
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE FIRST GROUP OF PARTS

PART 4

COMPANIES WINDING UP

CHAPTER 15

DISCLAIMER

Liquidator's notice of disclaimer

4.187.—(1) Where the liquidator disclaims property under section 178, the notice of disclaimer shall contain such particulars of the property disclaimed as enable it to be easily identified.

(2) The notice shall be signed by the liquidator and filed in court, with a copy. The court shall secure that both the notice and the copy are sealed and endorsed with the date of filing.

(3) The copy notice, so sealed and endorsed, shall be returned by the court to the liquidator as follows—

- (a) if the notice has been delivered at the offices of the court by the liquidator in person, it shall be handed to him,
- (b) if it has been delivered by some person acting on the liquidator's behalf, it shall be handed to that person, for immediate transmission to the liquidator, and
- (c) otherwise, it shall be sent to the liquidator by first class post.

The court shall cause to be endorsed on the original notice, or otherwise recorded on the file, the manner in which the copy notice was returned to the liquidator.

(4) For the purposes of section 178, the date of the prescribed notice is that which is endorsed on it, and on the copy, in accordance with this Rule.

Communication of disclaimer to persons interested

4.188.—(1) Within 7 days after the day on which the copy of the notice of disclaimer is returned to him under Rule 4.187, the liquidator shall send or give copies of the notice (showing the date endorsed as required by that Rule) to the persons mentioned in paragraphs (2) to (4) below.

(2) Where the property disclaimed is of a leasehold nature, he shall send or give a copy to every person who (to his knowledge) claims under the company as underlessee or mortgagee.

(3) He shall in any case send or give a copy of the notice to every person who (to his knowledge)—

- (a) claims an interest in the disclaimed property, or
- (b) is under any liability in respect of the property, not being a liability discharged by the disclaimer.

(4) If the disclaimer is of an unprofitable contract, he shall send or give copies of the notice to all such persons as, to his knowledge, are parties to the contract or have interests under it.

(5) If subsequently it comes to the liquidator's knowledge, in the case of any person, that he has such an interest in the disclaimed property as would have entitled him to receive a copy of the notice of disclaimer in pursuance of paragraphs (2) to (4), the liquidator shall then forthwith send or give to that person a copy of the notice.

But compliance with this paragraph is not required if—

- (a) the liquidator is satisfied that the person has already been made aware of the disclaimer and its date, or
- (b) the court, on the liquidator's application, orders that compliance is not required in that particular case.

Additional notices

4.189. The liquidator disclaiming property may, without prejudice to his obligations under sections 178 to 180 and Rules 4.187 and 4.188, at any time give notice of the disclaimer to any persons who in his opinion ought, in the public interest or otherwise, to be informed of it.

Duty to keep court informed

4.190. The liquidator shall notify the court from time to time as to the persons to whom he has sent or given copies of the notice of disclaimer under the two preceding Rules, giving their names and addresses, and the nature of their respective interests.

Application by interested party under s.178(5)

4.191. Where, in the case of any property, application is made to the liquidator by an interested party under section 178(5) (request for decision whether the property is to be disclaimed or not), the application—

- (a) shall be delivered to the liquidator personally or by registered post, and
- (b) shall be made in the form known as “notice to elect”, or a substantially similar form.

Interest in property to be declared on request

4.192.—(1) If, in the case of property which the liquidator has the right to disclaim, it appears to him that there is some person who claims, or may claim, to have an interest in the property, he may give notice to that person calling on him to declare within 14 days whether he claims any such interest and, if so, the nature and extent of it.

(2) Failing compliance with the notice, the liquidator is entitled to assume that the person concerned has no such interest in the property as will prevent or impede its disclaimer.

Disclaimer presumed valid and effective

4.193. Any disclaimer of property by the liquidator is presumed valid and effective, unless it is proved that he has been in breach of his duty with respect to the giving of notice of disclaimer, or otherwise under sections 178 to 180, or under this Chapter of the Rules.

Application for exercise of court's powers under s. 181

4.194.—(1) This Rule applies with respect to an application by any person under section 181 for an order of the court to vest or deliver disclaimed property.

(2) The application must be made within 3 months of the applicant becoming aware of the disclaimer, or of his receiving a copy of the liquidator's notice of disclaimer sent under Rule 4.188, whichever is the earlier.

(3) The applicant shall with his application file in court an affidavit—

- (a) stating whether he applies under paragraph (a) of section 181(2) (claim of interest in the property) or under paragraph (b) (liability not discharged);
- (b) specifying the date on which he received a copy of the liquidator's notice of disclaimer, or otherwise became aware of the disclaimer; and
- (c) specifying the grounds of his application and the order which he desires the court to make under section 181.

(4) The court shall fix a venue for the hearing of the application; and the applicant shall, not later than 7 days before the date fixed, give to the liquidator notice of the venue, accompanied by copies of the application and the affidavit under paragraph (3).

(5) On the hearing of the application, the court may give directions as to other persons (if any) who should be sent or given notice of the application and the grounds on which it is made.

(6) Sealed copies of any order made on the application shall be sent by the court to the applicant and the liquidator.

(7) In a case where the property disclaimed is of a leasehold nature, and section 179 applies to suspend the effect of the disclaimer, there shall be included in the court's order a direction giving effect to the disclaimer.

This paragraph does not apply if, at the time when the order is issued, other applications under section 181 are pending in respect of the same property.