
STATUTORY INSTRUMENTS

2018 No. 1082

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

PART 2

COMPANY VOLUNTARY ARRANGEMENTS

CHAPTER 4

Procedure for a CVA with a Moratorium

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

Statement of affairs (paragraph 6(1)(b) of Schedule A1)

2.10.—(1) The statement of affairs required by paragraph 6(1)(b) of Schedule A1 must contain the same information as is required by rule 2.5.

(2) The statement must be made up to a date not earlier than two weeks before the date of the proposal.

(3) However the nominee may allow the statement to be made up to an earlier date (but no more than two months before the date of the proposal) where that is more practicable.

(4) Where the statement is made up to an earlier date, the nominee's statement to the directors on the proposal must explain why.

(5) The statement of affairs must include a declaration that the information provided in it is, to the best of the knowledge and belief of at least one of the directors, accurate and complete.

Application to omit information from a statement of affairs

2.11. The nominee, the directors or any person appearing to the court to have an interest, may apply to the court for a direction that specified information be omitted from the statement of affairs, as delivered to the creditors, where disclosure of that information would be likely to prejudice the conduct of the CVA, or might reasonably be expected to lead to violence against any person.

The nominee's statement (paragraph 6(2) of Schedule A1)

2.12.—(1) The nominee must submit to the directors the statement required by paragraph 6(2)(1) of Schedule A1 within 28 days of the submission to the nominee of the proposal.

(2) The statement must—

- (a) include the name and address of the nominee; and
- (b) be authenticated and dated by the nominee.

- (3) A statement which contains an opinion on all the matters referred to in paragraph 6(2) must—
 - (a) explain why the nominee has formed that opinion; and
 - (b) if the nominee is willing to act, be accompanied by a statement of the nominee's consent to act in relation to the proposed CVA.
- (4) The statement of the nominee's consent must—
 - (a) include the name and address of the nominee;
 - (b) state that the nominee is qualified to act as an insolvency practitioner in relation to the company; and
 - (c) be authenticated and dated by the nominee.

Documents lodged with court to obtain moratorium (paragraph 7(1) of Schedule A1)

2.13.—(1) The statement of the company's affairs which the directors lodge with the court under paragraph 7(1)(b) of Schedule A1 must be the same as the statement they submit to the nominee under paragraph 6(1)(b) of that Schedule.

(2) The statement required by paragraph 7(1)(c) of that Schedule that the company is eligible for a moratorium must—

- (a) be made by the directors;
- (b) state that the company meets the requirements of paragraph 3 of Schedule A1 and is not a company which falls within paragraph 2(2) of that Schedule; and
- (c) be authenticated and dated by the directors.

(3) The statement required by paragraph 7(1)(d) of Schedule A1 that the nominee has consented to act must be in the same terms as the statement referred to in rule 2.12(3)(b).

- (4) The statement of the nominee's opinion required by paragraph 7(1)(e)(2) of that Schedule—
 - (a) must be the same as the statement of opinion required by paragraph 6(2) of that Schedule; and
 - (b) must be lodged with the court not later than ten business days after it was submitted to the directors.

(5) A statement from the nominee whether the proceedings will be main, secondary, territorial or non-EU proceedings with reasons for so stating must also be lodged with the court.

(6) The documents lodged with the court under paragraph 7(1) of Schedule A1, together with the statement required by paragraph (5) of this rule, must be accompanied by four copies of a schedule, authenticated and dated by the directors, identifying the company and listing all the documents lodged.

(7) The court must endorse the copies of the schedule with the date on which the documents were lodged and deliver three copies of the endorsed schedule to the directors.

Notice and advertisement of beginning of moratorium

2.14.—(1) The directors must, as soon as reasonably practicable, after delivery to them of the endorsed copies of the schedule deliver two copies of the schedule referred to in rule 2.13(6) to the nominee and one to the company.

- (2) After delivery of the copies of the schedule, the nominee—
 - (a) must, as soon as reasonably practicable, gazette a notice of the coming into force of the moratorium; and

(2) Paragraph 7(1)(e) is amended by paragraph 9(3) of Schedule 9 to the 2015 Act.

- (b) may advertise the notice in such other manner as the nominee thinks fit.
- (3) The notice must specify—
 - (a) the nature of the business of the company;
 - (b) that a moratorium under section 1A has come into force; and
 - (c) the date on which it came into force.
- (4) The nominee must, as soon as reasonably practicable, deliver a notice of the coming into force of the moratorium to—
 - (a) the registrar of companies;
 - (b) the company; and
 - (c) any petitioning creditor of whose address the nominee is aware.
- (5) The notice must specify—
 - (a) the date on which the moratorium came into force; and
 - (b) the court with which the documents to obtain the moratorium were lodged.
- (6) The nominee must deliver a notice of the coming into force of the moratorium and the date on which it came into force to—
 - (a) any messenger-at-arms or sheriff officer who to the knowledge of the nominee is charged with executing diligence against the company or its property; and
 - (b) the Keeper of the Register of Inhibitions and Adjudications.

Notice of continuation of moratorium where physical meeting of creditors is summoned (paragraph 8(3B) of Schedule A1)

2.15.—(1) This rule applies where under paragraph 8(3B)(b) and (3C) of Schedule A1(3) the moratorium continues after the initial period of 28 days referred to in paragraph 8(3) of that Schedule because a physical meeting of the company’s creditors is first summoned to take place after the end of that period.

