
STATUTORY INSTRUMENTS

2018 No. 1082

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

PART 3

ADMINISTRATION

CHAPTER 14

Reporting and Remuneration

Progress reports

3.93.—(1) The administrator must—

- (a) within six weeks after the end of each accounting period; and
- (b) within six weeks after the administrator ceases to act as administrator,

send to the court and to the registrar of companies, and to each creditor, a progress report.

(2) For the purposes of this Chapter, “accounting period” in relation to an administration is to be construed as follows:

- (a) the first accounting period is the period of six months beginning with the date on which the company entered administration; and
- (b) any subsequent accounting period is the period of six months beginning with the end of the last accounting period except that—
 - (i) where the administrator and the creditors’ committee agree, or
 - (ii) where there is no creditors’ committee, the court determines,

the accounting period is to be such other period beginning with the end of the last accounting period as may be agreed or, as the case may be determined, it is to be that other period.

(3) An administrator who fails to deliver a progress report within the time periods referred to in paragraph (1) is guilty of an offence.

(4) The court may, on the application of the administrator, extend either or both of the periods of six weeks referred to in paragraph (1) of this rule.

Progress reports: content

3.94.—(1) The administrator’s progress report must include—

- (a) identification details for the insolvency proceedings;
- (b) identification and contact details for the administrator;
- (c) the date of appointment of the administrator and any changes in the administrator in accordance with paragraphs (4) and (5);
- (d) details of any extensions to the initial period of appointment;

- (e) details of progress during the period of the report in accordance with paragraph (2);
 - (f) details of what assets remain to be realised;
 - (g) where a distribution is to be made in accordance with Chapter 15 in respect of an accounting period, the scheme of division; and
 - (h) any other relevant information for the creditors.
- (2) The details of the progress during the period of the report must include—
- (a) a receipts and payments account stating what assets of the company have been realised, for what value, and what payments have been made to creditors, in the form of a summary showing—
 - (i) receipts and payments during the relevant accounting period, or
 - (ii) where the administrator has ceased to act, receipts and payments during the period from the end of the last accounting period to the time when the administrator ceased to act (or, where the administrator has made no previous progress report, receipts and payments in the period since the administrator’s appointment); or
 - (b) where—
 - (i) no claim for outlays and remuneration is submitted under rule 3.95, or
 - (ii) a claim for outlays and remuneration is submitted under rule 3.95 but no determination fixing the amount of outlays and remuneration in accordance with rule 3.96(1) has been made in respect of such a claim—
 - (aa) a receipts and payments account which meets the requirements of paragraph (2)(a),
 - (bb) an estimate of the remuneration due to the administrator during the accounting period together with the basis or bases set out in rule 3.97 on which the estimate is based,
 - (cc) where remuneration due is not yet determined from the immediately preceding accounting period, an estimate of the remuneration due during that period, and
 - (dd) any outlays incurred.
- (3) The receipts and payments account in a final progress report must include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A.
- (4) A change in the administrator is only required to be shown in the next report after the change.
- (5) However if the current administrator is seeking the repayment of pre-administration expenses from a former administrator, the change in administrator must continue to be shown until the next report after the claim is settled.
- (6) This rule is without prejudice to the requirements of Chapter 15.

Administrator’s outlays and remuneration: claims

3.95.—(1) Where an administrator intends to submit a claim for the outlays reasonably incurred by the administrator and for remuneration within two weeks after the end of an accounting period, the administrator must submit to the creditors’ committee or, if there is no creditors’ committee, make available to creditors for the purposes of a decision procedure in respect of that period—

- (a) the administrator’s accounts of their intrusions with the company’s assets;
- (b) where funds are available after making allowance for contingencies, a scheme of division of the divisible funds; and
- (c) a claim for—

- (i) any outlays reasonably incurred by the administrator, and
- (ii) the administrator's remuneration.

(2) The administrator may, at any time within two weeks after the end of an accounting period, in respect of the previous accounting period, submit to a creditors' committee, or if there is no creditors' committee, seek approval from creditors through a decision procedure for—

- (a) the administrator's accounts of its intrusions with the company's assets for audit (such accounts of intrusions may include or consist of a progress report in terms of rules 3.93 and 3.94);
- (b) the outlays reasonably incurred by the administrator; and
- (c) the administrator's remuneration.

(3) The administrator may, at any time before the end of an accounting period submit to the creditors' committee or, if there is no creditors' committee, seek approval from creditors through a decision procedure for, an interim claim in respect of that period—

- (a) for the outlays reasonably incurred by the administrator; and
- (b) for the administrator's remuneration.

