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STATUTORY INSTRUMENTS

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**2016 No. 1024**

**The Insolvency (England and Wales) Rules 2016**

**PART 7**

**WINDING UP BY THE COURT**

**CHAPTER 3**

Petition for winding-up order

[Notes: (1) for petitions by a contributory or relevant office-holder (an administrator, administrative receiver or supervisor of a CVA) see Chapter 4;

(2) a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

**Application of this Chapter**

**7.4.**—(1) This Chapter applies subject to rule 7.25 to—

- (a) a petition for winding up presented by a contributory; or
- (b) a petition for winding up presented by a relevant office-holder of the company.

(2) “Relevant office-holder” in this Part means an administrator, administrative receiver and supervisor of a CVA.

**Contents of petition**

**7.5.**—(1) The petition must contain—

- (a) the name of the court (and hearing centre if applicable);
- (b) the name and address of the petitioner;
- (c) identification details for the company subject to the petition;
- (d) the company’s registered office (if any);
- (e) the date the company was incorporated and the enactment under which it was incorporated;
- (f) the total number of issued shares of the company and the manner in which they are divided up;
- (g) the aggregate nominal value of those shares;
- (h) the amount of capital paid up or credited as paid up;
- (i) a statement of the nature of the company’s business if known;
- (j) the grounds on which the winding-up order is sought;
- (k) where the ground for the winding-up order is section 122(1)(a), a statement that the company has by special resolution resolved that the company be wound up by the court and the date of such resolution;

- (l) where the ground for the winding-up order is section 122(1)(f) or 221(5)(b) and a statutory demand has been served on the company, a statement that such a demand has been served and the date of service and that the company is insolvent and unable to pay its debts;
  - (m) a statement whether the company is an Article 1.2 undertaking;
  - (n) a statement whether the proceedings will be main, secondary, territorial or non-EC proceedings and that the reasons for so stating are given in a witness statement;
  - (o) a statement that in the circumstances it is just and equitable that the company should be wound up;
  - (p) a statement that the petitioner therefore applies for an order that the company may be wound up by the court under the Act, or that such other order may be made as the court thinks just;
  - (q) the name and address of any person on whom the petitioner intends to serve the petition; and
  - (r) the contact details of the petitioner's solicitor (if any).
- (2) The petition must also contain a blank box for the court to complete with the details of the venue for hearing the petition.

### **Verification of petition**

- 7.6.**—(1) The petition must be verified by a statement of truth.
- (2) Where the petition is in respect of debts due to different creditors then the debt to each creditor must be verified separately.
- (3) A statement of truth which is not contained in or endorsed upon the petition must identify the petition and must contain—
- (a) identification details for the company;
  - (b) the name of the petitioner; and
  - (c) the name of the court (and hearing centre if applicable) in which the petition is to be presented.
- (4) The statement of truth must be authenticated and dated by or on behalf of the petitioner.
- (5) Where the person authenticating the statement of truth is not the petitioner, or one of the petitioners, the statement of truth must state—
- (a) the name and postal address of the person making the statement;
  - (b) the capacity in which, and the authority by which, the person authenticates the statement; and
  - (c) the means of that person's knowledge of the matters verified in the statement of truth.
- (6) If the petition is based on a statutory demand, and more than four months have elapsed between the service of the demand and the presentation of the petition, a witness statement must explain the reasons for the delay.
- (7) A statement of truth verifying more than one petition must include in its title the names of the companies to which it relates and must set out, in relation to each company, the statements relied on by the petitioner; and a clear and legible photocopy of the statement of truth must be filed with each petition which it verifies.
- (8) The witness statement must give the reasons for the statement that the proceedings will be main, secondary, territorial or non-EC proceedings.

**Petition: presentation and filing**

- 7.7.—(1) The petition must be filed with the court.
- (2) A petition may not be filed unless—
- (a) a receipt for the deposit payable to the official receiver is produced on presentation of the petition; or
  - (b) the Secretary of State has given notice to the court that the petitioner has made suitable alternative arrangements for the payment of the deposit and that notice has not been revoked.
- (3) A notice of alternative arrangements for the deposit may be revoked by a further notice filed with the court.
- (4) The court must fix a venue for hearing the petition, and this must be endorsed on the petition and the copies.
- (5) Each copy of the petition must have the seal of the court applied to it, and must be delivered to the petitioner.

**Court to which petition is to be presented where the company is subject to a CVA or is in administration**

- 7.8.—(1) A petition which is filed in relation to a company for which there is in force a CVA must be presented to the court or hearing centre to which the nominee's report under section 2 was submitted or where the documents for a moratorium under section 1A were filed.
- (2) A petition which is filed in relation to a company which is in administration must be presented to the court or hearing centre of the court having jurisdiction for the administration.

