

# PRACTICE DIRECTION INSOLVENCY PROCEEDINGS

## PART ONE

### 1. GENERAL

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- 1.1 In this Practice Direction:
- (1) 'The Act' means the Insolvency Act 1986 and includes the Act as applied to limited liability partnerships by the Limited Liability Partnerships Regulations 2001;
  - (2) 'The Insolvency Rules' means the rules for the time being in force and made under s.411 and s.412 of the Act in relation to insolvency proceedings;
  - (3) 'CPR' means the Civil Procedure Rules and 'CPR' followed by a Part or rule by number means the Part or rule with that number in those Rules;
  - (4) 'RSC' followed by an Order by number means the Order with that number set out in Schedule 1 to the CPR;
  - (5) 'Insolvency proceedings' means any proceedings under the Act, the Insolvency Rules, the Administration of Insolvent Estates of Deceased Persons Order 1986 (S.I. 1986 No.1999), the Insolvent Partnerships Order 1986 (S.I. 1986 No. 2124), the Insolvent Partnerships Order 1994 (S.I. 1994 No. 2421) or the Limited Liability Partnerships Regulations 2001.
  - (6) References to a 'company' shall include a limited liability partnership and references to a 'contributory' shall include a member of a limited liability partnership.
- 1.2 This Practice Direction shall come into effect on 26th April 1999 and shall replace all previous Practice Notes and Practice Directions relating to insolvency proceedings.
- 1.3 Except where the Insolvency Rules otherwise provide, service of documents in insolvency proceedings in the High Court will be the responsibility of the parties and will not be undertaken by the court.
- 1.4 Where CPR Part 2.4 provides for the court to perform any act, that act may be performed by a Registrar in Bankruptcy for the purpose of insolvency proceedings in the High Court.
- 1.5 A writ of execution to enforce any order made in insolvency proceedings in the High Court may be issued on the authority of a Registrar.

## PART TWO

### COMPANIES

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#### 2. ADVERTISEMENT OF WINDING UP PETITION

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- 2.1 Insolvency Rule 4.11(2)(b) is mandatory, and designed to ensure that the class remedy of winding up by the court is made available to all creditors, and is not used as a means of putting pressure on the company to pay the petitioner's debt. Failure to comply with the rule, without good reason accepted by the court, may lead to the summary dismissal of the petition on the return date (Insolvency Rule 4.11(5)). If the court, in its discretion, grants an adjournment, this will be on condition that the petition is advertised in due time for the adjourned hearing. No further adjournment for the purpose of advertisement will normally be granted.
- 2.2 Copies of every advertisement published in connection with a winding up petition must be lodged with the Court as soon as possible after publication and in any event not later than the day specified in Insolvency Rule 4.14 of the Insolvency Rules 1986. This direction applies even if the advertisement is defective in any way (e.g. is published at a date not in accordance with the Insolvency Rules, or omits or misprints some important words) or if the petitioner decides not to pursue the petition (e.g. on receiving payment).

#### 3. CERTIFICATE OF COMPLIANCE - TIME FOR FILING

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- 3.1 In the High Court in order to assist practitioners and the Court the time laid down by Insolvency Rule 4.14 of the Insolvency Rules 1986, for filing a certificate of compliance and a copy of the advertisement, is hereby extended to not later than 4.30 p.m. on the Friday preceding the day on which the petition is to be heard. Applications to file the certificate and the copy advertisement after 4.30 p.m. on the Friday will only be allowed if some good reason is shown for the delay.

#### 4. ERRORS IN PETITIONS

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- 4.1 Applications for leave to amend errors in petitions which are discovered subsequent to a winding up order being made should be made to the Court Manager in the High Court and to the District Judge in the county court.

- 4.2 Where the error is an error in the name of the company, the Court Manager in the High Court and the District Judge in the county court may make any necessary amendments to ensure that the winding up order is drawn with the correct name of the company inserted. If there is any doubt, e.g. where there might be another company in existence which could be confused with the company to be wound up, the Court Manager will refer the application to the Registrar and the District Judge may refer it to the Judge.
- 4.3 Where an error is an error in the registered office of the company and any director or member of the company claims that the company was unaware of the petition by reason of it having been served at the wrong registered office, it will be open to them to apply to rescind the winding up order in the usual way.
- 4.4 Where it is discovered that the company had been struck off the Register of Companies prior to the winding up order being made, the matter must be restored to the list before the order is entered to enable an order for the restoration of the name to be made as well as the order to wind up.

## **5. DISTRIBUTION OF BUSINESS**

- 5.1 The following applications shall be made direct to the Judge and, unless otherwise ordered, shall be heard in public:-
  - (1) Applications to commit any person to prison for contempt;
  - (2) Applications for urgent interim relief (e.g. applications pursuant to s.127 of the Act prior to any winding up order being made);
  - (3) Applications to restrain the presentation or advertisement of a petition to wind up; or
  - (4) Applications for the appointment of a provisional liquidator;
  - (5) Petitions for administration orders or an interim order upon such a Petition;
  - (6) Applications after an administration order has been made pursuant to s.14(3) of the Act (for directions) or s.18(3) of the Act (to vary or discharge the order);
  - (7) Petitions to discharge administration orders and to wind up;
  - (8) Applications pursuant to s.5(3) of the Act (to stay a winding up or discharge an administration order or for directions) where a voluntary arrangement has been approved;
  - (9) Appeals from a decision made by a County Court or by a Registrar of the High Court.
- 5.2 Subject to paragraph 5.4 below all other applications shall be made to the Registrar or the District Judge in the first instance who may give any necessary directions and may, in the exercise of his discretion, either hear and determine it himself or refer it to the Judge.

