
STATUTORY INSTRUMENTS

2018 No. 1082

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

PART 3

ADMINISTRATION

CHAPTER 7

Administrator's proposals

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

Administrator's proposals: additional content

3.35.—(1) The administrator's statement of proposals (which is required by paragraph 49(4) to be sent to the registrar of companies, creditors and members) must identify the insolvency proceedings and, in addition to the matters set out in paragraph 49, contain—

- (a) any other trading names of the company;
- (b) details of the administrator's appointment, including—
 - (i) the date of the appointment,
 - (ii) the person making the application or appointment, and
 - (iii) where a number of persons have been appointed as administrators, details of the matters set out in paragraph 100(2) of Schedule B1 relating to the exercise of their functions;
- (c) the names of the directors and secretary of the company and details of any shareholdings in the company which they may have;
- (d) an account of the circumstances giving rise to the appointment of the administrator;
- (e) the date the proposals were sent to the creditors;
- (f) if a statement of the company's affairs has been submitted—
 - (i) a copy or summary of it, except so far as an order under rule 3.44 or 3.45 limits disclosure of it, and excluding any schedule referred to in rule 3.30(6)(b), or the particulars relating to individual creditors contained in any such schedule,
 - (ii) details of who provided the statement of affairs, and
 - (iii) any comments which the administrator may have upon the statement of affairs;
- (g) if an order under rule 3.45 or 3.46 has been made—
 - (i) a statement of that fact, and
 - (ii) the date of the order;
- (h) if no statement of affairs has been submitted—

- (i) the details of the financial position of the company at the latest practicable date (which must, unless the court orders otherwise, be a date not earlier than that on which the company entered administration), and
 - (ii) an explanation as to why there is no statement of affairs;
 - (i) a full list of the company's creditors in accordance with paragraph (2) if either—
 - (i) no statement of affairs has been submitted, or
 - (ii) a statement of affairs has been submitted but it does not include such a list, or the administrator believes the list included is less than full;
 - (j) a statement of—
 - (i) how it is envisaged the purpose of the administration will be achieved, and
 - (ii) how it is proposed that the administration will end, including, where it is proposed that the administration will end by the company moving to a creditors' voluntary winding up—
 - (aa) details of the proposed liquidator,
 - (bb) where applicable, the declaration required by section 231, and
 - (cc) a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator in accordance with paragraph 83(7) (a) of Schedule B1 and rule 3.60(6)(b);
 - (k) a statement of either—
 - (i) the method by which the administrator has decided to seek a decision by creditors as to whether they approve the proposals, or
 - (ii) the administrator's reasons for not seeking a decision by creditors;
 - (l) the manner in which the affairs and business of the company—
 - (i) have, since the date of the administrator's appointment, been managed and financed, including, where any assets have been disposed of, the reasons for the disposals and the terms upon which the disposals were made, and
 - (ii) will, if the administrator's proposals are approved, continue to be managed and financed;
 - (m) a statement whether the proceedings are main, secondary, territorial or non-EU proceedings; and
 - (n) any other information that the administrator thinks necessary to enable creditors to decide whether or not to approve the proposals.
- (2) The list of creditors required by paragraph (1)(i) must contain the details required by paragraph (3) except where paragraphs (4) and (5) apply.
- (3) The particulars required by paragraph (2) are as follows and must be given in this order—
- (a) the name and postal address of the creditor;
 - (b) the amount of the debt owed to the creditor;
 - (c) details of any security held by the creditor;
 - (d) the date on which any such security was given; and
 - (e) the value of any such security;
- (4) This paragraph applies where the particulars required by paragraph (3) relate to creditors who are either—
- (a) employees or former employees of the company; or

