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STATUTORY INSTRUMENTS

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**1986 No. 1925**

**The Insolvency Rules 1986**

THE THIRD GROUP OF PARTS

PART 7

COURT PROCEDURE AND PRACTICE

CHAPTER 9

GENERAL

**Principal court rules and practice to apply**

**7.51.** Except so far as inconsistent with the Insolvency Rules, the Rules of the Supreme Court and the practice of the High Court apply to insolvency proceedings in the High Court, and the County Court Rules and the practice of the county court apply to insolvency proceedings in a county court, in either case with any necessary modifications.

**Right of audience**

**7.52.—**(1) Official receivers and deputy official receivers have right of audience in insolvency proceedings, whether in the High Court or a county court.

(2) Subject as above, rights of audience in insolvency proceedings are the same as obtained before the coming into force of the Rules.

**Right of attendance (company insolvency)**

**7.53.—**(1) Subject as follows, in company insolvency proceedings any person stating himself in writing, in records kept by the court for that purpose, to be a creditor or member of the company or, where the company is being wound up, a contributory, is entitled, at his own cost, to attend in court or in chambers at any stage of the proceedings.

(2) Attendance may be by the person himself, or his solicitor.

(3) A person so entitled may request the court in writing to give him notice of any step in the proceedings; and, subject to his paying the costs involved and keeping the court informed as to his address, the court shall comply with the request.

(4) If the court is satisfied that the exercise by a person of his rights under this Rule has given rise to costs for the insolvent estate which would not otherwise have been incurred and ought not, in the circumstances, to fall on that estate, it may direct that the costs be paid by the person concerned, to an amount specified.

The person's rights under this Rule are in abeyance so long as those costs are not paid.

(5) The court may appoint one or more persons to represent the creditors, the members or the contributories of an insolvent company, or any class of them, to have the rights conferred by this Rule, instead of the rights being exercisable by any or all of them individually.

If two or more persons are appointed under this paragraph to represent the same interest they must (if at all) instruct the same solicitor.

### **Insolvency practitioner's solicitor**

**7.54.** Where in any proceedings the attendance of the responsible insolvency practitioner's solicitor is required, whether in court or in chambers, the insolvency practitioner himself need not attend, unless directed by the court.

### **Formal defects**

**7.55.** No insolvency proceedings shall be invalidated by any formal defect or by any irregularity, unless the court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the court.

### **Restriction on concurrent proceedings and remedies**

**7.56.** Where in insolvency proceedings the court makes an order staying any action, execution or other legal process against the property of a company, or against the property or person of an individual debtor or bankrupt, service of the order may be effected by sending a sealed copy of the order to whatever is the address for service of the plaintiff or other party having the carriage of the proceedings to be stayed.

### **Affidavits**

**7.57.—(1)** Subject as follows, the rules and practice obtaining in the High Court with regard to affidavits, their form and contents, and the procedure governing their use, are to be taken as applicable in all insolvency proceedings in any court.

(2) In applying RSC Order 41 (which relates to affidavits generally), there are to be disregarded provisions which are inconsistent with, or necessarily excluded by, the following paragraphs of this Rule.

(3) Where in insolvency proceedings an affidavit is made by the official receiver or the responsible insolvency practitioner, the deponent shall state the capacity in which he makes it, the position which he holds, and the address at which he works.

(4) Notwithstanding RSC Order 41 Rule 8 (affidavit not to be sworn before party's own solicitor), a creditor's affidavit of debt may be sworn before his own solicitor.

(5) The official receiver, any deputy official receiver, or any officer of the court duly authorised in that behalf, may take affidavits and declarations.

### **Security in court**

**7.58.—(1)** Where security has to be given to the court (otherwise than in relation to costs), it may be given by guarantee, bond or the payment of money into court.

(2) A person proposing to give a bond as security shall give notice to the party in whose favour the security is required, and to the court, naming those who are to be sureties to the bond.

(3) The court shall forthwith give notice to both the parties concerned of a venue for the execution of the bond and the making of any objection to the sureties.

(4) The sureties shall make an affidavit of their sufficiency (unless dispensed with by the party in whose favour the security is required) and shall, if required by the court, attend the court to be cross-examined.

### **Payment into court**

**7.59.** The Rules of the Supreme Court and the County Court Rules relating to payment into and out of court of money lodged in court as security for costs apply, in the High Court and a county court respectively, to money lodged in court under the Rules.

### **Discovery**

**7.60.**—(1) Any party to insolvency proceedings may, with the leave of the court, administer interrogatories to, or obtain discovery from, any other party to those proceedings.

(2) Application under this Rule may be made ex parte.

### **Office copies of documents**

**7.61.**—(1) Any person who has under the Rules the right to inspect the court file of insolvency proceedings may require the court to provide him with an office copy of any document from the file.

(2) A person's rights under this Rule may be exercised on his behalf by his solicitor.

(3) An office copy provided by the court under this Rule shall be in such form as the registrar thinks appropriate, and shall bear the court's seal.