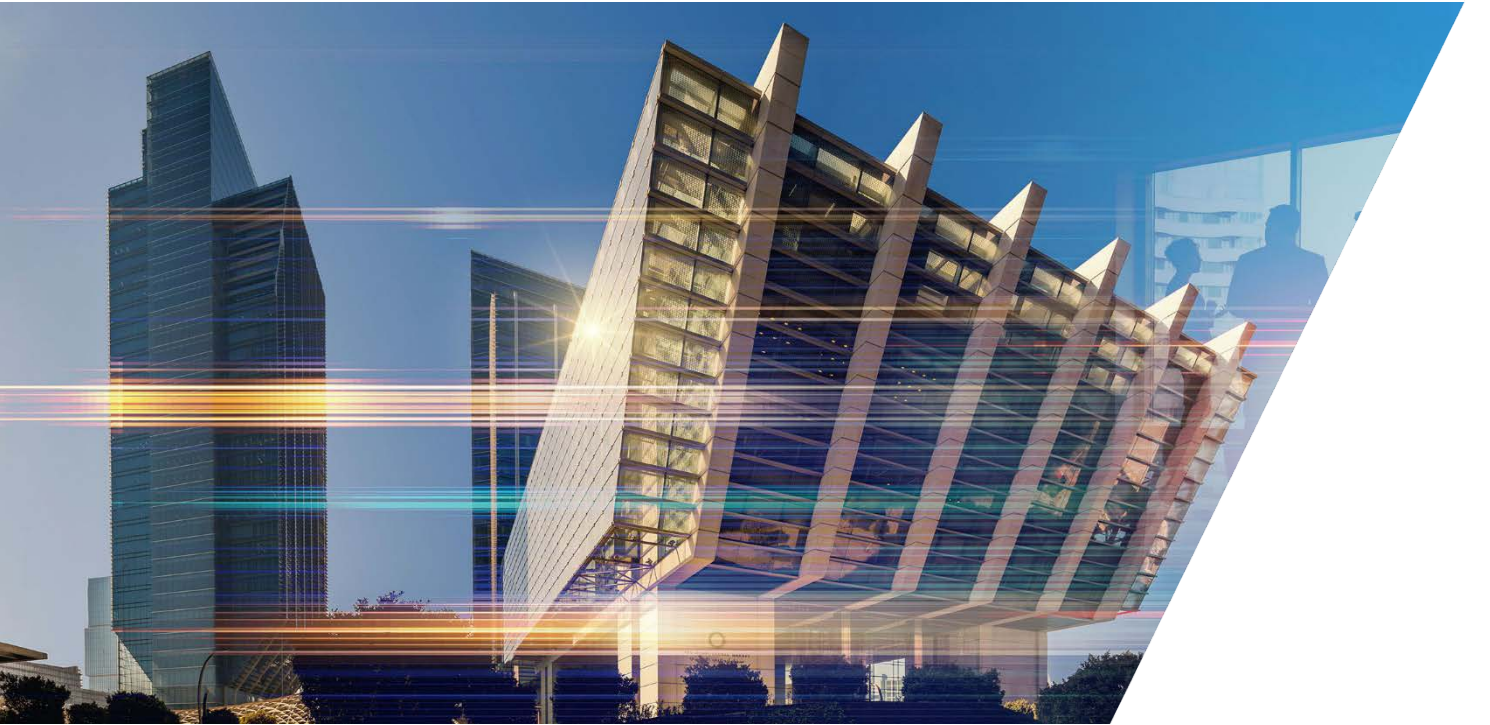




ADGM COURTS
محاكم سوق أبوظبي العالمي



ADGM COURTS
PRACTICE DIRECTION 14
INSOLVENCY

PRACTICE DIRECTION 14

INSOLVENCY

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PRACTICE DIRECTION 14

INSOLVENCY

Date issued: 9 July 2020

This Practice Direction is to be read with, and subject to, the Insolvency Regulations 2015 (“Regulations”), the ADGM Court Procedure Rules 2016 (“CPR”) and the Divisions and Jurisdiction (Court of First Instance) Rules 2015. This Practice Direction does not set out all of the relevant procedures relating to insolvency proceedings or related matters, and parties must also refer to and comply with any requirements set out in the Regulations.

The Provisions of the CPR (including any related Practice Directions) apply for the purposes of any Insolvency Proceedings before the Court with any necessary modifications, except so far as disappplied by or inconsistent with this Practice Direction.

Except as provided otherwise in this Practice Direction, terms have the meanings set out in the CPR or the Regulations, as the case may be. A reference in this Practice Direction to the Registrar of Companies has the same meaning as the Registrar for the purposes of the Regulations. Any reference to a section in this Practice Direction is a reference to a section in the Regulations unless otherwise stated and a reference to a Rule is a reference to the CPR.

This Practice Direction must be read in conjunction with other Practice Directions including, in particular:

- **Practice Direction 1 – General**
- **Practice Direction 6 – Service of Documents**
- **Practice Direction 9 – Costs**
- **Practice Direction 11 – Appeals**

Unless the Court orders or directs otherwise, the following provisions shall apply.

A. GENERAL PROVISIONS – APPLICATIONS

Preliminary

14.1. This Section applies to any application made to the Court under the Regulations or this Practice Direction except:

- (a) a petition for a winding-up order under sections 202 or 203 of the Regulations (see Section I); and
- (b) an application for the appointment of a provisional liquidator (see Section J); and

Form and contents of application

14.2. Unless specifically provided for in this practice direction, any application to the Court is to be made in accordance with **Form INSOLVENCY 4** and supported by witness statement evidence in accordance with **Form INSOLVENCY 2** and must state:

- (a) that the application is made under the Regulations;

- (b) the section of the Regulations or paragraph of a Schedule to the Regulations or paragraph of this Practice Direction (as the case may be) pursuant to which it is made;
- (c) the names of the parties;
- (d) the name of the Company or non-Abu Dhabi Global Market Company which is the subject of the Insolvency Proceedings to which the application relates;
- (e) where the Court has previously allocated a reference number to the Insolvency Proceedings within which the application is made, that number;
- (f) the nature of the remedy or order applied for or the directions sought from the Court;
- (g) the names and addresses of the persons on whom it is intended to serve the application or that no person is intended to be served;
- (h) where the Regulations or this Practice Direction require that notice of the application is to be given to specified persons, the names and addresses of all those persons (so far as known to the applicant);
- (i) whether the applicant requests a hearing and, if so, whether the applicant requests an expedited hearing of the application or for the hearing to be without notice, and the reason(s) for the request; and
- (j) the applicant's address for service.