**Copies of petition to be served on company or delivered to other persons**

- 7.9.—(1) Where this rule requires the petitioner to serve a copy of the petition on the company or deliver a copy to another person the petitioner must, when filing the petition with the court, file an additional copy with the court for each such person.
- (2) Where the petitioner is not the company the petitioner must serve a sealed copy of the petition on the company in accordance with Schedule 4.
- (3) If, to the petitioner's knowledge—
- (a) the company is in the course of being wound up voluntarily, the petitioner must deliver a copy of the petition to the liquidator;
  - (b) an administrative receiver has been appointed in relation to the company, or the company is in administration, the petitioner must deliver a copy of the petition to the receiver or the administrator;
  - (c) there is in force for the company a CVA, the petitioner must deliver a copy of the petition to the supervisor of the CVA; or
  - (d) there is a member State liquidator appointed in main proceedings in relation to the company, the petitioner must deliver a copy to that person.
- (4) If either the Financial Conduct Authority or Prudential Regulation Authority is entitled to be heard at the hearing of the petition in accordance with section 371 of the Financial Services and Markets Act 2000, the petitioner must deliver a copy of the petition to the Financial Conduct Authority or Prudential Regulation Authority (as appropriate).
- (5) Where this rule requires the petitioner to deliver a copy of the petition to any other person that copy must be delivered within three business days after the day on which the petition is served

on the company or where the petitioner is the company within three business days of the company receiving the sealed petition.

### **Notice of petition**

- 7.10.**—(1) Unless the court otherwise directs, the petitioner must give notice of the petition.
- (2) The notice must state—
- (a) that a petition has been presented for the winding up of the company;
  - (b) in the case of an overseas company, the address at which service of the petition was effected;
  - (c) the name and address of the petitioner;
  - (d) the date on which the petition was presented;
  - (e) the venue fixed for the hearing of the petition;
  - (f) the name and address of the petitioner’s solicitor (if any); and
  - (g) that any person intending to appear at the hearing (whether to support or oppose the petition) must give notice of that intention in accordance with rule 7.14.
- (3) The notice must be gazetted.
- (4) The notice must be made to appear—
- (a) if the petitioner is the company itself, not less than seven business days before the day appointed for the hearing; and
  - (b) otherwise, not less than seven business days after service of the petition on the company, nor less than seven business days before the day appointed for the hearing.
- (5) The court may dismiss the petition if notice of it is not given in accordance with this rule.

### **Persons entitled to request a copy of petition**

**7.11.** If a director, contributory or creditor requests a hard copy of the petition from the solicitor for the petitioner, or the petitioner, if acting in person, and pays the standard fee for copies the solicitor or petitioner must deliver the copy within two business days.

### **Certificate of compliance**

- 7.12.**—(1) The petitioner or the petitioner’s solicitor must, at least five business days before the hearing of the petition, file with the court a certificate of compliance with rules 7.9 and 7.10 relating to service and notice of the petition.
- (2) The certificate must be authenticated and dated by the petitioner or the petitioner’s solicitor and must state—
- (a) the date of presentation of the petition;
  - (b) the date fixed for the hearing; and
  - (c) the date or dates on which the petition was served and notice of it was given in compliance with rules 7.9 and 7.10.
- (3) A copy of or, where that is not reasonably practicable, a statement of the content of, any notice given must be filed with the court with the certificate.
- (4) The court may, if it thinks just, dismiss the petition if this rule is not complied with.

### **Permission for the petitioner to withdraw**

**7.13.**—(1) The court may order that the petitioner has permission to withdraw the petition on such terms as to costs as the parties may agree if at least five business days before the first hearing the petitioner, on an application without notice to any other party, satisfies the court that—

- (a) notice of the petition has not been given under rule 7.10;
  - (b) no notices in support or in opposition to the petition have been received by the petitioner; and
  - (c) the company consents to an order being made under this rule.
- (2) The order must contain—
- (a) identification details for the company;
  - (b) the date the winding-up petition was presented;
  - (c) the name and postal address of the applicant;
  - (d) a statement that upon the application made without notice to any other party by the applicant named in the order the court is satisfied that notice of the petition has not been given, that no notices in support of or in opposition to the petition have been received by the petitioner and that the company consents to this order; and
  - (e) an order that, with the permission of the court, the petition is withdrawn.

