

1986 No. 1925**INSOLVENCY****The Insolvency Rules 1986**

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<i>Made</i>	<i>10th November 1986</i>
<i>Laid before Parliament</i>	<i>1st December 1986</i>
<i>Coming into force</i>	<i>29th December 1986</i>

The Lord Chancellor, in the exercise of his powers under sections 411 and 412 of the Insolvency Act 1986, with the concurrence of the Secretary of State, and after consulting the committee existing for that purpose under section 413 of that Act, hereby makes the following Rules:—

INTRODUCTORY PROVISIONS**0.1. Citation and commencement**

These Rules may be cited as the Insolvency Rules 1986 and shall come into force on 29th December 1986.

Commencement

Pt 0 rule 0.1: December 29, 1986

[0.2.— Construction and interpretation

(1) In these Rules—

“the Act” means the Insolvency Act 1986 (any reference to a numbered section being to a section of that Act);

“the Companies Act” means [the Companies Act 2006]¹ ;

“CPR” means the Civil Procedure Rules 1998.² and “CPR” followed by a Part or rule by number means the Part or rule with that number in those Rules;

“RSC” followed by an Order by number means the Order with that number set out in Schedule 1 to the CPR; and

“the Rules” means the Insolvency Rules 1986.

(2) [...]³

¹ Words substituted by Insolvency (Amendment) (No. 2) Rules 2009/2472 rule 4(2) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/2472 rule 2)

² S.I. 1998/3132 (L. 17); amended by S.I. 1999/1008 (L. 8).

³ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.2(2) (April 6, 2010)

(3) Subject to [paragraph (1)]⁴, Part 13 of the Rules has effect for their interpretation and application.
]⁵

Commencement

Pt 0 rule 0.2 definition of "the Act" - definition of "the Rules": December 29, 1986

0.3.— Extent

(1) Parts 1, 2 and 4 of the Rules, and Parts 7 to 13 as they relate to company insolvency, apply in relation to companies which the courts in England and Wales have jurisdiction to wind up.

[(2) Rule 3.1 applies to all receivers to whom Part III of the Act applies, Rule 3.39 and 3.40 apply to all receivers who are not administrative receivers, and the remainder of Part 3 of the Rules applies to administrative receivers appointed otherwise than under section 51 (Scottish Receivership).]⁶

(3) Parts 5 and 6 of the Rules, and Parts 7 to 13 as they relate to individual insolvency, extend to England and Wales only.

Commencement

Pt 0 rule 0.3(1)-(3): December 29, 1986

THE FIRST GROUP OF PARTS**PART 1****COMPANY VOLUNTARY ARRANGEMENTS****CHAPTER 1****PRELIMINARY****1.1.— Scope of this Part; interpretation**

(1) The Rules in this Part apply where, pursuant to Part I of the Act, it is intended to make, and there is made, a proposal to a company and its creditors for a voluntary arrangement, that is to say, a composition in satisfaction of its debts or a scheme of arrangement of its affairs.

(2) In this Part—

[(a) Chapter 2 applies where the proposal for the voluntary arrangement is made by the directors of the company and

⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.2(3) (April 6, 2010)

⁵ Substituted by Insolvency (Amendment) (No. 2) Rules 1999/1022 Sch.1 para.1 (April 26, 1999)

⁶ Substituted by Insolvency (Amendment) Rules 2003/1730 rule 3 (September 15, 2003)

- (i) the company is neither in liquidation nor is [the company in administration]⁷ ; and
- (ii) no steps have been taken to obtain a moratorium under Schedule A1 to the Act in connection with the proposal;

] ⁸

(b) Chapter 3 applies where the company is in liquidation or [the company is in administration]⁹ , and the proposal is made by the liquidator or (as the case may be) the administrator, he in either case being the nominee for the purposes of the proposal;

[(c) Chapter 4 applies in the same case as Chapter 3, but where the nominee is not the liquidator or administrator;

(d) Chapter 5 applies in all the three cases mentioned in sub-paragraphs (a) to (c) above;

(e) Chapters 7 and 8 apply to all voluntary arrangements with or without a moratorium; and

(f) Chapter 9 applies where the proposal is made by the directors of an eligible company with a view to obtaining a moratorium.] ¹⁰

(3) In Chapters 3, 4 and 5, the liquidator or the administrator is referred to as “the responsible insolvency practitioner”.

