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STATUTORY INSTRUMENTS

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**2016 No. 1024**

**The Insolvency (England and Wales) Rules 2016**

**PART 4**

**RECEIVERSHIP**

**CHAPTER 2**

**Administrative receivers (other than in Scottish receiverships)**

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

**Application of Chapter 2**

**4.2.** This Chapter applies to administrative receivers (other than those appointed under section 51 (Scottish receiverships)).

**Interpretation**

**4.3.** In this Chapter—

“nominated person” means a relevant person who has been required by the administrative receiver to make out and deliver to the administrative receiver a statement of affairs; and

“relevant person” means a person mentioned in section 47(3).

**Administrative receiver’s security**

**4.4.** The cost of the administrative receiver’s security required by section 390(3) for the proper performance of the administrative receiver’s functions is an expense of the administrative receivership.

**Publication of appointment of administrative receiver (section 46(1))**

**4.5.—(1)** The notice which an administrative receiver is required by section 46(1) to send to the company and the creditors on being appointed must contain—

- (a) identification details for the company;
- (b) any other registered name of the company in the 12 months before the date of the appointment;
- (c) any name under which the company has traded at any time in those 12 months, if substantially different from its then registered name;
- (d) the name and address of the person appointed;
- (e) the date of the appointment;
- (f) the name of the person who made the appointment;

- (g) the date of the instrument conferring the power under which the appointment was made;
  - (h) a brief description of the instrument; and
  - (i) a brief description of any assets of the company in relation to which the appointment is not made.
- (2) The notice which an administrative receiver is required by section 46(1) to publish—
- (a) must be gazetted;
  - (b) may be advertised in such other manner as the administrative receiver thinks fit; and
  - (c) must state—
    - (i) that an administrative receiver has been appointed,
    - (ii) the date of the appointment,
    - (iii) the name of the person who made the appointment, and
    - (iv) the nature of the business of the company.

#### **Requirement to provide a statement of affairs (section 47(1))**

[Note: see sections 234(1) and 235(1) for the application of section 235 to administrative receivers.]

**4.6.—(1)** A requirement under section 47(1) for a nominated person to make out and submit to the administrative receiver a statement of the affairs of the company must be made by a notice delivered to such a person.

- (2) The notice must be headed “Notice requiring statement of affairs” and must—
- (a) identify the company immediately below the heading;
  - (b) require the recipient to prepare and submit to the administrative receiver a statement of the affairs of the company; and
  - (c) inform each recipient of—
    - (i) the name and address of any other nominated person to whom a notice has been delivered,
    - (ii) the date by which the statement must be delivered to the administrative receiver, and
    - (iii) the effect of sections 47(6) (penalty for non-compliance) and 235 (duty to co-operate with the office-holder).

(3) The administrative receiver must inform each nominated person that a document for the preparation of the statement of affairs capable of completion in compliance with rule 4.7 can be supplied if requested.

#### **Statement of affairs: contents and delivery of copy (section 47(2))**

[Note: section 47(2) requires the statement of affairs to be verified by a statement of truth.]

**4.7.—(1)** The statement of affairs must be headed “Statement of affairs” and must state that it is a statement of the affairs of the company on a specified date, being the date on which the administrative receiver was appointed.

- (2) The statement of affairs must contain, in addition to the matters required by section 47(2)—
- (a) a summary of the assets of the company, setting out the book value and the estimated realisable value of—
    - (i) any assets subject to a fixed charge,
    - (ii) any assets subject to a floating charge,
    - (iii) any uncharged assets, and

- (iv) the total assets available for preferential creditors;
  - (b) a summary of the liabilities of the company, setting out—
    - (i) the amount of preferential debts,
    - (ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts,
    - (iii) an estimate of the prescribed part, if applicable,
    - (iv) an estimate of the total assets available to pay debts secured by floating charges,
    - (v) the amount of debts secured by floating charges,
    - (vi) an estimate of the deficiency with respect to debts secured by floating charges or the surplus available after paying the debts secured by floating charges,
    - (vii) the amount of unsecured debts (excluding preferential debts and any deficiency with respect to debts secured by floating charges),
    - (viii) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts (excluding preferential debts and any deficiency with respect to debts secured by fixed and floating charges),
    - (ix) any issued and called-up capital, and
    - (x) an estimate of the deficiency with respect to, or surplus available to, members of the company;
  - (c) a list of the company's creditors with the further particulars required by paragraph (3) indicating—
    - (i) any creditors under hire-purchase, chattel leasing or conditional sale agreements,
    - (ii) any creditors who are consumers claiming amounts paid in advance for the supply of goods or services, and
    - (iii) any creditors claiming retention of title over property in the company's possession.
- (3) The particulars required by section 47(2) and paragraph (2)(c) of this rule to be included in the statement of affairs relating to each creditor are as follows—
- (a) the name and postal address;
  - (b) the amount of the debt owed to the creditor;
  - (c) details of any security held by the creditor;
  - (d) the date the security was given; and
  - (e) the value of any such security.
- (4) Paragraph (5) 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 or services.
- (5) Where this paragraph applies—
- (a) the statement of affairs must state separately for each of paragraphs (4)(a) and (b) the number of such creditors and the total of the debts owed to them; and
  - (b) the particulars required by paragraph (3) must be set out in separate schedules to the statement of affairs for each of paragraphs (4)(a) and (b).
- (6) The nominated person who makes the statement of truth required by section 47(2) (or, if more than one, by one of them) must deliver the statement of affairs together with a copy to the administrative receiver.