- (b) consumers claiming amounts paid in advance for the supply of goods and services.
- (5) Where paragraph (4) applies—
 - (a) the list of creditors required by paragraph (1)(i) must state separately for each of paragraphs (4)(a) and (b) the number of the creditors and the total debts owed to them;
 - (b) the particulars required by paragraph (3) in respect of such creditors must be set out in separate schedules to the list of creditors for each of paragraphs (4)(a) and (b); and
 - (c) the administrator must not deliver any such schedule to the registrar of companies with the statement of proposals.
- (6) Except where the administrator proposes a CVA in relation to the company, the statement made by the administrator under paragraph 49 of Schedule B1 must also include—
 - (a) to the best of the administrator’s knowledge and belief, an estimate of the value of—
 - (i) the prescribed part (whether or not the administrator might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts), and
 - (ii) the company’s net property (as defined in section 176A(6)); and
 - (b) a statement whether the administrator proposes to make an application to the court under section 176A(5) and if so the reason for the application.
- (7) The administrator may exclude from an estimate under paragraph (6)(a) information the disclosure of which could seriously prejudice the commercial interests of the company.
- (8) If the exclusion of such information affects the calculation of an estimate, the report must say so.
- (9) The document containing the statement of proposals must include a statement of the basis on which it is proposed that the administrator’s remuneration should be fixed by a decision in accordance with Chapter 14 of Part 3 of these Rules.
- (10) Where applicable, the document containing the statement of proposals must include—
 - (a) a statement of any pre-administration costs charged or incurred by the administrator or, to the administrator’s knowledge, by any other person qualified to act as an insolvency practitioner in relation to the company;
 - (b) a statement that the payment of any unpaid pre-administration costs as an expense of the administration is—
 - (i) subject to approval under rule 3.52, and
 - (ii) not part of the proposals subject to approval under paragraph 53(1) of Schedule B1.

Administrator’s proposals: statement of pre-administration costs

- 3.36.** A statement of pre-administration costs under rule 3.35(10)(a) must include—
- (a) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made;
 - (b) details of the work done for which the fees were charged and expenses incurred;
 - (c) an explanation of why the work was done before the company entered administration and how it had been intended to further the achievement of an objective in paragraph 3(1) of Schedule B1 in accordance with sub-paragraphs (2) to (4) of that paragraph;
 - (d) a statement of the amount of the pre-administration costs, setting out separately—
 - (i) the fees charged by the administrator,

(1) Paragraph 53 and the preceding heading are amended by paragraph 10(8) to (10) of Schedule 9 to the 2015 Act.

- (ii) the expenses incurred by the administrator,
- (iii) the fees charged (to the administrator's knowledge) by any other person qualified to act as an insolvency practitioner in relation to the company (and, if more than one, by each separately), and
- (iv) the expenses incurred (to the administrator's knowledge) by any other person qualified to act as an insolvency practitioner in relation to the company (and, if more than one, by each separately);
- (e) a statement of the amounts of pre-administration costs which have already been paid (set out separately as under sub-paragraph (d));
- (f) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person set out separately as under sub-paragraph (d);
- (g) a statement of the amounts of unpaid pre-administrations costs (set out separately as under sub-paragraph (d)); and
- (h) a statement that the payment of unpaid pre-administration costs as an expense of the administration is—
 - (i) subject to approval under rule 3.52, and
 - (ii) not part of the proposals subject to approval under paragraph 53 of Schedule B1.

Advertising administrator's proposals and notices of extension of time for delivery of proposals (paragraph 49 of Schedule B1)

- 3.37.**—(1) A notice published by the administrator under paragraph 49(6) of Schedule B1 must—
- (a) identify the insolvency proceedings and contain the registered office of the company;
 - (b) be advertised in such manner as the administrator thinks fit; and
 - (c) be published as soon as reasonably practicable after the administrator has delivered the statement of proposals to the company's creditors but not later than eight weeks (or such other period as may be agreed by the creditors or as the court may order) from the date on which the company entered administration.
- (2) Where the court orders, on an application by the administrator under paragraph 107 of Schedule B1, an extension of the period in paragraph 49(5) of Schedule B1 for delivering copies of the statement of proposals, the administrator must as soon as reasonably practicable after the making of the order deliver a notice of the extension to—
- (a) the creditors of the company;
 - (b) the members of the company of whose address the administrator is aware; and
 - (c) the registrar of companies.
- (3) The notice must—
- (a) identify the insolvency proceedings;
 - (b) state the date to which the court has ordered an extension; and
 - (c) contain the registered office of the company.
- (4) The administrator is taken to comply with paragraph (2)(b) if the administrator publishes a notice complying with paragraph (5).
- (5) The notice must—
- (a) contain the information required by paragraph (3);
 - (b) be advertised in such manner as the administrator thinks fit;