Filing and service of application

- 14.3. On receipt of an application notice containing a request for a hearing the Court will notify the applicant of the time and date for the hearing of the application in a notice of listing.
- 14.4. Unless the application is filed without notice, the applicant shall serve a sealed copy of the application on the respondent named in the application (or on each respondent if more than one), along with any notice of listing.
- 14.5. Applications made without notice are to be submitted to the Court by email to registry@adgmcourts.com.
- 14.6. An application may be made without notice if this is permitted by the Regulations, a rule, a practice direction or otherwise is with the Court's permission. The Court's permission will be granted only where:
 - (a) there is exceptional urgency;
 - (b) it is otherwise desirable to do so in the interests of justice; or
 - (c) there are good reasons for making the application without notice, for example, because the notice would or might defeat the object of the application.
- 14.7. Where the Court is asked to make an order on an application without notice, the applicant must bring to the Court's attention any matter which, if the respondent was represented, the respondent would wish the Court to be aware of. This includes any matters which might tend to undermine the application.

- 14.8. Where the Court makes an order on an application without notice, whether granting or dismissing an application, the Court may make orders that the applicant serve on every person against whom an order was sought or made:
- (a) the application notice;
 - (b) all written material on which the applicant sought to rely in support of his application;
 - (c) a transcript of the hearing of the application;
 - (d) a copy of the order; and
 - (e) notice that any person against whom an order was sought or made may apply to have the order set aside or varied.
- 14.9. The Court may give any of the following directions:
- (a) that the application be served upon persons other than those specified by the relevant provision of the Regulations or this Practice Direction;
 - (b) that the giving of notice to any person may be dispensed with; and
 - (c) that notice be given in some way other than that specified in paragraph 14.4.
- 14.10. An application must be served at least 14 calendar days before the date fixed for its hearing unless:
- (a) the provision of the Regulations or this Practice Direction under which the application is made makes different provision; or
 - (b) the case is one of urgency to which paragraph 14.11 applies.
- 14.11. Where the case is one of exceptional urgency, the Court may (without prejudice to its general power to extend or abridge time limits):
- (a) hear the application immediately, either with or without notice to, or the attendance of, other parties; or
 - (b) authorise a shorter period of service than that provided for by paragraph 14.10,
- and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the Court thinks fit.

Hearings without notice

- 14.12. Where the relevant provisions of the Regulations or this Practice Direction do not require service of the application on, or notice of it to be given to, any person:
- (a) the Court may hear the application as soon as reasonably practicable without fixing a time and date for the hearing as required by paragraph 14.3; or
 - (b) it may fix a time and date for the hearing in which case paragraphs 14.3 to 14.11 shall apply to the extent that they are relevant,

but nothing in those provisions is to be taken as prohibiting the applicant from giving such notice if the applicant wishes to do so.

Witness statements

- 14.13. Subject to paragraphs 14.18 to 14.19, where evidence is required by the Regulations or this Practice Direction as to any matter, such evidence may be provided in the form of a witness statement unless in any specific case the Regulations or a Rule makes different provision.
- 14.14. Witness statements must be in accordance with **Form Insolvency 2** and must comply with the requirements of Part 14 of the CPR.
- 14.15. Where in Insolvency Proceedings a witness statement is made by an Office-holder, the witness statement must state:
- (a) the capacity in which that Office-holder is acting; and
 - (b) the address at which that Office-holder works.
- 14.16. The Court may, on the application of any party to the matter in question, order the attendance for cross-examination of the person making the witness statement.
- 14.17. Where, after such an order has been made, the person in question does not attend, that person's witness statement must not be used in evidence without the permission of the Court.

Reports

- 14.18. Unless the application involves other parties, a report may be filed in Court instead of a witness statement by:
- (a) a liquidator;
 - (b) an administrative receiver;
 - (c) a receiver;
 - (d) an administrator (subject to Section C); and
 - (e) a provisional liquidator.
- 14.19. In any case where a report is filed instead of a witness statement, the report shall be treated for the purposes of paragraph 14.20 and any hearing before the Court as if it were a witness statement.

Filing and service of witness statements

- 14.20. Unless the provision of the Regulations or this Practice Direction under which the application is made provides otherwise, or the Court otherwise allows:
- (a) if the applicant intends to rely at a hearing on evidence in a witness statement, he shall file the witness statement with the Court and serve a copy on the respondent (or on each respondent if more than one);

- (b) where a respondent to an application intends to oppose it and to rely for that purpose on evidence in a witness statement, he shall file the witness statement with the Court and serve a copy on the applicant (or on each applicant if more than one) and on every other respondent; and

the timetable for the filing and service of witness statements shall be as set out in the Regulations or this Practice Direction, or as directed by the Court.

Hearing of application

- 14.21. Unless the Court otherwise directs, the application will be heard in public in accordance with section 98 of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015.

Adjournment of hearing and directions

- 14.22. The Court may adjourn the hearing of an application on such terms as it thinks fit.

- 14.23. The Court may at any time give such directions as it thinks fit as to:

- (a) service or notice of the application or any hearing on or to any person;
- (b) whether particulars of claim and defence are to be delivered and generally as to the procedure on the application, including whether a hearing is necessary; and
- (c) the matters to be dealt with in evidence.

- 14.24. The Court may give directions as to the manner in which any evidence is to be adduced at a resumed hearing and in particular as to:

- (a) the taking of evidence wholly or partly by witness statement or orally;
- (b) the cross-examination of the maker of a witness statement; and
- (c) any report to be made by an Office-holder.

B. ADMINISTRATION

- 14.25. A person may be appointed as administrator of a Company:

- (a) by administration order of the Court under section 6 of the Regulations;
- (b) by the holder of a qualifying charge under section 21 of the Regulations; or
- (c) by the Company or its directors under section 29 of the Regulations.

- 14.26. This Practice Direction principally deals with applications to the Court for the appointment of an administrator by administration order of the Court (see paragraph 14.25(a)). Save for Section D (paragraph 14.42) and Section E (paragraph 14.43) below, a party who wishes to appoint an administrator out of Court (see paragraphs 14.25(b) or 14.25(c)) must follow the procedure set out in the Regulations.

C. APPLICATION TO THE COURT FOR AN ADMINISTRATION ORDER

Application to the Court for an administration order [sections 6, 8 to 11]

14.27. An application to the Court for an administration order in respect of a Company is to be made in accordance with **Form INSOLVENCY 1**.

