of business or in such newspaper as he thinks appropriate for ensuring that the order comes to the notice of the company's creditors.

(2) The administrator shall at the same time give notice of his appointment to the following persons—

- (a) a receiver, if appointed;
- (b) a petitioner in a petition for the winding up of the company, if that petition is pending;
- (c) any provisional liquidator of the company, if appointed;
- (d) any supervisor of a voluntary arrangement under Part 1 of the Act; and
- (e) the Keeper of the Register of Inhibitions and Adjudications for recording in that register.

(3) Where, by virtue of a provision of Schedule B1 to the Act or of these Rules, the administrator is required to send a notice of his appointment to any person, he shall satisfy that requirement by sending to that person a notice in the form required by Rule 7.30 and Schedule 5

Notice requiring statement of affairs

2.20.—(1) In this Chapter “relevant person” has the meaning given to it in paragraph 47(3).

(2) Subject to Rule 2.21, the administrator shall send to each relevant person upon whom he decides to make a requirement under paragraph 47 a notice in the form required by Rule 7.30 and Schedule 5 requiring him to provide a statement of the company's affairs

(3) The notice shall inform each of the relevant persons—

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- (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 paragraph 48(4) (penalty for non-compliance); and
- (d) of the application to him, and to each other relevant person, of section 235 (duty to provide information, and to attend on the administrator, if required).

(4) The administrator shall furnish each relevant person upon whom he decides to make a requirement under paragraph 47 with the forms required for the preparation of the statement of affairs.

Statements of affairs and statements of concurrence

2.21.—(1) The statement of the company's affairs shall be in the form required by Rule 7.30 and Schedule 5

(2) Where more than one relevant person is required to submit a statement of affairs the administrator may require one or more such persons to submit, in place of a statement of affairs, a statement of concurrence in the form required by Rule 7.30 and Schedule 5; and where the administrator does so, he shall inform the person making the statement of affairs of that fact

(3) The person making the statutory declaration in support of a statement of affairs shall send the statement, together with one copy thereof, to the administrator, and a copy of the statement to each of those persons whom the administrator has required to submit a statement of concurrence.

(4) A person required to submit a statement of concurrence shall deliver to the administrator the statement of concurrence, together with one copy thereof, before the end of the period of 5 business days (or such other period as the administrator may agree) beginning with the day on which the statement of affairs being concurred with is received by him.

(5) A statement of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the statement of concurrence is not in agreement with the statement of affairs, he considers that statement to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.

(6) Subject to Rule 2.22, the administrator shall, as soon as is reasonably practicable, file a copy of the statement of affairs and any statement of concurrence with the registrar of companies

(7) Subject to Rule 2.22, the administrator shall insert any statement of affairs submitted to him, together with any statement of concurrence, in the sederunt book.

Limited disclosure

2.22.—(1) Where the administrator thinks that it would prejudice the conduct of the administration for the whole or part of the statement of the company's 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 order that the statement or, as the case may be, the specified part of it, shall not be filed with the registrar of companies or entered in the sederunt book.

(3) The administrator shall as soon as reasonably practicable file a copy of that order with the registrar of companies, and shall place a copy of the order in the sederunt book.

(4) If a creditor seeks disclosure of the statement of affairs or a specified part of it in relation to which an order has been made under this Rule, he may apply to the court for an order that the administrator disclose it or a specified part of it.

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(5) The court may attach to an order for disclosure any conditions as to confidentiality, duration and scope of the order in any material change of circumstances, and other matters as it sees fit.

(6) If there is a material change in circumstances rendering the limit on disclosure unnecessary, the administrator shall, as soon as reasonably practicable after the change, apply to the court for the order to be discharged or varied; and upon the discharge or variation of the order the administrator shall, as soon as reasonably practicable—

- (a) file a copy of the full statement of affairs (or so much of the statement of affairs as is no longer subject to the order) with the registrar of companies;
- (b) where he has previously sent a copy of his proposals to the creditors in accordance with paragraph 49, provide the creditors with a copy of the full statement of affairs (or so much of the statement as is no longer subject to the order) or a summary thereof; and
- (c) place a copy of the full statement of affairs (or so much of the statement as is no longer subject to the order) in the sederunt book.

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

2.23.—(1) The power of the administrator under paragraph 48(2) to revoke a requirement under paragraph 47(1), or to grant an extension of time, may be exercised at the administrator's own instance, or at the request of any relevant person.

