
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 7

WINDING UP BY THE COURT

CHAPTER 5

Provisional liquidator

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

Application for appointment of provisional liquidator (section 135)

7.33.—(1) An application to the court for the appointment of a provisional liquidator under section 135 may be made by—

- (a) the petitioner;
 - (b) a creditor of the company;
 - (c) a contributory;
 - (d) the company;
 - (e) the Secretary of State;
 - (f) a temporary administrator;
 - (g) a member State liquidator appointed in main proceedings (including in accordance with Article 29 of the EC Regulation); or
 - (h) any person who under any enactment would be entitled to present a petition for the winding up of the company.
- (2) The application must be supported by a witness statement stating—
- (a) the grounds on which it is proposed that a provisional liquidator should be appointed;
 - (b) if some person other than the official receiver is proposed to be appointed, that that person has consented to act and, to the best of the applicant's belief, is qualified to act as an insolvency practitioner in relation to the company;
 - (c) whether or not the official receiver has been informed of the application and, if so, whether a copy of it has been delivered to the official receiver;
 - (d) whether to the applicant's knowledge—
 - (i) there has been proposed or is in force for the company a CVA;
 - (ii) an administrator or administrative receiver is acting in relation to the company; or
 - (iii) a liquidator has been appointed for its voluntary winding up; and
 - (e) the applicant's estimate of the value of the assets in relation to which the provisional liquidator is to be appointed.

(3) The applicant must deliver copies of the application and the witness statement in support to the official receiver, who may attend the hearing and make any representations which the official receiver thinks appropriate.

(4) If for any reason it is not practicable to deliver copies of the application and statement to the official receiver before the hearing, the applicant must inform the official receiver of the application in sufficient time for the official receiver to be able to attend.

(5) If satisfied that sufficient grounds are shown for the appointment the court may appoint a provisional liquidator on such terms as it thinks just.

Deposit by applicant

7.34.—(1) An applicant for an order appointing the official receiver as provisional liquidator must, before the order is made, deposit with the official receiver, or otherwise secure to the official receiver's satisfaction, such sum as the court directs to cover the official receiver's remuneration and expenses.

(2) If the sum deposited or secured proves to be insufficient, the court may, on the application of the official receiver, order the applicant for the appointment to deposit or secure an additional sum.

(3) If such additional sum is not deposited or secured within two business days after service of the order on the applicant then the court may discharge the order appointing the official receiver as provisional liquidator.

(4) If a winding-up order is made after a provisional liquidator has been appointed, any money deposited under this rule must (unless it is required because the assets are insufficient to pay the remuneration and expenses of the provisional liquidator) be repaid to the person depositing it (or as that person may direct) as an expense of the winding up, in the prescribed order of priority.

Order of appointment of provisional liquidator

7.35.—(1) The order appointing the provisional liquidator must have the title "Order of appointment of Provisional Liquidator" and contain—

- (a) the name of the court (and hearing centre if applicable) in which the order is made;
- (b) the name and title of the judge making the order;
- (c) the name and postal address of the applicant;
- (d) identification details for the company;
- (e) the statement that the court is satisfied—
 - (i) that the company is unable to pay its debts (if applicable), and
 - (ii) that the proceedings are main, secondary, territorial or non-EC proceedings, as the case may be;
- (f) an order either that—
 - (i) upon the sum, which is specified in the order, being deposited by the applicant with the official receiver, the official receiver is appointed provisional liquidator of the company, or
 - (ii) the person specified in the order is appointed provisional liquidator of the company;
- (g) identification and contact details for the provisional liquidator, where the provisional liquidator is not the official receiver;
- (h) details of the functions to be carried out by the provisional liquidator in relation to the company's affairs;

- (i) a notice to the officers of the company that they are required by section 235 to give the provisional liquidator all the information the provisional liquidator may reasonably require relating to the company's property and affairs and to attend upon the provisional liquidator at such times as the provisional liquidator may reasonably require; and
 - (j) the date of the order.
- (2) Where two or more provisional liquidators are appointed the order must also specify (as required by section 231) whether any act required or authorised under any enactment to be done by the provisional liquidator is to be done by all or any one or more of them.
- (3) The court must, as soon as reasonably practicable after the order is made, deliver copies of the order as follows—
- (a) if the official receiver is the provisional liquidator, two sealed copies to the official receiver;
 - (b) if another person is appointed as provisional liquidator—
 - (i) two sealed copies to that person, and
 - (ii) one copy to the official receiver;
 - (c) if there is an administrative receiver acting in relation to the company, one sealed copy to the administrative receiver.
- (4) The official receiver or other person appointed as provisional liquidator must as soon as reasonably practicable deliver a sealed copy of the order to either—
- (a) the company, or
 - (b) the liquidator, if a liquidator was appointed for the company's voluntary winding-up.
- (5) The official receiver or other person appointed as provisional liquidator must as soon as reasonably practicable deliver a copy of the order to the registrar of companies.