14.28. The application must:

- (a) if made by the Company or the directors, state the name of the Company and its address for service, which (in the absence of special reasons to the contrary) is that of the Company's registered office;
- (b) if made by the directors, state that it is made under section 8(1)(b) of the Regulations;
- (c) if made by a single creditor, including the holder of a qualifying charge, state his name and address for service; or
- (d) if made by two or more creditors, including the holder of a qualifying charge, state that it is so made (naming them).

14.29. The application must also:

- (a) have attached to it a written statement by each of the persons proposed to be the administrator of the Company stating or containing:
 - (i) that he consents to accept appointment;
 - (ii) details of any prior professional relationship that he has had with the Company to which he is to be appointed as administrator; and
 - (iii) his opinion that it is reasonably likely that the purpose of administration will be achieved,
 - (iv) any other matters prescribed in paragraph 46 of Schedule 1 of the Regulations; and
- (b) contain a statement of the applicant's belief that the Company is, or is likely to become, unable to pay its debts, except where the applicant is the holder of a qualifying charge and is making the application in reliance on section 37 of the Regulations.

14.30. The application shall be supported by witness statement evidence in accordance with **Form INSOLVENCY 2** and must:

- (a) if the application is made by the Company or the directors, be made by one of the directors, or the secretary of the Company, stating himself to make it on behalf of the Company or, as the case may be, on behalf of the directors; or
- (b) if the application is made by creditors, be made by a person acting under the authority of them all, whether or not himself or one of their number and shall state the nature of his authority and the means of his knowledge of the matters to which the witness statement relates.

14.31. The witness statement shall also contain:

- (a) a statement of the Company's financial position, specifying (to the best of the applicant's knowledge and belief) the Company's assets and liabilities, including contingent and prospective liabilities;
- (b) details of any security known or believed to be held by creditors of the Company, and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver or to appoint an administrator under section 21 of the Regulations. If an administrative receiver has been appointed, that fact shall be stated;
- (c) details of any Insolvency Proceedings in relation to the Company including any petition that has been presented for the winding-up of the Company so far as known to the applicant;
- (d) where it is intended to appoint a number of persons as administrators of a Company, details of the matters set out in section 145(2) of the Regulations regarding the exercise of the function of the administrators of the Company; and
- (e) any other matters which, in the applicant's opinion, will assist the Court in deciding whether to make such an order, so far as lying within the knowledge or belief of the applicant.

14.32. Where the administration application is made by the holder of a qualifying charge under sections 37(1), 38(1)(b) or 39(2) of the Regulations, he shall give sufficient details in the witness statement in support to satisfy the Court that he is entitled to appoint an administrator of the Company under section 21 of the Regulations.

14.33. Where the administration application is made by the holder of a qualifying charge under section 39(2) of the Regulations, or by a liquidator under section 39(4) of the Regulations, the witness statement in support shall also contain (in addition to the matters set out in paragraphs 14.31 and 14.32):

- (a) full details of the existing Insolvency Proceedings, the name and address of the liquidator, the date the liquidator was appointed and by whom;
- (b) the reasons why it has subsequently been considered appropriate that an administration application should be made; and
- (c) any other matters that would, in the applicant's opinion, assist the Court in deciding whether to make provisions in relation to matters arising in connection with the liquidation.

Service of application [sections 13 - 16]

14.34. Service of the application must be made in accordance with sections 13 to 16 of the Regulations.

14.35. A certificate of service must be made in accordance with **Form INSOLVENCY 3**.

Application to the Court by holder of a qualifying charge or a liquidator (special cases)
[sections 37(1), 38(1)(b), 39(2) and 39(4)]

- 14.36. A holder of a qualifying charge may apply to the Court for an administration order under:
- (a) Section 37(1) of the Regulations;
 - (b) Section 38(1)(b) of the Regulations (which is to be read together with Section 17); or
 - (c) Section 39(2) of the Regulations.
- 14.37. A liquidator may apply to the Court for an administration order under section 39(4) of the Regulations.
- 14.38. Section 37 of the Regulations contains special provisions relating to the circumstances in which a holder of a qualifying charge may make an application to the Court for an administration order.
- 14.39. Section 38 of the Regulations (which is to be read together with section 17) contains provisions relating to an application to the Court by the holder of a qualifying charge seeking to intervene and have a specified person appointed as administrator (and not the person specified by another administration applicant).
- 14.40. Sections 39 and 40 of the Regulations contain provisions relating to the application to the Court for an administration order by the holder of a qualifying charge, or a liquidator, where the Company is in liquidation.
- 14.41. In all cases, an application to the Court for an administration order under sections 37(1), 38(1)(b), 39(2) or 39(4) shall:
- (a) be made in accordance with **Form Insolvency 1**, supported by witness statement evidence in accordance with **Form Insolvency 2**;
 - (b) comply, as applicable, with the requirements set out in paragraphs 14.38 to 14.40; and
 - (c) comply with such other requirements set out in Chapter 2 of Part 1 of the Regulations as are applicable including, without limitation, sections 8(2), 10, 12, 13, 14, 15, 16 and 20.

D. APPOINTMENT OF AN ADMINISTRATOR BY THE HOLDER OF A QUALIFYING CHARGE

- 14.42. A holder of a qualifying charge may appoint an administrator pursuant to Chapter 3 of Part 1 of the Regulations without a Court order. For the purpose of any documents to be filed with the Court pursuant to Chapter 3, they must be filed:
- (a) where Insolvency Proceedings have previously been commenced, through the eCourts Platform in accordance with Practice Direction 1; or
 - (b) in all other cases, by email to the Registry at registry@adgmcourts.com.

E. APPOINTMENT OF AN ADMINISTRATOR BY THE COMPANY OR ITS DIRECTORS

- 14.43. A Company or its directors may appoint an administrator pursuant to Chapter 4 of Part 1 of the Regulations without a Court order. For the purpose of any documents to be filed with the Court pursuant to Chapter 4, they must be filed:
- (a) where Insolvency Proceedings have previously been commenced, through the eCourts Platform in accordance with Practice Direction 1; or
 - (b) in all other cases, by email to the Registry at registry@adgmcourts.com.