(2) A relevant person whose request under this Rule has been refused by the administrator may apply to the court for a release or extension of time.

(3) An applicant under this Rule shall bear his own expenses in the application and, unless the court otherwise orders, no allowance towards such expenses shall be made out of the assets of the company.

Expenses of statement of affairs

2.24.—(1) A relevant person who provides to the administrator a statement of the company's affairs or statement of concurrence shall be allowed, and paid by the administrator out of his receipts, any expenses incurred by the relevant person in so doing which the administrator considers reasonable.

(2) Any decision by the administrator under this Rule is subject to appeal to the court.

(3) Nothing in this Rule relieves a relevant person from any obligation to provide a statement of affairs or statement of concurrence, or to provide information to the administrator.

Administrator's proposals

2.25.—(1) The statement required to be made by the administrator under paragraph 49 shall include, in addition to the matters set out in that paragraph—

- (a) details of the court which granted the administration order or in which the notice of appointment was lodged, and the relevant court reference number (if any);
- (b) the full name, registered address, registered number and any other trading names of the company;
- (c) details relating to his appointment as administrator, including the date of appointment and the person making the application or appointment, and, where there are joint administrators, a statement of the matters referred to in paragraph 100(2);

- (d) the names of the directors and secretary of the company and details of any shareholdings which they have in the company;
- (e) an account of the circumstances giving rise to the appointment of the administrator;
- (f) if a statement of the company's affairs has been submitted, a copy or summary of it, with the administrator's comments, if any;
- (g) if an order limiting the disclosure of the statement of affairs has been made, a statement of that fact, as well as—
 - (i) details of who provided the statement of affairs;
 - (ii) the date of the order of limited disclosure; and
 - (iii) the details or a summary of the details that are not subject to that order;
- (h) if a full statement of affairs is not provided, the names and addresses of the creditors, and details of the debts owed to, and security held by, each of them;
- (i) if no statement of affairs has been submitted—
 - (i) details of the financial position of the company at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the company entered administration);
 - (ii) the names and addresses of the creditors, and details of the debts owed to, and security held by, each of them; and
 - (iii) an explanation as to why there is no statement of affairs;
- (j) the basis upon which it is proposed that the administrator's remuneration should be fixed;
- (k) except where the administrator proposes a voluntary arrangement in relation to the company —
 - (i) to the best of the administrator's knowledge and belief—
 - (aa) an estimate of the value of the prescribed part (whether or not he proposes to make an application to the court under section 176A(5) and whether or not section 176A(3) applies); and
 - (bb) an estimate of the value of the company's net property, provided that such estimates shall not be required to include any information the disclosure of which could seriously prejudice the commercial interests of the company, but if such information is excluded the estimates shall be accompanied by a statement to that effect; and
 - (ii) whether and, if so, why the administrator proposes to make an application to the court under section 176A(5);
- (l) how it is envisaged the purpose of the administration will be achieved and how it is proposed that the administration shall end;
- (m) where a creditors' voluntary liquidation is proposed—
 - (i) details of the proposed liquidator; and
 - (ii) a statement that, in accordance with paragraph 83(7) and Rule 2.47, creditors may nominate another person to act as liquidator;
- (n) where it is proposed to make distributions to creditors in accordance with Chapter 9, the classes of creditors to whom it is proposed that distributions be made and whether or not the administrator intends to make an application to the court under paragraph 65(3);
- (o) where the administrator has decided not to call a meeting of creditors, his reasons;

