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50. Release of Official Receiver as liquidator or trustee

Obtaining release as trustee or liquidator

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Introduction

50.1 General

The official receiver may apply for their release as liquidator/trustee when the administration of a company, partnership or bankruptcy estate is for all practical purposes complete. Sections 174(3) and 299(2) provide that the official receiver applies to the Secretary of State for their release and that release takes effect from the date determined by the Secretary of State. The power of the Secretary of State with regard to release has been delegated to Estate Account Services (EAS), Birmingham. When the official receiver is released they are discharged as of that date from all liability in respect of what they have done or anything they have failed to do in the administration of the estate. They are also discharged from all liability in respect of their conduct as liquidator or trustee. Creditors, contributories and successor liquidators/trustees do still have recourse to the court under sections 212

or 304 (remedy against delinquent liquidator or trustee) but such an application may only be made with the permission of the court once the official receiver has obtained their release.

It is Insolvency Service policy that, except in certain contentious cases, the Official Receiver will no longer apply for their release as trustee or liquidator. However, in order to close a case in ISCIS, it is necessary to take the case through the release process, which is fully controlled by Workflow.

50.2 Provisional liquidator

Where the official receiver has acted as provisional liquidator of a company and the period of office ceases they should apply to the court which appointed them for release either at the time of cessation or shortly afterwards[1]. Release as provisional liquidator should still be applied for even if the official receiver has become liquidator on the making of a winding-up order against the company as the release will stand to protect them in respect of any action which they took, or did not take, whilst provisional liquidator.

1. Section 174(5)

50.3 Release where OR replaced as liquidator or trustee by IP

Where the official receiver is replaced as liquidator/trustee on the appointment of an insolvency practitioner either at a meeting of creditors/contributories or following appointment by the Secretary of State the official receiver obtains their release at the time they notify the court that they have been replaced. In a case where the insolvency practitioner is appointed by the court the court will determine the time of the official receiver's release[1].

1. Section 174(2) or s299(1)

50.4 Early dissolution

Where the official receiver decides to apply for early dissolution of a company a notice under section 202 to creditors, contributories and any administrative receiver of the company informing them of their decision, they are under no legal obligation to send creditors notice of their intention to apply for release. Section 202(4) relieves them from any such duty, which is in any event unlikely to arise, since creditors will not at that stage have had an opportunity to prove their debts. The official receiver should then apply to EAS for release in the usual way (see paragraph 50.12). The early dissolution procedure should not be used where there is an immediate or

foreseeable need to later defer the dissolution (see paragraph 50.9). For further information regarding early dissolution see chapter 54.

Notices

50.5 Notice of intention to apply for release

It is Insolvency Service policy that, except in certain contentious cases, the Official Receiver will no longer apply for their release as trustee or liquidator.

Where the official receiver decides to apply for release as trustee or liquidator and they have acted as substantive liquidator/trustee of the estate and their release is not granted by the operation of sections 174(2) and 299(1) (see paragraph 50.3), they must send notice[1] of their intention to apply to the Secretary of State for release to all of the creditors of which they are aware and in the case of bankruptcy to the bankrupt[2]. In the case of liquidation, contributories should not receive this notice. The official receiver may apply to the court to be relieved of the duty to send notice to all creditors of which they are aware[3].

In considering the application, the court shall have regard to the cost of carrying out the duty, to the amount of the assets available and to the extent of the interest of creditors or contributories, or any particular class of them. The notice should include a summary of their receipts and payments as liquidator/trustee consistent with the information provided in the report to creditors. Full explanations must be given in respect of any assets which have not been realised, assets subject to protracted realisation and assets which did not achieve their estimated realisable values. In bankruptcy cases reference must be made to the position on the bankrupt's discharge. In company cases reference should be made to any proposed application for deferral of the company's dissolution.

The recipients of the notice have 21 days in which to object to the Secretary of State (EAS) regarding the granting of the official receiver's release after which time the release may be granted. If for any reason there is a delay in the posting of the notices then EAS should be informed urgently by telephone so that the official receiver's release is not approved until after the full 21 day notice period has expired. The telephone call should be followed up by an e-mail on the same day. See paragraph 50.13 for information regarding objections to release.