F. PRIORITY FUNDING [sections 109A and 109B]

- 14.44. An application by an administrator to the Court for an order to permit the obtaining of credit or the incurring of debt on a priority funding basis is to be made in accordance with **Form INSOLVENCY 4** and supported by witness statement evidence in accordance with **Form INSOLVENCY 2**, and must:
- (a) as applicable, state the matters set out in paragraph 14.2;
 - (b) identify the nature of the priority financing to be obtained; and
 - (c) where the new security interest is to rank as a matter of priority equally with or above any existing security interest in respect of the same property:
 - (i) state that the administrator is unable to obtain such credit otherwise; and
 - (ii) set out the basis on which the administrator contends that there will be adequate protection of the interest of the holder of the existing security interest on the property of the insolvent estate on which the security interest is proposed to be granted.
- 14.45. The administrator shall, as soon as reasonably practicable after the making of such application, notify each known creditor of the Company that such application has been made or, if that is not practicable in the circumstances, publish a notice of the application on the Registrar of Companies' website and in an English language newspaper distributed in the United Arab Emirates and available in the Abu Dhabi Global Market.
- 14.46. The application will be heard by the Court on the date and time set out in the notice of listing issued by the Court, which shall be included in the notification or notice for purpose of paragraph 14.45.

G. SECURITY

- 14.47. Security is provided by an administrator by virtue of the fact that the administrator is licensed as an insolvency practitioner under the Commercial Licensing Regulations 2015.

H. RECEIVERS

- 14.48. A receiver may be appointed:
- (a) upon application to the Court in accordance with Part 28 of the CPR;
 - (b) by a person in accordance with Part 2 of the Regulations.

Court-appointed receiver

14.49. Any application to the Court in relation to a Court-appointed receiver, including in relation to an application to the Court for the appointment of a receiver, is to be made in accordance with Part 28 of the CPR and Practice Direction 10.

Receiver appointed under Part 2 of the Regulations

14.50. A receiver may be appointed by a person under Part 2 of the Regulations without applying to the Court for an order. However, Part 2 contemplates that certain applications may be made to the Court during the course of the receivership. Any such application to the Court under Part 2 of the Regulations is to be made in accordance with **Form INSOLVENCY 4**, supported by witness statement evidence in accordance with **Form INSOLVENCY 2**.

Security

14.51. Security is provided by a receiver by virtue of the fact that the receiver is licensed as an insolvency practitioner under the Commercial Licensing Regulations 2015.

I. WINDING UP

14.52. The winding-up of a Company may either be voluntary or by the Court, both of which are dealt with in Part 3 of the Regulations.

14.53. This Practice Direction (and Section H below) deals with the winding-up of a Company by the Court.

J. PETITION TO THE COURT FOR A WINDING-UP ORDER

Injunction to restrain presentation or advertisement of petition

14.54. An application may at any time be made by a Company for an injunction to restrain a person from:

- (a) presenting a petition for the winding up of a Company; or
- (b) advertising a petition for the winding up of a Company.

14.55. Such application should be made in accordance with Section A of this Practice Direction.

Winding-up petition [section 204]

14.56. A petition for the winding-up of a Company is to be made in accordance with **Form INSOLVENCY 5**.

14.57. Where the ground for the winding-up order is founded on section 200(1)(a) of the Regulations and a statutory demand has been served on the Company, the petition must include:

- (a) a statement that such a demand has been served,
 - (b) the date of service,
 - (c) the amount of the outstanding debt as at the date of service; and
 - (d) a statement that the Company is insolvent and unable to pay its debts.
- 14.58. The petition shall contain the name and address of the insolvency practitioner (if any) whom the petitioner proposes should be appointed as liquidator or provisional liquidator of the Company in the event that a winding-up order is made by the Court and a statement that the person so nominated is (to the best of the petitioner's belief) an insolvency practitioner who is registered as an official liquidator with the Registrar of Companies for the purposes of section 289(2) of the Regulations and has consented to such appointment. There shall be attached to the petition a copy of the written consent to such appointment signed by the insolvency practitioner so nominated.
- 14.59. The petition must be verified by a statement of truth.
- 14.60. Where the petition is in respect of debts due to different creditors then the debt to each creditor must be verified separately in accordance with **Form INSOLVENCY 6**.
- 14.61. A statement of truth verifying more than one petition shall include in its title the names of the Companies to which it relates and shall set out, in respect of 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.
- 14.62. Where a petition is filed at the instance of an administrator, the petition shall:
- (a) be expressed to be the petition of the Company by its administrator;
 - (b) state the name of the administrator, the Court case number and the date that the Company entered administration; and
 - (c) where applicable, contain an application under section 113 of the Regulations, requesting that the appointment of the administrator shall cease to have effect.

Service of petition [section 204(2)]

- 14.63. A sealed copy of the petition shall be served on the Company by the petitioner in accordance with section 204(2) of the Regulations.
- 14.64. Any application to the Court that the petition may be served in such other manner as the Court may by order approve or direct is to be made in accordance with Rule 19 of the CPR.
- 14.65. Service of the petition is to be proved by a certificate of service which must be:
- (a) made in accordance with **Form INSOLVENCY 3**; and
 - (b) be filed with the Court as soon as reasonably practicable after service, and in any event not less than 5 business days before the hearing of the petition.

Other persons to receive copies of petition or entitled to copy of petition [section 204(3), (4)]

- 14.66. Where the Regulations require the petitioner to deliver a copy of the petition to any other person that copy must be delivered within 3 business days after the day on which the petition is served on the Company, or where the petitioner is the Company within three 3 business days of the Company receiving the sealed petition.

Notice of listing

- 14.67. This petition will be heard by the Court on the date and time set out in the notice of listing issued by the Court, which the petitioner is to serve on, or provide to, all relevant persons along with the petition.

Notice of the winding-up petition [section 205]

- 14.68. Notice of the winding-up petition shall be published in the manner and in accordance with the requirements set out in section 205 and Schedule 1 of the Regulations.
- 14.69. Non-compliance with paragraph 14.68 is a ground on which the Court may, if it thinks fit, dismiss the petition.

Company's opposition to the petition [section 204(5)]

- 14.70. If the Company intends to oppose the petition, it must do so in accordance with **Form INSOLVENCY 7**, setting out brief grounds for the opposition, not less than 7 days before the date fixed for the hearing.
- 14.71. If the Company disputes the debt upon which the petition has been presented, the Court may make such directions as it considers appropriate for the filing of evidence.