- 5.3 The following matters will also be heard in public:-
- (1) Petitions to wind up;
  - (2) Public examinations;
  - (3) All matters and applications heard by the Judge, except those referred by the Registrar or the District Judge to be heard in private or so directed by the Judge to be heard.
- 5.4 In accordance with directions given by the Lord Chancellor the Registrar has authorised certain applications in the High Court to be dealt with by the Court Manager of the Companies Court, pursuant to Insolvency Rule 13.2(2). The applications are:
- (1) To extend or abridge time prescribed by the Insolvency Rules in connection with winding up (Insolvency Rules 4.3 and 12.9);
  - (2) For substituted service of winding up petitions (Insolvency Rule 4.8(6));
  - (3) To withdraw petitions (Insolvency Rule 4.15);
  - (4) For the substitution of a petitioner (Insolvency Rule 4.19);
  - (5) By the Official Receiver for limited disclosure of a statement of affairs (Insolvency Rule 4.35);
  - (6) By the Official Receiver for relief from duties imposed upon him by the rules (Insolvency Rule 4.47);
  - (7) By the Official Receiver for permission to give notice of a meeting by advertisement only (Insolvency Rule 4.59);
  - (8) To transfer proceedings from the High Court to a County Court (Insolvency Rule 7.11);
  - (9) For permission to amend any originating application.
- [N.B. In District Registries all such applications must be made to the District Judge.]

## **6. DRAWING UP OF ORDERS**

- 6.1 The Court will draw up all orders except orders on the application of the Official Receiver or for which the Treasury Solicitor is responsible under the existing practice.

## **7. RESCISSION OF A WINDING UP ORDER**

- 7.1 Any application for the rescission of a winding up order shall be made within seven days after the date on which the order was made (Insolvency Rule 7.47(4)). Notice of any such application must be given to the Official Receiver.

- 7.2 Applications will only be entertained if made (a) by a creditor, or (b) by a contributory, or (c) by the company jointly with a creditor or with a contributory. The application must be supported by written evidence of assets and liabilities.
- 7.3 In the case of an unsuccessful application the costs of the petitioning creditor, the supporting creditors and of the Official Receiver will normally be ordered to be paid by the creditor or the contributory making or joining in the application. The reason for this is that if the costs of an unsuccessful application are made payable by the company, they fall unfairly on the general body of creditors.
- 7.4 Cases in which the making of the winding up order has not been opposed may, if the application is made promptly, be dealt with on a statement by the applicant's legal representative of the circumstances; but apart from such cases, the court will normally require any application to be supported by written evidence.
- 7.5 There is no need to issue a form of application (Form 7.2) as the petition is restored before the Court.

## **8. RESTRAINT OF PRESENTATION OF A WINDING-UP PETITION**

- 8.1 An application to restrain presentation of a Winding-up petition must be made to the Judge by the issue of an Originating Application (Form 7.1).

## **PART THREE**

## **PERSONAL INSOLVENCY - BANKRUPTCY**

## **9. DISTRIBUTION OF BUSINESS**

- 9.1 The following applications shall be made direct to the Judge and unless otherwise ordered shall be heard in public:
  - (1) Applications for the committal of any person to prison for contempt;
  - (2) Application for injunctions or for the modification or discharge of injunctions;
  - (3) Applications for interlocutory relief or directions after the matter has been referred to the Judge.
- 9.2 All other applications shall be made to the Registrar or the District Judge in the first instance. He shall give any necessary directions and may, if the application is within his jurisdiction to determine, in his discretion either hear and determine it himself or refer it to the Judge.
- 9.3 The following matters shall be heard in public:
  - (1) The public examination of debtors;

- (2) Opposed applications for discharge or for the suspension or lifting of the suspension of discharge;
  - (3) Opposed applications for permission to be a director;
  - (4) In any case where the petition was presented or the receiving order or order for adjudication was made before the appointed day, those matters and applications specified in Rule 8 of the Bankruptcy Rules 1952;
  - (5) All matters and applications heard by the Judge, except matters and applications referred by the Registrar or the District Judge to be heard by the Judge in private or directed by the Judge to be so heard.
- 9.4 All petitions presented will be listed under the name of the debtor.
- 9.5 In accordance with Directions given by the Lord Chancellor the Registrar has authorised certain applications in the High Court to be dealt with by the Court Manager of the Bankruptcy Court pursuant to Insolvency Rule 13.2(2). The applications are:
- (1) by petitioning creditors: to extend time for hearing petitions (s.376 of the Act).
  - (2) by the Official Receiver:
    - (a) To transfer proceedings from the High Court to a County Court (Insolvency Rule 7.13);
    - (b) to amend the full title of the proceedings (Insolvency Rules 6.35 and 6.47).

