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STATUTORY INSTRUMENTS

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**2016 No. 1024**

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

**PART 7**

**WINDING UP BY THE COURT**

**CHAPTER 4**

**Petition by a contributory or a relevant office-holder**

[Note: (1) “relevant office-holder” is defined in rule 7.4(2);

(2) a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

**Interpretation and application of rules in Chapter 3**

**7.25.**—(1) The following rules in Chapter 3 apply subject to paragraph (2), with the necessary modifications, to a petition under this Chapter by a contributory or a relevant office-holder—

rule 7.8 (court to which petition is to be presented where the company is subject to a CVA or is in administration);

rule 7.9(1), (4) and (5) (copies of petition to be served on other persons);

rule 7.11 (persons entitled to request a copy of petition);

rule 7.14 (notice by persons intending to appear);

rule 7.15 (list of appearances);

rule 7.19 (notice of adjournment);

rule 7.20 (order for winding up by the court) except where rule 7.32 applies (petition by administrator or where there is a supervisor);

rule 7.21 (notice to official receiver of winding-up order); and

rule 7.22 (delivery and notice of the order).

(2) The following rules apply to petitions under this Chapter presented by a relevant office-holder—

rule 7.23 (petition dismissed); and

rule 7.24 (injunction to restrain presentation or notice of petition).

**Contents of petition for winding-up order by a contributory**

**7.26.**—(1) A petition presented by a contributory must contain—

(a) the name of the court (and hearing centre if applicable);

(b) the name and postal address of the petitioner;

(c) identification details for the company subject to the petition;

- (d) the company's registered office (if any);
  - (e) the date the company was incorporated and the enactment under which it was incorporated;
  - (f) the total number of issued shares of the company and the manner in which they are divided up;
  - (g) the aggregate nominal value of those shares;
  - (h) the amount of capital paid up or credited as paid up;
  - (i) a statement of the nature of the company's business if known;
  - (j) the number and total value of the shares held by the petitioner;
  - (k) a statement whether the shares held by the petitioner—
    - (i) were allotted to the petitioner on the incorporation of the company,
    - (ii) have been registered in the name of the petitioner for more than six months in the last 18 months, or
    - (iii) devolved upon the petitioner through the death of the former holder of the shares;
  - (l) the grounds on which the winding-up order is sought;
  - (m) a statement whether the company is an Article 1.2 undertaking;
  - (n) a statement whether the proceedings will be main, secondary, territorial or non-EC proceedings and that the reasons for so stating are given in the form of a witness statement;
  - (o) a statement that in the circumstances it is just and equitable that the company should be wound up;
  - (p) a statement that the petitioner therefore applies for an order that the company may be wound up by the court under the Act, or that such other order may be made as the court thinks just;
  - (q) the name and postal address of any person on whom the petitioner intends to serve the petition; and
  - (r) the contact details of the petitioner's solicitor (if any).
- (2) The petition must also contain a blank box for the court to complete with the details of the venue for hearing the petition.

**Petition presented by a relevant office-holder**

**7.27.—(1)** A petition by a relevant office-holder must be expressed to be the petition of the company by the office-holder.

(2) The petition must contain the particulars required by rule 7.26 (other than paragraph (1)(j) and (k) and the following (as applicable)—

- (a) identification details for the office-holder;
- (b) the full name of the court or hearing centre in which the proceedings are being conducted or where documents relating to the proceedings are filed;
- (c) the court case number;
- (d) the date the insolvency proceedings in respect of which the office-holder holds office commenced; and

- (e) where the office-holder is an administrator, an application under paragraph 79(1) of Schedule B1, requesting that the appointment of the administrator should cease to have effect.

### **Verification of petition**

- 7.28.**—(1) The petition must be verified by a statement of truth.
- (2) A statement of truth which is not contained in or endorsed upon the petition must identify the petition and must contain—
- (a) identification details for the company;
  - (b) the name of the petitioner; and
  - (c) the name of the court (and hearing centre if applicable) in which the petition is to be presented.
- (3) The statement of truth must be authenticated and dated by or on behalf of the petitioner.
- (4) Where the person authenticating the statement of truth is not the petitioner, or one of the petitioners, the statement of truth must state—
- (a) the name and postal address of the person making the statement;
  - (b) the capacity in which, and the authority by which, the person authenticates the statement; and
  - (c) the means of the person’s knowledge of the matters verified in the statement of truth.
- (5) A statement of truth verifying more than one petition must include in its title the names of the companies to which it relates and must set out, in relation to each company, the statements relied on by the petitioner; and a clear and legible photocopy of the statement of truth must be filed with each petition which it verifies.
- (6) The reasons for the statement that the proceedings will be main, secondary, territorial or non-EC proceedings must be given in a witness statement.