[(4) In this Part, a reference to an “eligible company” is to a company that is eligible for a moratorium in accordance with paragraph 2 of Schedule A1 to the Act¹¹ .] ¹²

Commencement

Pt 1(1) rule 1.1(1)-(3): December 29, 1986

CHAPTER 2

PROPOSAL BY DIRECTORS

1.2. [...] ¹³

1.3.— Contents of proposal

(1) The directors' proposal shall provide a short explanation why, in their opinion, a voluntary arrangement under Part I of the Act is desirable, and give reasons why the company's creditors may be expected to concur with such an arrangement.

⁷ Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(1) para.1(a) (September 15, 2003)

⁸ Substituted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.1(a) (January 1, 2003: substitution has effect subject to conditions specified in SI 2002/2712 rule 3(2))

⁹ Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(1) para.1(b) (September 15, 2003)

¹⁰ Rule 1.1(2)(c)-(f) substituted for rule 1.1(2)(c)-(d) by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.1(b) (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹¹ Schedule A1 is inserted into the Insolvency Act 1986 (c. 45) by section 1 of, and Schedule 1 to, the Insolvency Act 2000 (c. 39) and is amended by S.I. 2002/1990.

¹² Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.1(c) (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹³ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (2) The following matters shall be stated, or otherwise dealt with, in the directors' proposal—
- (a) the following matters, so far as within the directors' immediate knowledge—
 - (i) the company's assets, with an estimate of their respective values,
 - (ii) the extent (if any) to which the assets are charged in favour of creditors,
 - (iii) the extent (if any) to which particular assets are to be excluded from the voluntary arrangement;
 - (b) particulars of any property, other than assets of the company itself, which is proposed to be included in the arrangement, the source of such property and the terms on which it is to be made available for inclusion;
 - (c) the nature and amount of the company's liabilities (so far as within the directors' immediate knowledge), the manner in which they are proposed to be met, modified, postponed or otherwise dealt with by means of the arrangement, and (in particular)—
 - (i) how it is proposed to deal with preferential creditors (defined in section 4(7)) and creditors who are, or claim to be, secured,
 - (ii) how persons connected with the company (being creditors) are proposed to be treated under the arrangement, and
 - (iii) whether there are, to the directors' knowledge, any circumstances giving rise to the possibility, in the event that the company should go into liquidation, of claims under—
 - section 238 (transactions at an undervalue),
 - section 239 (preferences),
 - section 244 (extortionate credit transactions), or
 - section 245 (floating charges invalid);
 and, where any such circumstances are present, whether, and if so how, it is proposed under the voluntary arrangement to make provision for wholly or partly indemnifying the company in respect of such claims;
 - [(ca) an estimate (to the best of the directors' knowledge and belief and subject to paragraph (4)) of—
 - (i) the value of the prescribed part, should the company go into liquidation if the proposal for the voluntary arrangement is not accepted, whether or not section 176A is to be disapplied; and
 - (ii) the value of the company's net property on the date that the estimate is made.
-]¹⁴
- (d) whether any, and if so what, guarantees have been given of the company's debts by other persons, specifying which (if any) of the guarantors are persons connected with the company;
 - (e) the proposed duration of the voluntary arrangement;
 - (f) the proposed dates of distributions to creditors, with estimates of their amounts;
 - [(fa) how it is proposed to deal with the claim of any person who is bound by the arrangement by virtue of section 5(2)(b)(ii)¹⁵ ;]¹⁶

¹⁴ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(1) para.2(1) (September 15, 2003)

¹⁵ Section 5(2)(b) of the Act was amended by section 2 of, and paragraph 6(c) of Schedule 2 to, the Insolvency Act 2000.