**Statement of affairs: statement of concurrence**

**4.8.**—(1) The administrative receiver may require a relevant person to deliver to the administrative receiver a statement of concurrence.

(2) A statement of concurrence is a statement, verified by a statement of truth, that that person concurs in the statement of affairs submitted by a nominated person.

(3) The administrative receiver must inform the nominated person who has been required to submit a statement of affairs that the relevant person has been required to deliver a statement of concurrence.

(4) The nominated person must deliver a copy of the statement of affairs to every relevant person who has been required to deliver a statement of concurrence.

(5) A statement of concurrence—

(a) must identify the company; and

(b) may be qualified in relation to matters dealt with in the statement of affairs where the relevant person—

(i) is not in agreement with the statement of affairs,

(ii) considers the statement to be erroneous or misleading, or

(iii) is without the direct knowledge necessary for concurring in it.

(6) The relevant person must deliver the required statement of concurrence together with a copy to the administrative receiver before the end of the period of five business days (or such other period as the administrative receiver may agree) beginning with the day on which the relevant person receives the statement of affairs.

**Statement of affairs: retention by administrative receiver**

**4.9.** The administrative receiver must retain the verified statement of affairs and each statement of concurrence as part of the records of the receivership.

**Statement of affairs: release from requirement and extension of time (section 47(5))**

**4.10.**—(1) The administrative receiver may exercise the power in section 47(5) to release a person from an obligation to submit a statement of affairs imposed under section 47(1) or (2), or to grant an extension of time, either on the administrative receiver's own discretion or at the request of a nominated person.

(2) A nominated person may apply to the court if the administrative receiver refuses that person's request.

(3) On receipt of an application, the court may, if it is satisfied that no sufficient cause is shown for it, dismiss it without giving notice to any party other than the applicant.

(4) The applicant must, at least 14 days before any hearing, deliver to the administrative receiver a notice stating the venue with a copy of the application and of any evidence on which the applicant intends to rely.

(5) The administrative receiver may do either or both of the following—

(a) file a report of any matters which the administrative receiver thinks ought to be drawn to the court's attention; or

(b) appear and be heard on the application.

(6) If a report is filed, the administrative receiver must deliver a copy of it to the applicant not later than five business days before the hearing.

(7) Sealed copies of any order made on the application must be delivered by the court to the applicant and the administrative receiver.

(8) On any application under this rule, the applicant's costs must be paid by the applicant in any event; but the court may order that an allowance of all or part of them be payable out of the assets under the administrative receiver's control.

#### **Statement of affairs: expenses**

**4.11.**—(1) The administrative receiver must pay, out of the assets under the administrative receiver's control, the expenses which the administrative receiver considers to have been reasonably incurred by—

- (a) a nominated person in making a statement of affairs and statement of truth; or
- (b) a relevant person in making a statement of concurrence.

(2) Any decision by the administrative receiver under this rule is subject to appeal to the court.

#### **Limited disclosure**

**4.12.**—(1) This rule applies where the administrative receiver thinks that disclosure of the whole or part of a statement of the company's affairs or a statement of concurrence would be likely to prejudice the conduct of the receivership or might reasonably be expected to lead to violence against any person.

(2) The administrative receiver may apply to the court for an order in respect of—

- (a) the statement of affairs; or
- (b) a statement of concurrence;

and the court may order that the whole or any specified part of the statement of affairs or a statement of concurrence must not be open to inspection except with permission of the court.

(3) The court's order may include directions regarding the delivery of documents to the registrar of companies and the disclosure of relevant information to other persons.

#### **Administrative receiver's report to the registrar of companies and secured creditors (section 48(1))**

**4.13.**—(1) The report which under section 48(1)(1) an administrative receiver is to send to the registrar of companies must be accompanied by a copy of any statement of affairs under section 47 and any statement of concurrence under rule 4.8.

(2) However the administrative receiver must not deliver to the registrar of companies with the statement of affairs any schedule required by rule 4.7(5)(b).

(3) The duty to send a copy of the report to the registrar of companies is subject to any order for limited disclosure made under rule 4.12.

(4) If a statement of affairs or statement of concurrence is submitted to the administrative receiver after the report is sent to the registrar of companies, the administrative receiver must deliver a copy of it to the registrar of companies as soon as reasonably practicable after its receipt by the administrative receiver.