1. Form NORAD

2. Rule 7.70 or 10.86

3. Rule 7.72 or 10.88

50.6 Electronic delivery of notices and the use of Websites

The official receiver is permitted to send notices by electronic means provided that the recipient has consented and has provided an electronic address for delivery[1].

The official receiver may also satisfy their requirement to notify creditors and contributories by the notice being available for viewing or downloading on a website[2]. The official receiver is required to notify creditors and contributories of the address of the website together with any password required to access or download the document. The notice must also contain a statement informing the recipient of their entitlement to request a hard copy of the notice and specify a telephone number, e-mail address and postal address to make such a request.

Accordingly, the official receiver could utilise electronic means or a website for giving notice of their intention to apply for release.

1. Rule 1.45 – 1.50

2. Section 246B

50.7 Notice to mutual societies

Where release is being sought in respect of a friendly society, building society or industrial and provident society, notice should be sent to Mutual Societies Registration, The Financial Conduct Authority, 25 The North Colonnade, London, E14 5HS

Checks prior to application for release

50.8 Checks to be carried out when preparing notices for release

In the exceptional cases in which the official receiver decides to apply for release as trustee or liquidator, and in all cases in which the administration is to be concluded, a thorough review of the file should take place to ensure that all administrative matters have been dealt with and that all ISCIS screens have been updated with the correct information. If there are funds in the estate the official receiver should distribute them to creditors as soon as possible. The checks that should be made as a minimum are as follows;

- check that all relevant assets have been realised or otherwise accounted for
- all protracted realisation items are listed
- ensure all insurance, with the exception of that required for any long term assets, has been cancelled
- ensure that any agents have accounted for their asset realisations and that agents' accounts have been paid
- check that any items held in the cashier's safe for safekeeping have been realised or returned to third parties, as appropriate
- ensure that, where appropriate, remaining assets have been correctly recorded and that all relevant documents have been uploaded to the electronic file to assist the LTADT in realising the asset
- check that a deposit exists in the Funds tab, that all fees and disbursements have been charged correctly and any payments made in the due order of priority
- ensure that all correspondence has been answered
- ensure that in company cases an approach has been made to any administrative receiver in office to determine whether a deferral of dissolution is necessary. A similar approach should also be made to any Law of Property Act receiver in office, see paragraph 50.11)
- check for any continuing prosecution or disqualification proceedings and, if so, seek to defer the dissolution of the company (see paragraph 50.10)
- consider the preservation or destruction of any accounting records and electronic case file
- consider deferring the dissolution of a company where there is an occupational pension scheme in existence (see paragraph 50.9)

Deferral of dissolution

50.9 General

When notice that the administration of the liquidation has been completed has been filed at Companies House, it is usual for the company to be dissolved by the Registrar of Companies at the end of three months, beginning with the day on which the notice is received by the Registrar of Companies[1]. Where the following situations exist it is imperative that an application is made for the dissolution of the company to be deferred by the Secretary of State[2, 3]:

a) where the company is subject to prosecution/disqualification proceedings, application should be made for dissolution to be deferred for 6 years

b) where an administrative receiver or Law of Property Act receiver is in office, 2 years deferral should be applied for

c) where the winding up of an occupational pension scheme remains to be concluded, an estimate will need to be taken of the time needed and the appropriate period of deferral (in whole years) applied for

Other situations may also exist where it is imperative that the dissolution of the company is deferred e.g. where an insurance claim is in progress which requires the company to remain on the register but does not stop the liquidator's release. In such situations the official receiver should apply for an appropriate period of deferral (in whole years). For further information, see chapter 54.