¹⁶ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.2(a) (January 1, 2003: insetion has effect subject to conditions specified in SI 2002/2712 rule 3(2))

- (g) the amount proposed to be paid to the nominee (as such) by way of remuneration and expenses;
- (h) the manner in which it is proposed that the supervisor of the arrangement should be remunerated, and his expenses defrayed;
- (j) whether, for the purposes of the arrangement, any guarantees are to be offered by directors, or other persons, and whether (if so) any security is to be given or sought;
- (k) the manner in which funds held for the purposes of the arrangement are to be banked, invested or otherwise dealt with pending distribution to creditors;
- (l) the manner in which funds held for the purpose of payment to creditors, and not so paid on the termination of the arrangement, are to be dealt with;
- (m) the manner in which the business of the company is proposed to be conducted during the course of the arrangement;
- (n) details of any further credit facilities which it is intended to arrange for the company, and how the debts so arising are to be paid;
- (o) the functions which are to be undertaken by the supervisor of the arrangement; [...]¹⁷

[(p) the name, address and qualification of the person proposed as supervisor of the voluntary arrangement, and confirmation that he is either qualified to act as an insolvency practitioner in relation to the company or is an authorised person in relation to the company; [...]¹⁸]¹⁹

[(q) whether the EC Regulation²⁰ will apply and, if so, whether the proceedings will be main proceedings, secondary proceedings or territorial proceedings [; and]²¹]²²

[(r) such other matters (if any) as the directors consider appropriate for ensuring that members and creditors are enabled to reach an informed decision on the proposal.]²¹

(3) With the agreement in writing of the nominee, the directors' proposal may be amended at any time up to delivery of the [nominee's]²³ report to the court under section 2(2).

[(4) Nothing in paragraph (2)(ca) is to be taken as requiring the estimate referred to in that paragraph to include any information, the disclosure of which could seriously prejudice the commercial interests of the company. If such information is excluded from the calculation the estimate shall be accompanied by a statement to that effect.]²⁴

Commencement

Pt 1(2) rule 1.3(1)-(3): December 29, 1986

¹⁷ Word repealed by Insolvency (Amendment) Rules 2002/1307 rule 4(2)(a) (May 31, 2002)

¹⁸ Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.3(2)(a) (April 6, 2010)

¹⁹ Substituted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.2(b) (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

²⁰ Council Regulation (EC) 1346/2000, OJ No. L160, 30.06.00. p.1.

²¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.3(2)(b) (April 6, 2010)

²² Added by Insolvency (Amendment) Rules 2002/1307 rule 4(2)(b) (May 31, 2002)

²³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.3(3) (April 6, 2010)

²⁴ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(1) para.2(2) (September 15, 2003)

1.4.— Notice to intended nominee

- (1) The directors shall give to the intended nominee written notice of their proposal.
- (2) The notice, accompanied by a copy of the proposal, shall be delivered either to the nominee himself, or to a person authorised to take delivery of documents on his behalf.
- (3) If the intended nominee agrees to act, he shall cause a copy of the notice to be endorsed to the effect that it has been received by him on a specified date; and the period of 28 days referred to in section 2(2) then runs from that date.
- (4) The copy of the notice so endorsed shall be returned by the nominee [as soon as reasonably practicable]²⁵ to the directors at an address specified by them in the notice for that purpose.

Commencement

Pt 1(2) rule 1.4(1)-(4): December 29, 1986

1.5.— Statement of affairs

- (1) The directors shall, [at the same time as the]²⁶ proposal is delivered to the nominee, [...] ²⁷ deliver to him a statement of the company's affairs.
- (2) The statement shall comprise the following particulars (supplementing or amplifying, so far as is necessary for clarifying the state of the company's affairs, those already given in the directors' proposal)—
 - (a) a list of the company's assets, divided into such categories as are appropriate for easy identification, with estimated values assigned to each category;
 - (b) in the case of any property on which a claim against the company is wholly or partly secured, particulars of the claim and its amount, and of how and when the security was created;
 - (c) the names and addresses of the company's preferential creditors (defined in section 4(7)), with the amounts of their respective claims;
 - (d) the names and addresses of the company's unsecured creditors, with the amounts of their respective claims;
 - (e) particulars of any debts owed by or to the company to or by persons connected with it;
 - (f) the names and addresses of the company's members, with details of their respective shareholdings;
 - (g) such other particulars (if any) as the nominee may in writing require to be furnished for the purposes of making his report to the court on the directors' proposal.
- (3) The statement of affairs shall be made up to a date not earlier than 2 weeks before the date of the notice to the nominee under Rule 1.4.

