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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

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

**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;

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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).

- (h) a statement whether the company is an Article 1.2 undertaking;
  - (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.

### **Notice of appointment after notice of intention to appoint**

**3.24.**—(1) Notice of an appointment under paragraph 22 of Schedule B1 (when notice of intention to appoint has been given under paragraph 26) must be headed “Notice of appointment of an administrator by a company (where a notice of intention to appoint has been given)” or “Notice of appointment of an administrator by the directors of a company (where a notice of intention to appoint has been given)” and must contain—

- (a) identification details for the company immediately below the heading;
- (b) a statement that the company has, or the directors have, as the case may be, appointed the person named as administrator of the company;
- (c) the name and address of the person appointed as administrator;
- (d) a statement that a copy of the administrator’s consent to act accompanies the notice;
- (e) a statement that the company is, or the directors are, as the case may be, entitled to make an appointment under paragraph 22 of Schedule B1;
- (f) a statement that the appointment is in accordance with Schedule B1;
- (g) a statement whether the company is an Article 1.2 undertaking;

- (h) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial, or non-EU proceedings and the reasons for so stating;
  - (i) a statement that the company has, or the directors have, as the case may be, given notice of their intention to appoint in accordance with paragraph 26(1) of Schedule B1, that a copy of the notice was lodged with the court, the date of that lodging and either—
    - (i) that five business days have elapsed since notice was given under paragraph 26(1) of Schedule B1, or
    - (ii) that each person to whom the notice was given has consented to the appointment; and
  - (j) the date and time of the appointment by the company or its directors.
- (2) Where two or more administrators are appointed, the notice must also specify in terms of paragraph 100(2) of Schedule B1—
- (a) which functions, if any, are to be exercised by those persons acting jointly; and
  - (b) which functions, if any, are to be exercised by any or all of those persons.
- (3) The statutory declaration included in the notice in accordance with paragraph 29(2) of Schedule B1 must be made not more than five business days before the notice is lodged with the court.
- (4) If the statutory declaration is not made by the person making the appointment it must indicate the capacity in which the person making the declaration does so.

#### **Notice of appointment without prior notice of intention to appoint**

**3.25.**—(1) Notice of an appointment under paragraph 22 of Schedule B1 (when notice of intention to appoint has not been given under paragraph 26) must be headed “Notice of appointment of an administrator by a company (where a notice of intention to appoint has not been given)” or “Notice of appointment of an administrator by the directors of a company (where a notice of intention to appoint has not been given)” and must identify the company immediately below the heading.

- (2) The notice must state the following—
- (a) that the company has, or the directors have, as the case may be, appointed the person specified under sub-paragraph (b) as administrator of the company;
  - (b) the name and address of the person appointed as administrator;
  - (c) that a copy of the administrator’s consent to act accompanies the notice;
  - (d) that the company is or the directors are, as the case may be, entitled to make an appointment under paragraph 22 of Schedule B1;
  - (e) that the appointment is in accordance with Schedule B1;
  - (f) that the company has not within the preceding 12 months been—
    - (i) in administration,
    - (ii) the subject of a moratorium under Schedule A1 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) 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) whether the company is an Article 1.2 undertaking;

- (i) whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EU proceedings and the reasons for so stating;
  - (j) that the notice is accompanied by—
    - (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) the date and time of the appointment.
- (3) Where two or more administrators are appointed the notice must also specify in terms of paragraph 100(2) of Schedule B1—
- (a) which functions (if any) are to be exercised by those persons acting jointly; and
  - (b) which functions (if any) are to be exercised by any or all of those persons.
- (4) The statutory declaration included in the notice in accordance with paragraph 29(2) and 30 of Schedule B1 must—
- (a) if the declaration is made on behalf of 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.

**Notice of appointment: lodging with the court**

- 3.26.**—(1) Three copies of the notice of appointment in accordance with rule 3.24 or 3.25 must be lodged with the court, accompanied by—
- (a) the administrator’s consent to act; and
  - (b) the written consent of all those persons to whom notice was given in accordance with paragraph 26(1) of Schedule B1 unless the period of notice set out in paragraph 26(1) has expired.
- (2) Where a notice of intention to appoint an administrator has not been given, the copies of the notice of appointment must also be accompanied by—
- (a) a copy of the resolution of the company to appoint an administrator, where the company is making the appointment; or
  - (b) a record of the decision of the directors, where the directors are making the appointment.
- (3) The court must certify the copies, endorse them with the date and time of lodging and deliver two of the certified copies to the appointer.
- (4) The appointer must as soon as reasonably practicable deliver one of the certified copies to the administrator.