Certificate of compliance [sections 204(2) and 205]

- 14.72. The petitioner must, at least 5 business days before the hearing of the petition, file a certificate of compliance with sections 204(2) and 205 of the Regulations in accordance with **Form INSOLVENCY 8**.
- 14.73. Non-compliance with paragraph 14.72 is a ground on which the Court may, if it thinks fit, dismiss the petition.

Permission for petitioner to withdraw

- 14.74. If at least 5 business days before the hearing the petitioner, on an application without notice to any other party in such form as the Court may specify, satisfies the Court that:
- (a) the petition has not been advertised;
 - (b) no notices (whether in support or opposition) have been received by him with reference to the petition; and
 - (c) the Company consents to an order being made under this paragraph;

the Court may order that the petitioner has permission to withdraw the petition on such terms as to costs as the parties may agree or the Court may think fit.

Request for the appointment of person as liquidator [section 204(7)]

- 14.75. Where a petition contains a request for the appointment of a person as liquidator in accordance with section 210(3) of the Regulations, the person whose appointment is sought shall, not less than 2 business days before the day appointed for the hearing, file a report using **Form INSOLVENCY 9** which contains particulars of:
- (a) the date on which he notified creditors of the Company, either in writing or at a meeting of creditors, of the intention to seek his appointment as liquidator, such date to be at least 7 business days before the day on which the report under this paragraph is filed; and
 - (b) details of any response from creditors to that notification, including any objections to his appointment.

Security

- 14.76. Security is provided by a liquidator by virtue of the fact that the liquidator is licensed as an insolvency practitioner under the Commercial Licensing Regulations 2015.

Notice of intention to appear [section 205(2)(f)]

- 14.77. Any person intending to appear at the hearing (whether to support or to oppose the petition) must give the petitioner notice of that intention in accordance with **Form INSOLVENCY 10** no later than 4.00pm on the business day before the day appointed for the hearing.
- 14.78. The notice shall be sent to the petitioner at the address shown for him in the Court records or in the advertisement of the petition required by section 205(2) of the Regulations, or it may be sent to his legal representative.
- 14.79. A person who fails to comply with paragraphs 14.77 and 14.78 may appear on the hearing of the petition only with the permission of the Court.

List of appearances [section 205(3)]

- 14.80. The petitioner must file a list of appearances in accordance with **Form INSOLVENCY 11** on the day appointed for the hearing.

Substitution of petitioner

- 14.81. Where a person petitions and is subsequently found not entitled to do so, or where the petitioner:
- (a) fails to advertise his petition within the time prescribed by the Regulations or such extended time as the Court may allow;
 - (b) consents to withdraw his petition, or to allow it to be dismissed, consents to an adjournment, or fails to appear in support of his 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
 - (c) appears, but does not apply for an order in the terms of the prayer of his petition;

the Court may, on such terms as it thinks just, substitute as petitioner any person who in its opinion would have a right to present a petition, and who is desirous of prosecuting it.

Dismissal of the petition

- 14.82. When a petition is dismissed, the petitioner shall forthwith give notice of the dismissal. Such notice shall be advertised in the same manner as the petition was advertised under paragraph 14.68.
- 14.83. The notice advertised under paragraph 14.82 must state:
- (a) that a petition for the winding-up of the Company has been dismissed;
 - (b) the name and address of the petitioner;
 - (c) the date on which the petition was presented;
 - (d) the date on which the petition was advertised; and
 - (e) the date of the hearing at which the petition was dismissed.
- 14.84. Where the petitioner is not the Company itself and the petitioner has not complied with paragraphs 14.82 and 14.83 within 21 days of the date of the hearing at which the petition was dismissed, the Company may advertise notice of the dismissal itself. Where the Company advertises notice of the dismissal itself:
- (a) the petitioner shall pay to the Company the costs reasonably incurred by the Company in advertising such notice; and
 - (b) the amount of the costs so payable, unless agreed between the Company and the petitioner, will be decided by summary assessment in accordance with Practice Direction 9 unless the Court directs otherwise.
- 14.85. Paragraphs 14.82 to 14.84 above do not apply in the case where a petition is withdrawn pursuant to paragraph 14.74 above.

Appointment of liquidator following administration [section 210(3)]

- 14.86. For the purpose of section 210 of the Regulations, the persons described in sections 202 and 203 of the Regulations may apply to the Court for the appointment of a liquidator following administration. Unless such application is included in the petition, the application is to be made in accordance with **Form INSOLVENCY 4**, supported by witness statement evidence in accordance with **Form INSOLVENCY 2**.

K. PROVISIONAL LIQUIDATORS

Appointment of provisional liquidator [section 210(1)]

- 14.87. For the purpose of section 210 of the Regulations, the persons described in sections 202 and 203 of the Regulations may apply to the Court for the appointment of a provisional liquidator. Unless such application is included in the petition, the application is to be made

in accordance with **Form INSOLVENCY 4**, supported by witness statement evidence in accordance with **Form INSOLVENCY 2**, and must state:

- (a) the grounds on which it is proposed that a provisional liquidator should be appointed; for example, jeopardy, or threat of dissipation of assets or otherwise;
- (b) that the person proposed to be appointed (if any) has consented to act and, to the best of the applicant's belief, is an official liquidator who is registered with the Registrar of Companies for the purposes of section 289(2) of the Regulations;
- (c) whether to the applicant's knowledge:
 - (i) there has been proposed or is in force for the Company a Deed of Company Arrangement;
 - (ii) an administrative receiver is acting in relation to the Company;
 - (iii) an administrator has been appointed or an administration order has been made and, if so, whether the applicant is seeking the Court's consent; or
 - (iv) a liquidator has been appointed for the Company's voluntary winding-up; and
- (d) the applicant's estimate of the value of the assets in respect of which the provisional liquidator is to be appointed, and the facts and bases upon which such estimate is made.

Security

14.88. Security is provided by a provisional liquidator by virtue of the fact that the provisional liquidator is licensed as an insolvency practitioner under the Commercial Licensing Regulations 2015.

Notice and advertisement of appointment

14.89. Where a provisional liquidator has been appointed, the Court shall as soon as reasonably practicable give notice of the fact to the provisional liquidator.

14.90. On receipt of the notice of appointment, as soon as reasonably practicable the provisional liquidator shall give notice of that appointment by advertisement in accordance with, as applicable, paragraph 14.68.

14.91. In addition to the standard contents, the notice must state:

- (a) that a provisional liquidator has been appointed; and
- (b) the date of the appointment.

