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STATUTORY INSTRUMENTS

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**2018 No. 1082**

**The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018**

**PART 3**

**ADMINISTRATION**

**CHAPTER 4**

**Appointment of administrator by company or directors**

**Notice of intention to appoint**

**3.23.**—(1) A notice required by paragraph 26(1) of Schedule B1 must be headed “Notice of intention to appoint an administrator by company or directors” and must contain the following—

- (a) identification details for the insolvency proceedings;
- (b) a statement that the company or the directors, as the case may be, intend to appoint an administrator of the company;
- (c) the name and address of the proposed administrator;
- (d) the names and addresses of the persons to whom notice is being given in accordance with paragraph 26(1) of Schedule B1;
- (e) a statement that each of those persons is or may be entitled to appoint—
  - (i) an administrative receiver of the company, or
  - (ii) an administrator of the company under paragraph 14 of Schedule B1;
- (f) a statement that the company has not within the preceding 12 months been—
  - (i) in administration,
  - (ii) the subject of a moratorium under Schedule A1(1) which ended on a date when no CVA was in force, or
  - (iii) the subject of a CVA which was made during a moratorium under Schedule A1 and which ended prematurely within the meaning of section 7B;
- (g) a statement that in relation to the company there is no—
  - (i) petition for winding up which has been presented but not yet disposed of,
  - (ii) administration application which has not yet been disposed of, or
  - (iii) administrative receiver in office;
- (h) a statement whether the company is an Article 1.2 undertaking;

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(1) Relevant amending Acts are paragraph 9 of Schedule 9 to the 2015 Act and paragraph 20 of Schedule 6 to the Deregulation Act 2015 (c.20).

- (i) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EU proceedings and the reasons for so stating;
  - (j) a statement that the notice is accompanied (as appropriate) by either—
    - (i) a copy of the resolution of the company to appoint an administrator, or
    - (ii) a record of the decision of the directors to appoint an administrator; and
  - (k) a statement that if a recipient of the notice who is named in terms of paragraph (e) wishes to consent in writing to the appointment that person may do so but that after five business days have expired from delivery of the notice the appointer may make the appointment although such a recipient has not replied.
- (2) The notice must be accompanied by—
- (a) a copy of the resolution of the company to appoint an administrator, where the company intends to make the appointment; or
  - (b) a record of the decision of the directors, where the directors intend to make the appointment.
- (3) If notice of intention to appoint is given under paragraph 26(1) of Schedule B1, a copy of that notice must be sent at the same time to—
- (a) any messenger-at-arms or sheriff officer who, to the knowledge of the person giving the notice, is instructed to execute diligence or other legal process against the company;
  - (b) any person who, to the knowledge of the person giving the notice, has executed diligence against the company or its property;
  - (c) any supervisor of a CVA; and
  - (d) the company, if the company is not intending to make the appointment.
- (4) The statutory declaration accompanying the notice in accordance with paragraph 27(2) of Schedule B1 must—
- (a) if it is not made by the person making the appointment, indicate the capacity in which the person making the declaration does so; and
  - (b) be made not more than five business days before the notice is lodged with the court.