1. Section 205(1)(b) & (2),

2. Section 205(3),

3. Form DSNDIR

50.10 Deferral of dissolution - prosecution or disqualification proceedings outstanding

The official receiver may conclude the administration of the liquidation or apply for their release as liquidator where prosecution or disqualification proceedings are outstanding, but they must ensure that:

a) the company records relevant to the proceedings are not disposed of, and

b) the dissolution of the company is deferred for six years from the date of the conclusion of the administration of the liquidation or official receiver's release (see chapter 54)

50.11 Deferral of dissolution - receiver in office

Where there is an administrative or Law of Property Act receiver in office the official receiver should, before applying for release, write to the receiver informing them of the official receiver's intention to apply for release. Further, the official receiver should state that unless they hear to the contrary from the receiver, they will ask for a direction that the dissolution of the company be deferred for two years from the date of the official receiver's release as liquidator. The official receiver should allow 28 days for a response from the receiver and should upload a copy of their letter and a copy of any reply from the receiver to the electronic file.

When the official receiver is informed at the time of release that the Secretary of State has directed that the dissolution be deferred they should notify the receiver of this. They should also inform the receiver that any subsequent application to extend the period of the deferral should be made by them to the Secretary of State before that period ends.

For further information regarding deferral of dissolution see chapter 54.

Application and objections

50.12 Application for release

In the vast majority of cases, the official receiver will no longer be applying for release as trustee or liquidator. The closing notice letter including the notice of release and account summary (NORAD/ACCSUM) will no longer be sent. Nor will the notice of application for release (TRLTB) be sent to the bankrupt.

Once a case is ready to be closed, the ‘Release’ workflow on ISCIS should be initiated by selecting the ‘Release’ button on the ‘Case Header’ tab. Then using the ‘Request Release’ screen details of the type of closing should be entered.

Take the ‘Perform Manual Checks’ workflow task carry out the manual checks and mark the task Complete.

Take the ‘Create NORAD Documentation’ workflow task, do not produce the NORAD or ACCSUM documentation (close the document production screen) and mark the task Complete.

Check that the case header now shows - Financial Case Status: Closed

If this does not happen in a matter of minutes, it suggests there is an issue with the case.

In those cases in which the official receiver decides to apply for release, they should send out the notices of intention to apply for release and apply to EAS (acting on behalf of the Secretary of State) for release by sending the following;

- where appropriate, form DSNDIR, application for deferred dissolution
- in exceptional cases only, a copy of the application for release checklist

EAS will vet all applications before approving the official receiver’s release and any deferral of dissolution.

50.13 Objections to release

In those cases in which the official receiver applies for release, it should be noted that the legislation does not provide for a period during which creditors may object to the official receiver's application for release. However, the official receiver's release will not be approved until the period of 21 days from receipt of the notice of intention to apply for release has expired. Creditors are informed in that notice that any objections should be reported in that period to EAS. If an objection to release is received by the official receiver, EAS should be informed urgently by telephone to ensure that the official receiver's release is not approved until after the matter has been resolved. On the same day a minute should be sent by e-mail. Once approved there is no mechanism for the official receiver's release to be revoked.

When an objection to release is received within 21 days of the notice to creditors, or prior to release being granted, the official receiver's application for release will be removed from general processing to prevent the release being granted. The reason for the objection is then considered by EAS and if it is not a valid objection the person concerned is notified in writing and given a further 21 days in which to respond. If the objection is considered to be valid, a holding letter is sent to the objector and the official receiver is contacted for further information. The objection is then referred to the Senior Official Receiver for adjudication. When the matter is finally resolved EAS are instructed by the Senior Official Receiver to deal with the release and to send a copy of the release certificate to the objector.

Some creditors will tend to object in principle to the release of the official receiver as they consider that by the official receiver being released the director/bankrupt is in some way "getting off lightly". However, others may have concerns that the director/bankrupt is now enjoying a good lifestyle whilst they are suffering as a result of losses due to the insolvency. It is imperative that all creditor correspondence is followed up prior to applying for release to avoid delays caused by objections to release from creditors who believe, for example, that the bankrupt/company has assets which were not disclosed to the official receiver.

Where an objection to release is lodged with the official receiver directly, in addition to notifying EAS there is nothing to stop the official receiver dealing directly with the objector to resolve the matter, copying the resulting correspondence to EAS and the Senior Official Receiver team, as appropriate.

If an objection to release is received by EAS after 21 days and the release has already been granted the objector is advised that the official receiver's release cannot be revoked but EAS will liaise with the official receiver/the Senior Official Receiver to try to address the matter raised. The objector will have the option to pursue the matter as a complaint whereupon the normal complaints procedure would be followed.

