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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 12**

**Replacing the administrator**

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

**Grounds for resignation**

**3.62.**—(1) The administrator may resign—

- (a) on grounds of ill health;
- (b) because of the intention to cease to practise as an insolvency practitioner; or
- (c) because the further discharge of the duties of administrator is prevented or made impractical by—
  - (i) a conflict of interest, or
  - (ii) a change of personal circumstances.

(2) The administrator may, with the permission of the court, resign on other grounds.

**Notice of intention to resign**

**3.63.**—(1) The administrator must give at least five business days' notice of intention—

- (a) to resign in a case falling within rule 3.62(1); or
- (b) to apply for the court's permission to resign in a case falling within rule 3.62(2).

(2) The notice must contain—

- (a) identification details for the insolvency proceedings;
- (b) the date of the appointment of the administrator; and
- (c) the name of the person who made the appointment or the administration application, as the case may be.

(3) The notice must also contain—

- (a) the date with effect from which the administrator intends to resign; or
- (b) where the administrator was appointed by an administration order, the date on which the administrator intends to lodge with the court an application for permission to resign.

(4) Notice must be delivered—

- (a) to any continuing administrator of the company;
  - (b) to the creditors' committee (if any);
  - (c) if there is neither a continuing administrator nor a creditors' committee, to—
    - (i) the company, and
    - (ii) the company's creditors;
  - (d) to the member State liquidator appointed in relation to the company (if there is one);
  - (e) where the administrator was appointed by the holder of a qualifying floating charge under paragraph 14 of Schedule B1, to—
    - (i) the person who appointed the administrator, and
    - (ii) all holders of prior qualifying floating charges;
  - (f) where the administrator was appointed by the company or the directors of the company under paragraph 22 of Schedule B1, to—
    - (i) the appointer, and
    - (ii) all holders of qualifying floating charges.
- (5) The notice must be accompanied by a summary of the administrator's receipts and payments.

#### **Notice of resignation (paragraph 87 of Schedule B1)**

**3.64.**—(1) A resigning administrator must, within five business days of delivering the notice under paragraph 87(2) of Schedule B1, deliver a copy of the notice to—

- (a) the registrar of companies;
  - (b) all persons, other than the person who made the appointment, to whom notice of intention to resign was delivered under rule 3.63; and
  - (c) except where the appointment was by administration order, lodge a copy of the notice with the court.
- (2) The notice must contain—
- (a) identification details for the insolvency proceedings;
  - (b) the date of the appointment of the administrator; and
  - (c) the name of the person who made the appointment or the administration application, as the case may be.
- (3) The notice must state—
- (a) the date from which the resignation is to have effect; and
  - (b) where the resignation is with the permission of the court, the date on which permission was given.

(4) Where an administrator was appointed by an administration order, notice of resignation under paragraph 87(2)(a) of Schedule B1 must be given by lodging the notice with the court.

#### **Application to court to remove administrator from office**

**3.65.**—(1) An application for an order under paragraph 88 of Schedule B1 that the administrator be removed from office must state the grounds on which the order is requested.

(2) A copy of the application must be delivered, not less than five business days before the date fixed for the hearing—

- (a) to the administrator;

- (b) to the person who—
    - (i) made the application for the administration order, or
    - (ii) appointed the administrator;
  - (c) to the creditors' committee (if any);
  - (d) to any continuing administrator of the company; and
  - (e) where there is neither a creditors' committee nor a continuing administrator appointed, to the company and the creditors, including any floating charge holders.
- (3) The court must deliver to the applicant a copy of any order removing the administrator.
- (4) The applicant must deliver a copy of the order—
- (a) as soon as reasonably practicable, and in any event within five business days of the copy order being delivered, to the administrator; and
  - (b) within five business days of the copy order being delivered, to—
    - (i) all other persons to whom notice of the application was delivered, and
    - (ii) the registrar of companies.

#### **Notice of vacation of office when administrator ceases to be qualified to act**

**3.66.** An administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the company and gives notice in accordance with paragraph 89 of Schedule B1 must also deliver notice to the registrar of companies.

#### **Deceased administrator**

**3.67.—**(1) If the administrator dies a notice of the fact and date of death must be lodged with the court.

- (2) The notice must be lodged as soon as reasonably practicable by one of the following—
- (a) a surviving administrator;
  - (b) a member of the deceased administrator's firm (if the deceased was a member or employee of a firm);
  - (c) an officer of the deceased administrator's company (if the deceased was an officer or employee of a company); or
  - (d) the executor of the deceased administrator.

(3) If such a notice has not been lodged within the 21 days following the administrator's death, any other person may lodge the notice.

(4) The person who lodges the notice must also deliver a notice to the registrar of companies which contains—

- (a) identification details for the insolvency proceedings;
- (b) the name of the person who made the appointment or the administration application, as the case may be;
- (c) the date of the appointment of the administrator; and
- (d) the fact and date of death.

**Application to replace**

**3.68.**—(1) Where an application to court is made under paragraph 91(1) or 95 of Schedule B1 to appoint a replacement administrator, the application must be accompanied by the proposed replacement administrator's consent to act.

(2) Where the application is made under paragraph 91(1), a copy of the application must be delivered—

- (a) to the person who made the application for the administration order;
- (b) to any person who has appointed a receiver of the company;
- (c) to any person who is or may be entitled to appoint a receiver of the company;
- (d) to any person who is or may be entitled to appoint an administrator of the company under paragraph 14 of Schedule B1;
- (e) to any receiver of the company;
- (f) if there is pending a petition for the winding up of the company, to—
  - (i) the petitioner, and
  - (ii) any provisional liquidator;
- (g) to any member State liquidator appointed in main proceedings in relation to the company;
- (h) to the company, if the application is made by anyone other than the company;
- (i) to any supervisor of any CVA in relation to the company; and
- (j) to the proposed administrator.

(3) Rules 3.10, 3.11 and 3.13(1) and (2) apply to applications made under paragraph 91(1) and 95 of Schedule B1, with any necessary modifications.

**Appointment of replacement or additional administrator**

**3.69.** Where a replacement administrator is appointed or an additional administrator is appointed to act—

- (a) the following apply—
  - (i) rule 3.17 the requirement as to the heading in paragraph (1) and paragraphs (1)(a) to (f), and (2),
  - (ii) rule 3.18 paragraphs (1)(a) and (b)(ii), (2) and (3),
  - (iii) rule 3.24 paragraphs (1)(a) to (d) and (2),
  - (iv) rule 3.25 paragraphs (1), (2)(a) to (c) and (3),
  - (v) rule 3.26 paragraphs (1)(a), (3) and (4), and
  - (vi) rule 3.27 paragraphs (1), (2)(a) and (b), (3) and (4).
- (b) the replacement or additional administrator must deliver notice of the appointment to the registrar of companies; and
- (c) all documents must clearly identify the appointment as of a replacement administrator or an additional administrator.

**Administrator's duties on vacating office**

**3.70.**—(1) An administrator who ceases to be in office as a result of removal, resignation or ceasing to be qualified to act as an insolvency practitioner in relation to the company must as soon as reasonably practicable deliver to the person succeeding as administrator—

- (a) the assets (after deduction of any expenses properly incurred and distributions made by the departing administrator);
  - (b) the records of the administration, including correspondence, statements of claim and documentary evidence of debt and other documents relating to the administration while it was within the responsibility of the departing administrator; and
  - (c) the company's records.
- (2) An administrator who makes default in complying with this rule is guilty of an offence.