

## SCHEDULE 2

Regulation 12

### REQUIREMENTS FOR SECURITY OR CAUTION AND RELATED MATTERS

#### PART 1

##### Interpretation

##### **Interpretation**

**1. In this Schedule—**

“cover schedule” means the schedule referred to in paragraph 3(2)(c);

“the insolvent” means the individual or company in relation to which an insolvency practitioner is acting;

“general penalty sum” shall be construed in accordance with paragraph 3(2)(b);

“insolvent’s assets” means all assets comprised in the insolvent’s estate together with any monies provided by a third party for the payment of the insolvent’s debts or the costs and expenses of administering the insolvent’s estate;

“specific penalty sum” shall be construed in accordance with paragraph 3(2)(a).

#### PART 2

##### Requirements relating to security and caution

##### **Requirements in respect of security or caution**

**2.** The requirements in respect of security or caution for the proper performance of the duties of insolvency practitioners prescribed for the purposes of section 390(3)(b) shall be as set out in this Part.

##### **Requirement for Bonding – Terms of the Bond**

**3.—(1)** Where an insolvency practitioner is appointed to act in respect of an insolvent there shall be in force a bond in a form approved by the Secretary of State which—

(a) contains provision whereby a surety or cautioner undertakes to be jointly and severally liable for losses in relation to the insolvent caused by—

(i) the fraud or dishonesty of the insolvency practitioner whether acting alone or in collusion with one or more persons; or

(ii) the fraud or dishonesty of any person committed with the connivance of the insolvency practitioner and

(b) otherwise conforms to the requirements of this Part.

(2) The terms of the bond shall provide—

(a) for the payment, in respect of each case where the insolvency practitioner acts, of claims in respect of liabilities for losses of the kind mentioned in sub-paragraph (1) up to an aggregate maximum sum in respect of that case (“the specific penalty sum”) calculated in accordance with the provisions of this Schedule;

*Status: This is the original version (as it was originally made).*

- (b) in the event that any amounts payable under (a) are insufficient to meet all claims arising out of any case, for a further sum of £250,000 (“the general penalty sum”) out of which any such claims are to be met;
  - (c) for a schedule containing the name of the insolvent and the value of the insolvent’s assets to be submitted to the surety or cautioner within such period as may be specified in the bond;
  - (d) that where at any time before the insolvency practitioner obtains his release or discharge in respect of his acting in relation to an insolvent, he forms the opinion that the value of that insolvent’s assets is greater than the current specific penalty sum, a revised specific penalty sum shall be applicable on the submission within such time as may be specified in the bond of a cover schedule containing a revised value of the insolvent’s assets;
  - (e) for the payment of losses of the kind mentioned in sub-paragraph (1), whether they arise during the period in which the insolvency practitioner holds office in the capacity in which he was initially appointed or a subsequent period where he holds office in a subsequent capacity;
- (3) The terms of the bond may provide—
- (a) that total claims in respect of the acts of the insolvency practitioner under all bonds relating to him are to be limited to a maximum aggregate sum (which shall not be less than than £25,000,000); and
  - (b) for a time limit within which claims must be made.
- 4.** Subject to paragraphs 5, 6 and 7, the amount of the specific penalty in respect of a case in which the insolvency practitioner acts, shall equal at least the value of the insolvent’s assets as estimated by the insolvency practitioner as at the date of his appointment but ignoring the value of any assets—
- (a) charged to a third party to the extent of any amount which would be payable to that third party; or
  - (b) held on trust by the insolvent to the extent that any beneficial interest in those assets does not belong to the insolvent.
- 5.** In a case where an insolvency practitioner acts as a nominee or supervisor of a voluntary arrangement under Part I or Part VIII of the Act, the amount of the specific penalty shall be equal to at least the value of those assets subject to the terms of the arrangement (whether or not those assets are in his possession) including, where under the terms of the arrangement the debtor or a third party is to make payments, the aggregate of any payments to be made.
- 6.** Where the value of the insolvent’s assets is less than £5,000, the specific penalty sum shall be £5,000.
- 7.** Where the value of the insolvent’s assets is more than £5,000,000 the specific penalty sum shall be £5,000,000.
- 8.** In estimating the value of an insolvent’s assets, unless he has reason to doubt their accuracy, the insolvency practitioner may rely upon—
- (a) any statement of affairs produced in relation to that insolvent pursuant to any provision of the Act; and
  - (b) in the case of a sequestration—
    - (i) the debtor’s list of assets and liabilities under section 19 of the Bankruptcy (Scotland) Act 1985(1);
    - (ii) the preliminary statement under that Act; or

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(1) 1985 c. 66.