[NB In District Registries all such applications must be made to the District Judge]

## **10. SERVICE ABROAD OF STATUTORY DEMAND**

- 10.1 A statutory demand is not a document issued by the Court. Leave to serve out of the jurisdiction is not, therefore, required.
- 10.2 Insolvency Rule 6.3(2) ('Requirements as to service') applies to service of the statutory demand whether outside or within the jurisdiction.
- 10.3 A creditor wishing to serve a statutory demand outside the jurisdiction in a foreign country with which a civil procedure convention has been made (including the Hague Convention) may and, if the assistance of a British Consul is desired, must adopt the procedure prescribed by CPR Part 6.25. In the case of any doubt whether the country is a 'convention country', enquiries should be made of the Queen's Bench Masters' Secretary Department, Room E216, Royal Courts of Justice.
- 10.4 In all other cases, service of the demand must be effected by private arrangement in accordance with Insolvency Rule 6.3(2) and local foreign law.

- 10.5 When a statutory demand is to be served out of the jurisdiction, the time limits of 21 days and 18 days respectively referred to in the demand must be amended. For this purpose reference should be made to the table set out in the practice direction supplementing Section III of CPR Part 6.
- 10.6 A creditor should amend the statutory demand as follows:
- (1) For any reference to 18 days there must be substituted the appropriate number of days set out in the table plus 4 days, and
  - (2) for any reference to 21 days there must be substituted the appropriate number of days in the table plus 7 days.

Attention is drawn to the fact that in all forms of the statutory demand the figure 18 and the figure 21 occur in more than one place.

## **11. SUBSTITUTED SERVICE**

### **STATUTORY DEMANDS:**

- 11.1 The creditor is under an obligation to do all that is reasonable *tobring the statutory demand to the debtor's attention and, if practicable, to cause personal service to be effected. Where it is not possible to effect prompt personal service, service may be effected by other means such as first class post or by insertion through a letter box.*
- 11.2 Advertisement can only be used as a means of substituted service where:
- (1) The demand is based on a judgment or order of any Court;
  - (2) The debtor has absconded or is keeping out of the way with a view to avoiding service and,
  - (3) There is no real prospect of the sum due being recovered by execution or other process.

As there is no statutory form of advertisement, the Court will accept an advertisement in the following form:

## STATUTORY DEMAND

(Debt for liquidated sum payable immediately following a judgment or order of the Court)

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To (Block letters)

of

TAKE NOTICE that a statutory demand has been issued by:

Name of Creditor:

Address:

The creditor demands payment of £                      the amount now due on a judgment or order of the (High Court of Justice                      Division)(.....County Court) dated the                      day of 199                      .

The statutory demand is an important document and it is deemed to have been served on you on the date of the first appearance of this advertisement. You must deal with this demand within 21 days of the service upon you or you could be made bankrupt and your property and goods taken away from you. If you are in any doubt as to your position, you should seek advice immediately from a solicitor or your nearest Citizens' Advice Bureau. The statutory demand can be obtained or is available for inspection and collection from:

Name:

Address:

(Solicitor for) the Creditor

Tel. No.                     

Reference:

You have only 21 days from the date of the first appearance of this advertisement before the creditor may present a Bankruptcy Petition. You have only 18 days from that date within which to apply to the Court to set aside the demand.



- 11.3 In all cases where substituted service is effected, the creditor must have taken all those steps which would justify the Court making an order for substituted service of a petition. The steps to be taken to obtain an order for substituted service of a petition are set out below. Failure to comply with these requirements may result in the Court declining to file the petition: Insolvency Rule 6.11(9).

## PETITIONS

- 11.4 In most cases, evidence of the following steps will suffice to justify an order for substituted service:
- (1) One personal call at the residence and place of business of the debtor where both are known or at either of such places as is known. Where it is known that the debtor has more than one residential or business address, personal calls should be made at all the addresses.
  - (2) Should the creditor fail to effect service, a first class prepaid letter should be written to the debtor referring to the call(s), the purpose of the same and the failure to meet with the debtor, adding that a further call will be made for the same purpose on the       day of       19       at       hours at       (place). At least two business days notice should be given of the appointment and copies of the letter sent to all known addresses of the debtor. The appointment letter should also state that
    - (a) in the event of the time and place not being convenient, the debtor is to name some other time and place reasonably convenient for the purpose;
    - (b) (Statutory Demands) if the debtor fails to keep the appointment the creditor proposes to serve the debtor by [advertisement] [post] [insertion through a letter box] or as the case may be, and that, in the event of a bankruptcy petition being presented, the Court will be asked to treat such service as service of the demand on the debtor;
    - (c) (Petitions) if the debtor fails to keep the appointment, application will be made to the Court for an order for substituted service either by advertisement, or in such other manner as the Court may think fit.
  - (3) In attending any appointment made by letter, inquiry should be made as to whether the debtor has received all letters left for him. If the debtor is away, inquiry should also be made as to whether or not letters are being forwarded to an address within the jurisdiction (England and Wales) or elsewhere.
  - (4) If the debtor is represented by a Solicitor, an attempt should be made to arrange an appointment for personal service through such Solicitor. The Insolvency Rules enable a Solicitor to accept service of a statutory demand on behalf of his client but there is no similar provision in respect of service of a bankruptcy petition.

- (5) The written evidence filed pursuant to Insolvency Rule 6.11 should deal with all the above matters including all relevant facts as to the debtor's whereabouts and whether the appointment letter(s) have been returned.
- 11.5 Where the Court makes an order for service by first class ordinary post, the order will normally provide that service be deemed to be effected on the seventh day after posting. The same method of calculating service may be applied to calculating the date of service of a statutory demand.