### **Notice by persons intending to appear**

**7.14.**—(1) A creditor or contributory who intends to appear on the hearing of the petition must deliver a notice of intention to appear to the petitioner.

- (2) The notice must contain—
- (a) the name and address of the creditor or contributory, and any telephone number and reference which may be required for communication with that person or with any other person (also to be specified in the notice) authorised to speak or act on the creditor's or contributory's behalf;
  - (b) the date of the presentation of the petition and a statement that the notice relates to the matter of that petition;
  - (c) the date of the hearing of the petition;
  - (d) for a creditor, the amount and nature of the debt due from the company to the creditor;
  - (e) for a contributory, the number of shares held in the company;
  - (f) a statement whether the creditor or contributory intends to support or oppose the petition;
  - (g) where the creditor or contributory is represented by a solicitor or other agent, the name, postal address, telephone number and any reference number of that person and details of that person's position with or relationship to the creditor or contributory; and
  - (h) the name and postal address of the petitioner.
- (3) The notice must be authenticated and dated by or on behalf of the creditor or contributory delivering it.
- (4) Where the person authenticating the notice is not the creditor or contributory the notice must state the name and postal address of the person making the statement and the capacity in which, and the authority by which, the person authenticates the notice.
- (5) The notice must be delivered to the petitioner or the petitioner's solicitor at the address shown in the court records, or in the notice of the petition required by rule 7.10.

(6) The notice must be delivered so as to reach the petitioner (or the petitioner's solicitor) not later than 4pm on the business day before that which is appointed for the hearing (or, where the hearing has been adjourned, for the adjourned hearing).

(7) A person who fails to comply with this rule may appear on the hearing of the petition only with the permission of the court.

### **List of appearances**

**7.15.**—(1) The petitioner must prepare for the court a list of the creditors and contributories who have given notice under rule 7.14.

(2) The list must contain—

- (a) the date of the presentation of the petition;
- (b) the date of the hearing of the petition;
- (c) a statement that the creditors and contributories listed have delivered notice that they intend to appear at the hearing of the petition;
- (d) their names and addresses;
- (e) the amount each creditor claims to be owed;
- (f) the number of shares claimed to be held by each contributory;
- (g) the name and postal address of any solicitor for a person listed; and
- (h) whether each person listed intends to support the petition, or to oppose it.

(3) On the day appointed for the hearing of the petition, a copy of the list must be handed to the court before the hearing commences.

(4) If the court gives a person permission to appear under rule 7.14(7), then the petitioner must add that person to the list with the same particulars.

### **Witness statement in opposition**

**7.16.**—(1) If the company intends to oppose the petition, it must not later than five business days before the date fixed for the hearing—

- (a) file with the court a witness statement in opposition; and
- (b) deliver a copy of the witness statement to the petitioner or the petitioner's solicitor.

(2) The witness statement must contain—

- (a) identification details for the proceedings;
- (b) a statement that the company intends to oppose the making of a winding-up order; and
- (c) a statement of the grounds on which the company opposes the making of the order.

### **Substitution of creditor or contributory for petitioner**

**7.17.**—(1) This rule applies where the petitioner—

- (a) is subsequently found not to have been entitled to present the petition;
- (b) fails to give notice of the petition in accordance with rule 7.10;
- (c) consents to withdraw the petition, or to allow it to be dismissed, consents to an adjournment, or fails to appear in support of the petition when it is called on in court on the day originally fixed for the hearing, or on a day to which it is adjourned; or
- (d) appears, but does not apply for an order in the terms requested in the petition.

(2) The court may, on such terms as it thinks just, substitute as petitioner—

- (a) a creditor or contributory who in its opinion would have a right to present a petition and who wishes to prosecute it; or
- (b) a member State liquidator who has been appointed in main proceedings in relation to the company, and who wishes to prosecute the petition.

### **Order for substitution of petitioner**

**7.18.** An order for substitution of a petitioner must contain—

- (a) identification details for the proceedings;
- (b) the name of the original petitioner;
- (c) the name of the creditor, contributory or member State liquidator (“the named person”) who is substituted as petitioner;
- (d) a statement that the named person has requested to be substituted as petitioner under rule 7.17;
- (e) the following orders—
  - (i) either—
    - (aa) that the named person must pay the statutory deposit to the court and that, upon such payment being made, the statutory deposit paid by the original petitioner is to be repaid to the original petitioner by the official receiver, or
    - (bb) where the named person is the subject of a notice to the court by the Secretary of State under rule 7.7(2)(b) (notice of alternative arrangements for the payment of deposit) that the statutory deposit paid by the original petitioner is to be repaid to the original petitioner by the official receiver;
  - (ii) that the named person be substituted as petitioner in place of the original petitioner and that the named person may amend the petition accordingly,
  - (iii) that the named person must within a period specified in the order file a statement of truth of the statements in the amended petition,
  - (iv) that not later than before the adjourned hearing of the petition, by a date specified in the order, the named person must serve a sealed copy of the amended petition on the company and deliver a copy to any other person to whom the original petition was delivered,
  - (v) that the hearing of the amended petition be adjourned to the venue specified in the order, and
  - (vi) that the question of the costs of the original petitioner and of the statutory deposit (if appropriate) be reserved until the final determination of the amended petition;
- (f) the venue of the adjourned hearing; and
- (g) the date of the order.