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- (p) the manner in which the affairs and business of the company—
 - (i) have, since the date of the administrator’s appointment, been managed and financed; and
 - (ii) will, if the administrator’s proposals are approved, continue to be managed and financed;
 - (q) whether—
 - (i) the EC Regulation applies; and
 - (ii) if so, whether the proceedings are main proceedings or territorial proceedings; and
 - (r) such other information (if any) as the administrator thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.
- (2) A copy of the administrator’s statement of his proposals shall be sent to the registrar of companies together with a notice in the form required by Rule 7.30 and Schedule 5
- (3) Where the statement of proposals states that the administrator thinks—
- (a) that the company has sufficient property to enable each creditor of the company to be paid in full;
 - (b) that the company has insufficient property to make a distribution to unsecured creditors other than by virtue of section 176A(2)(a); or
 - (c) that neither of the objectives specified in paragraph 3(1)(a) and (b) can be achieved, and no meeting has been requisitioned under paragraph 52(2), the administrator’s proposals shall be deemed to have been approved by the creditors upon the expiry of the period set out in Rule 2.31.
- (4) The administrator shall give notice to the creditors of any order varying the period referred to in paragraph 49(5) (which sets out the period during which the administrator shall send out a copy of his statement of proposals).
- (5) Where the administrator intends to apply to the court (or to lodge a notice under paragraph 80(2)) for the administration to cease at a time before he has sent a statement of his proposals to creditors in accordance with paragraph 49, he shall, at least 10 days before he makes such an application or lodges such a notice, send to all creditors of the company (so far as he is aware of their addresses) a report containing the information required by paragraph (1) (a) to (q) of this Rule.
- (6) Where the administrator wishes to publish a notice under paragraph 49(6) he shall publish the notice once in the Edinburgh Gazette and once in the newspaper in which the administrator’s appointment was advertised. The notice shall—
- (a) state the full name of the company;
 - (b) state the full name and address of the administrator;
 - (c) give details of the administrator’s appointment; and
 - (d) specify an address to which any member of the company may apply in writing for a copy of the statement of proposals to be provide free of charge.
- (7) A notice under paragraph 49(6) must be published as soon as reasonably practicable after the administrator sends his statement of proposals to the company’s creditors and in any case no later than 8 weeks (or such other period as may be agreed by the creditors or ordered by the court) from the date upon which the company entered administration.

CHAPTER 6

MEETINGS

General

2.26. The provisions of Chapter 1 of Part 7 (Meetings) shall apply with regard to meetings of the company's creditors or members which are summoned by the administrator, subject to the provisions in this chapter.

Meetings to consider administrator's proposals

2.27.—(1) The administrator may, upon giving at least 14 days' notice, require the attendance at a creditors' meeting of any directors or officers of the company (including persons who have been directors or officers in the past) whose presence at the meeting is, in the administrator's opinion, appropriate.

(2) If at the meeting there is not the requisite majority for approval of the administrator's proposals (with modifications, if any), the chairman may, and shall if a resolution is passed to that effect, adjourn the meeting once only and for not more than 14 days.

(3) The administrator shall give notice to the creditors of any order varying the period referred to in paragraph 51(2) (which sets out the period during which the administrator must set the date for an initial creditors' meeting).

(4) Rule 7.8 (adjournment), with the exception of Rule 7.8(6), shall not apply in relation to initial creditors' meetings in administration.

Correspondence instead of creditors' meetings

2.28.—(1) This Rule applies where an administrator proposes to conduct the business of a creditors' meeting by correspondence in accordance with paragraph 58.

(2) Notice of the business to be conducted shall be given to all who are entitled to be notified of a creditors' meeting by virtue of paragraph 51.

(3) The administrator may seek to obtain the agreement of the creditors to a resolution by sending to every creditor a copy of the proposed resolution.

(4) The administrator shall send to the creditors a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent.

(5) The administrator shall set a closing date for receipt of votes and comments. The closing date shall be set at the discretion of the administrator, but shall not be less than 14 days from the date of issue of the notice under paragraph (1) of this Rule.

(6) In order to be considered, votes and comments must be received by the administrator by the closing date and must be accompanied by the statement of claim and account or voucher referred to in Rule 4.15 as applied by this Part.

(7) For the conduct of business to proceed, the administrator must receive at least one response which satisfies the requirements of paragraph (6) of this Rule.

(8) If no responses are received by the closing date then the administrator shall summon a creditors' meeting.

(9) Any single creditor, or a group of creditors, of the company whose debt(s) amount to at least 10% of the total debts of the company may, within 5 business days from the date of the administrator sending out a resolution or proposals, require him to summon a creditors' meeting to consider the matters raised therein.

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(10) If the administrator’s proposals or revised proposals are rejected by the creditors pursuant to this Rule, the administrator may summon a creditors' meeting.

(11) A reference in this Part to anything done at a creditors' meeting includes a reference to anything done in the course of correspondence in accordance with this Rule; and Rule 2.35 shall apply to the business of a creditors' meeting conducted by correspondence as it applies to a creditors' meeting.

Applicable law

2.29.—(1) This Rule applies where the laws of a member State and not the law of Scotland applies in relation to the conduct of the meeting.

(2) Where this Rule applies, subject as above, the meeting shall be summoned and conducted in accordance with the constitution of the company and the laws of the member State referred to in paragraph (1) of this Rule shall apply to the conduct of the meeting.

