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STATUTORY INSTRUMENTS

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**2016 No. 1024**

**The Insolvency (England and Wales) Rules 2016**

**PART 3**

**ADMINISTRATION**

**CHAPTER 3**

**Appointment of administrator by holder of floating charge**

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

**Notice of intention to appoint**

**3.16.**—(1) This rule applies where the holder of a qualifying floating charge (“the appointer”) gives a notice under paragraph 15(1)(a) of Schedule B1 of intention to appoint an administrator under paragraph 14 and files a copy of the notice with the court under paragraph 44(2).

(2) The notice filed with the court must be headed “Notice of intention to appoint an administrator by holder of qualifying floating charge” and must contain the following—

- (a) identification details for the proceedings;
- (b) the name and address of the appointer;
- (c) a statement that the appointer intends to appoint an administrator of the company;
- (d) the name and address of the proposed administrator;
- (e) a statement that the appointer is the holder of the qualifying floating charge in question and that it is now enforceable;
- (f) details of the charge, the date upon which it was registered and the maximum amount if any secured by the charge;
- (g) a statement that the notice is being given in accordance with paragraph 15(1)(a) of Schedule B1 to the holder of every prior floating charge which satisfies paragraph 14(2) of that Schedule;
- (h) the names and addresses of the holders of such prior floating charges and details of the charges;
- (i) a statement whether the company is or is not subject to insolvency proceedings at the date of the notice, and details of the proceedings if it is;
- (j) a statement whether the company is an Article 1.2 undertaking; and
- (k) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EC proceedings with reasons for the statement.

(3) The notice must be authenticated by the appointer or the appointer’s solicitor and dated.

(4) The filing of the copy with the court under paragraph 44(2) of Schedule B1 must be done at the same time as notice is given in accordance with paragraph 15(1)(a).

- (5) The giving of notice under paragraph 15(1)(a) must be by service of the notice.

### **Notice of appointment**

**3.17.**—(1) Notice of an appointment under paragraph 14 of Schedule B1 must be headed “Notice of appointment of an administrator by holder of a qualifying floating charge” and must contain—

- (a) identification details for the proceedings;
- (b) the name and address of the appointer;
- (c) a statement that the appointer has appointed the person named as administrator of the company;
- (d) the name and address of the person appointed as administrator;
- (e) a statement that a copy of the administrator’s consent to act accompanies the notice;
- (f) a statement that the appointer is the holder of the qualifying floating charge in question and that it is now enforceable;
- (g) details of the charge including the date of the charge, the date on which it was registered and the maximum amount if any secured by the charge;

(h) one of the following statements—

(i) that notice has been given in accordance with paragraph 15(1)(a) of Schedule B1 to the holder of every prior floating charge which satisfies paragraph 14(2) of that Schedule, that two business days have elapsed from the date the last such notice was given (if more than one) and—

(aa) that a copy of every such notice was filed with the court under paragraph 44(2) of Schedule B1, and the date of that filing (or the latest date of filing if more than one), or

(bb) that a copy of every such notice accompanies the notice of appointment but was not filed with the court under paragraph 44(2) of Schedule B1,

(ii) that the holder of every such floating charge to whom notice was given has consented in writing to the making of the appointment and that a copy of every consent accompanies the notice of appointment,

(iii) that the holder of every such floating charge has consented in writing to the making of the appointment without notice having been given to all and that a copy of every consent accompanies the notice of appointment, or

(iv) that there is no such floating charge;

(i) a statement whether the company is or is not subject to insolvency proceedings at the date of the notice, and details of the proceedings if it is;

(j) a statement whether the company is an Article 1.2 undertaking;

(k) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EC proceedings and the reasons for so stating; and

(l) a statement that the appointment is in accordance with Schedule B1.

(2) Where two or more administrators are appointed the notice must also specify (as required by paragraph 100(2) of Schedule B1)—

(a) which functions (if any) are to be exercised by those persons acting jointly; and

(b) which functions (if any) are to be exercised by any or all of those persons.

(3) The statutory declaration included in the notice in accordance with paragraph 18(2) of Schedule B1 must be made not more than five business days before the notice is filed with the court.

### **Filing of notice with the court**

**3.18.**—(1) Three copies of the notice of appointment must be filed with the court, accompanied by—

- (a) the administrator’s consent to act; and
- (b) either—
  - (i) evidence that the appointer has given notice as required by paragraph 15(1)(a) of Schedule B1; or
  - (ii) copies of the written consent of all those required to give consent in accordance with paragraph 15(1)(b) of Schedule B1.

(2) The court must apply the seal of the court to the copies of the notice, endorse them with the date and time of filing and deliver two of the sealed copies to the appointer.

(3) The appointer must as soon as reasonably practicable deliver one of the sealed copies to the administrator.

(4) This rule is subject to rules 3.20 and 3.21 (appointment made out of court business hours).

### **Appointment by floating charge holder after administration application made**

**3.19.**—(1) This rule applies where the holder of a qualifying floating charge, after receiving notice that an administration application has been made, appoints an administrator under paragraph 14 of Schedule B1.

(2) The holder must as soon as reasonably practicable deliver a copy of the notice of appointment to—

- (a) the person making the administration application; and
- (b) the court in which the application has been made.

### **Appointment taking place out of court business hours: procedure**

**3.20.**—(1) When (but only when) the court is closed, the holder of a qualifying floating charge may file a notice of appointment with the court by—

- (a) faxing it to a designated telephone number; or
- (b) emailing it, or attaching it to an email, to a designated email address.

