
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE SECOND GROUP OF PARTS

PART 5

INDIVIDUAL VOLUNTARY ARRANGEMENTS

SECTION A: THE DEBTOR'S PROPOSAL

Preparation of proposal

5.2. The debtor shall prepare for the intended nominee a proposal on which (with or without amendments to be made under Rule 5.3(3) below) to make his report to the court under section 256.

Contents of proposal

5.3.—(1) The debtor's proposal shall provide a short explanation why, in his opinion, a voluntary arrangement under Part VIII is desirable, and give reasons why his creditors may be expected to concur with such an arrangement.

(2) The following matters shall be stated, or otherwise dealt with, in the proposal—

- (a) the following matters, so far as within the debtor's immediate knowledge—
 - (i) his assets, with an estimate of their respective values,
 - (ii) the extent (if any) to which the assets are charged in favour of creditors,
 - (iii) the extent (if any) to which particular assets are to be excluded from the voluntary arrangement;
- (b) particulars of any property, other than assets of the debtor himself, which is proposed to be included in the arrangement, the source of such property and the terms on which it is to be made available for inclusion;
- (c) the nature and amount of the debtor's liabilities (so far as within his immediate knowledge), the manner in which they are proposed to be met, modified, postponed or otherwise dealt with by means of the arrangement and (in particular)—
 - (i) how it is proposed to deal with preferential creditors (defined in section 258(7)) and creditors who are, or claim to be, secured,
 - (ii) how associates of the debtor (being creditors of his) are proposed to be treated under the arrangement, and
 - (iii) (Case 2 only) whether there are, to the debtor's knowledge, any circumstances giving rise to the possibility, in the event that he should be adjudged bankrupt, of claims under—
 - section 339 (transactions at an undervalue),
 - section 340 (preferences), or

section 343 (extortionate credit transactions),

and, where any such circumstances are present, whether, and if so how, it is proposed under the voluntary arrangement to make provision for wholly or partly indemnifying the insolvent estate in respect of such claims;

- (d) whether any, and if so what, guarantees have been given of the debtor's debts by other persons, specifying which (if any) of the guarantors are associates of his;
- (e) the proposed duration of the voluntary arrangement;
- (f) the proposed dates of distributions to creditors, with estimates of their amounts;
- (g) the amount proposed to be paid to the nominee (as such) by way of remuneration and expenses;
- (h) the manner in which it is proposed that the supervisor of the arrangement should be remunerated, and his expenses defrayed;
- (j) whether, for the purposes of the arrangement, any guarantees are to be offered by any persons other than the debtor, and whether (if so) any security is to be given or sought;
- (k) the manner in which funds held for the purposes of the arrangement are to be banked, invested or otherwise dealt with pending distribution to creditors;
- (l) the manner in which funds held for the purpose of payment to creditors, and not so paid on the termination of the arrangement, are to be dealt with;
- (m) if the debtor has any business, the manner in which it is proposed to be conducted during the course of the arrangement;
- (n) details of any further credit facilities which it is intended to arrange for the debtor, and how the debts so arising are to be paid;
- (o) the functions which are to be undertaken by the supervisor of the arrangement;
- (p) the name, address and qualification of the person proposed as supervisor of the voluntary arrangement, and confirmation that he is (so far as the debtor is aware) qualified to act as an insolvency practitioner in relation to him.

(3) With the agreement in writing of the nominee, the debtor's proposal may be amended at any time up to the delivery of the former's report to the court under section 256.

Notice to intended nominee

5.4.—(1) The debtor shall give to the intended nominee written notice of his proposal.

(2) The notice, accompanied by a copy of the proposal, shall be delivered either to the nominee himself, or to a person authorised to take delivery of documents on his behalf.

(3) If the intended nominee agrees to act, he shall cause a copy of the notice to be endorsed to the effect that it has been received by him on a specified date.

(4) The copy of the notice so endorsed shall be returned by the nominee forthwith to the debtor at an address specified by him in the notice for that purpose.

(5) Where (in Case 1) the debtor gives notice of his proposal to the official receiver and (if any) the trustee, the notice must contain the name and address of the insolvency practitioner who has agreed to act as nominee.

Application for interim order

5.5.—(1) An application to the court for an interim order under Part VIII of the Act shall be accompanied by an affidavit of the following matters—

- (a) the reasons for making the application;
 - (b) particulars of any execution or other legal process which, to the debtor's knowledge, has been commenced against him;
 - (c) that he is an undischarged bankrupt or (as the case may be) that he is able to petition for his own bankruptcy;
 - (d) that no previous application for an interim order has been made by or in respect of the debtor in the period of 12 months ending with the date of the affidavit; and
 - (e) that the nominee under the proposal (naming him) is a person who is qualified to act as an insolvency practitioner in relation to the debtor, and is willing to act in relation to the proposal.
- (2) A copy of the notice to the intended nominee under Rule 5.4, endorsed to the effect that he agrees so to act, shall be exhibited to the affidavit.
- (3) On receiving the application and affidavit, the court shall fix a venue for the hearing of the application.
- (4) The applicant shall give at least 2 days' notice of the hearing—
- (a) in Case 1, to the bankrupt, the official receiver and the trustee (whichever of those three is not himself the applicant),
 - (b) in Case 2, to any creditor who (to the debtor's knowledge) has presented a bankruptcy petition against him, and
 - (c) in either case, to the nominee who has agreed to act in relation to the debtor's proposal.