²⁵ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

²⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.4(2)(a) (April 6, 2010)

²⁷ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.4(2)(b) (April 6, 2010)

However, the nominee may allow an extension of that period to the nearest practicable date (not earlier than 2 months before the date of the notice under Rule 1.4); and if he does so, he shall give his reasons in his report to the court on the directors' proposal.

(4) [The statement must be verified by a statement of truth made by at least one director.]²⁸

Commencement

Pt 1(2) rule 1.5(1)-(4): December 29, 1986

1.6.— Additional disclosure for assistance of nominee

(1) If it appears to the nominee that he cannot properly prepare his report on the basis of information in the directors' proposal and statement of affairs, he may call on the directors to provide him with—

- (a) further and better particulars as to the circumstances in which, and the reasons why, the company is insolvent or (as the case may be) threatened with insolvency;
- (b) particulars of any previous proposals which have been made in respect of the company under Part I of the Act;
- (c) any further information with respect to the company's affairs which the nominee thinks necessary for the purposes of his report.

(2) The nominee may call on the directors to inform him, with respect to any person who is, or at any time in the 2 years preceding the notice under Rule 1.4 has been, a director or officer of the company, whether and in what circumstances (in those 2 years or previously) that person—

- (a) has been concerned in the affairs of any other company (whether or not incorporated in England and Wales) which has become insolvent, or
- (b) has himself been adjudged bankrupt or entered into an arrangement with his creditors.

(3) For the purpose of enabling [the nominee such access to the company's accounts and records as the nominee may require]²⁹ .

Commencement

Pt 1(2) rule 1.6(1)-(3): December 29, 1986

1.7.— Nominee's report on the proposal

(1) With his report to the court under section 2 the nominee shall deliver—

- (a) a copy of the directors' proposal (with amendments, if any, authorised under Rule 1.3(3)); and
- (b) a copy or summary of the company's statement of affairs.

(2) If the nominee makes known his opinion [that the directors' proposal has a reasonable prospect of being approved and implemented and]³⁰ that meetings of the company and its creditors should be summoned under section 3, his report shall have annexed to it his comments on the proposal.

²⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.4(3) (April 6, 2010)

²⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.5(2) (April 6, 2010)

³⁰ Words inserted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.3 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

If his opinion is otherwise, he shall give his reasons for that opinion.

(3) The court shall cause the nominee's report to be endorsed with the date on which it is filed in court. Any director, member or creditor of the company is entitled, at all reasonable times on any business day, to inspect the file.

(4) The nominee shall send a copy of his report, and of his comments (if any), to the company.

Commencement

Pt 1(2) rule 1.7(1)-(4): December 29, 1986

[1.8.— Replacement of nominee

(1) Where a person other than the nominee intends to apply to the court under section 2(4)³¹ for the nominee to be replaced, (except in any case where the nominee has died) he shall give to the nominee at least [5 business]³² days' notice of his application.

(2) Where the nominee intends to apply to the court under section 2(4) of the Act to be replaced, he shall give at least [5 business]³² days' notice of his application to the person intending to make the proposal.

(3) No appointment of a replacement nominee shall be made by the court unless there is filed in court a statement by the replacement nominee—

(a) indicating his consent to act, and

(b) that he is qualified to act as an insolvency practitioner in relation to the company or is an authorised person in relation to the company.

] ³³

Commencement

Pt 1(2) rule 1.8: December 29, 1986

1.9.— Summoning of meetings under s. 3

(1) If in his report the nominee states that in his opinion meetings of the company and its creditors should be summoned to consider the directors' proposal, the date on which the meetings are to be held shall be not [...] ³⁴ more than 28, days from that on which the nominee's report is filed in court under Rule 1.7.

