
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 3

ADMINISTRATION

CHAPTER 2

Appointment of administrator by Court

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

Administration application (paragraph 12 of Schedule B1)

3.3.—(1) An administration application in relation to a company must be headed “Administration application” and must identify the company immediately below the heading.

(2) The application must contain—

- (a) the name of the applicant;
- (b) a statement whether the application is being made by—
 - (i) the company under paragraph 12(1)(a) of Schedule B1,
 - (ii) the directors of the company under paragraph 12(1)(b) of Schedule B1,
 - (iii) a single creditor under paragraph 12(1)(c) of Schedule B1,
 - (iv) a creditor under paragraph 12(1)(c) of Schedule B1 on behalf of that creditor and others,
 - (v) the holder of a qualifying floating charge under paragraph 35 or 37 of Schedule B1 (specifying which),
 - (vi) the liquidator of the company under paragraph 38 of Schedule B1,
 - (vii) the supervisor of a CVA under section 7(4)(b), or
 - (viii) a designated officer of a magistrates’ court under section 87A of the Magistrates’ Courts Act 1980⁽¹⁾;
- (c) if the application is made by a creditor on behalf of that creditor and others, the names of the others;
- (d) if the application is made by the holder of a qualifying floating charge, details of the charge including the date of the charge, the date on which it was registered and the maximum amount if any secured by the charge;
- (e) if the company is registered under the Companies Act—

(1) 1980 c.43; section 87A was inserted by Criminal Justice Act 1988 (c.33) and amended by Enterprise Act 2002 (c.40), Courts Act 2003 (c.39) and Tribunals, Courts and Enforcement Act 2007 (c.15).

- (i) any issued and called-up capital, the number of shares into which the capital is divided, the nominal value of each share and the amount of capital paid up or treated as paid up; or
 - (ii) that it is a company limited by guarantee;
 - (f) particulars of the principal business carried on by the company;
 - (g) a statement whether the company is an Article 1.2 undertaking;
 - (h) a statement whether the proceedings flowing from the appointment will be main, secondary, territorial or non-EC proceedings and that the reasons for the statement are set out in the witness statement in support of the application made under rule 3.6;
 - (i) except where the applicant is the holder of a qualifying floating charge and is making the application under paragraph 35 of Schedule B1, a statement that the applicant believes, for the reasons set out in the witness statement in support of the application that the company is, or is likely to become, unable to pay its debts;
 - (j) the name and address of the proposed administrator;
 - (k) the address for service of the applicant;
 - (l) the statement that the applicant requests the court—
 - (i) to make an administration order in relation to the company,
 - (ii) to appoint the proposed person to be administrator, and
 - (iii) to make such ancillary order as the applicant may request, and such other order as the court thinks appropriate.
- (3) The application must be authenticated by the applicant or the applicant’s solicitor and dated.

Administration application made by the directors

3.4. After an application by the directors for an administration order is filed it is to be treated for all purposes as an application by the company.

Administration application by the supervisor of a CVA

3.5. After an application by the supervisor of a CVA for an administration order in respect of the company has been served on the company as required by rule 3.8(3)(d) it is to be treated for all purposes as an application by the company.

Witness statement in support of administration application

- 3.6.—**(1) If an administration application is to be made by—
- (a) the company, a witness statement must be made by one of the following stating that the person making the statement does so on behalf of the company—
 - (i) one of the directors,
 - (ii) the secretary of the company, or
 - (iii) the supervisor of a CVA;
 - (b) the company’s directors, a witness statement must be made by one of the following stating that the person making it does so on behalf of the directors—
 - (i) one of the directors, or
 - (ii) the secretary of the company;
 - (c) a single creditor, a witness statement must be made by—

- (i) that creditor, or
 - (ii) a person acting under that creditor's authority;
 - (d) two or more creditors, a witness statement must be made by a person acting under the authority of them all, whether or not one of their number.
- (2) In a case falling within paragraph (1)(c)(ii) or (d), the witness statement must state the nature of the authority of the person making it and the means of that person's knowledge of the matters to which the witness statement relates.
- (3) The witness statement must contain—
- (a) a statement of the company's financial position, specifying (to the best of the applicant's knowledge and belief) the company's assets and liabilities, including contingent and prospective liabilities;
 - (b) details of any security known or believed to be held by creditors of the company, and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver or to appoint an administrator under paragraph 14 of Schedule B1;
 - (c) a statement that an administrative receiver has been appointed if that is the case;
 - (d) details of any insolvency proceedings in relation to the company, including any petition that has been presented for the winding up of the company so far as known to the applicant;
 - (e) where it is intended to appoint a number of persons as administrators, a statement of the matters relating to the exercise of their functions set out in paragraph 100(2) of Schedule B1;
 - (f) the reasons for the statement that the proceedings will be main, secondary, territorial or non-EC proceedings; and
 - (g) any other matters which, in the applicant's opinion, will assist the court in deciding whether to make such an order.
- (4) Where the application is made by the holder of a qualifying floating charge under paragraph 35 or 37 of Schedule B1, the witness statement must give sufficient details to satisfy the court that the applicant is entitled to appoint an administrator under paragraph 14 of Schedule B1.
- (5) Where the application is made under paragraph 37 or 38 of Schedule B1 in relation to a company in liquidation, the witness statement must also contain—
- (a) details of the existing insolvency proceedings, the name and address of the liquidator, the date the liquidator was appointed and by whom;
 - (b) the reasons why it has subsequently been considered appropriate that an administration application should be made; and
 - (c) any other matters that would, in the applicant's opinion, assist the court in deciding whether to make provision in relation to matters arising in connection with the liquidation.