(4) If the administrator submits such an interim claim, the creditors' committee, or the creditors by decision procedure as the case may be may issue an interim determination in relation to the amount of the outlays and remuneration payable to the administrator, and where they do so, they must take into account that interim determination when issuing their determination under paragraph 3.96(1)(a)(ii).

Administrator's outlays and remuneration: determination

3.96.—(1) Within six weeks after the end of an accounting period—

- (a) the creditors' committee or, if there is no creditors' committee, the creditors through a decision procedure—
 - (i) may audit the accounts submitted or made available under rule 3.95(1)(a), and
 - (ii) must issue a determination fixing the amount of the outlays and remuneration payable to the administrator; and
- (b) the administrator must make the accounts submitted for audit, scheme of division and determination of the amount fixed under paragraph (1)(a)(ii) available for the inspection by the members of the company and the creditors.

(2) If the administrator's remuneration and outlays have been fixed by determination of the creditors' committee in accordance with paragraph (1)(a)(ii) and the administrator considers the amount to be insufficient, the administrator may request that it be increased by decision of the creditors by decision procedure.

(3) If the creditors' committee fails to issue a determination in accordance with paragraph (1)(a)(ii), the administrator must seek a decision of the creditors through decision procedure (except in a case under paragraph (6)) and they must issue a determination in accordance with paragraph (1)(a)(ii).

(4) If the creditors fail to issue a determination by decision procedure in accordance with paragraph (3) then the administrator must submit the claim to the court and the court must issue a determination.

(5) In a case where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1, a decision under paragraph (2) or a decision under rule 3.101 is taken to be passed if (and only if) passed by the approval of—

- (a) each secured creditor of the company; or

(b) if the administrator has made, or proposes to make, a distribution to preferential creditors—

- (i) each secured creditor of the company, and
- (ii) a decision of the preferential creditors in a decision procedure.

(6) In a case where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1, if there is no creditor's committee, or the committee does not make the requisite determination in accordance with rule 3.96(1)(a)(ii) or 3.96(3), the administrator's remuneration and outlays may be fixed (in accordance with this rule) by the approval of—

- (a) each secured creditor of the company; or
- (b) if the administrator has made, or proposes to make, a distribution to preferential creditors—
 - (i) each secured creditor of the company, and
 - (ii) a decision of the preferential creditors in a decision procedure.

(7) In fixing the amount of the administrator's remuneration and outlays in respect of any accounting period, the creditors' committee or, as the case may be, the creditors by decision procedure, may take into account any adjustment which the creditors' committee or the creditors may wish to make in the amount of the remuneration and outlays fixed in respect of any earlier accounting period.

Administrator's remuneration: basis of remuneration

3.97.—(1) The basis of the administrator's remuneration must be fixed—

- (a) as a percentage of the value of the company's property with which the administrator has to deal;
- (b) by reference to the work which was reasonably undertaken by the administrator and the administrator's staff in attending to matters arising in the administration; or
- (c) as a set amount.

(2) The basis of remuneration may be one or a combination of the bases set out in paragraph (1) and different bases or percentages agreed may be fixed in respect of different things done by the administrator or administrator's staff.

Former administrator's outlays and remuneration

3.98. For the purposes of paragraph 99 of Schedule B1, the former administrator's outlays and remuneration comprise those items set out in rule 3.51.

Appeal against fixing of remuneration.

3.99.—(1) If the administrator considers that the remuneration or outlays fixed for the administrator by the creditors' committee, or by decision of the creditors (including remuneration or outlays fixed under rule 3.96(6)) is insufficient, the administrator may apply to the court for an order increasing their amount or rate.

(2) The administrator must give at least 14 days' notice of the administrator's application to the members of the creditors' committee, and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

(3) If there is no creditors' committee, the administrator's notice of the administrator's application must be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented and heard.

(4) The court may order the expenses of the administrator's application, including the expenses of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the administration.

Creditor's claim that remuneration is excessive

3.100.—(1) If the administrator's remuneration and outlays have been fixed by the creditors' committee or by the creditors, any creditor or creditors of the company representing in value at least 25 percent of the creditors may apply to the court not later than eight weeks after the end of an accounting period for an order that the administrator's remuneration or outlays be reduced on the grounds that they are, in all the circumstances, excessive.

(2) The court may make an order fixing the remuneration or outlays at a reduced amount or rate.

(3) The court may order the expenses of the creditor making the application to be paid as an expense of the administration.

Remuneration of joint administrators

3.101. Where there are joint administrators—

- (a) it is for them to agree between themselves as to how the remuneration or outlays payable should be apportioned;
- (b) if they cannot agree as to how the remuneration or outlays payable should be apportioned, any one of them may refer the issue for determination—
 - (i) by the court, or
 - (ii) by resolution of the creditors' committee or a meeting of creditors.