(2) Notices calling the meetings shall be sent by the nominee, at least 14 days before the day fixed for them to be held—

³¹ Section 2(4) was amended by section 2 of, and paragraph 3(b) of Schedule 2 to, the Insolvency Act 2000.

³² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.6(2) (April 6, 2010)

³³ Substituted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.4 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

³⁴ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.7(2) (April 6, 2010)

- (a) in the case of the creditors' meeting, to all the creditors specified in the statement of affairs, and any other creditors of the company of [whose address the nominee]³⁵ is otherwise aware; and
 - (b) in the case of the meeting of members of the company, to all persons who are, to the best of the nominee's belief, members of it.
- (3) Each notice sent under this Rule shall specify the court to which the nominee's report under section 2 has been delivered and shall state the effect of [Rule 1.19(2), (3) and (4)]³⁶ (requisite majorities (creditors)); and with each notice there shall be sent—
- (a) a copy of the directors' proposal;
 - (b) a copy of the statement of affairs or, if the nominee thinks fit, a summary of it (the summary to include a list of creditors and the amount of their debts); and
 - (c) the nominee's comments on the proposal.

Commencement

Pt 1(2) rule 1.9(1)-(3)(c): December 29, 1986

CHAPTER 3

PROPOSAL BY ADMINISTRATOR OR LIQUIDATOR (HIMSELF THE NOMINEE)

1.10.— Preparation of proposal

[(1) The responsible insolvency practitioner's proposal must specify all such matters as under Rule 1.3 (subject to paragraph (3) below) in Chapter 2 the directors of the company would be required to include in a proposal by them, with the addition, where the company is in administration or liquidation, of the nature and amount of its preferential creditors.”.]³⁷

(2) Where the company is being wound up by the court, the insolvency practitioner shall give notice of the proposal to the official receiver.

[(3) The administrator or liquidator shall include, in place of the estimate required by Rule 1.3(2)(ca), a statement which contains—

- (a) to the best of the administrator or liquidator's knowledge and belief—
 - (i) an estimate of the value of the prescribed part (whether or not he proposes to make an application to court under section 176A(5) or section 176A(3) applies), and
 - (ii) an estimate of the value of the company's net property, and
- (b) whether, and, if so, why, the administrator or liquidator proposes to make an application to court under section 176A(5).

(4) Nothing in this Rule is to be taken as requiring any such estimate to include any information, the disclosure of which could seriously prejudice the commercial interests of the company. If such information is excluded from the calculation the estimate shall be accompanied by a statement to that effect.]³⁸

³⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.7(3) (April 6, 2010)

³⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.7(4) (April 6, 2010)

³⁷ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.8(2) (April 6, 2010)

Commencement

Pt 1(3) rule 1.10(1)-(2): December 29, 1986

1.11.— Summoning of meetings under s. 3

(1) The responsible insolvency practitioner shall fix a venue for the creditors' meeting and the company meeting, and give at least 14 days' notice of the meetings—

- (a) in the case of the creditors' meeting, to all the creditors specified in the company's statement of affairs, and to any other creditors of [whose address the insolvency practitioner is otherwise]³⁹ aware; and
- (b) in the case of the company meeting, to all persons who are, to the best of his belief, members of the company.

(2) Each notice sent out under this Rule shall state the effect of Rule 1.19(1), (3) and (4) (requisite majorities (creditors)); and with it there shall be sent—

- (a) a copy of the responsible insolvency practitioner's proposal, and
- (b) a copy of the statement of affairs or, if he thinks fit, a summary of it (the summary to include a list of creditors and the amounts of their debts).

Commencement

Pt 1(3) rule 1.11(1)-(2)(b): December 29, 1986

CHAPTER 4

PROPOSAL BY ADMINISTRATOR OR LIQUIDATOR (ANOTHER INSOLVENCY PRACTITIONER THE NOMINEE)

1.12.— Preparation of proposal and notice to nominee

(1) The responsible insolvency practitioner shall give notice to the intended nominee, and prepare his proposal for a voluntary arrangement, in the same manner as is required of the directors, in the case of a proposal by them, under Chapter 2.