Filing of application

- 3.7.—**(1) The application must be filed with the court together with the witness statement in support and the proposed administrator's consent to act.
- (2) The court must fix a venue for the hearing of the application.
- (3) There must also be filed, at the same time as the application or at any time after that, a sufficient number of copies of the application and the statement for service in accordance with rule 3.8.
- (4) Each of the copies filed must—
- (a) have applied to it the seal of the court;
 - (b) be endorsed with—

- (i) the date and time of filing, and
- (ii) the venue fixed by the court; and
- (c) be delivered by the court to the applicant.

Service of application

3.8.—(1) In this rule, references to the application are to a copy of the application and witness statement delivered by the court under rule 3.7(4)(c).

(2) Notification for the purposes of paragraph 12(2) of Schedule B1 must be by service of the application.

(3) The applicant must serve the application on the following (in addition to serving it on the persons referred to in paragraph 12(2)(a) to (c) of Schedule B1)—

- (a) any administrative receiver of the company;
- (b) if there is a petition pending for the winding up of the company on—
 - (i) the petitioner, and
 - (ii) any provisional liquidator;
- (c) any member State liquidator appointed in main proceedings in relation to the company;
- (d) the company, if the application is made by anyone other than the company or its directors;
- (e) any supervisor of a CVA in relation to the company; and
- (f) the proposed administrator.

(4) The certificate of service must be filed with the court as soon as reasonably practicable after service and in any event not later than the business day before the hearing of the application.

Notice to enforcement agents charged with distress or other legal process, etc.

3.9. The applicant must as soon as reasonably practicable after filing the application deliver a notice of its being made to—

- (a) any enforcement agent or other officer who to the knowledge of the applicant is charged with distress or other legal process against the company or its property; and
- (b) any person who to the knowledge of the applicant has distrained against the company or its property.

Notice of other insolvency proceedings

3.10. After the application has been filed and until an order is made, it is the duty of the applicant to file with the court notice of the existence of any insolvency proceedings in relation to the company, as soon as the applicant becomes aware of them—

- (a) anywhere in the world, in the case of a company registered under the Companies Act in England and Wales;
- (b) in any EEA State (including the United Kingdom), in the case of a company incorporated in an EEA State other than the United Kingdom; or
- (c) in any member State other than Denmark, in the case of a company not incorporated in an EEA State.

Intervention by holder of qualifying floating charge (paragraph 36(1)(b) of Schedule B1)

3.11.—(1) Where the holder of a qualifying floating charge applies to the court under paragraph 36(1)(b) of Schedule B1 to have a specified person appointed as administrator, the holder must produce to the court—

- (a) the written consent of the holder of any prior qualifying floating charge;
- (b) the proposed administrator’s consent to act; and
- (c) sufficient evidence to satisfy the court that the holder is entitled to appoint an administrator under paragraph 14 of Schedule B1.

(2) If an administration order is made appointing the specified person, the costs of the person who made the administration application and of the applicant under paragraph 36(1)(b) of Schedule B1 are, unless the court orders otherwise, to be paid as an expense of the administration.

The hearing

3.12.—(1) At the hearing of the administration application, any of the following may appear or be represented—

- (a) the applicant;
- (b) the company;
- (c) one or more of the directors;
- (d) any administrative receiver;
- (e) any person who has presented a petition for the winding up of the company;
- (f) the proposed administrator;
- (g) any member State liquidator appointed in main proceedings in relation to the company;
- (h) the holder of any qualifying floating charge;
- (i) any supervisor of a CVA;
- (j) with the permission of the court, any other person who appears to have an interest which justifies appearance.

(2) If the court makes an administration order, the costs of the applicant, and of any other person whose costs are allowed by the court, are payable as an expense of the administration.

The order

3.13.—(1) Where the court makes an administration order the court’s order must be headed “Administration order” and must contain the following—

- (a) identification details for the proceedings;
- (b) the name and title of the judge making the order;
- (c) the address for service of the applicant;
- (d) details of any other parties (including the company) appearing and by whom represented;
- (e) an order that during the period the order is in force the affairs, business and property of the company is to be managed by the administrator;
- (f) the name of the person appointed as administrator;
- (g) an order that that person is appointed as administrator of the company;
- (h) a statement that the court is satisfied either that the EC Regulation does not apply or that it does;

- (i) where the EC Regulation does apply, a statement whether the proceedings are main, secondary or territorial proceedings;
 - (j) the date of the order (and if the court so orders the time); and
 - (k) such other provisions if any as the court thinks just.
- (2) Where two or more administrators are appointed the order must also specify (as required by paragraph 100(2) of Schedule B1)—
- (a) which functions (if any) are to be exercised by those persons acting jointly; and
 - (b) which functions (if any) are to be exercised by any or all of those persons.

Order on an application under paragraph 37 or 38 of Schedule B1

3.14. Where the court makes an administration order in relation to a company on an application under paragraph 37 or 38 of Schedule B1, the court must also include in the order—

- (a) in the case of a liquidator appointed in a voluntary winding up, the removal of that liquidator from office;
- (b) provision for payment of the expenses of the winding up;
- (c) such provision as the court thinks just relating to—
 - (i) any indemnity given to the liquidator,
 - (ii) the release of the liquidator,
 - (iii) the handling or realisation of any of the company's assets in the hands of or under the control of the liquidator, and
 - (iv) other matters arising in connection with the winding up; and
- (d) such other provisions if any as the court thinks just.

Notice of administration order

3.15.—(1) If the court makes an administration order, it must as soon as reasonably practicable deliver two sealed copies of the order to the applicant.

(2) The applicant must as soon as reasonably practicable deliver a sealed copy of the order to the person appointed as administrator.

(3) If the court makes an order under sub-paragraph (d) or (f) of paragraph 13(1) of Schedule B1, it must give directions as to the persons to whom, and how, notice of that order is to be delivered.