Order of appointment of provisional liquidator

14.92. The Court shall as soon as reasonably practicable after the order is made, provide a sealed copy of the order:

- (a) to the person appointed as provisional liquidator; and

- (b) if there is an administrative receiver, a copy to him.
- 14.93. The provisional liquidator shall as soon as reasonably practicable send a copy of the order to:
- (a) the Company or, if a liquidator has been appointed for the Company's voluntary winding-up, to him, or to any other Office-holder; and
 - (b) the Registrar of Companies or the Financial Services Regulator, as applicable.

Remuneration

- 14.94. The remuneration of the provisional liquidator shall be fixed by the Court from time to time on his application.
- 14.95. In fixing his remuneration, the Court shall take into account:
- (a) the time properly given by him (as provisional liquidator) and his staff in attending to the Company's affairs;
 - (b) the complexity (or otherwise) 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, his duties; and
 - (e) the value and nature of the property with which he has had to deal.
- 14.96. Without prejudice to any order the Court may make as to costs, the provisional liquidator's remuneration shall be paid to him, and the amount of any expenses incurred by him reimbursed:
- (a) if a winding-up order is not made, out of the property of the Company; and
 - (b) if a winding-up order is made, as an expense of the liquidation, in the prescribed order of priority.
- 14.97. In a case falling within paragraph 14.96(a) above the provisional liquidator may retain out of the Company's property such sums or property as are or may be required for meeting his remuneration and expenses.

Termination of appointment

- 14.98. The appointment of the provisional liquidator shall be terminated without further order on the appointment of a liquidator and may be terminated by the Court on his application or on that of any of the persons described in sections 202 and 203 of the Regulations.
- 14.99. If the provisional liquidator's appointment terminates, whether in consequence of the dismissal of the winding-up petition or otherwise, the Court may give such directions as it thinks fit with respect to the accounts of his administration or any other matters which it thinks appropriate.

14.100. Notice of termination of the appointment of a provisional liquidator must be given by the provisional liquidator, unless the termination is on the making of a winding-up order. Such notice must as soon as reasonably practicable be:

- (a) sent to the Registrar of Companies or the Financial Services Regulator, as applicable;
- (b) advertised in the same manner as the appointment of the provisional liquidator was advertised pursuant to paragraph 14.90.

L. SERVICE OF DOCUMENTS

14.101. Service is defined in the Regulations to mean for both Court documents and other documents, service in accordance with Part 4 of the ADGM Court Procedure Rules or by any method as the Court may by order approve or direct.

14.102. Where in Insolvency Proceedings the Court makes an order staying any action, execution or other legal process against the property of a Company, service of the order may be effected by sending a sealed copy of the order to whatever is the address for service of the party having the carriage of the proceedings to be stayed.

14.103. Where there are joint Office-holders in insolvency proceedings, service on one of them is to be treated as service on all of them.

M. CONTENTS OF NOTICES

14.104. In addition to any requirements set out in any section of the Regulations or this Practice Direction, notices must comply with Schedule 1 of the Regulations.

N. COSTS AND DETAILED ASSESSMENT

Scope

14.105. This Section applies in relation to costs in connection with Insolvency Proceedings.

14.106. In this Section a reference to costs includes charges and expenses.

Requirement to assess costs by the detailed procedure

14.107. Where the costs of any person are payable as an expense out of the insolvent estate in accordance with the Regulations, this Practice Direction or by order of the Court, the amount payable must be decided by detailed assessment unless agreed between the Office-holder and the person entitled to payment.

14.108. In the absence of such agreement as is mentioned in paragraph 14.107, the Office-holder:

- (a) may serve notice requiring that person to commence detailed assessment proceedings in accordance with Section E of Practice Direction 9 (Detailed Assessment of Costs); and
- (b) must serve such notice (except in an administrative receivership) where a liquidation or creditors' committee formed in relation to the insolvency proceedings resolves that the amount of the costs must be decided by detailed assessment.

14.109. Where the costs of any person employed by an Office-holder in Insolvency Proceedings are required to be decided by detailed assessment under an order of the Court directing that those costs are to be paid otherwise than out of the insolvent estate, the registrar of the Court shall note on the final costs certificate by whom, or the manner in which, the costs are to be paid.

14.110. Where an Office-holder is made a party to any proceedings on the application of another party to the proceedings, he shall not be personally be liable for costs unless the Court otherwise directs.

14.111. Nothing in paragraphs 14.107 to 14.110 above shall affect the power of the Court to order an immediate assessment of the costs of any proceedings, or part of any proceedings, before the Court pursuant to Part 24 of the CPR.

Application for costs

14.112. This Section applies where a party to, or person affected by, any proceedings in an insolvency:

- (a) applies to the Court for an order allowing his costs, or part of them, incidental to the proceedings; and
- (b) that application is not made at the time of the proceedings.

14.113. An application to the Court under paragraph 14.112 is to be made in accordance with **Form INSOLVENCY 4** and supported by witness statement evidence in accordance with **Form INSOLVENCY 2**.

14.114. The applicant shall serve a sealed copy of the application on the Office-holder.

14.115. The Office-holder may appear on an application to which paragraph 14.112 applies.

14.116. No costs of or incidental to the application shall be allowed to the applicant unless the Court is satisfied that the application could not have been made at the time of the proceedings.

Costs and expenses of witnesses

14.117. No allowance as a witness in any examination or other proceedings before the Court shall be made to any officer of the insolvent Company to which the proceedings relate.

14.118. A person presenting any petition in a Company insolvency shall not be regarded as a witness on the hearing of the petition, but the registrar of the Court may allow his expenses of travelling and subsistence.

O. REVIEW AND APPEALS IN INSOLVENCY PROCEEDINGS

Review, rescission or variation of order

14.119. The Court may review, rescind, or vary any order made by it in relation to Insolvency Proceedings arising out of:

- (a) a change of circumstances; or
- (b) such other matter where the Court considers it is in the interests of justice to conduct such review or rescind or vary an order;

however, this paragraph shall not apply in circumstances where the application constitutes an appeal of an order.

14.120. Any application for the rescission of a winding-up order shall be made within 5 business days after the date on which the order was made. An application under this paragraph is to be made in accordance with **Form INSOLVENCY 4** and supported by witness statement evidence in accordance with **Form INSOLVENCY 2**.

Appeals

14.121. Any appeal in relation to an order or judgment made in connection with an Insolvency Proceeding is to be made in accordance with Part 25 of the CPR (save that Rule 205 shall not apply) and Practice Direction 11.