## **12. SETTING ASIDE A STATUTORY DEMAND**

- 12.1 The application (Form 6.4) and written evidence in support (Form 6.5) exhibiting a copy of the statutory demand must be filed in Court within 18 days of service of the statutory demand on the debtor. Where service is effected by advertisement in a newspaper the period of 18 days is calculated from the date of the first appearance of the advertisement. Three copies of each document must be lodged with the application to enable the Court to serve notice of the hearing date on the applicant, the creditor and the person named in Part B of the statutory demand.
- 12.2 Where, to avoid expense, copies of the documents are not lodged with the application in the High Court, any order of the Registrar fixing a venue is conditional upon copies of the documents being lodged on the next business day after the Registrar's order otherwise the application will be deemed to have been dismissed.
- 12.3 Where the statutory demand is based on a judgment or order, the Court will not at this stage go behind the judgment or order and inquire into the validity of the debt nor, as a general rule, will it adjourn the application to await the result of an application to set aside the judgment or order.
- 12.4 Where the debtor (a) claims to have a counterclaim, set off or cross demand (whether or not he could have raised it in the action in which the judgment or order was obtained) which equals or exceeds the amount of the debt or debts specified in the statutory demand or (b) disputes the debt (not being a debt subject to a judgment or order) the Court will normally set aside the statutory demand if, in its opinion, on the evidence there is a genuine triable issue.
- 12.5 A debtor who wishes to apply to set aside a statutory demand after the expiration of 18 days from the date of service of the statutory demand must apply for an extension of time within which to apply. If the applicant wishes to apply for an injunction to restrain presentation of a petition the application must be made to the Judge. Paragraphs 1 and 2 of Form 6.5 (Affidavit in Support of Application to set Aside Statutory Demand) should be used in support of the application for an extension of time with the following additional paragraphs:
  - (3) That to the best of my knowledge and belief the creditor(s) named in the demand has/have not presented a petition against me.

- (4.) That the reasons for my failure to apply to set aside the demand within 18 days after service are as follows: ...

If application is made to restrain presentation of a bankruptcy petition the following additional paragraph should be added:

- (5) Unless restrained by injunction the creditor(s) may present a bankruptcy petition against me.

### **13. PROOF OF SERVICE OF A STATUTORY DEMAND**

- 13.1 Insolvency Rule 6.11(3) provides that, if the Statutory Demand has been served personally, the written evidence must be provided by the person who effected that service. Insolvency Rule 6.11(4) provides that, if service of the demand (however effected) has been acknowledged in writing, the evidence of service must be provided by the creditor or by a person acting on his behalf. Insolvency Rule 6.11(5) provides that, if neither paragraphs (3) or (4) apply, the written evidence must be provided by a person having direct knowledge of the means adopted for serving the demand.
- 13.2 Form 6.11 (Evidence of personal service of the statutory demand): this form should only be used where the demand has been served personally and acknowledged in writing (see Insolvency Rule 6.11(4)). If the demand has not been acknowledged in writing, the written evidence should be provided by the Process Server and Paragraphs 2 and 3 (part of Form 6.11) should be omitted (See Insolvency Rule 6.11(3)).
- 13.3 Form 6.12 (Evidence of Substituted Service of the Statutory Demand): this form can be used whether or not service of the demand has been acknowledged in writing. Paragraphs 4 and 5 (part) provide for the alternatives. Practitioners are reminded, however, that the appropriate person to provide the written evidence may not be the same in both cases. If the demand has been acknowledged in writing, the appropriate person is the creditor or a person acting on his behalf. If the demand has not been acknowledged, that person must be someone having direct knowledge of the means adopted for serving the demand.

Practitioners may find it more convenient to allow process servers to carry out the necessary investigation whilst reserving to themselves the service of the demand. In these circumstances Paragraph 1 should be deleted and the following paragraph substituted:

- (1.) Attempts have been made to serve the demand, full details of which are set out in the accompanying affidavit of ...'.

- 13.4 'Written evidence' means an affidavit or a witness statement.

## 14. EXTENSION OF HEARING DATE OF PETITION

- 14.1 Late applications for extension of hearing dates under Insolvency Rule 6.28, and failure to attend on the listed hearing of a petition, will be dealt with as follows:
- (1) If an application is submitted less than two clear working days before the hearing date (for example, later than Monday for Thursday, or Wednesday for Monday) the costs of the application will not be allowed under Insolvency Rule 6.28(3).
  - (2) If the petition has not been served and no extension has been granted by the time fixed for the hearing of the petition, and if no one attends for the hearing, the petition will be re-listed for hearing about 21 days later. The Court will notify the petitioning creditor's solicitors (or the petitioning creditor in person), and any known supporting or opposing creditors or their solicitors, of the new date and times. Written evidence should then be filed on behalf of the petitioning creditor explaining fully the reasons for the failure to apply for an extension or to appear at the hearing, and (if appropriate) giving reasons why the petition should not be dismissed.
  - (3) On the re-listed hearing the Court may dismiss the petition if not satisfied it should be adjourned or a further extension granted.
- 14.2 All applications for extension should include a statement of the date fixed for the hearing of the petition.
- 14.3 The petitioning creditor should attend (by solicitors or in person) on or before the hearing date to ascertain whether the application has reached the file and been dealt with. It should not be assumed that an extension will be granted.