Notice of appointment of provisional liquidator

- 7.36.**—(1) The provisional liquidator must as soon as reasonably practicable after receipt of the copy of the order of appointment give notice of appointment unless the court directs otherwise.
- (2) The notice—
- (a) must be gazetted; and
 - (b) may be advertised in such other manner as the provisional liquidator thinks fit.
- (3) The notice must state—
- (a) that a provisional liquidator has been appointed; and
 - (b) the date of the appointment.

Security

- 7.37.**—(1) This rule applies where an insolvency practitioner is appointed as provisional liquidator.
- (2) The cost of providing the security required under the Act must be paid in the first instance by the provisional liquidator, however—
- (a) if a winding-up order is not made, the person appointed is entitled to be reimbursed out of the property of the company, and the court may make an order on the company accordingly; and
 - (b) if a winding-up order is made, the person appointed is entitled to be reimbursed as an expense of the winding up in the prescribed order of priority.

(3) If the provisional liquidator fails to give or keep up the required security, the court may remove the provisional liquidator, and make such order as it thinks just as to costs.

(4) If an order is made under this rule removing the provisional liquidator, or discharging the order appointing the provisional liquidator, the court must give directions as to whether any, and if so what, steps should be taken for the appointment of another person in the place of the removed or discharged provisional liquidator.

Remuneration

7.38.—(1) The remuneration of the provisional liquidator (other than the official receiver) is to be fixed by the court from time to time on the application of the provisional liquidator.

- (2) In fixing the remuneration of the provisional liquidator, the court must take into account—
- (a) the time properly given by the provisional liquidator and the staff of the provisional liquidator in attending to the company's affairs;
 - (b) the complexity of the case;
 - (c) any respects in which, in connection with the company's affairs, there falls on the provisional liquidator any responsibility of an exceptional kind or degree;
 - (d) the effectiveness with which the provisional liquidator appears to be carrying out, or to have carried out, the duties of the provisional liquidator; and
 - (e) the value and nature of the property with which the provisional liquidator has to deal.

(3) Without prejudice to any order the court may make as to costs, the remuneration of the provisional liquidator (whether the official receiver or another) must be paid to the provisional liquidator, and the amount of any expenses incurred by the provisional liquidator (including the remuneration and expenses of any special manager appointed under section 177) reimbursed—

- (a) if a winding-up order is not made, out of the property of the company;
- (b) if a winding-up order is made, as an expense of the winding up, in the prescribed order of priority; and
- (c) in either case (if the relevant funds are insufficient), out of the deposit under rule 7.34.

(4) Unless the court otherwise directs, where a winding up order is not made, the provisional liquidator may retain out of the company's property such sums or property as are or may be required for meeting the remuneration and expenses of the provisional liquidator.

(5) Where a person other than the official receiver has been appointed provisional liquidator, and the official receiver has taken any steps for the purpose of obtaining a statement of affairs or has performed any other duty under these Rules, the provisional liquidator must pay the official receiver such sum (if any) as the court may direct.

Termination of appointment

7.39.—(1) The appointment of the provisional liquidator may be terminated by the court on the application of the provisional liquidator, or a person specified in rule 7.33(1).

(2) If the provisional liquidator's appointment terminates, in consequence of the dismissal of the winding-up petition or otherwise, the court may give such directions as it thinks just relating to the accounts of the provisional liquidator's administration or any other matters which it thinks appropriate.

(3) The provisional liquidator must give notice of termination of the appointment as provisional liquidator, unless the termination is on the making of a winding-up order or the court directs otherwise.

- (4) The notice referred to in paragraph (3)—

- (a) must be delivered to the registrar of companies as soon as reasonably practicable;
 - (b) must be gazetted as soon as reasonably practicable; and
 - (c) may be advertised in such other manner as the provisional liquidator thinks fit.
- (5) The notice under paragraph (3) must state—
- (a) that the appointment as provisional liquidator has been terminated;
 - (b) the date of that termination; and
 - (c) that the appointment terminated otherwise than on the making of a winding-up order.