(2) Rule 1.2 applies to the responsible insolvency practitioner as it applies to the directors; and Rule 1.4 applies as regards the action to be taken by the nominee.

(3) The content of the proposal shall be as required by Rule 1.3 [(and, where relevant, Rule 1.10)]⁴⁰, reading references to the directors as referring to the responsible insolvency practitioner.

(4) Rule 1.6 applies in respect of the information to be furnished to the nominee, reading references to the directors as referring to the responsible insolvency practitioner.

(5) With the proposal the responsible insolvency practitioner shall provide a copy of the company's statement of affairs.

³⁸ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(1) para.3(b) (September 15, 2003)

³⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.9(2) (April 6, 2010)

⁴⁰ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(2) para.4 (January 11, 1988)

(6) Where the company is being wound up by the court, the responsible insolvency practitioner shall send a copy of the proposal to the official receiver, accompanied by the name and address of the insolvency practitioner [or authorised person]⁴¹ who has agreed to act as nominee.

(7) Rules 1.7 to 1.9 apply as regards a proposal under this Chapter as they apply to a proposal under Chapter 2.

Commencement

Pt 1(4) rule 1.12(1)-(7): December 29, 1986

CHAPTER 5

PROCEEDINGS ON A PROPOSAL MADE BY THE DIRECTORS, OR BY THE ADMINISTRATOR, OR BY THE LIQUIDATOR

SECTION A: MEETINGS OF COMPANY'S CREDITORS AND MEMBERS

1.13.— Summoning of meetings

[(1) Subject as follows, in fixing the venue for the creditors' meeting and the company meeting, [the nominee must]⁴² have regard primarily to the convenience of the creditors.

(2) Meetings shall in each case be summoned for commencement between 10.00 and 16.00 hours on a business day.

(3) The meetings may be held on the same day or on different days. If held on the same day, the meetings shall be held in the same place, but in either case the creditors' meeting shall be fixed for a time in advance of the company meeting.

(4) Where the meetings are not held on the same day, they shall be held within [5 business]⁴³ days of each other.

(5) With every notice summoning either meeting there shall be sent out forms of proxy.]⁴⁴

Commencement

Pt 1(5) rule 1.13(1)-(4): December 29, 1986

1.14.— The chairman at meetings

(1) Subject as follows, at both the creditors' meeting and the company meeting, and at any combined meeting, the [nominee must]⁴⁵ be chairman.

⁴¹ Words inserted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.5 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

⁴² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.10(2) (April 6, 2010)

⁴³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.10(3) (April 6, 2010)

⁴⁴ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(1) para.4 (September 15, 2003)

⁴⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.11(2) (April 6, 2010)

(2) If for any reason he is unable to attend, he may nominate another person to act as chairman in his place; but a person so nominated must be [...] ⁴⁶ —

- [(a) a person qualified to act as an insolvency practitioner in relation to the company;
 - (b) an authorised person in relation to the company; or
 - (c) an employee of the [nominee] ⁴⁷ or his firm who is experienced in insolvency matters.
-]⁴⁸

Commencement

Pt 1(5) rule 1.14(1)-(2)(b): December 29, 1986

1.15. The chairman as proxy-holder

The chairman shall not by virtue of any proxy held by him vote to increase or reduce the amount of the remuneration or expenses of the nominee or the supervisor of the proposed arrangement, unless the proxy specifically directs him to vote in that way.

Commencement

Pt 1(5) rule 1.15: December 29, 1986

1.16.— Attendance by company officers

(1) At least 14 days' notice to attend the meetings shall be given by the [nominee] ⁴⁹ —

- (a) to all directors of the company, and
- (b) to any persons in whose case the convener thinks that their presence is required as being officers of the company, or as having been directors or officers of it at any time in the 2 years immediately preceding the date of the notice.

(2) The chairman may, if he thinks fit, exclude any present or former director or officer from attendance at a meeting, either completely or for any part of it; and this applies whether or not a notice under this Rule has been sent to the person excluded.