### **Notice of adjournment**

**7.19.—(1)** If the court adjourns the hearing of the petition the petitioner must as soon as reasonably practicable deliver a notice of the making of the order of adjournment and of the venue for the adjourned hearing to—

- (a) the company; and
  - (b) any creditor or contributory who has given notice under rule 7.14 but was not present at the hearing.
- (2) The notice must identify the proceedings.

### **Order for winding up by the court**

**7.20.**—(1) An order for winding-up by the court must contain—

- (a) identification details for the proceedings;
- (b) the name and title of the judge making the order;
- (c) the name and postal address of the petitioner;
- (d) the nature of the petitioner which entitles that person to present the petition (e.g. the company, a creditor, or a regulator);
- (e) the date of presentation of the petition;
- (f) an order that the company be wound up by the court under the Act;
- (g) a statement whether the proceedings are main, secondary, territorial or non-EC proceedings;
- (h) an order that the petitioner’s costs of the petition be paid out of the assets of the company (unless the court determines otherwise);
- (i) if applicable, an order that the costs of other persons as specified in the order be paid out of the assets of the company;
- (j) the date of the order; and
- (k) a statement that an official receiver attached to the court is by virtue of the order liquidator of the company, or

(2) The order may contain such additional terms concerning costs as the court thinks just.

### **Notice to official receiver of winding-up order**

**7.21.**—(1) When a winding-up order has been made, the court must deliver notice of the fact to the official receiver as soon as reasonably practicable.

(2) The notice must have the title “Notice to Official Receiver of Winding-up Order” and must contain—

- (a) identification details for the proceedings;
- (b) the company’s registered office;
- (c) the date of presentation of the petition;
- (d) the date of the winding-up order; and
- (e) the name and postal address of the petitioner or the petitioner’s solicitor.

### **Delivery and notice of the order**

**7.22.**—(1) As soon as reasonably practicable after making a winding-up order, the court must deliver to the official receiver two copies of the order sealed with the seal of the court.

(2) The official receiver must deliver—

- (a) a sealed copy of the order to the company; and
- (b) a copy of the order to the registrar of companies (in compliance with section 130(1)).

(3) As an alternative to delivering a sealed copy of the order to the company, the court may direct that the sealed copy be delivered to such other person or persons, as the court directs.

(4) The official receiver—

- (a) must cause a notice of the order to be gazetted as soon as reasonably practicable; and
- (b) may advertise a notice of the order in such other manner as the official receiver thinks fit.



- (5) The notice must state—
  - (a) that a winding-up order has been made in relation to the company; and
  - (b) the date of the order.

### **Petition dismissed**

**7.23.**—(1) Unless the court otherwise directs, when a petition is dismissed the petitioner must give a notice of the dismissal as soon as reasonably practicable.

- (2) The notice must be—
  - (a) gazetted; or
  - (b) advertised in accordance with any directions of the court.
- (3) The notice must contain—
  - (a) a statement that a petition for the winding up of the company has been dismissed;
  - (b) in the case of an overseas company, the address at which service of the petition was effected;
  - (c) the name and address of the petitioner;
  - (d) the date on which the petition was presented;
  - (e) the date on which the petition was gazetted or otherwise advertised; and
  - (f) the date of the hearing at which the petition was dismissed.
- (4) The company may itself gazette notice of the dismissal where—
  - (a) the petitioner is not the company; and
  - (b) the petitioner has not given notice in accordance with paragraphs (1) to (3) within 21 days of the date of the hearing at which the petition was dismissed.

### **Injunction to restrain presentation or notice of petition**

**7.24.**—(1) An application by a company for an injunction restraining a creditor from presenting a petition for the winding up of the company must be made to a court having jurisdiction to wind up the company.

(2) An application by a company for an injunction restraining a creditor from giving notice of a petition for the winding up of a company must be made to the court or hearing centre in which the petition is pending.