## 15. BANKRUPTCY PETITION

To help in the completion of the form of a creditor's bankruptcy petition, attention is drawn to the following points:

- 15.1 The petition does not require dating, signing or witnessing.
- 15.2 In the title it is only necessary to recite the debtor's name e.g. Re John William Smith or Re J W Smith (Male). Any alias or trading name will appear in the body of the petition. This also applies to all other statutory forms other than those which require the 'full title'.
- 15.3 Where the petition is based on a statutory demand, only the debt claimed in the demand may be included in the petition.
- 15.4 In completing Paragraph 2 of the petition, attention is drawn to Insolvency Rule 6.8(1)(a) to (c), particularly where the 'aggregate sum' is made up of a number of debts.
- 15.5 Date of service of the statutory demand (paragraph 4 of the petition):

- (1) In the case of personal service, the date of service as set out in the affidavit of service should be recited and whether service is effected *before/after* 1700 hours on Monday to Friday or at any time on a Saturday or a Sunday: see CPR Part 6.7(2) and (3).
  - (2) In the case of substituted service (otherwise than by advertisement), the date alleged in the affidavit of service should be recited: see '11. Substituted Service' above.
  - (3) In the strictly limited case of service by advertisement under Insolvency Rule 6.3, the date to be alleged is the date of the advertisement's appearance or, as the case may be, its first appearance: see Insolvency Rules 6.3(3) and 6.11(8).
- 15.6 There is no need to include in the petition details of the person authorised to present it.
- 15.7 Certificates at the end of the petition:
- (1) The period of search for prior petitions has been reduced to eighteen months.
  - (2) Where a statutory demand is based wholly or in part on a County Court judgment, the following certificate is to be added:
- I/We certify that on the                      of                      19                      I/We attended on the County Court and was/were informed by an officer of the Court that no money had been paid into Court in the action or matter                      v                      Claim No                      pursuant to the statutory demand.
- This certificate will not be required when the demand also requires payment of a separate debt, not based on a County Court judgement, the amount of which exceeds the bankruptcy level (at present £750).
- 15.8 Deposit on petition: the deposit will be taken by the Court and forwarded to the Official Receiver. In the High Court, the petition fee and deposit should be handed to the Supreme Court Accounts Office, Fee Stamping Room, who will record the receipt and will impress two entries on the original petition, one in respect of the Court fee and the other in respect of the deposit. In the County Court, the petition fee and deposit should be handed to the duly authorised officer of the Court's staff who will record its receipt.
- In all cases cheque(s) for the whole amount should be made payable to 'HM Paymaster General'.
- 15.9 On the hearing of a petition for a bankruptcy order, in order to satisfy the Court that the debt on which the petition is founded has not been paid or secured or compounded the Court will normally accept as sufficient a certificate signed by the person representing the petitioning creditor in the following form:

I certify that I have/my firm has made enquiries of the petitioning creditor(s) within the last business day prior to the hearing/adjourned hearing and to the best of my knowledge and belief the debt on which the petition is founded is still due and owing and has not been paid or secured or compounded save as to .....

Signed ..... Dated .....

For convenience in the High Court this certificate will be incorporated in the attendance slip, which will be filed after the hearing. A fresh certificate will be required on each adjourned hearing.

## **16. ORDERS WITHOUT ATTENDANCE**

- 16.1 In suitable cases the Court will normally be prepared to make orders under Part VIII of the Act (Individual Voluntary Arrangements), without the attendance of either party, provided there is no bankruptcy order in existence and (so far as is known) no pending petition. The orders are:
- (1) A fourteen day interim order with the application adjourned 14 days for consideration of the nominee's report, where the papers are in order, and the nominee's signed consent to act includes a waiver of notice of the application or a consent by the nominee to the making of an interim order without attendance.
  - (2) A standard order on consideration of the nominee's report, extending the interim order to a date 7 weeks after the date of the proposed meeting, directing the meeting to be summoned and adjourning to a date about 3 weeks after the meeting. Such an Order may be made without attendance if the nominee's report has been delivered to the Court and complies with Section 256(1) of the Act and Insolvency Rule 5.10(2) and (3) and proposes a date for the meeting not less than 14 days from that on which the nominee's report is filed in Court under Insolvency Rule 5.10 nor more than 28 days from that on which that report is considered by the Court under Insolvency Rule 5.12.
  - (3) A 'concertina' Order, combining orders as under (1) and (2) above. Such an order may be made without attendance if the initial application for an interim order is accompanied by a report of the nominee and the conditions set out in (1) and (2) above are satisfied.
  - (4) A final order on consideration of the Chairman's report. Such an order may be made without attendance if the Chairman's report has been filed and complies with Insolvency Rule 5.22(1). The order will record the effect of the Chairman's report and may discharge the interim order.

16.2 Provided that the conditions as under 16.1(2) and (4) above are satisfied and that the appropriate report has been lodged with the Court in due time the parties need not attend or be represented on the adjourned hearing for consideration of the Nominee's report or of the Chairman's report (as the case may be) unless they are notified by the Court that attendance is required. Sealed copies of the order made (in all four cases as above) will be posted by the Court to the applicant or his Solicitor and to the Nominee.