### **Presentation and service of petition**

- 7.29.**—(1) The petition with one copy must be filed with the court.
- (2) The petition may not be filed unless a receipt for the deposit payable to the official receiver is produced on presentation of the petition.
- (3) The court must fix a hearing for a return day on which, unless the court otherwise directs, the petitioner and the company must attend before the court for—
- (a) directions to be given in relation to the procedure on the petition; or
  - (b) the hearing of the petition where—
    - (i) it is presented by a relevant office-holder, and
    - (ii) the court considers it just in all the circumstances.
- (4) On fixing the return day, the court must deliver to the petitioner a sealed copy of the petition endorsed with the return day and time of hearing.
- (5) The petitioner must serve a sealed copy of the petition on the company at least 14 days before the return day.
- (6) Where a member State liquidator has been appointed in main proceedings in relation to the company, the petitioner must deliver a copy of the petition to the member State liquidator.

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(1) Paragraph 79(2)(c) is amended by paragraph 10(29) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

**Request to appoint former administrator or supervisor as liquidator (section 140)**

**7.30.**—(1) This rule applies where a petition requests under section 140(2) the appointment of a former administrator or supervisor as liquidator.

(2) The person whose appointment is sought (“the appointee”) must, not less than two business days before the return day fixed under rule 7.29(3), file with the court a report including particulars of—

- (a) the date on which the appointee delivered notice to creditors of the company, of the appointee’s intention to seek appointment as liquidator, such date to be at least seven business days before the day on which the report is filed; and
- (b) details of any response from creditors to that notice, including any objections to the proposed appointment.

**Hearing of petition**

**7.31.**—(1) On the return day, or at any time after it, the court—

- (a) must, where the petition is presented by a person who is not a relevant office-holder, give directions;
- (b) may, in any other case, give directions; or
- (c) may, in either case, make any such order as it sees fit.

(2) In particular, the court may give directions relating to the following matters—

- (a) service or delivery of the petition, whether in connection with the venue for a further hearing, or for any other purpose;
- (b) whether particulars of claim and defence are to be delivered, and generally as to the procedure on the petition;
- (c) whether and if so by what means, notice of the petition is to be given;
- (d) the manner in which any evidence is to be provided at any hearing before the judge and in particular (but without prejudice to the generality of the above) as to—
  - (i) the taking of evidence wholly or in part by witness statement or orally,
  - (ii) the cross-examination of any person who has made a witness statement, and
  - (iii) the matters to be dealt with in evidence; and
- (e) any other matter affecting the procedure on the petition or in connection with the hearing and disposal of the petition.

(3) In giving directions the court must consider whether a copy of the petition should be served on or delivered to any of the persons specified in rule 7.9.

**Order for winding up by the court of a company in administration or where there is a supervisor of a CVA in relation to the company**

**7.32.**—(1) An order for winding-up by the court of a company in administration or where there is a supervisor of a CVA in relation to the company must contain—

- (a) identification details for the proceedings;
- (b) the name and title of the judge making the order;
- (c) the name and postal address of the administrator or supervisor of the company;
- (d) the date of the administrator’s or supervisor’s appointment;

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(2) Section 140(3) is amended by paragraph 35 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

- (e) the date of presentation of the petition;
  - (f) where there is an administrator, an order that the administrator's appointment ceases to have effect;
  - (g) an order that the company be wound up by the court under the Act;
  - (h) a statement whether the proceedings are main, secondary, territorial or non-EC proceedings; and
  - (i) the name and address of the person appointed as liquidator of the company (if applicable);
  - (j) an order that—
    - (i) an official receiver attached to the court is by virtue of the order liquidator of the company, or
    - (ii) that the administrator or the supervisor (as the case may be) specified in the order is appointed liquidator of the company; and
  - (k) the date of the order.
- (2) The order may contain such additional terms as to the costs as the court thinks just.
- (3) Where the court appoints the former administrator or the supervisor as liquidator paragraphs (3)(c), (4), (7), (8) and (9) of rule 7.56 apply.