
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 3

ADMINISTRATION

CHAPTER 6

Statement of affairs

[Note: (1) “relevant person” in this Chapter is defined in paragraph 47(3) of Schedule B1; Note a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Interpretation

3.28. In this Chapter—

“nominated person” means a relevant person who has been required by the administrator to make out and deliver to the administrator a statement of affairs; and

“relevant person” means a person mentioned in paragraph 47(3) of Schedule B1.

Statement of affairs: notice requiring and delivery to the administrator (paragraph 47(1) of Schedule B1)

[Note: see section 234(1) and 235(1) for the application of section 235 to administrators.]

3.29.—(1) A requirement under paragraph 47(1) of Schedule B1 for one or more relevant persons to provide the administrator with a statement of the affairs of the company must be made by a notice delivered to each such person.

(2) The notice must be headed “Notice requiring statement of affairs” and must—

(a) require each nominated person to whom the notice is delivered to prepare and submit to the administrator a statement of the affairs of the company;

(b) inform each nominated person of—

(i) the names and addresses of all others (if any) to whom the same notice has been delivered,

(ii) the date by which the statement must be delivered to the administrator, and

(iii) the effect of paragraph 48(4) of Schedule B1 (penalty for non-compliance) and section 235 (duty to co-operate with the office-holder).

(3) The administrator must inform each nominated person to whom notice is delivered that a document for the preparation of the statement of affairs capable of completion in compliance with rule 3.30 will be supplied if requested.

(4) The nominated person (or one of them, if more than one) must deliver the statement of affairs to the administrator with the statement of truth required by paragraph 47(2)(a) of Schedule B1 and a copy of each statement.

Statement of affairs: content (paragraph 47 of Schedule B1)

[Note: paragraph 47(2)(a) of Schedule B1 requires the statement of affairs to be verified by a statement of truth.]

3.30.—(1) The statement of the company’s affairs must be headed “Statement of affairs” and must—

- (a) identify the company immediately below the heading; and
- (b) state that it is a statement of the affairs of the company on a specified date, being the date on which it entered administration.

(2) The statement of affairs must contain (in addition to the matters required by paragraph 47(2) of Schedule B1)—

- (a) a summary of the assets of the company, setting out the book value and the estimated realisable value of—
 - (i) any assets subject to a fixed charge,
 - (ii) any assets subject to a floating charge,
 - (iii) any uncharged assets, and
 - (iv) the total value of all the assets available for preferential creditors;
- (b) a summary of the liabilities of the company, setting out—
 - (i) the amount of preferential debts,
 - (ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts,
 - (iii) an estimate of the prescribed part, if applicable,
 - (iv) an estimate of the total assets available to pay debts secured by floating charges,
 - (v) the amount of debts secured by floating charges,
 - (vi) an estimate of the deficiency with respect to debts secured by floating charges or the surplus available after paying the debts secured by fixed or floating charges,
 - (vii) the amount of unsecured debts (excluding preferential debts),
 - (viii) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts,
 - (ix) any issued and called-up capital, and
 - (x) an estimate of the deficiency with respect to, or surplus available to, members of the company;
- (c) a list of the company’s creditors with the further particulars required by paragraph (3) indicating—
 - (i) any creditors under hire-purchase, chattel leasing or conditional sales agreements, and
 - (ii) any creditors claiming retention of title over property in the company’s possession; and
- (d) the name and address of each member of the company and the number, nominal value and other details of the shares held by each member.

(3) The list of creditors required by paragraph 47(2) of Schedule B1 and paragraph (2)(c) of this rule must contain the details required by paragraph (4) except where paragraphs (5) and (6) apply.

(4) The particulars required by paragraph (3) are as follows—

- (a) the name and postal address of the creditor;
- (b) the amount of the debt owed to the creditor;
- (c) details of any security held by the creditor;
- (d) the date on which the security was given; and
- (e) the value of any such security.

(5) Paragraph (6) applies where the particulars required by paragraph (4) relate to creditors who are either—

- (a) employees or former employees of the company; or
- (b) consumers claiming amounts paid in advance for the supply of goods or services.

(6) Where this paragraph applies—

- (a) the statement of affairs itself must state separately for each of paragraph (5)(a) and (b) the number of such creditors and the total of the debts owed to them; and
- (b) the particulars required by paragraph (4) must be set out in separate schedules to the statement of affairs for each of paragraphs (5)(a) and (b).

Statement of affairs: statement of concurrence

3.31.—(1) The administrator may require a relevant person to deliver to the administrator a statement of concurrence.

(2) A statement of concurrence is a statement, verified by a statement of truth, that that person concurs in the statement of affairs submitted by a nominated person.

(3) The administrator must inform the nominated person who has been required to submit a statement of affairs that the relevant person has been required to deliver a statement of concurrence.

(4) The nominated person must deliver a copy of the statement of affairs to every relevant person who has been required to submit a statement of concurrence.

(5) A statement of concurrence—

- (a) must identify the company; and
- (b) may be qualified in relation to matters dealt with in the statement of affairs where the relevant person—
 - (i) is not in agreement with the statement of affairs,
 - (ii) considers the statement of affairs to be erroneous or misleading, or
 - (iii) is without the direct knowledge necessary for concurring with it.

(6) The relevant person must deliver the required statement of concurrence together with a copy to the administrator before the end of the period of five business days (or such other period as the administrator may agree) beginning with the day on which the relevant person receives the statement of affairs.

Statement of affairs: filing

3.32.—(1) The administrator must as soon as reasonably practicable deliver to the registrar of companies a copy of—

- (a) the statement of affairs; and

(b) any statement of concurrence.

(2) However, the administrator must not deliver to the registrar of companies with the statement of affairs any schedule required by rule 3.30(6)(b).

(3) The requirement to deliver the statement of affairs is subject to any order of the court made under rule 3.45 that the statement of affairs or a specified part must not be delivered to the registrar of companies.

Statement of affairs: release from requirement and extension of time

3.33.—(1) The power of the administrator under paragraph 48(2) of Schedule B1 to revoke a requirement to provide a statement of affairs or to extend the period within which it must be submitted may be exercised upon the administrator’s own initiative or at the request of a nominated person who has been required to provide it.

(2) The nominated person may apply to the court if the administrator refuses that person’s request for a revocation or extension.

(3) On receipt of an application, the court may, if it is satisfied that no sufficient cause is shown for it, dismiss it without giving notice to any party other than the applicant.

(4) Unless the application is dismissed, the court must fix a venue for it to be heard.

(5) The applicant must, at least 14 days before any hearing, deliver to the administrator a notice stating the venue with a copy of the application and of any evidence on which the applicant intends to rely.

(6) The administrator may do either or both of the following—

(a) file a report of any matters which the administrator thinks ought to be drawn to the court’s attention; or

(b) appear and be heard on the application.

(7) If a report is filed, the administrator must deliver a copy of it to the applicant not later than five business days before the hearing.

(8) Sealed copies of any order made on the application must be delivered by the court to the applicant and the administrator.

(9) On an application under this rule, the applicant’s costs must be paid by the applicant in any event, but the court may order that an allowance of all or part of them be payable as an expense of the administration.

Statement of affairs: expenses

3.34.—(1) The expenses of a nominated person which the administrator considers to have been reasonably incurred in making a statement of affairs or of a relevant person in making a statement of concurrence must be paid by the administrator as an expense of the administration.

(2) A decision by the administrator that expenses were not reasonably incurred (and are therefore not payable as an expense of the administration) may be appealed to the court.