16.3 In suitable cases the Court may also make consent orders without attendance by the parties. The written consent of the parties will be required. Examples of such orders are as follows:

- (1) On applications to set aside a statutory demand, orders:
  - (a) dismissing the application, with or without an order for costs as may be agreed (permission will be given to present a petition on or after the seventh day after the date of the order, unless a different date is agreed);
  - (b) setting aside the demand, with or without an order for costs as may be agreed; or
  - (c) giving permission to withdraw the application with or without an order for costs as may be agreed.
- (2) On petitions: where there is a list of supporting or opposing creditors in Form 6.21, or a statement signed by or on behalf of the petitioning creditor that no notices have been received from supporting or opposing creditors, orders:
  - (a) dismissing the petition, with or without an order for costs as may be agreed, or
  - (b) if the petition has not been served, giving permission to withdraw the petition (with no order for costs).
- (3) On other applications, orders:
  - (a) for sale of property, possession of property, disposal of proceeds of sale
  - (b) giving interim directions
  - (c) dismissing the application, with or without an order for costs as may be agreed
  - (d) giving permission to withdraw the application, with or without an order for costs as may be agreed.

If, (as may often be the case with orders under subparagraphs (3)(a) or (b) above) an adjournment is required, whether generally with liberty to restore or to a fixed date, the order by consent may include an order for the adjournment. If adjournment to a date is requested, a time estimate should be given and the Court will fix the first available date and time on or after the date requested.



- 16.4 The above lists should not be regarded as exhaustive, nor should it be assumed that an order will be made without attendance as requested.
- 16.5 The procedure outlined above is designed to save time and costs but is not intended to discourage attendance.
- 16.6 Applications for consent orders without attendance should be lodged at least two clear working days (and preferably longer) before any fixed hearing date.
- 16.7 Whenever a document is lodged or a letter sent, the correct case number, code (if any) and year (for example 123/SD/99 or 234/99) should be quoted. A note should also be given of the date and time of the next hearing (if any).
- 16.8 Attention is drawn to Paragraph 4.4(4) of the Practice Direction relating to CPR Part 44.

## PART FOUR

### 17. APPEALS IN INSOLVENCY PROCEEDINGS

- 17.1 This Part shall come into effect on 2<sup>nd</sup> May 2000 and shall replace and revoke Paragraph 17 of, and be read in conjunction with the Practice Direction - Insolvency Proceedings which came into effect on 26<sup>th</sup> April 1999 as amended.
- 17.2
  - (1) An appeal from a decision of a County Court (whether made by a District Judge or a Circuit Judge) or of a Registrar of the High Court in insolvency proceedings ('a first appeal') lies to a Judge of the High Court pursuant to s. 375(2) of the Act and Insolvency Rules 7.47(2) and 7.48(2) (as amended by s. 55 of the Access to Justice Act 1999).
  - (2) The procedure and practice for a first appeal are governed by Insolvency Rule 7.49 which imports the procedure and practice of the Court of Appeal. The procedure and practice of the Court of Appeal is governed by CPR Part 52 and its Practice Direction, which are subject to the provisions of the Act, the Insolvency Rules and this Practice Direction: see CPR Part 52 rule 1(4).
  - (3) A first appeal (as defined above) does not include an appeal from a decision of a Judge of the High Court.
- 17.3
  - (1) Section 55 of the Access to Justice Act 1999 has amended s. 375(2) of the Act and Insolvency Rules 7.47(2) and 7.48(2) so that an appeal from a decision of a Judge of the High Court made on a first appeal lies, with the permission of the Court of Appeal, to the Court of Appeal.
  - (2) An appeal from a Judge of the High Court in insolvency proceedings which is not a decision on a first appeal lies, with the permission of the Judge or of the Court of Appeal, to the Court of Appeal (see CPR Part 52 rule 3);



- (3) The procedure and practice for appeals from a decision of a Judge of the High Court in insolvency proceedings (whether made on a first appeal or not) are also governed by Insolvency Rule 7.49 which imports the procedure and practice of the Court of Appeal as stated at Paragraph 17.2(2) above.
- 17.4 CPR Part 52 and its Practice Direction and Forms apply to appeals from a decision of a Judge of the High Court in insolvency proceedings.
- 17.5 An appeal from a decision of a Judge of the High Court in insolvency proceedings requires permission as set out in Paragraph 17.3(1) and (2) above.
- 17.6 A first appeal does not require the permission of any court.
- 17.7 Except as provided in this Part, CPR Part 52 and its Practice Direction and Forms do not apply to first appeals, but Paragraphs 17.8 to 17.23 inclusive of this Part apply only to first appeals.
- 17.8 Interpretation:
- (a) the expressions ‘appeal court’, ‘lower court’, ‘appellant’, ‘respondent’ and ‘appeal notice’ have the meanings given in CPR Part 52.1(3);
  - (b) ‘Registrar of Appeals’ means in relation to an appeal filed at the Royal Courts of Justice in London a Bankruptcy Registrar, and in relation to an appeal filed in a District Registry in accordance with Paragraph 17.10(2) and (3) below a District Judge of the relevant District Registry.
  - (c) ‘appeal date’ means the date fixed by the appeal court for the hearing of the appeal or the date fixed by the appeal court upon which the period within which the appeal will be heard commences.
- 17.9 An appellant’s notice and a respondent’s notice shall be in Form PDIP 1 and PDIP 2 set out in the Schedule hereto.
- 17.10
- (1) An appeal from a decision of a Registrar in Bankruptcy shall, or from any decision made in any County Court may, be filed at the Royal Courts of Justice in London.
  - (2) An appeal from a decision made in the County Court exercising jurisdiction over an area within the Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle Upon Tyne or Preston Chancery District Registries may be filed in the Chancery District Registry of the High Court appropriate to the area in which the decision was made.
- 17.11
- (1) Where a party seeks an extension of time in which to file an appeal notice it must be requested in the appeal notice and the appeal notice should state the reason for the delay and the steps taken prior to the application being made; the court will fix a date for the hearing of the application and notify the parties of the date and place of hearing;