Entitlement to vote – member State liquidators

2.30.—(1) Where—

- (a) a creditor is entitled to vote at a creditors' meeting;
- (b) has lodged his claim in one or more sets of other proceedings;
- (c) votes (either in person or by proxy) on a resolution put to the meeting; and
- (d) a member State liquidator casts a vote in respect of the same claim,

only the creditor’s vote shall be counted.

(2) Where—

- (a) a creditor has lodged his claim in more than one set of other proceedings; and
- (b) more than one member State liquidator seeks to vote by virtue of that claim,

the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.

(3) For the purposes of this Rule, “other proceedings” means main proceedings or territorial proceedings in another member State.

Meeting requisitioned by creditors

2.31. The request for an initial creditors' meeting under paragraph 52(2) must be made within 12 days of the date upon which the administrator sends out his statement of proposals.

2.32.—(1) Rule 7.6(2)(a) does not apply if the requisitioning creditor’s debt alone is sufficient to meet the requirement of paragraph 52(2)(a) or, as the case may be, paragraph 56(1)(a), without the concurrence of other creditors.

(2) In its application to initial creditors' meetings in administration, for the period of 35 days referred to in Rule 7.6(3) there is substituted a period of 28 days.

Hire-purchase, conditional sale and hiring agreements

2.33.—(1) Subject as follows, an owner of goods under a hire-purchase agreement or under an agreement for the hire of goods for more than 3 months, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to him by the company on the date that the company entered administration.

(2) In calculating the amount of any debt for this purpose, no account shall be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the making of an administration application, a notice of intention to appoint an administrator or any matter arising as a consequence, or of the company entering administration.

Revision of the administrator's proposals

2.34.—(1) A statement of revised proposals under paragraph 54 shall include

- (a) details of the court which granted the administration order or in which the notice of appointment was lodged and the relevant court reference number (if any);
- (b) the full name, registered address, registered number and any other trading names of the company;
- (c) details relating to the appointment of the administrator, including the date of appointment and the person making the administration application or appointment;
- (d) the names of the directors and secretary of the company and details of any shareholdings which they have in the company;
- (e) a summary of the initial proposals and the reason or reasons for proposing a revision;
- (f) details of the proposed revision including details of the administrator's assessment of the likely impact of the proposed revision upon creditors generally or upon each class of creditors (as the case may be);
- (g) where it is proposed, by virtue of the revision, to make distributions to creditors in accordance with Chapter 9, the classes of creditors to whom it is proposed that distributions be made and whether or not the administrator intends to make an application to the court under paragraph 65(3);
- (h) where the revision includes a proposal to move from administration to a creditors' voluntary liquidation—
 - (i) details of the proposed liquidator;
 - (ii) a statement that, in accordance with paragraph 83(7) and Rule 2.47, creditors may nominate another person to act as liquidator; and
 - (iii) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions.

(2) Subject to paragraph 54(3), within 5 days of sending out the statement mentioned in paragraph (1) above, the administrator shall send a copy of the statement to every member of the company.

(3) A notice under paragraph 54(3) shall be published once in the Edinburgh Gazette and once in the newspaper in which the administrator's appointment was advertised, and shall—

- (a) state the full name of the company;
- (b) state the name and address of the administrator;
- (c) specify an address to which any member of the company may apply in writing for a copy of the statement to be provided free of charge; and
- (d) be published as soon as reasonably practicable after the administrator sends the statement to creditors.

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Notices to creditors

2.35.—(1) As soon as reasonably practicable after the conclusion of a meeting of creditors to consider the administrator’s proposals or revised proposals, or of the conclusion of the business of such a meeting by correspondence in accordance with these Rules, the administrator shall—

- (a) send notice of the result of the meeting in the form required by Rule 7.30 and Schedule 5 (including details of any modifications to the proposals that were approved) to every creditor who received notice of the meeting
- (b) lodge in court, and send to the registrar of companies and to any creditors who did not receive notice of the meeting and of whose claim he has become subsequently aware, a copy of the notice of the result of the meeting along with a copy of the proposals which were considered at that meeting; and
- (c) place a copy of the notice of the result of the meeting in the sederunt book.

(2) Where the business of a creditors' meeting has been carried out by correspondence in accordance with Rule 2.28, for the references in the foregoing paragraph of this Rule to the result of the meeting and notice of the meeting there shall be substituted references to the result of the correspondence and to the correspondence.