50.14 Release granted

Where release is granted this is automatically entered on ISCIS following the writing off of any nil or debit balance (see following paragraph). EAS will send a certificate of release to the court but a copy will not be forwarded to the official receiver. In company cases, EAS will prepare the notice that winding up is complete and forward this to Companies House together with any deferral of dissolution directions such as[1]:

a) the dissolution can proceed; or

b) the official receiver wishes to apply for the early dissolution of the company; or

c) dissolution has been deferred by the Secretary of State for a certain period

A copy of the paperwork sent to Companies House regarding deferral of dissolution will be uploaded on to the electronic file.

1. Rule 7.70 or 10.86

50.15 Writing off nil or debit balances

In the vast majority of cases in which the official receiver concludes the administration of the bankruptcy or liquidation without formally applying for release, the nil or debit balance is written off automatically as part of the workflow process.

In the rare cases in which the official receiver applies for release as trustee or liquidator, any nil or debit balance is written off by EAS on approval of the official receiver's application for release. This is dependent on the request for write off having been entered on ISCIS by the official receiver.

Rescission, stay and annulment

50.16 Rescission/recall or stay of proceedings in winding up

Where the winding-up order is rescinded[1] the official receiver as liquidator will have their release as from such time as the Court may determine[2]. No application for release is required. The date of the liquidator's release should be recorded as a file note in ISCIS. The release process should not be used.

Where an order for a permanent stay of proceedings[3] is made, the order should state that the liquidator will be released when the certificate of release issued by the Secretary of State is filed at court. The order should also include details of how the deposit is to be dealt with. If it is the intention of all parties that the stay be

permanent the court may state in the order that the deposit be returned to the petitioning creditor's solicitor. If the court declines to deal with the deposit in this way then the deposit should be transferred to reserved funds.

A copy of the final account should be filed in the Wisdom folder

The following filing protocol should be followed: office – company name – case ID number.

A copy of the final account should also be filed with the Court.

1. Rule 12.59

2. Section 174(4A)

3. Section 147(1)

50.17 Annulment of bankruptcy order

Where the official receiver is trustee they should ask the court, when it makes an order of annulment, to order that the official receiver be granted their release as trustee "on the date that the official receiver submits a copy of their final account to the Secretary of State and files a copy of the final account with the court."[1]

Following the making of an order of annulment of the bankruptcy order, official receivers should file a copy of their final account directly into the Wisdom folder. The following filing protocol should be followed: office – bankrupts name – case ID number. The official receiver must also file a copy of their final account with the court in order to comply with rule 10.141.

1. Section 299(4)

Ex-officio, deputyship and partnerships

50.18 Official receiver acting in ex-officio capacity

Where the official receiver deals with assets in an ex-officio capacity following vacation of office on completion of an administration by a practitioner acting as liquidator or trustee, no application for release need be made. Where funds received enabled a payment to be made by way of refund of a deposit, payment of law costs, etc, the official receiver should distribute the monies or transfer small credit balances to the indivisible balances account as appropriate and update ISCIS with the nil

balance. In the event that the official receiver becomes liquidator or trustee as a result of the removal, death or resignation of a practitioner acting as liquidator or trustee, they should conclude the administration in the usual way[1].

1. Section 136(3) or 300(2)

50.19 Deputyship cases

In the unusual event that an official receiver is acting as deputy for another official receiver, the administration should be concluded by the deputy official receiver in the normal manner.

An official receiver, acting as deputy official receiver, should apply for release (if required) on behalf of the official receiver who is the liquidator or trustee. All paperwork in this respect should bear the address of the deputy official receiver but the name of the official receiver who is the liquidator or trustee.

50.20 Partnerships

Release, if required, should be applied for in respect of every estate account opened regarding a winding-up order or bankruptcy order made in relation to a partnership. When dealing with a joint bankruptcy partnership (Article 11) a separate application should be made in each estate including the partnership estate. However, notices to creditors can be combined where release in more than one insolvency is being dealt with at the same time.