- (2) The appellant must file the appellant's notice at the appeal court within –
    - (a) such period as may be directed by the lower court; or
    - (b) where the court makes no such direction, 14 days after the date of the decision of the lower court which the appellant wishes to appeal.
  - (3) Unless the appeal court orders otherwise, an appeal notice must be served by the appellant on each respondent –
    - (a) as soon as practicable; and
    - (b) in any event not later than 7 days, after it is filed.
- 17.12
  - (1) A respondent may file and serve a respondent's notice.
  - (2) A respondent who wishes to ask the appeal court to uphold the order of the lower court for reasons different from or additional to those given by the lower court must file a respondent's notice.
  - (3) A respondent's notice must be filed within –
    - (a) such period as may be directed by the lower court; or
    - (b) where the court makes no such direction, 14 days after the date on which the respondent is served with the appellant's notice.
  - (4) Unless the appeal court orders otherwise a respondent's notice must be served by the respondent on the appellant and any other respondent –
    - (a) as soon as practicable; and
    - (b) in any event not later than 7 days, after it is filed.
- 17.13
  - (1) An application to vary the time limit for filing an appeal notice must be made to the appeal court.
  - (2) The parties may not agree to extend any date or time limit set by –
    - (a) this Practice Direction; or
    - (b) an order of the appeal court or the lower court.
- 17.14 Unless the appeal court or the lower court orders otherwise an appeal shall not operate as a stay of any order or decision of the lower court.
- 17.15 An appeal notice may not be amended without the permission of the appeal court.
- 17.16 A Judge of the appeal court may strike out the whole or part of an appeal notice where there is compelling reason for doing so.
- 17.17
  - (1) In relation to an appeal the appeal court has all the powers of the lower court.
  - (2) The appeal court has power to –

- (a) affirm, set aside or vary any order or judgment made or given by the lower court;
  - (b) refer any claim or issue for determination by the lower court;
  - (c) order a new trial or hearing;
  - (d) make a costs order.
- (3) The appeal court may exercise its powers in relation to the whole or part of an order of the lower court.
- 17.18 (1) Every appeal shall be limited to a review of the decision of the lower court.
- (2) Unless it orders otherwise, the appeal court will not receive –
  - (a) oral evidence; or
  - (b) evidence which was not before the lower court.
- (3) The appeal court will allow an appeal where the decision of the lower court was –
  - (a) wrong; or
  - (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.
- (4) The appeal court may draw any inference of fact which it considers justified on the evidence.
- (5) At the hearing of the appeal a party may not rely on a matter not contained in his appeal notice unless the appeal court gives permission.
- 17.19 The following applications shall be made to a Judge of the appeal court:
  - (1) for injunctions pending a substantive hearing of the appeal;
  - (2) for expedition or vacation of the hearing date of an appeal;
  - (3) for an order striking out the whole or part of an appeal notice pursuant to Paragraph 17.16 above;
  - (4) for a final order on paper pursuant to Paragraph 17.22(8) below.
- 17.20 (1) All other interim applications shall be made to the Registrar of Appeals in the first instance who may in his discretion either hear and determine it himself or refer it to the Judge.
- (2) An appeal from a decision of a Registrar of Appeals lies to a Judge of the appeal court and does not require the permission of either the Registrar of Appeals or the Judge.
- 17.21 The procedure for interim applications is by way of ordinary application (see Insolvency Rule 12.7 and Sch 4, Form 7.2).
- 17.22 The following practice applies to all first appeals to a Judge of the High Court whether filed at the Royal Courts of Justice in London, or filed at one of the other venues referred to in Paragraph 17.10 above:

- (1) on filing an appellant's notice in accordance with Paragraph 17.11(2) above, the appellant must file:
  - (a) two copies of the appeal notice for the use of the court, one of which must be stamped with the appropriate fee, and a number of additional copies equal to the number of persons who are to be served with it pursuant to Paragraph 17.22(4) below;
  - (b) a copy of the order under appeal; and
  - (c) an estimate of time for the hearing.
- (2) the above documents may be lodged personally or by post and shall be lodged at the address of the appropriate venue listed below:
  - (a) if the appeal is to be heard at the Royal Courts of Justice in London the documents must be lodged at Room 110, Thomas More Building, The Royal Courts of Justice, Strand, London WC2A 2LL;
  - (b) if the appeal is to be heard in Birmingham, the documents must be lodged at the District Registry of the Chancery Division of the High Court, 33 Bull Street, Birmingham B4 6DS;
  - (c) if the appeal is to be heard in Bristol the documents must be lodged at the District Registry of the Chancery Division of the High Court, Third Floor, Greyfriars, Lewins Mead, Bristol, BS1 2NR;
  - (d) if the appeal is to be heard in Cardiff the documents must be lodged at the District Registry in the Chancery Division of the High Court, First Floor, 2 Park Street, Cardiff, CF10 1ET;
  - (e) if the appeal is to be heard in Leeds the documents must be lodged at the District Registry of the Chancery Division of the High Court, The Court House, 1 Oxford Row, Leeds LS1 3BG;
  - (f) if the appeal is to be heard in Liverpool the documents must be lodged at the District Registry of the Chancery Division of the High Court, Liverpool Combined Court Centre, Derby Square, Liverpool L2 1XA;
  - (g) if the appeal is to be heard in Manchester the documents must be lodged at the District Registry of the Chancery Division of the High Court, Courts of Justice, Crown Square, Manchester, M60 9DJ;
  - (h) if the appeal is to be heard at Newcastle Upon Tyne the documents must be lodged at the District Registry of the Chancery Division of the High Court, The Law Courts, Quayside, Newcastle Upon Tyne NE1 3LA;