CHAPTER 7

THE CREDITORS' COMMITTEE

Application of provisions in Part 3 (Receivers)

2.36.—(1) Chapter 3 of Part 3 (the creditors' committee) shall apply with regard to the creditors' committee in administration as it applies to the creditors' committee in receivership, subject to the modifications specified below and to any other necessary modifications.

(2) For any reference in the said Chapter 3, or in any provision of Chapter 7 of Part 4 as applied by Rule 3.6, to the receiver, receivership or the creditors' committee in receivership, there shall be substituted a reference to the administrator, the administration and the creditors' committee in the administration.

(3) In Rules 3.4(1) and 3.7(1), for the reference to section 68 or 68(2), there shall be substituted a reference to paragraph 57 or 57(2).

(4) For Rule 3.5 there shall be substituted the following Rule:—

“Functions of the Committee

3.5. The creditors' committee shall assist the administrator in discharging his functions and shall act in relation to him in such manner as may be agreed from time to time.”.

CHAPTER 8

FUNCTIONS AND REMUNERATION OF ADMINISTRATOR

Disposal of secured property, etc.

2.37.—(1) This Rule applies where the administrator applies to the court under paragraph 71 or 72 for authority to dispose of property of the company which is subject to a security (other than a floating charge), or goods in the possession of the company under a hire purchase agreement.

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(2) If an order is made under paragraph 71 or 72 the administrator shall as soon as reasonably practicable give notice of it to that person or owner and shall send to that person or owner a copy of the order, certified by the clerk of court

(3) The administrator shall place in the sederunt book a copy of any order granted under paragraph 71 or 72.

Progress reports

2.38.—(1) The administrator shall

- (a) within six weeks after the end of each accounting period; and
- (b) within six weeks after he ceases to act as administrator,

send to the court and to the registrar of companies, and to each creditor, a progress report.

(2) For the purposes of this Part, “accounting period”, in relation to an administration, shall be construed in accordance with section 52(1) and (6) of the Bankruptcy Act as applied by virtue of Rule 2.41.

(3) For the purposes of this Part, “progress report” means a report which includes—

- (a) the name of the court which granted the administration order or in which the notice of appointment was lodged, and the court reference number (if any);
- (b) details of the company’s name, address and registration number;
- (c) details of the administrator’s name and address, date of appointment and, where the administrator was appointed under paragraph 14 or 22, the name and address of the person who made the appointment;
- (d) details of any extensions to the initial period of appointment;
- (e) details of progress to date, including a receipts and payments account which states what assets of the company have been realised, for what value, and what payments have been made to creditors. The account is to be in the form of an abstract showing—
 - (i) receipts and payments during the relevant accounting period; or
 - (ii) where the administrator has ceased to act, receipts and payments during the period from the end of the last accounting period to the time when he so ceased (or, where he has made no previous progress report, receipts and payments in the period since his appointment as administrator);
- (f) details of what assets remain to be realised;
- (g) where a distribution is to be made in accordance with Chapter 9 in respect of an accounting period, the scheme of division; and
- (h) any other relevant information for the creditors.

(4) In a receipts and payments account falling within paragraph (3)(e)(ii) above, the administrator shall include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A (prescribed part).

(5) The court may, on the application of the administrator, extend the period of six weeks referred to in paragraph (1) of this Rule.

(6) If the administrator makes default in complying with this Rule, he is liable to a fine and, for continued contravention, to a daily default fine.

(7) This Rule is without prejudice to the requirements of Chapter 9 (distributions to creditors).

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Determination of outlays and remuneration

2.39.—(1) Rules 4.32 to 4.35 and Rule 4.76 shall apply to an administration as they apply to a liquidation, subject to the modifications specified in the following paragraph of this Rule and to any other necessary modifications.

(2) For any references in the said Rules 4.32 to 4.35 and 4.76 or in the provisions of the Bankruptcy Act as applied by Rule 4.32 to the liquidator, the liquidation and the liquidation committee, there shall be substituted a reference to the administrator, the administration and the creditors' committee in the administration.

(3) Where the administrator has made a statement under paragraph 52(1)(b), a resolution under Rule 4.33, as applied by this Rule, or a resolution under paragraph (4)(b) of this Rule, shall be taken to be passed if (and only if) passed with the approval of—

- (a) each secured creditor of the company; or
 - (b) if the administrator has made, or proposes to make, a distribution to preferential creditors—
 - (i) each secured creditor of the company; and
 - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.
- (a) (4) Where there are joint administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned.
- (b) Where joint administrators cannot agree as to how the remuneration payable should be apportioned, any one of them may refer the issue for determination—
- (i) by the court; or
 - (ii) by resolution of the creditors' committee or a meeting of creditors.