- (c) state that members may request in writing a notice of the extension, and state the address to which to write; and
- (d) be published as soon as reasonably practicable after the administrator has delivered the notice of the extension to the company's creditors.

Seeking approval of the administrator's proposals

3.38.—(1) This rule applies where the administrator is required by paragraph 51 of Schedule B1(2) to seek approval from the company's creditors of the statement of proposals.

(2) The statement of proposals delivered under paragraph 49(4) of Schedule B1(3) must be accompanied by a notice to the creditors of the decision procedure in accordance with rule 5.8.

(3) The administrator may seek approval from the creditors using the deemed consent procedure in which case the statement of proposals delivered under paragraph 49(4) must be accompanied by a notice complying with the requirements of rule 5.7.

(4) Where the administrator has made a statement under paragraph 52(1) and has not sought a decision on approval from creditors, the proposal will be deemed to have been approved unless a decision has been requested under paragraph 52(2)(4).

(5) Where under paragraph (4) the proposal is deemed to have been approved the administrator must, as soon as reasonably practicable after the expiry of the period for requisitioning a decision set out in rule 5.17(2), deliver a notice of the date of deemed approval to the registrar of companies, the court and any creditor to whom the administrator has not previously delivered the proposal.

(6) The notice must contain—

- (a) identification details for the insolvency proceedings;
- (b) the name of the administrator;
- (c) the date the administrator was appointed; and
- (d) the date on which the statement of proposals was delivered to the creditors.

(7) A copy of the statement of proposals, with the statements required by rule 3.35(5) must accompany the notice given to the court and to any creditors to whom a copy of the statement of proposals has not previously been delivered.

Invitation to creditors to form a creditors' committee

3.39.—(1) Where the administrator is required to seek a decision from the company's creditors under paragraph 51 of Schedule B1, the administrator must at the same time deliver to the creditors a notice inviting them to decide whether a creditors' committee should be established if sufficient creditors are willing to be members of the committee.

(2) The notice must also invite nominations for members of the committee, such nominations to be received by the administrator by a date to be specified in the notice.

(3) The notice must state that any nominations—

- (a) must be delivered to the administrator by the specified date; and
- (b) can only be accepted if the administrator is satisfied as to the creditor's eligibility under rule 3.74.

(2) Paragraph 51 and the preceding heading are inserted for Scotland by paragraph 1 of Schedule 16 to the Enterprise Act 2002 (c.40).

(3) Paragraph 49 is amended by paragraph 10(2) of Schedule 9 to the 2015 Act.

(4) Paragraph 52(2) is amended by paragraph 10(6) of Schedule 9 to the 2015 Act.

(4) A notice under this rule must also be delivered to the creditors at any other time when the administrator seeks a decision by creditors and a creditors' committee has not already been established at that time.

Notice of extension of time to seek approval

3.40.—(1) Where the court orders an extension to the period set out in paragraph 51(2) of Schedule B1, the administrator must deliver a notice of the extension as soon as reasonably practicable to each person mentioned in paragraph 49(4) of Schedule B1.

(2) The notice must contain identification details for the insolvency proceedings and the date to which the court has ordered an extension.

(3) The administrator is taken to have complied with paragraph (1) as regards members of the company if the administrator publishes a notice complying with paragraph (4).

(4) The notice must—

- (a) be advertised in such a manner as the administrator thinks fit;
- (b) state that members may request in writing a copy of the notice of the extension, and state the address to which to write; and
- (c) be published as soon as reasonably practicable after the administrator has delivered the notice of the extension to the company's creditors.