- (i) if the appeal is to be heard in Preston the documents must be lodged at the District Registry of the Chancery Division of the High Court, The Combined Court Centre, Ringway, Preston PR1 2LL.
- (3) if the documents are correct and in order the court at which the documents are filed will fix the appeal date and will also fix the place of hearing. That court will send letters to all the parties to the appeal informing them of the appeal date and of the place of hearing and indicating the time estimate given by the appellant. The parties will be invited to notify the court of any alternative or revised time estimates. In the absence of any such notification the estimate of the appellant will be taken as agreed. The court will also send to the appellant a document setting out the court's requirement concerning the form and content of the bundle of documents for the use of the Judge. Not later than 7 days before the appeal date the bundle of documents must be filed by the appellant at the address of the relevant venue as set out in sub-paragraph 17.22(2) above and a copy of it must be served by the appellant on each respondent. The bundle should include an approved transcript of the judgment of the lower court or, where there is no officially recorded judgment, the document(s) referred to in paragraph 5.12 of the Practice Direction to CPR Part 52.
- (4) the appeal notice must be served on all parties to the proceedings in the lower court who are directly affected by the appeal. This may include the Official Receiver, liquidator or trustee in bankruptcy.
- (5) the appeal notice must be served by the appellant or by the legal representative of the appellant and may be effected by:
  - (a) any of the methods referred to in CPR Part 6 rule 2; or
  - (b) with permission of the court, an alternative method pursuant to CPR Part 6 rule 8.
- (6) service of an appeal notice shall be proved by a Certificate of Service in accordance with CPR Part 6 rule 10 (CPR Form N215) which must be filed at the relevant venue referred to at Paragraph 17.22(2) above immediately after service.
- (7) skeleton arguments, accompanied by a written chronology of events relevant to the appeal, should be filed at the address of the appropriate venue as set out in sub-paragraph 17.22(2) above, at least two clear days before the date fixed for the hearing. Failure to lodge may result in an adverse costs order being made by the Judge on the hearing of the appeal.
- (8) where an appeal has been settled or where an appellant does not wish to continue with the appeal, the appeal may be disposed of on paper without a hearing. It may be dismissed by consent but the appeal court will not make an order allowing an appeal unless it is satisfied that the decision of the lower court was wrong. Any consent order signed by each party or letters of consent from each party must be lodged not later than 24 hours before the date fixed for the hearing of the appeal at the address of the appropriate

venue as set out in sub-paragraph 17.22(2) above and will be dealt with by the Judge of the appeal court. Attention is drawn to paragraph 4.4(4) of the Practice Direction to CPR Part 44 regarding costs where an order is made by consent without attendance.

- 17.23 Only the following paragraphs of the Practice Direction to CPR Part 52, with any necessary modifications, shall apply to first appeals: 5.12 and 5.14 to 5.20 inclusive.
- 17.24 (1) Where, under the procedure relating to appeals in insolvency proceedings prior to the coming into effect of this Part of this Practice Direction, an appeal has been set down in the High Court or permission to appeal to the Court of Appeal has been granted before 2<sup>nd</sup> May 2000, the procedure and practice set out in this Part of this Practice Direction shall apply to such an appeal after that date.
- (2) Where, under the procedure relating to appeals in insolvency proceedings prior to the coming into effect of this Part of this Practice Direction, any person has failed before 2<sup>nd</sup> May 2000 either:
- (a) in the case of a first appeal, to set down in the High Court an appeal which relates to an order made (County Court) or sealed (High Court) after 27<sup>th</sup> March 2000 and before 2<sup>nd</sup> May 2000, or
  - (b) in the case of an appeal from a decision of a Judge of the High Court, to obtain any requisite permission to appeal to the Court of Appeal which relates to an order sealed in the same period,
- the time for filing an appeal notice is extended to 16<sup>th</sup> May 2000 and application for any such permission should be made in the appeal notice.
- 17.25 This paragraph applies where a judge of the High Court has made a Bankruptcy order or a winding-up order or dismissed an appeal against such an order and an application is made for a stay of proceedings pending appeal.
- (1) the judge will not normally grant a stay of all proceedings but will confine himself to a stay of advertisement of the proceedings.
  - (2) where the judge has granted permission to appeal any stay of advertisement will normally be until the hearing of the appeal but on terms that the stay will determine without further order if an appellant's notice is not filed within the period prescribed by the rules.
  - (3) where the judge has refused permission to appeal any stay of advertisement will normally be for a period not exceeding 28 days. Application for any further stay of advertisement should be made to the Court of Appeal.

## THE SCHEDULE