CHAPTER 9

DISTRIBUTIONS TO CREDITORS

2.40.—(1) This Chapter applies in any case where the administrator proposes to make a distribution to creditors or any class of them.

(2) Where the distribution is to a particular class of creditors, references in this Chapter (except Rule 2.41(4)(c)) to creditors shall, so far as the context requires, be references to that class of creditors only.

2.41.—(1) Chapter 5 of Part 4 (claims in liquidation) and Chapter 9 of that Part (distribution of company's assets by liquidator) shall apply with regard to claims to a dividend out of the assets of a company in administration as they do to a company in liquidation, subject to the modifications specified below and to any other necessary modifications.

(2) In the said Chapters 5 and 9, or in any provision of the Bankruptcy Act as applied by Rule 4.16 or 4.68—

- (a) for any reference to the liquidator, liquidation, and liquidation committee there shall be substituted a reference to the administrator, the administration and the creditors' committee in the administration; and
- (b) for any reference to the date of commencement of winding up there shall be substituted a reference to the date on which the company entered administration.

(3) Section 53(3) of the Bankruptcy Act, as applied by Rule 4.68, shall apply subject to paragraph (4) of this Rule.

(4) The administrator may make a distribution to secured or preferential creditors or, where he has the permission of the court, to unsecured creditors only if—

- (a) he has sufficient funds for the purpose;
- (b) he does not intend to give notice pursuant to paragraph 83;
- (c) his statement of proposals, as approved by the creditors under paragraph 53(1) or 54(5), contains a proposal to make a distribution to the class of creditors in question; and
- (d) the payment of a dividend is consistent with the functions and duties of the administrator and any proposals made by him or which he intends to make.

CHAPTER 10

ENDING ADMINISTRATION

Final progress reports

2.42. “Final progress report” means a progress report which includes a summary account of—

- (a) the administrator’s original proposals;
- (b) any major changes to, or deviations from, those proposals in the course of the administration;
- (c) the steps taken during the administration; and
- (d) the outcome.

Notice of automatic end of administration

2.43.—(1) Where the appointment of an administrator has ceased to have effect, and the administrator is not required by any other Rule to give notice of that fact, he shall, as soon as reasonably practicable, and in any event within 5 business days of the date when the appointment has ceased, lodge in court a notice of automatic end of administration in the form required by Rule 7.30 and Schedule 5, together with a final progress report

(2) The administrator shall, as soon as reasonably practicable, send a copy of the notice and accompanying report to the registrar of companies, and to all persons who received a copy of the administrator’s proposals.

(3) If the administrator makes default in complying with this Rule, he is liable to a fine and, for continued contravention, to a daily default fine.

Applications for extension of administration

2.44.—(1) An application to court for an extension of administration shall be accompanied by a progress report for the period since the last progress report (if any).

(2) A request for an extension of administration by consent of creditors shall be accompanied by a progress report for the period since the administrator’s last progress report (if any).

(3) The administrator shall use the notice of extension of period of administration in the form required by Rule 7.30 and Schedule 5 in all circumstances where he is required to give such notice

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Notice of end of administration

2.45.—(1) A notice by the administrator

- (a) that the purpose of administration has been sufficiently achieved; or
- (b) that the court has ordered that the appointment shall cease to have effect,

shall be in the form required by Rule 7.30 and Schedule 5, and shall be accompanied by a final progress report.

(2) The administrator shall, as soon as reasonably practicable, and (in the case of a notice under paragraph 80(2)) within 5 business days of satisfying the requirements of paragraph 80(2)(a), send a copy of the notice to every creditor of the company of whose claim and address he is aware, to all those persons who were notified of his appointment, and to the company.

(3) The administrator shall be taken to have complied with the requirements of paragraph 80(5) if, within 5 business days of satisfying the requirements of paragraph 80(2)(a), he publishes, once in the Edinburgh Gazette and once in the newspaper in which his appointment was advertised, a notice undertaking to provide a copy of the notice of end of administration to any creditor of the company.

(4) The notice referred to in paragraph (3) above must—

- (a) state the full name of the company;
- (b) state the name and address of the administrator;
- (c) state the date upon which the administrator's appointment ceased to have effect; and
- (d) specify an address to which any creditor may apply in writing for a copy of the notice of end of administration to be provided to him.