Notice of the creditors' decision on the administrator's proposals (paragraph 53(2))

3.41.—(1) In addition to delivering a report to the court and the registrar of companies (in accordance with paragraph 53(2) of Schedule B1) the administrator must deliver a report to—

- (a) the company's creditors (accompanied by a copy of the statement of proposals, with the statement required by rule 3.35(10)(a), if it has not previously been delivered to the creditor); and
- (b) every other person to whom a copy of the statement of proposals was delivered.

(2) A report mentioned in paragraph (1) must contain—

- (a) identification details for the insolvency proceedings;
- (b) details of decisions taken by the creditors including details of any modifications to the proposals which were approved by the creditors; and
- (c) the date such decisions were made.

(3) A copy of the statement of proposals, with any statements required by rule 3.35(9) and (10), must accompany the report to the court.

Administrator's proposals: revision

3.42.—(1) Where paragraph 54(1) of Schedule B1(5) applies, the statement of the proposed revision which is required to be delivered to the creditors must be delivered together with a notice of the decision procedure in accordance with rule 5.8.

(2) The statement must identify the insolvency proceedings and include—

- (a) any other trading names of the company;
- (b) details of the administrator's appointment, including—
 - (i) the date of appointment, and

(5) Paragraph 54 is amended by paragraph 10(11) to (16) of Schedule 9 to the 2015 Act.

- (ii) the person making the application or appointment;
 - (c) the names of the directors and secretary of the company and details of any shareholdings in the company which they may have;
 - (d) a summary of the original proposals and the reason or reasons for proposing a revision;
 - (e) details of the proposed revision, including details of the administrator's assessment of the likely impact of the proposed revision upon creditors generally or upon each class of creditors;
 - (f) where the proposed revision relates to the ending of the administration by a creditors' voluntary winding up and the nomination of a person to be the proposed liquidator of the company—
 - (i) details of the proposed liquidator,
 - (ii) where applicable, the declaration required by section 231, and
 - (iii) a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator in accordance with paragraph 83(7)(a) of Schedule B1 and rule 3.60(6)(b); and
 - (g) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions.
- (3) The administrator may seek a decision using the deemed consent procedure in which case the statement of the proposed revision must be accompanied by a notice which complies with rule 5.7.
- (4) The period within which, subject to paragraph 54(3) of Schedule B1, the administrator must send a copy of the statement to every member of the company of whose address the administrator is aware is five business days after sending the statement of the proposed revision to the creditors.
- (5) Notice under paragraph 54(3) and (4) of Schedule B1 must—
- (a) be advertised in such manner as the administrator thinks fit as soon as reasonably practicable after the administrator has sent the statement to the creditors; and
 - (b) state that members may request in writing a copy of the proposed revision, and state the address to which to write.
- (6) A copy of the statement of revised proposals under rule 3.43(3) must be delivered to the registrar of companies not later than five days after the report under rule 3.43(1) is delivered.

Notice of result of creditors' decision on revised proposals (paragraph 54(6))

- 3.43.—**(1) In addition to delivering a report to the court and the registrar of companies (in accordance with paragraph 54(6) of Schedule B1) the administrator must deliver a report to—
- (a) the company's creditors (accompanied by a copy of the original statement of proposals and the revised statement of proposals if the administrator had not delivered notice of the decision procedure or deemed consent procedure to the creditor); and
 - (b) every other person to whom a copy of the original statement of proposals was delivered.
- (2) A report mentioned in paragraph (1) must contain—
- (a) identification details for the insolvency proceedings;
 - (b) the date of the revised proposals;
 - (c) details of decisions taken by the creditors including details of any modifications to the revised proposals which were approved by the creditors; and
 - (d) the date such decisions were made.
- (3) A copy of the statement of revised proposals must accompany the notice to the court.

Status: *This is the original version (as it was originally made).*
