
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 6

CREDITORS' VOLUNTARY WINDING UP

CHAPTER 2

Statement of affairs and other information

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

Statement of affairs made out by the liquidator under section 95(1A)

[Note: (1) section 95(4A) requires the statement of affairs to be verified by a statement of truth; (2) the “official rate” referred to in paragraph (2)(c) is defined in section 251 as being the rate referred to in section 189(4).]

6.2.—(1) This rule applies to the statement of affairs made out by the liquidator under section 95(1A) (effect of company’s insolvency in members’ voluntary winding up).

(2) The statement of affairs must be headed “Statement of affairs” and must contain—

- (a) identification details for the company;
- (b) a statement that it is a statement of the affairs of the company on a date which is specified, being the date of the opinion formed by the liquidator under section 95(1);
- (c) a statement that as at that date, the liquidator formed the opinion that the company would be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors’ declaration of solvency made under section 89; and
- (d) the date it is made.

(3) The statement of affairs must be delivered by the liquidator to the registrar of companies within five business days after the completion of the decision procedure or deemed consent procedure referred to in rule 6.11 in respect of the appointment of the liquidator.

(4) However the liquidator must not deliver to the registrar of companies with the statement of affairs any schedule required by rule 6.4(4)(b).

Statement of affairs made out by the directors under section 99(1)

[Note: section 99(2A) requires the statement of affairs to be verified by a statement of truth.]

6.3.—(1) This rule applies to the statement of affairs made out by the directors under section 99(1)(1).

(2) The statement of affairs must be headed “Statement of affairs” and must contain—

(1) Section 99(1) is substituted by paragraph 23(2) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

- (a) identification details for the company;
 - (b) a statement that it is a statement of the affairs of the company on a date which is specified, being a date not more than 14 days before the date of the resolution for winding up; and
 - (c) the date it is made.
- (3) If a creditor requests a copy of the statement of affairs at a time when no liquidator is appointed the directors must deliver a copy to the creditor.
- (4) The directors must deliver the statement of affairs to the liquidator as soon as reasonably practicable after the liquidator is appointed.
- (5) The liquidator must deliver the statement of affairs to the registrar of companies within five business days after the completion of the decision procedure or deemed consent procedure referred to in rule 6.14 in respect of the appointment of the liquidator.
- (6) However the liquidator must not deliver to the registrar of companies with the statement of affairs any schedule required by rule 6.4(4)(b).

Additional requirements as to statements of affairs

- 6.4.—**(1) A statement of affairs under section 95(1A) or 99(1) must also contain—
- (a) a list of the company's shareholders, with the following details about each shareholder—
 - (i) name and postal address,
 - (ii) the type of shares held,
 - (iii) the nominal amount of the shares held,
 - (iv) the number of shares held,
 - (v) the amount per share called up, and
 - (vi) the total amount called up;
 - (b) the total amount of shares called up held by all shareholders;
 - (c) a summary of the assets of the company, setting out the book value and 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 value of all the assets available for preferential creditors;
 - (d) 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 fixed or floating charges,
 - (vii) the amount of unsecured debts (excluding preferential debts),
 - (viii) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts,

- (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;
- (e) a list of the company's creditors with the further particulars required by paragraph (2) indicating—
 - (i) any creditors under hire-purchase, chattel leasing or conditional sale agreements,
 - (ii) any creditors who are consumers claiming amounts paid in advance of the supply of goods or services, and
 - (iii) any creditors claiming retention of title over property in the company's possession.
- (2) The further particulars required by this paragraph relating to each creditor are as follows—
 - (i) the name and postal address,
 - (ii) amount of the debt owed to the creditor, (as required by section 95(4) or 99(2)),
 - (iii) details of any security held by the creditor,
 - (iv) the date the security was given, and
 - (v) the value of any such security.
- (3) Paragraph (4) applies where the particulars required by paragraph (2) 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.
- (4) Where this paragraph applies—
 - (a) the statement of affairs must state separately for each of paragraphs (3)(a) and (b) the number of such creditors and the total of the debts owed to them; and
 - (b) the particulars required by paragraph (2) must be set out in separate schedules to the statement of affairs for each of paragraphs (3)(a) and (b).