Application to court

2.46.—(1) An application under paragraph 79 for an order providing for the appointment of an administrator of the company to cease to have effect shall be accompanied by a progress report for the period since the last such report (if any) and a statement indicating what the administrator thinks should be the next steps for the company.

(2) Where the administrator applies to the court because the creditors' meeting has required him to, his application shall be accompanied by a statement in which he shall indicate (giving reasons) whether or not he agrees with the creditors' requirement that he make the application.

(3) Where the administrator applies to the court other than at the request of a creditors' meeting, he shall give to—

- (a) the applicant for the administration order under which he was appointed;
- (b) the person by whom he was appointed or to the holder of the floating charge by virtue of which he was appointed (as the case may be); and
- (c) the creditors,

at least 7 days' written notice of his intention so to apply.

(4) Where the administrator applies to court under paragraph 79 in conjunction with a petition under section 124 for an order to wind up the company, he shall, in addition to the requirements of paragraph (3), notify the creditors of whether he intends to seek appointment as liquidator.

Moving from administration to creditors' voluntary liquidation

2.47.—(1) A notice pursuant to paragraph 83(3) shall be in the form required by Rule 7.30 and Schedule 5, and shall be accompanied by a final progress report which includes details of the assets to be dealt with in the liquidation

(2) As soon as reasonably practicable, the administrator shall send a copy of the notice and accompanying documents to all those who received notice of the administrator's appointment.

(3) For the purposes of paragraph 83(7), a person shall be nominated by the creditors either—

(a) by the approval by the creditors of the administrator's statement of proposals under paragraph 49(1) or his statement of revised proposals under paragraph 54(2) in which that person is proposed to be nominated as liquidator; or

(b) where the creditors wish to nominate a person other than that proposed by the administrator, at the meeting held to consider the statement of proposals, or of revised proposals (as the case may be) in which the move from administration to creditors' voluntary liquidation is proposed.

Moving from administration to dissolution

2.48.—(1) The notice required by paragraph 84(1) shall be in the form required by Rule 7.30 and Schedule 5, and shall be accompanied by a final progress report

(2) As soon as reasonably practicable a copy of the notice and accompanying documents shall be sent to all those who received notice of the administrator's appointment.

(3) Where the court makes an order under paragraph 84(7) it shall, where the applicant is not the administrator, give a copy of the order to the administrator.

(4) The notice required by paragraph 84(8) shall be in the form required by Rule 7.30 and Schedule 5

CHAPTER 11

REPLACING ADMINISTRATOR

Grounds for resignation

2.49.—(1) The administrator may give notice of his resignation on grounds of ill health or because—

(a) he intends ceasing to be in practice as an insolvency practitioner; or

(b) there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by him of the duties of administrator.

(2) The administrator may, with the leave of the court, give notice of his resignation on grounds other than those specified in paragraph (1).

Notice of intention to resign

2.50.—(1) The administrator must give to the persons specified below at least 7 days' notice of his intention to resign, or to apply for the court's leave to do so

(a) if there is a continuing administrator of the company, to him;

(b) if there is a creditors' committee, to it; and

(c) if there is no such administrator and no creditors' committee, to the company and its creditors.

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(2) Where the administrator gives notice under paragraph (1), he shall also give notice to a member State liquidator, if such a person has been appointed in relation to the company.

(3) Where the administrator was appointed by the holder of a qualifying floating charge under paragraph 14, the notice of intention to resign shall also be sent to all holders of a qualifying floating charge.

(4) Where the administrator was appointed by the company or the directors of the company under paragraph 22, a copy of the notice of intention to resign shall also be sent to the company and to all holders of a qualifying floating charge.

Notice of resignation

2.51.—(1) Where the administrator was appointed under an administration order, the notice of resignation shall be lodged in court, and a copy sent to the registrar of companies

(2) A copy of the notice of resignation shall be sent, not more than 5 business days after it has been lodged in court, to all those to whom notice of intention to resign was sent.

(3) Where the administrator was appointed by the holder of a qualifying floating charge, a copy of the notice of resignation shall be lodged in court and sent to the registrar of companies, and to anyone else who received notice of intention to resign, within 5 business days of the notice of resignation being sent to the holder of the floating charge by virtue of which the appointment was made.

(4) Where the administrator was appointed by the company or the directors, a copy of the notice of resignation shall be lodged in court and sent to the registrar of companies, and to anyone else who received the notice of intention to resign, within 5 business days of the notice of resignation being sent to either the company or the directors that made the appointment.