P. PRINCIPAL COURT RULES AND PRACTICE TO APPLY

14.122. The Provisions of the CPR (including any related Practice Directions) apply for the purposes of any Insolvency Proceedings before the Court with any necessary modifications, except so far as disappplied by or inconsistent with this Practice Direction.

Further information and disclosure

14.123. Any party to Insolvency Proceedings may apply to the Court for an order:

- (a) that any other party:
 - (i) clarify any matter which is in dispute in the proceedings; or
 - (ii) give additional information in relation to any such matter,

in accordance with Rule 54 of the CPR; or

- (b) to obtain documents from any other party in accordance with Part 13 of the CPR.

14.124. An application under paragraph 14.123 is to be made in accordance with **Form INSOLVENCY 4** and supported by witness statement evidence in accordance with **Form INSOLVENCY 2**, and may be made without notice.

Copies of documents

14.125. Any person who has under the Regulations or this Practice Direction the right to inspect the Court file may require the Court to provide him with an electronic copy of any document from the file.

Formal defects

14.126. Paragraph 29B of Schedule 1 of the Regulations provides that no Insolvency Proceedings shall be invalidated by any formal defect or by any irregularity, unless the Court before which the objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court.

Enforcement

14.127. In any Insolvency Proceedings, an order or judgment of the Court may be enforced in the same manner as an order or judgment of the Court made in any other proceedings, and to the same effect in accordance with the CPR.

Q. INQUIRY INTO COMPANY DEALINGS

Application under section 256 of the Regulations [section 256]

14.128. An application under section 256 of the Regulations is to be made in accordance with **Form INSOLVENCY 4** and supported by witness statement evidence in accordance with **Form INSOLVENCY 2**, specifying:

- (a) the name of the respondent;
- (b) the grounds on which it is made;
- (c) whether the application is for an order that the respondent:
 - (i) appear before the Court;
 - (ii) submit witness statements (and, if so, the particulars to be given of the matters to be included);
 - (iii) produce books, papers or other records (if so, the items in question to be specified);
 - (iv) clarify any matter which is in dispute in the proceedings or give additional information in relation to any such matter and, if so, Rule 54 of the CPR shall apply to any such order; or

for any two or more of those purposes or for some other (and, if so, what other) relief.

14.129. The application may be made without notice to any party other than the respondent.

Orders for examination, etc

- 14.130. The Court, if it orders the respondent to appear before it, shall specify a date and time for his appearance, which shall be not less than 14 calendar days from the date of the order.
- 14.131. If the respondent is ordered to submit a witness statement, the order shall specify:
- (a) the matters which are to be dealt with in his witness statement; and
 - (b) the time within which the witness statement is to be submitted to the Court.
- 14.132. If the order is to produce books, papers or other records, the time and manner of compliance shall be specified.
- 14.133. The order must be served as soon as reasonably practicable on the respondent; and it must be served personally.

Procedure for examination

- 14.134. At any examination of the respondent, the applicant may attend in person, or be represented by a legal representative, and may put such questions to the respondent as the Court may allow.
- 14.135. The following persons may attend the examination with the permission of the Court and may put questions to the respondent (but only through the applicant):
- (a) any person who could have applied for an order under section 256 of the Regulations; or
 - (b) any creditor who has provided information on which the application was made by the applicant.
- 14.136. If the respondent is ordered to clarify any matter or to give additional information, the Court shall direct him as to the questions which he is required to answer, and as to whether his answers (if any) are to be made in a witness statement.
- 14.137. The respondent may at his own expense instruct a legal representative, who may put to him such questions as the Court may allow for the purpose of enabling him to explain or qualify any answers given him, and may make representations on his behalf.

Record of examination

- 14.138. There shall be a written record of the examination in the form of a transcript. The respondent shall have the opportunity to review the transcript and to propose corrections of any typographical errors or corrections of a similar nature.
- 14.139. Subject to any law to the contrary, the written record may, in any proceedings (whether under the Regulations or otherwise) be used as evidence against the respondent of any statement made by him in the course of his examination.

Inspection of record of examination, etc.

- 14.140. The written record of questions put to the respondent and the respondent's answers, and any witness statements submitted by the respondent in compliance with an order of the Court, are not to be filed with the Court or placed on the Court file. To the extent that any such documents are to be provided to the Registry, they are to be sent by email to registry@adgmcourts.com.
- 14.141. The documents set out in paragraph 14.140 are not open to inspection without an order of the Court by any person other than:
- (a) the applicant for an order under section 256 of the Regulations; or
 - (b) any person who could have applied for such an order in respect of the affairs of the same Company.
- 14.142. The documents to which paragraph 14.141 refers are:
- (a) the written record of the respondent's examination;
 - (b) copies of the questions put to the respondent or proposed to be put to the respondent and answers to questions given by the respondent;
 - (c) any witness statement by the respondent; and
 - (d) any document on the Court files which shows the grounds for the application for an order.
- 14.143. The Court may from time to time give directions as to the custody and inspection of any documents to which paragraphs 14.140 to 14.142 apply, and as to the furnishing of copies of, or extracts from, such documents.

Costs of proceedings

- 14.144. Where the Court makes any other order against a person (including, without limitation, an order requiring the production of books, papers or other records or clarifying any matter which is in dispute or giving additional information) the costs of the application for the order may be ordered by the Court to be paid by the respondent.
- 14.145. Where the Court has ordered an examination of any person under section 256 of the Regulations, and it appears to it that the examination was made necessary because information had been unjustifiably refused by that person, it may order that the costs of the examination be paid by him.
- 14.146. Subject to paragraphs 14.144 and 14.145, the applicant's costs shall be paid as an expense of the insolvency proceeding.
- 14.147. The costs of a person summoned to attend for examination under this section incurred in connection with his attendance are at the Court's discretion.

R. APPLICATION TO LIMITED LIABILITY PARTNERSHIPS

- 14.148. Subject to paragraph 14.149, the provisions of this Practice Direction shall apply to a Limited Liability Partnership.

14.149. This Practice Direction shall apply to a Limited Liability Partnership, except where the context otherwise requires, with the following modifications—

- (a) references to a Company shall include references to a Limited Liability Partnership;
- (b) references to a Director or to an officer of a Company shall include references to a member or a designated member of a Limited Liability Partnership or any other person designated under a Limited Liability Partnership Agreement as fulfilling the managerial functions of a member or a designated member of a Limited Liability Partnership;
- (c) references to the Companies Regulations 2015 shall include references to the equivalent provisions of the Limited Liability Partnerships Regulations (if any) as apply to a Limited Liability Partnership;
- (d) references to the Articles of a Company shall include references to a Limited Liability Partnership Agreement of a Limited Liability Partnership; and
- (e) such further modifications as the context requires for the purpose of giving effect to this Practice Direction as applied by this section.