Statement of affairs: statement of concurrence

6.5.—(1) The liquidator may require a director (“the relevant person”) to deliver to the liquidator a statement of concurrence.

(2) A statement of concurrence is a statement that the relevant person concurs in the statement of affairs submitted by another director.

(3) The liquidator must inform the director 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 director who has been required to submit the statement of affairs must deliver a copy to every relevant person who has been required to submit 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 maker of the statement of concurrence—
 - (i) is not in agreement with the statement of affairs,
 - (ii) considers the statement of affairs to be erroneous or misleading, or
 - (iii) is without the direct knowledge necessary for concurring with it.

(6) The relevant person must deliver the required statement of concurrence, verified by a statement of truth, to the liquidator together with a copy before the end of the period of five business

days (or such other period as the liquidator may agree) beginning with the day on which the relevant person receives the statement of affairs.

(7) The liquidator must deliver the verified statement of concurrence to the registrar of companies.

Order limiting disclosure of statement of affairs etc.

6.6.—(1) Where the liquidator thinks that disclosure of the whole or part of the statement of affairs or of any statement of concurrence would be likely to prejudice the conduct of the winding up or might reasonably be expected to lead to violence against any person, the liquidator may apply to the court for an order that the statement of affairs, statement of concurrence or any specified part of them must not be delivered to the registrar of companies.

(2) The court may order that the whole or a specified part of the statement of affairs or a statement of concurrence must not be delivered to the registrar of companies.

(3) The liquidator must as soon as reasonably practicable deliver to the registrar of companies a copy of the order, the statement of affairs and any statement of concurrence to the extent allowed by the order.

Expenses of statement of affairs and decisions sought from creditors

6.7.—(1) Any reasonable and necessary expenses of preparing the statement of affairs under section 99 may be paid out of the company's assets, either before or after the commencement of the winding up, as an expense of the winding up.

(2) Any reasonable and necessary expenses of the decision procedure or deemed consent procedure to seek a decision from the creditors on the nomination of a liquidator under rule 6.14 may be paid out of the company's assets, either before or after the commencement of the winding up, as an expense of the winding up.

(3) Where payment under paragraph (1) or (2) is made before the commencement of the winding up, the directors must deliver to the creditors with the statement of affairs a statement of the amount of the payment and the identity of the person to whom it was made.

(4) The liquidator appointed under section 100(2) may make such a payment, but if there is a liquidation committee, the liquidator must deliver to the committee at least five business days' notice of the intention to make it.

(5) However such a payment may not be made to the liquidator, or to any associate of the liquidator, otherwise than with the approval of the liquidation committee, the creditors, or the court.

(6) This is without prejudice to the court's powers under rule 7.109 (voluntary winding up superseded by winding up by the court).

Delivery of accounts to liquidator (section 235)

6.8.—(1) A person who is specified in section 235(3) must deliver to the liquidator accounts of the company of such nature, as at such date, and for such period, as the liquidator requires.

(2) The period for which the liquidator may require accounts may begin from a date up to three years before the date of the resolution for winding up, or from an earlier date to which audited accounts of the company were last prepared.

(3) The accounts must, if the liquidator so requires, be verified by a statement of truth.

(4) The accounts (verified by a statement of truth if so required) must be delivered to the liquidator within 21 days from the liquidator's request, or such longer period as the liquidator may allow.

(2) Section 100 is amended by paragraph 24 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26) which inserts new subsections (1), (1A) and (1B).

Expenses of assistance in preparing accounts

6.9.—(1) Where the liquidator requires a person to deliver accounts under rule 6.8 the liquidator may, with the approval of the liquidation committee (if there is one) and as an expense of the winding up, employ a person or firm to assist that person in the preparation of the accounts.

(2) The person who is required to deliver accounts may request an allowance of all or part of the expenses to be incurred in employing a person or firm to assist in preparing the accounts.

(3) A request for an allowance must be accompanied by an estimate of the expenses involved.

(4) The liquidator must only authorise the employment of a named person or a named firm approved by the liquidator.

(5) The liquidator may, with the approval of the liquidation committee (if there is one), authorise such an allowance, payable as an expense of the winding up.