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STATUTORY INSTRUMENTS

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**2021 No. 1178**

The Payment and Electronic Money Institution  
Insolvency (England and Wales) Rules 2021

PART 2

Application for special administration order

**Content of application**

**6.**—(1) An application for a special administration order must be made in writing and authenticated by the applicant.

(2) The application must state—

- (a) the full name and registered number of the institution,
- (b) any other trading names of the institution,
- (c) the institution's date of incorporation,
- (d) the institution's nominal capital and the amount of capital paid up,
- (e) the address of the institution's registered office,
- (f) an email address for the institution,
- (g) the identity of the person (or persons) nominated for appointment as administrator, and
- (h) a statement setting out which of the grounds in regulation 9(1) the applicant is relying on in making the application.

**Statement of proposed administrator**

**7.** An application for a special administration order must be accompanied by a statement by the proposed administrator—

- (a) specifying the name and business address of the person (or each person) proposed to be appointed,
- (b) giving that person's (or each person's) consent to act,
- (c) giving details of the person's (or each person's) qualification to act as an insolvency practitioner, and
- (d) giving details of any prior professional relationship that the person (or any of them) has had with the institution.

**Witness statement in support of application**

**8.**—(1) An application for a special administration order must be accompanied by a witness statement.

(2) If the application is made by—

- (a) the institution or one of its directors, the witness statement must be made by one of its directors or the company secretary of the institution, stating that they make it on behalf of the institution or, as the case may be, on behalf of the directors,
  - (b) a creditor or a contributory of the institution, the witness statement must be made by a person acting under the authority of all the creditors, or, as the case may be, all the contributories, making the application,
  - (c) the FCA, the witness statement must identify the person making the statement and must include the capacity in which that person makes the statement and the basis for that person's knowledge of the matters set out in the statement, or
  - (d) a combination of the persons listed in regulation 8(1)(a) to (e), the witness statement must be made by a person acting under the authority of all the applicants.
- (3) The witness statement must—
- (a) set out the reasons by which the applicant believes the ground in regulation 9(1) on which the application is based is satisfied,
  - (b) state the institution's current financial position, specifying (to the best of the applicant's knowledge and belief) the institution's assets and liabilities, including contingent and prospective liabilities,
  - (c) specify any security known or believed to be held by the creditors of the institution,
  - (d) specify the amount of relevant funds held by the institution to the best of the applicant's knowledge and belief,
  - (e) specify how functions are going to be allocated where more than one person is to be appointed as administrator (stating in particular whether functions are to be exercisable jointly or by any or all of the persons appointed), and
  - (f) specify any other matters which the applicant thinks will assist the court in deciding whether to make the special administration order.

### **Filing of application**

**9.—**(1) The application and its accompanying documents must be filed with the court together with enough copies of the application and accompanying documents for service and proof of service under rule 10.

- (2) The court must fix a venue for the hearing of the application.
- (3) In fixing the venue the court must have regard to—
  - (a) the desirability of the application being heard as soon as is reasonably practicable, and
  - (b) the need for the institution's representatives to be able to reach the venue in time for the hearing.
- (4) Each of the copies filed—
  - (a) must have the seal of the court applied to it,
  - (b) must be endorsed with the date and time of filing, and
  - (c) must be endorsed with the venue for the hearing of the application.

### **Service of application**

- 10.—**(1) The application must be served on—
- (a) the institution (if neither the institution nor its directors are the applicant),
  - (b) the person (or each of the persons) nominated for appointment as administrator,

- (c) any person who has given notice to the FCA in respect of the institution under regulation 11(6), and
  - (d) if there is in force for the institution a voluntary arrangement under Part 1 of the IA 1986, the supervisor of that arrangement.
- (2) Service under paragraph (1) must be service of a sealed and endorsed copy of the application and its accompanying documents issued under rule 9.
- (3) Service of the application must be effected by the applicant, or their solicitor, or by a person instructed by the applicant or the solicitor, as soon as is reasonably practicable before the hearing.
- (4) Service must be effected as follows—
- (a) on the institution (subject to paragraph (5)), by delivering the documents to its registered office, and
  - (b) on any other person (subject to paragraph (6)) by delivering the documents to that person's proper address.
- (5) If delivery to the institution's registered office is not practicable, service may be effected by delivery to its last known principal place of business in England and Wales.
- (6) For the purposes of paragraph (4)(b), a person's proper address is any which that person has previously notified to the applicant as their address for service, but if no address has been notified, service may be effected by delivery to that person's usual or last known address.
- (7) Delivery or service of documents to any place or address under paragraph (4) or paragraph (5) may be made by leaving them there or by electronic delivery in accordance with rule 257, and where the document is sent electronically, it must be sent with a read receipt and the message shall be deemed to be delivered when the message is read.

### **Proof of service**

- 11.**—(1) Service of the application must be verified by a witness statement specifying the date and time on which, and the manner in which, service was effected.
- (2) The witness statement, with a sealed copy of the application exhibited to it, must be filed with the court—
- (a) as soon as is reasonably practicable, and
  - (b) in any event, before the hearing of the application.

### **Further notification**

- 12.** As soon as is reasonably practicable after filing the application, the applicant must notify—
- (a) any enforcement officer or other officer whom the applicant knows to be charged with effecting an execution or other legal process against the institution or its property,
  - (b) any person whom the applicant knows to have distrained against the institution or its property, and
  - (c) the FCA (if not the applicant).

### **The hearing**

- 13.** At the hearing of the application, any of the following may appear or be represented—
- (a) the applicant,
  - (b) the institution,
  - (c) one or more of the directors,

- (d) the person (or a person) nominated for appointment as administrator,
- (e) any supervisor of a voluntary arrangement under Part 1 of the IA 1986,
- (f) any person who has given notice to the FCA in respect of the institution under regulation 11(6),
- (g) the FCA, and
- (h) with the permission of the court, any other person who appears to have an interest.

#### **The special administration order**

**14.** If the court makes a special administration order, the order must state—

- (a) the name and address of the applicant,
- (b) the name, registered address and registered number of the institution to which the order refers,
- (c) details of any other parties appearing at the hearing,
- (d) the name of any administrator appointed by the order,
- (e) the date and time from which their appointment shall take effect,
- (f) the terms for costs of the application, and
- (g) any further particulars that the court thinks fit.

#### **Costs**

**15.** If the court makes a special administration order, the following are payable as an expense of the special administration—

- (a) costs of the applicant, and
- (b) any other costs allowed by the court.

#### **Notice of special administration order**

**16.—(1)** If the court makes a special administration order, it must, as soon as is reasonably practicable, deliver 3 sealed copies to the applicant.

(2) The applicant must as soon as is reasonably practicable, deliver a sealed copy to—

- (a) the administrator, and
- (b) the FCA (if not the applicant).

(3) If the court makes an order under regulation 10(1)(d) or regulation 10(1)(f), it must give directions as to the persons to whom and how notice of that order is to be given.