
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 7

WINDING UP BY THE COURT

CHAPTER 6

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.]

Notice requiring statement of affairs (section 131)

7.40.—(1) Where, under section 131, the official receiver requires a nominated person to provide the official receiver with a statement of the affairs of the company, the official receiver must deliver a notice to that person.

- (2) The notice must be headed “Notice requiring statement of affairs” and must—
- (a) identify the company immediately below the heading;
 - (b) require a nominated person to prepare and submit to the official receiver a statement of affairs of the company;
 - (c) inform the nominated person—
 - (i) of the names and addresses of any other nominated person to whom such a notice has been delivered, and
 - (ii) of the date by which the statement must be delivered; and
 - (d) state the effect of section 131(7) (penalty for non-compliance) and section 235 (duty to co-operate) as it applies to the official receiver.

(3) The official receiver must inform the nominated person that a document for the preparation of the statement of affairs capable of completion in compliance with rule 7.41 can be supplied by the official receiver if requested.

Statement of affairs

- 7.41.**—(1) 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—
 - (i) the date of the winding-up order, or
 - (ii) the date directed by the official receiver;
 - (c) a list of the company’s shareholders with the following information about each one—

- (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 of shares called up;
- (d) the total amount of shares called up held by all shareholders;
- (e) 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;
- (f) 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;
- (g) a list of the company's creditors (as required by section 131(2)) with the following 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 particulars required by this paragraph are as follows—
- (i) the name and postal address,
 - (ii) the amount of the debt owed to the creditor,
 - (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 itself must state separately for each of paragraph (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) in respect of those creditors must be set out in separate schedules to the statement of affairs for each of paragraph (3)(a) and (b).

(5) The statement of affairs must be verified by a statement of truth by the nominated person, or all of them if more than one, making the statement of affairs.

(6) The nominated person (or one of them, if more than one) must deliver the statement of affairs verified as required by paragraph (5) to the official receiver together with a copy.

(7) The official receiver must deliver the verified copy of the statement of affairs and any statements of concurrence delivered under rule 7.42 to the registrar of companies.

(8) However the official receiver must not deliver to the registrar of companies with the statement of affairs any schedule required by paragraph (4)(b).

Statement of affairs: statement of concurrence

7.42.—(1) The official receiver may require a person mentioned in section 131(3) (“a relevant person”) to deliver to the official receiver a statement of concurrence.

(2) A statement of concurrence is a statement, verified by a statement of truth, that that person concurs in the statement of affairs submitted by a nominated person.

(3) The official receiver must inform the nominated person 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 nominated person must deliver a copy of the statement of affairs 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 relevant person—
 - (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 in it.

(6) The relevant person must deliver the required statement of concurrence (with a copy) to the official receiver before the end of the period of five business days (or such other period as the official receiver may agree) beginning with the day on which the relevant person receives the statement of affairs.

Order limiting disclosure of statement of affairs etc.

7.43.—(1) Where the official receiver 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 official receiver 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 filed with the registrar of companies.

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

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

Release from duty to submit statement of affairs: extension of time (section 131)

7.44.—(1) The official receiver may exercise the power in section 131(5) to release a person from an obligation to submit a statement of affairs imposed under section 131(1) or (2), or to grant an extension of time, either at the official receiver’s own discretion, or at the request of a nominated person.

(2) A nominated person may apply to the court for a release or an extension of time if the official receiver refuses that person’s request.

(3) On receipt of an application, the court may, if it is satisfied that no sufficient cause is shown for it, dismiss it without giving notice to any party other than the applicant.

(4) Unless the application is dismissed, the court must fix a venue for it to be heard.

(5) The applicant must, at least 14 days before any hearing, deliver to the official receiver a notice stating the venue with a copy of the application and of any evidence on which the applicant intends to rely.

(6) The official receiver may do either or both of the following—

(a) file a report of any matters which the official receiver thinks ought to be drawn to the court’s attention; or

(b) appear and be heard on the application.

(7) If a report is filed, the official receiver must deliver a copy of it to the applicant not later than five business days before the hearing.

(8) The court must deliver sealed copies of any order made on the application to the nominated person and the official receiver.

(9) The applicant must pay the applicant’s own costs in any event and, unless and to the extent that the court orders otherwise those costs will not be an expense of the winding up.

Statement of affairs: expenses

7.45.—(1) If a nominated person cannot personally prepare a proper statement of affairs, the official receiver may, as an expense of the winding up, employ a person or firm to assist in the preparation of the statement.

(2) At the request of a nominated person, made on the grounds that the nominated person cannot personally prepare a proper statement, the official receiver may authorise an allowance, payable as an expense of the winding up, of all or part of the expenses to be incurred by the nominated person in employing a person or firm to assist the nominated person in preparing it.

(3) Any such request by the nominated person must be accompanied by an estimate of the expenses involved; and the official receiver must only authorise the employment of a named person or a named firm, approved by the official receiver.

(4) An authorisation given by the official receiver under this rule must be subject to such conditions (if any) as the official receiver thinks fit to impose relating to the manner in which any person may obtain access to relevant documents and other records.

(5) Nothing in this rule relieves a nominated person from any obligation relating to the preparation, verification and submission of the statement of affairs, or to the provision of information to the official receiver or the liquidator.

(6) Any payment made as an expense of the winding up under this rule must be made in the prescribed order of priority.

(7) Paragraphs (2) to (6) of this rule may be applied, on application to the official receiver by any nominated person, in relation to the making of a statement of concurrence.

Delivery of accounts to official receiver

7.46.—(1) Any of the persons specified in section 235(3) must, at the request of the official receiver, deliver to the official receiver accounts of the company of such nature, as at such date, and for such period, as the official receiver may specify.

(2) The period specified may begin from a date up to three years before the date of the presentation of the winding-up petition, or from an earlier date to which audited accounts of the company were last prepared.

(3) The court may, on the official receiver's application, require accounts for any earlier period.

(4) Rule 7.45 applies (with the necessary modifications) in relation to accounts to be delivered under this rule as it applies in relation to the statement of affairs.

(5) The accounts must, if the official receiver so requires, be verified by a statement of truth and (whether or not so verified) be delivered to the official receiver within 21 days of the request under paragraph (1), or such longer period as the official receiver may allow.

Further disclosure

7.47.—(1) The official receiver may at any time require a nominated person to deliver (in writing) further information amplifying, modifying or explaining any matter contained in the statement of affairs, or in accounts delivered under the Act or these Rules.

(2) The information must, if the official receiver so directs, be verified by a statement of truth, and (whether or not so verified) be delivered to the official receiver within 21 days of the requirement under paragraph (1), or such longer period as the official receiver may allow.