Incapacity to Act, through death or otherwise

2.52.—(1) Subject to the following paragraph of this Rule, where the administrator has died, it is the duty of his executors or, where the deceased administrator was a partner in a firm, of a partner of that firm to give notice of that fact to the court and to the registrar of companies, specifying the date of death

(2) Notice of the death may also be given by any person.

(3) Where an administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the company gives notice in accordance with paragraph 89(2), he shall also give notice to the registrar of companies.

Application to replace

2.53.—(1) Where an application is made to the court under paragraph 91 or 95 to appoint a replacement administrator, the application shall be accompanied by a Statement of the Proposed Administrator.

(2) Where the original administrator was appointed under an administration order, a copy of the application shall be served on the person who made the application for the administration order.

(3) Where the court makes an order filling a vacancy in the office of administrator, the same provisions shall apply, subject to such modification as may be necessary, in respect of giving notice of, and advertising, the appointment as in the case of the original appointment of an administrator.

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2.54.—(1) This Rule applies where any person has appointed an administrator by notice in accordance with these Rules and a replacement administrator is appointed

(2) The same provisions apply in respect of giving notice of, and advertising, the replacement appointment as in the case of an initial appointment, and all statements, consents and other documents as required shall also be required in this case.

(3) All forms and notices shall clearly identify that the appointment is of a replacement administrator.

Joint or concurrent appointments

2.55.—(1) Where a person is appointed in accordance with paragraph 103 to act as administrator jointly or concurrently with the person or persons then acting, the same provisions shall apply, subject to this Rule and to such other modification as may be necessary, in respect of the making of this appointment as in the case of the original appointment of an administrator.

(2) An appointment made under paragraph 103 shall be notified to the registrar of companies in the form required by Rule 7.30 and Schedule 5

Application to court to remove administrator from office

2.56.—(1) An application to the court to remove an administrator from office shall be served upon—

- (a) the administrator;
- (b) where the administrator was appointed by the court, the person who made the application for the administration order;
- (c) where the appointment was made by the holder of a qualifying floating charge, the holder of the floating charge by virtue of which the appointment was made;
- (d) where the appointment was made by the directors or by the company, the person who made the appointment;
- (e) the creditors' committee (if any);
- (f) the joint administrator (if any); and
- (g) where there is neither a creditor's committee nor a joint administrator, upon the company and the creditors.

(2) An applicant under this Rule shall, within 5 business days of the order being made, send a copy of the order to all those to whom notice of the application was sent, and a notice to the registrar of companies in the form required by Rule 7.30 and Schedule 5.

CHAPTER 12

EC REGULATION – CONVERSION OF ADMINISTRATION TO WINDING UP

Application for conversion into winding up

2.57.—(1) Where a member State liquidator proposes to apply to the court for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of an administration into a winding up, there shall be lodged in support of his application an affidavit complying with Rule 2.58.

(2) The application and the affidavit required under this Rule shall be served upon—

- (a) the company; and
- (b) the administrator.

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Contents of affidavit

2.58.—(1) The affidavit shall state—

- (a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;
- (b) the deponent’s belief that the conversion of the administration into a winding up would prove to be in the interests of the creditors in the main proceedings;
- (c) the deponent’s opinion as to whether the company ought to enter voluntary winding up or be wound up by the court; and
- (d) all other matters that, in the opinion of the member State liquidator, would assist the court—
 - (i) in deciding whether to make such an order; and
 - (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) An affidavit under this rule shall be sworn by, or on behalf of, the member State liquidator.

Power of court

2.59.—(1) On hearing the application for conversion into winding up the court may make such order as it thinks fit.

(2) If the court makes an order for conversion into winding up the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Without prejudice to the generality of paragraph (1) of this Rule, an order under that paragraph may provide that the company be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the order is made.

CHAPTER 13

EC REGULATION – MEMBER STATE LIQUIDATOR

Interpretation of creditor and notice to member State liquidator

2.60.—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

(2) For the purposes of Chapters 6, 7 and 8 of these Rules, (and except where the context otherwise requires) the member State liquidator is deemed to be a creditor.

(3) Paragraph (2) of this Rule is without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditor’s rights).

(4) Where the administrator is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court, the registrar of companies, or a provisional liquidator or liquidator, the administrator shall also give notice or provide copies, as the case may be, to the member State liquidator.

(5) Paragraph (4) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co-operate and communicate information).”