Hearing of the application

5.6.—(1) Any of the persons who have been given notice under Rule 5.5(4) may appear or be represented at the hearing of the application.

(2) The court, in deciding whether to make an interim order on the application, shall take into account any representations made by or on behalf of any of those persons (in particular, whether an order should be made containing such provision as is referred to in section 255(3) and (4)).

(3) If the court makes an interim order, it shall fix a venue for consideration of the nominee's report. Subject to the following paragraph, the date for that consideration shall be not later than that on which the interim order ceases to have effect under section 255(6).

(4) If under section 256(4) an extension of time is granted for filing the nominee's report, the court shall, unless there appear to be good reasons against it, correspondingly extend the period for which the interim order has effect.

Action to follow making of order

5.7.—(1) Where an interim order is made, at least 2 sealed copies of the order shall be sent by the court forthwith to the person who applied for it; and that person shall serve one of the copies on the nominee under the debtor's proposal.

(2) The applicant shall also forthwith give notice of the making of the order to any person who was given notice of the hearing pursuant to Rule 5.5(4) and was not present or represented at it.

Statement of affairs

5.8.—(1) In Case 1, if the debtor has already delivered a statement of affairs under section 272 (debtor's petition) or 288 (creditor's petition), he need not deliver a further statement unless so required by the nominee, with a view to supplementing or amplifying the former one.

(2) In Case 2, the debtor shall, within 7 days after his proposal is delivered to the nominee, or within such longer time as the latter may allow, deliver to the nominee a statement of his (the debtor's) affairs.

(3) The statement shall comprise the following particulars (supplementing or amplifying, so far as is necessary for clarifying the state of the debtor's affairs, those already given in his proposal)—

- (a) a list of his assets, divided into such categories as are appropriate for easy identification, with estimated values assigned to each category;
- (b) in the case of any property on which a claim against the debtor is wholly or partly secured, particulars of the claim and its amount, and of how and when the security was created;
- (c) the names and addresses of the debtor's preferential creditors (defined in section 258(7)), with the amounts of their respective claims;
- (d) the names and addresses of the debtor's unsecured creditors, with the amounts of their respective claims;
- (e) particulars of any debts owed by or to the debtor to or by persons who are associates of his;
- (f) such other particulars (if any) as the nominee may in writing require to be furnished for the purposes of making his report to the court on the debtor's proposal.

(4) The statement of affairs shall be made up to a date not earlier than 2 weeks before the date of the notice to the nominee under Rule 5.4.

However, the nominee may allow an extension of that period to the nearest practicable date (not earlier than 2 months before the date of the notice under Rule 5.4); and if he does so, he shall give his reasons in his report to the court on the debtor's proposal.

(5) The statement shall be certified by the debtor as correct, to the best of his knowledge and belief.

Additional disclosure for assistance of nominee

5.9.—(1) If it appears to the nominee that he cannot properly prepare his report on the basis of information in the debtor's proposal and statement of affairs, he may call on the debtor to provide him with—

- (a) further and better particulars as to the circumstances in which, and the reasons why, he is insolvent or (as the case may be) threatened with insolvency;
- (b) particulars of any previous proposals which have been made by him under Part VIII of the Act;
- (c) any further information with respect to his affairs which the nominee thinks necessary for the purposes of his report.

(2) The nominee may call on the debtor to inform him whether and in what circumstances he has at any time—

- (a) been concerned in the affairs of any company (whether or not incorporated in England and Wales) which has become insolvent, or
- (b) been adjudged bankrupt, or entered into an arrangement with his creditors.

(3) For the purpose of enabling the nominee to consider the debtor's proposal and prepare his report on it, the latter must give him access to his accounts and records.

Nominee's report on the proposal

5.10.—(1) The nominee's report shall be delivered by him to the court not less than 2 days before the interim order ceases to have effect.

- (2) With his report the nominee shall deliver—
- (a) a copy of the debtor's proposal (with amendments, if any, authorised under Rule 5.3(3)); and
 - (b) a copy or summary of any statement of affairs provided by the debtor.

(3) If the nominee makes known his opinion that a meeting of the debtor's creditors should be summoned under section 257, his report shall have annexed to it his comments on the debtor's proposal.

If his opinion is otherwise, he shall give his reasons for that opinion.

(4) The court shall cause the nominee's report to be endorsed with the date on which it is filed in court. Any creditor of the debtor is entitled, at all reasonable times on any business day, to inspect the file.

- (5) In Case 1, the nominee shall send to the official receiver—
- (a) a copy of the debtor's proposal,
 - (b) a copy of his (the nominee's) report and his comments accompanying it (if any), and
 - (c) a copy or summary of the debtor's statement of affairs.

In Case 2, the nominee shall send a copy of each of those documents to any person who has presented a bankruptcy petition against the debtor.

Replacement of nominee

5.11. Where the debtor intends to apply to the court under section 256(3) for the nominee to be replaced, he shall give to the nominee at least 7 days' notice of his application.