(2) The nominee must lodge with the court and deliver to the registrar of companies a notice of the continuation as soon as reasonably practicable after summoning such a meeting of the company’s creditors.

- (3) The notice must—
 - (a) identify the company;
 - (b) give the name and address of the nominee;
 - (c) state the date on which the notice of the meeting was sent to the creditors under rule 5.6;
 - (d) state the date for which the meeting is summoned;
 - (e) state that under paragraph 8(3B)(b) and (3C) of Schedule A1 the moratorium will be continued to that date; and
 - (f) be authenticated and dated by the nominee.

Notice of decision extending or further extending a moratorium (paragraph 36 of Schedule A1)

2.16.—(1) This rule applies where the moratorium is extended, or further extended, by a decision which takes effect under paragraph 36(4) of Schedule A1.

(2) The nominee must, as soon as reasonably practicable, lodge with the court and deliver to the registrar of companies a notice of the decision.

(3) The notice must—

- (a) identify the company;
- (b) give the name and address of the nominee;
- (c) state the date on which the moratorium was extended or further extended;
- (d) state the new expiry date of the moratorium; and
- (e) be authenticated and dated by the nominee.

Notice of court order extending, further extending, renewing or continuing a moratorium (paragraph 34(2) of Schedule A1)

2.17. Where the court makes an order extending, further extending, renewing or continuing a moratorium, the nominee must, as soon as reasonably practicable, deliver to the registrar of companies a notice stating the new expiry date of the moratorium.

Advertisement of end of a moratorium (paragraph 11(1) of Schedule A1)

2.18.—(1) After the moratorium ends, the nominee—

- (a) must, as soon as reasonably practicable, gazette a notice of its coming to an end; and
- (b) may advertise the notice in such other manner as the nominee thinks fit.

(2) The notice must specify—

- (a) the nature of the company's business;
- (b) that a moratorium under section 1A has ended; and
- (c) the date on which it came to an end.

(3) The nominee must, as soon as reasonably practicable,—

- (a) lodge with the court a notice specifying the date on which the moratorium ended; and
- (b) deliver such a notice to—
 - (i) the registrar of companies,
 - (ii) the company,
 - (iii) all the creditors, and
 - (iv) the Keeper of the Register of Inhibitions and Adjudications.

Disposal of secured property etc. during a moratorium

2.19.—(1) This rule applies where the company applies to the court under paragraph 20 of Schedule A1 for permission to dispose of—

- (a) property subject to a security, or
- (b) goods under a hire-purchase agreement.

(4) Sub-paragraphs (2), (3), (4)(a) and (5)(a) of paragraph 36 are amended by paragraph 9(28) and (29) of Schedule 9 to the 2015 Act.

(2) The court must fix a venue for hearing the application.

(3) The company must, as soon as reasonably practicable, deliver a notice of the venue to the holder of the security or the owner of the goods under the agreement.

(4) If an order is made, the court must deliver two copies of the order certified by the court to the company and the company must, as soon as reasonably practicable, deliver one of them to the holder or owner.

Withdrawal of nominee's consent to act (paragraph 25(5) of Schedule A1)

2.20.—(1) A nominee who withdraws consent to act must lodge with the court and deliver a notice under paragraph 25(5) of Schedule A1 as soon as reasonably practicable.

(2) The notice must—

- (a) identify the company;
- (b) give the name and address of the nominee;
- (c) specify the date on which the nominee withdrew consent;
- (d) state, with reference to the circumstances mentioned in paragraph 25(2) of that Schedule, why the nominee withdrew consent; and
- (e) be authenticated and dated by the nominee.

Application to the court to replace the nominee (paragraph 28 of Schedule A1)

2.21.—(1) Directors who intend to make an application under paragraph 28(5) of Schedule A1 for the nominee to be replaced must deliver a notice of the intention to make the application to the nominee at least five business days before lodging the application with the court.

(2) A nominee who intends to make an application under that paragraph to be replaced must deliver notice of the intention to make the application to the directors at least five business days before lodging the application with the court.

(3) The court must not appoint a replacement nominee unless a statement by the replacement nominee has been lodged with the court confirming that that person—

- (a) consents to act, and
- (b) is qualified to act as an insolvency practitioner in relation to the company.

Notice of appointment of replacement nominee

2.22.—(1) A person appointed as a replacement nominee must as soon as reasonably practicable—

- (a) deliver a notice of the appointment to the registrar of companies and the former nominee; and
- (b) where the appointment is not by the court, lodge a notice of the appointment with the court.

(2) The notice of the appointment must—

- (a) identify the company;
- (b) give the name and address of the replacement nominee;
- (c) specify the date on which the replacement nominee was appointed to act; and
- (d) be authenticated and dated by the replacement nominee.

(5) Paragraph 28(1) is amended by paragraph 20(2)(e)(i) of Schedule 6 to the Deregulation Act 2015 (c.20).

Applications to court to challenge nominee's actions etc. (paragraphs 26 and 27 of Schedule A1)

2.23. A person intending to make an application to the court under paragraph 26 or 27 of Schedule A1 must deliver a notice of the intention to make the application to the nominee at least five business days before lodging the application with the court.