(5) The report must contain (in addition to the matters required by section 48(1)) estimates to the best of the administrative receiver's knowledge and belief of—

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(1) Section 48(1) is amended by paragraph 12(2) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

- (a) the value of the prescribed part (whether or not the administrative receiver might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts); and
  - (b) the value of the company's net property (as defined by section 176A(6)).
- (6) The administrative receiver may exclude from an estimate under paragraph (5) information the disclosure of which could seriously prejudice the commercial interests of the company.
- (7) If the exclusion of such information affects the calculation of an estimate, the report must say so.
- (8) If the administrative receiver proposes to make an application to court under section 176A(5) the report must say so and give the reason for the application.

#### **Copy of report for unsecured creditors (section 48(2))**

- 4.14.** A notice under section 48(2)(b)(2) stating an address to which unsecured creditors should write for copies of an administrative receiver's report under that section—
- (a) must be gazetted;
  - (b) may be advertised in such other manner as the administrative receiver thinks fit; and
  - (c) must be accompanied by a notice under rule 4.15.

#### **Invitation to creditors to form a creditors' committee**

- 4.15.—**(1) An administrative receiver must deliver to the creditors with the report under section 48(1) a notice inviting the creditors 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 membership of the committee, such nominations to be received by the administrative receiver by a date to be specified in the notice.
- (3) The notice must state that any nominations—
- (a) must be delivered to the administrative receiver by the specified date; and
  - (b) can only be accepted if the administrative receiver is satisfied as to the creditor's eligibility under rule 17.4.

#### **Disposal of charged property (section 43(1))**

- 4.16.—**(1) This rule applies where an administrative receiver applies to the court under section 43(1) for authority to dispose of property of the company which is subject to a security.
- (2) The court must fix a venue for the hearing of the application.
- (3) As soon as reasonably practicable after the court has fixed the venue, the administrative receiver must deliver notice of the venue to the person who is the holder of the security.
- (4) If an order is made under section 43(1), the court must deliver two sealed copies to the administrative receiver and the administrative receiver must deliver one of them to the holder of the security.

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(2) Section 48(2) is amended by paragraph 12(3) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

### **Summary of receipts and payments**

**4.17.**—(1) The administrative receiver must deliver a summary of receipts and payments as receiver to the registrar of companies, the company and to the person who made the appointment, and to each member of the creditors' committee.

(2) The notice delivered to the registrar of companies under rule 1.20 must contain the date of the appointment of the administrative receiver.

(3) The summary must be delivered to those persons within two months after—

- (a) the end of the period of 12 months from the date of being appointed;
- (b) the end of every subsequent period of 12 months; and
- (c) ceasing to act as administrative receiver (unless there is a joint administrative receiver who continues in office).

(4) The summary must show receipts and payments—

- (a) during the relevant period of 12 months; or
- (b) where the administrative receiver has ceased to act, during the period—
  - (i) from the end of the last 12-month period to the time when the administrative receiver so ceased, or
  - (ii) if there has been no previous summary, since being appointed.

(5) This rule is without prejudice to the administrative receiver's duty to produce proper accounts otherwise than as above.

(6) An administrative receiver who makes default in complying with this rule is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.

### **Resignation**

**4.18.**—(1) An administrative receiver must deliver notice of intention to resign at least five business days before the date the resignation is intended to take effect to—

- (a) the person by whom the appointment was made;
- (b) the company or, if it is then in liquidation, the liquidator; and
- (c) the members of the creditors' committee.

(2) The notice must specify the date on which the administrative receiver intends the resignation to take effect.

### **Deceased administrative receiver**

**4.19.**—(1) If the administrative receiver dies a notice of the fact and date of death must be delivered as soon as reasonably practicable to—

- (a) the person by whom the appointment was made;
- (b) the registrar of companies;
- (c) the company or, if it is in liquidation, the liquidator; and
- (d) the members of the creditors' committee.

(2) The notice must be delivered by one of the following—

- (a) a surviving joint administrative receiver;
- (b) a member of the deceased administrative receiver's firm (if the deceased was a member or employee of a firm);

- (c) an officer of the deceased administrative receiver's company (if the deceased was an officer or employee of a company); or
- (d) a personal representative of the deceased administrative receiver.

(3) If such a notice has not been delivered within 21 days following the administrative receiver's death then any other person may deliver the notice.

#### **Other vacation of office**

**4.20.** An administrative receiver, on vacating office on completion of the administrative receivership, or in consequence of ceasing to be qualified to act as an insolvency practitioner in relation to the company, must as soon as reasonably practicable deliver a notice of doing so to—

- (a) the person by whom the appointment was made;
- (b) the company or, if it is then in liquidation, the liquidator; and
- (c) the members of the creditors' committee.

#### **Notice to registrar of companies (section 45(4))**

**4.21.** Where an administrative receiver's office is vacated other than by death, the notice to the registrar of companies required by section 45(4) may be given by delivering to the registrar of companies the notice required by section 859K(3)(3) of the Companies Act.