(2) The notice must specify the name of the court (and hearing centre if applicable) that has jurisdiction.

(3) The Lord Chancellor must designate the telephone number and email address.

(4) The Secretary of State must publish the designated telephone number and email address on the Insolvency Service webpages and deliver notice of them to any person requesting them from the Insolvency Service.

(5) The appointer must ensure that—

- (a) a fax transmission report giving the time and date of the fax transmission and the telephone number to which the notice was faxed and containing a copy of the first page (in part or in full) of the document faxed is created by the fax machine that is used to fax the notice; or
- (b) a hard copy of the email is created giving the time and date of the email and the address to which it was sent.

(6) The appointer must retain the fax transmission report or hard copy of the email.

(7) The appointer must deliver a notice to the administrator of the filing of the notice of appointment as soon as reasonably practicable.

(8) The copy of the faxed or emailed notice of appointment as received by the Courts Service must be delivered by the Lord Chancellor as soon as reasonably practicable to the court specified in the notice as the court having jurisdiction in the case, to be placed on the relevant court file.

(9) The appointer must take to the court on the next occasion that the court is open for business—

- (a) three copies of the faxed or emailed notice of appointment;
- (b) the fax transmission report or hard copy required by paragraph (5);
- (c) all supporting documents referred to in the notice in accordance with rule 3.21(1) which are in the appointer's possession; and
- (d) a statement providing reasons for the out-of-hours filing of the notice of appointment, including why it would have been damaging to the company or its creditors not to have so acted.

(10) The copies of the notice must be sealed by the court and endorsed with—

- (a) the date and time when, according to the appointer's fax transmission report or hard copy of the email, the notice was faxed or sent; and
- (b) the date when the notice and accompanying documents were delivered to the court.

(11) The court must deliver two of the sealed copies of the notice of appointment to the appointer.

(12) The appointer must, as soon as reasonably practicable, deliver one of the copies to the administrator.

(13) The reference—

- (a) to the Insolvency Service in paragraph (4) means the Secretary of State acting by means of the Insolvency Service; and
- (b) to the Courts Service in paragraph (8) means the Lord Chancellor acting by means of Her Majesty's Courts and Tribunals Service.

#### **Appointment taking place out of court business hours: content of notice**

**3.21.**—(1) Notice of an appointment filed in accordance with rule 3.20 must be headed “Notice of appointment of an administrator by holder of a qualifying floating charge”, identify the company immediately below the heading and must contain—

- (a) the name and address of the appointer;
- (b) a statement that the appointer has appointed the person named as administrator of the company;
- (c) the name and address of the person appointed as administrator;
- (d) a statement that the appointer is the holder of the qualifying floating charge in question and that it is now enforceable;
- (e) details of the charge, the date upon which it was registered and the maximum amount secured by the charge;
- (f) one of the following statements—
  - (i) that notice has been given in accordance with paragraph 15(1)(a) of Schedule B1 to the holder of every prior floating charge which satisfies paragraph 14(2) of that Schedule, that a copy of every such notice was filed with the court under paragraph 44(2) of that Schedule, the date of that filing (or the latest date of filing if more than one) and that two business days have elapsed from that date,
  - (ii) that notice has been given in accordance with paragraph 15(1)(a) of Schedule B1 to the holder of every prior floating charge which satisfies paragraph 14(2) of that

- Schedule and that a copy of every such notice is in the appointer's possession but was not filed with the court under paragraph 44(2) of that Schedule,
- (iii) that the holder of every such floating charge to whom notice was given has consented to the making of the appointment and that a copy of every consent is in the appointer's possession,
  - (iv) that the holder of every such floating charge has consented to the making of the appointment without notice having been given to all and that a copy of every consent is in the appointer's possession, or
  - (v) that there is no such floating charge;
- (g) a statement whether the company is or is not subject to insolvency proceedings at the date of the notice, and details of the proceedings if it is;
  - (h) a statement whether the company is an Article 1.2 undertaking and that a statement of the reasons for stating this is in the appointer's possession;
  - (i) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EC proceedings;
  - (j) an undertaking that the following will be delivered to the court on the next occasion on which the court is open—
    - (i) any document referred to in the notice in accordance with rule 3.20 as being in the appointer's possession,
    - (ii) the fax transmission report or hard copy of the email, and
    - (iii) the statement of reasons for out-of-hours filing;
  - (k) a statement that the proposed administrator consents to act; and
  - (l) a statement that the appointment is in accordance with Schedule B1.
- (2) Where two or more administrators are appointed the notice must also specify (as required by paragraph 100(2) of Schedule B1)—
- (a) which functions (if any) are to be exercised by those persons acting jointly; and
  - (b) which functions (if any) are to be exercised by any or all of those persons.
- (3) The statutory declaration included in the notice in accordance with paragraph 18(2) of Schedule B1 must be made not more than five business days before the notice is filed with the court.

**Appointment taking place out of court business hours: legal effect**

**3.22.—**(1) The filing of a notice in accordance with rule 3.20 has the same effect for all purposes as the filing of a notice of appointment in accordance with rule 3.18.

(2) The appointment—

- (a) takes effect from the date and time of the fax transmission or sending of the email; but
- (b) ceases to have effect if the requirements of rule 3.20(9) are not completed on the next occasion the court is open for business.

(3) Where any question arises in relation to the date and time that the notice of appointment was filed with the court, it is a presumption capable of rebuttal that the date and time shown on the appointer's fax transmission report or hard copy of the email is the date and time at which the notice was filed.