S. FORMS

14.150. Forms, as specified in this Practice Direction and where provided, are to be used in Insolvency Proceedings.

14.151. Where the forms are required to be used, they may be used with such variations, if any, as the circumstances may require.

T. COURT RECORDS

14.152. The Court shall open and maintain a file in any case where documents are filed with it under the Regulations, this Practice Direction or the CPR.

14.153. The following persons may inspect or obtain from the Court a copy of, or a copy of any document or documents contained in, a file opened in accordance with paragraph 14.152

- (a) the Office-holder in the proceedings;
- (b) the Registrar of Companies or the Financial Services Regulator;
- (c) any person who is a creditor of the Company to which the proceedings relate if that person provides the Court with a statement in writing by him or a person authorised by him confirming that that person is a creditor;
- (d) an officer or former officer of the Company to which the proceedings relate; and
- (e) a member of the Company to which the proceedings relate or a contributory in its winding up.

14.154. The right to inspect or obtain a copy of any document or documents contained in the file opened in accordance with paragraph 14.152 may be exercised on that person's behalf by a person authorised to do so by that person.

- 14.155. Any person who is not otherwise entitled to inspect or obtain a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph 14.152 may do so if that person has the permission of the Court.
- 14.156. The Court may, upon an application by the Office-holder or any person appearing to the Court to have an interest, direct that the file, a document (or part of it) or a copy of a document (or part of it) must not be made available under paragraphs 14.153 to 14.154 without the permission of the Court.
- 14.157. A request to inspect or obtain a copy of a document or documents under paragraphs 14.153, 14.154 or 14.155 is to be made in accordance with **Form INSOLVENCY 12**, and that person must pay any prescribed fee. Any request is to be sent by email to registry@adgmcourts.com.
- 14.158. An application:
- (a) to inspect the file or obtain a copy of a document under paragraphs 14.153 to 14.155; or
 - (b) for a direction under paragraph 14.156,
- may be made without notice to any other party, but the Court may direct that notice shall be given to any person who would be affected by its decision.

U. BLOCK TRANSFERS OF CASES WHERE INSOLVENCY PRACTITIONER HAS RETIRED ETC.

14.159. This Section relates to an application for a block transfer order.

Power to make a block transfer order

- 14.160. This paragraph applies where an individual who is acting as an Office-holder (“the outgoing office-holder”):
- (a) dies;
 - (b) retires from practice; or
 - (c) is otherwise unable or unwilling to continue in office;
- and it is expedient to transfer some or all of the cases in which the outgoing Office-holder holds office to one or more office-holders (“the replacement Office-holder”) in a single transaction.
- 14.161. In a case to which this Section applies the Court has the power to make an order, (“a block transfer order”), appointing a replacement Office-holder in the place of the outgoing Office-holder to be:
- (a) liquidator or provisional liquidator in any winding up;
 - (b) receiver or administrative receiver in any receivership;
 - (c) administrator in any administration; or

(d) administrator of a Deed of Company Arrangement.

14.162. The replacement office-holder must be qualified to act as an insolvency practitioner under the Commercial Licensing Regulations 2015.

Application for a block transfer order

14.163. An application to the Court is to be made in accordance with **Form INSOLVENCY 4** and supported by witness statement evidence in accordance with **Form INSOLVENCY 2**.

14.164. An application for a block transfer order may be made for:

- (a) the removal of the outgoing Office-holder;
- (b) the appointment of a replacement Office-holder;
- (c) such other order or direction as may be necessary or expedient in connection with any of the matters referred to above.

14.165. The application may be made by any of the following:

- (a) the outgoing Office-holder (if able and willing to do so);
- (b) any person who holds office jointly with the outgoing Office-holder;
- (c) any person who is proposed to be appointed as the replacement Office-holder;
- (d) any creditor in a case subject to the application;
- (e) the approved insolvency practitioner regulatory body by which the outgoing Office-holder is or was licensed or authorised; or
- (f) the Registrar of Companies or the Financial Services Regulator.

14.166. An applicant (other than the Registrar of Companies or Financial Services Regulator) must, as applicable, deliver notice of the application to the Registrar of Companies or the Financial Services Regulator at least 5 business days before the hearing of the application.

14.167. The following must be made a respondent to the application and served by the applicant with it:

- (a) the outgoing Office-holder (if not the applicant or deceased);
- (b) every person who holds office jointly with the outgoing Office-holder;
- (c) any person who is proposed to be appointed as the replacement Office-holder; and
- (d) such other person as the Court directs.

14.168. The application must contain a schedule setting out:

- (a) the name of each case;

- (b) the identity of the Court having jurisdiction when the application is made;
- (c) the case number (if any); and
- (d) the capacity in which the outgoing Office-holder was appointed.

14.169. The application must be supported by witness statement evidence:

- (a) setting out the circumstances as a result of which it was expedient to appoint a replacement Office-holder; and
- (b) exhibiting the written consent to act of each person who is proposed to be appointed as replacement Office-holder.

Action following application for a block transfer order

14.170. The Court may in the first instance consider the application without a hearing and make such order as it thinks just.

14.171. In the first instance, the Court may do any of the following:

- (a) if the documents are considered to be in order and that the matter is considered straightforward, make an order on the substantive application;
- (b) give any directions which are considered to be necessary including (if appropriate) directions for the joinder of any additional respondents or requiring the service of the application on any person or requiring additional evidence to be provided; or
- (c) if an order is not made on the substantive application, give directions for the further consideration of the substantive application by the Court.

14.172. In deciding to what extent (if any) the costs of making an application under this Section should be paid as an expense of the insolvency proceedings to which the application relates, the factors to which the Court must have regard include:

- (a) the reasons for the making of the application;
- (b) the number of cases to which the application relates;
- (c) the value of assets comprised in those cases; and
- (d) the nature and extent of the costs involved.

14.173. Any appointment made under this Section must be notified:

- (a) as applicable, to the Registrar of Companies or the Financial Services Regulator as soon as reasonably practicable;
- (b) to the creditors; and
- (c) to such other persons as the Court may direct, in such manner as the Court may direct.