- (iii) the final statement of the debtor's affairs by the interim trustee under section 23 of the Bankruptcy (Scotland) Act 1985.

## PART 3

### Records relating to bonding and connected matters

#### **Record of specific penalty sums to be maintained by insolvency practitioner**

9.—(1) An insolvency practitioner shall maintain a record of all specific penalty sums that are applicable in relation to any case where he is acting and such record shall contain the name of each person to whom the specific penalty sum relates and the amount of each penalty sum that is in force.

(2) Any record maintained by an insolvency practitioner pursuant to this paragraph shall, on the giving of reasonable notice, be made available for inspection by—

- (a) any professional body recognised under section 391 of the Act of which he is or was a member and the rules of membership of which entitle or entitled him to act as an insolvency practitioner;
- (b) any competent authority by whom the insolvency practitioner is or was authorised to act pursuant to section 393 of the Act; and
- (c) the Secretary of State.

#### **Retention of bond by recognised professional body or competent authority**

10. The bond referred to in paragraph 3 shall be sent by the insolvency practitioner to—

- (a) any professional body recognised under section 391 of the Act of which he is a member and the rules of membership of which entitle him to act as an insolvency practitioner; or
- (b) any competent authority by whom the insolvency practitioner is authorised to act pursuant to section 393 of the Act.

#### **Inspection and retention requirements relating to cover schedule – England and Wales**

11.—(1) This regulation applies to an insolvency practitioner appointed in insolvency proceedings under the Act to act—

- (a) in relation to a company which the courts in England and Wales have jurisdiction to wind up; or
- (b) in respect of an individual.

(2) The insolvency practitioner shall retain a copy of the cover schedule submitted by him in respect of his acting in relation to the company or, as the case may be, individual until the second anniversary of the date on which he is granted his release or discharge in relation to that company or, as the case may be, that individual.

(3) The copy of a schedule kept by an insolvency practitioner in pursuance of sub-paragraph (2) shall be produced by him on demand for inspection by—

- (a) any creditor of the person to whom the schedule relates;
- (b) where the schedule relates to an insolvent who is an individual, that individual;
- (c) where the schedule relates to an insolvent which is a company, any contributory or director or other officer of the company; and
- (d) the Secretary of State.

### **Inspection and retention requirements relating to the cover schedule— Scotland**

**12.**—(1) Where an insolvency practitioner is appointed to act in relation to a company which the courts in Scotland have jurisdiction to wind up, he shall retain in the sederunt book kept under rule 7.33 of the Insolvency (Scotland) Rules 1986(2), the principal copy of any cover schedule containing entries in relation to his so acting.

(2) Where an insolvency practitioner is appointed to act as interim trustee or permanent trustee or as a trustee under a trust deed for creditors, he shall retain in the sederunt book kept for those proceedings, the principal copy of any cover schedule containing entries in relation to his so acting.

### **Requirements to submit cover schedule to authorising body**

**13.**—(1) Every insolvency practitioner shall submit to his authorising body not later than 20 days after the end of each month during which he holds office in a case—

- (a) the information submitted to a surety or cautioner in any cover schedule related to that month;
- (b) where no cover schedule is submitted in relation to the month, a statement either that there are no relevant particulars to be supplied or, as the case may be, that it is not practicable to supply particulars in relation to any appointments taken in that month; and
- (c) a statement identifying any case in respect of which he has been granted his release or discharge.

(2) In this regulation “authorising body” means in relation to an insolvency practitioner—

- (a) any professional body recognised under section 391 of the Act of which he is a member and the rules of membership of which entitle him to act as an insolvency practitioner; or
- (b) any competent authority by whom he is authorised to act as an insolvency practitioner pursuant to section 393 of the Act.

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(2) 1986 c. 1915.