Commencement

Pt 1(5) rule 1.16(1)-(2): December 29, 1986

⁴⁶ Revoked by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.7(a) (January 1, 2003: revocation has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

⁴⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.11(3) (April 6, 2010)

⁴⁸ Rule 1.14(2)(a)-(c) substituted for rule 1.14(2)(a)-(b) by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.7(b) (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

⁴⁹ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.12(2) (April 6, 2010)

SECTION B: VOTING RIGHTS AND MAJORITIES

[1.17.— Entitlement to vote (creditors)]

- (1) Subject as follows, every creditor who has notice of the creditors' meeting is entitled to vote at the meeting or any adjournment of it.
- (2) Votes are calculated according to the amount of the creditor's debt as at the date of the meeting or, where the company is being wound up or is [in administration]⁵⁰, the date of its going into liquidation or (as the case may be) [when the company entered administration]⁵⁰.
- (3) A creditor may vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained and for the purposes of voting (but not otherwise) his debt shall be valued at £1 unless the chairman agrees to put a higher value on it.

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Commencement

Pt 1(5) rule 1.17(1)-(9): December 29, 1986

[1.17A.— Procedure for admission of creditors' claims for voting purposes]

- (1) Subject as follows, at any creditors' meeting the chairman shall ascertain the entitlement of persons wishing to vote and shall admit or reject their claims accordingly.
- (2) The chairman may admit or reject a claim in whole or in part.
- (3) The chairman's decision on any matter under this Rule or under paragraph (3) of Rule 1.17 is subject to appeal to the court by any creditor or member of the company.
- (4) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.
- (5) If on an appeal the chairman's decision is reversed or varied, or votes are declared invalid, the court may order another meeting to be summoned, or make such order as it thinks just. The court's power to make an order under this paragraph is exercisable only if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity.
- (6) An application to the court by way of appeal against the chairman's decision shall not be made after the end of the period of 28 days beginning with the first day on which the report required by section 4(6) has been made to the court.
- (7) The chairman is not personally liable for any costs incurred by any person in respect of an appeal under this Rule.

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⁵⁰ Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(1) para.5 (September 15, 2003)

⁵¹ Rule 1.17-17A substituted for rule 1.17 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.8 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

⁵² Rule 1.17-17A substituted for rule 1.17 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.8 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

1.18.— Voting rights (members)

(1) Subject as follows, members of the company at their meeting vote according to the rights attaching to their shares respectively in accordance with the articles.

(2) [...] ⁵³

(3) References in this Rule to a person's shares include any other interest which he may have as a member of the company.

Commencement

Pt 1(5) rule 1.18(1)-(3): December 29, 1986

1.19.— Requisite majorities (creditors)

[(1) Subject to paragraph (2), at the creditors' meeting, a resolution is passed when a majority (in value) of those present and voting in person or by proxy have voted in favour of it.

(2) A resolution to approve the proposal or a modification is passed when a majority of three-quarters or more (in value) of those present and voting in person or by proxy have voted in favour of it.] ⁵⁴

(3) In the following cases there is to be left out of account a creditor's vote in respect of any claim or part of a claim—

- (a) where written notice of the claim was not given, either at the meeting or before it, to the chairman or [nominee] ⁵⁵ ;
- (b) where the claim or part is secured;
- (c) where the claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing—
 - (i) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made (or in the case of a company, which has not gone into liquidation), as a security in his hands, and
 - (ii) to estimate the value of the security and (for the purpose of entitlement to vote, but not of any distribution under the arrangement) to deduct it from his claim.

(4) Any resolution is invalid if those voting against it include more than half in value of the creditors, counting in these latter only those—

- (a) to whom notice of the meeting was sent;
- (b) whose votes are not to be left out of account under paragraph (3); and
- (c) who are not, to the best of the chairman's belief, persons connected with the company.

(5) It is for the chairman of the meeting to decide whether under this Rule—

- (a) a vote is to be left out of account in accordance with paragraph (3), or
- (b) a person is a connected person for the purposes of paragraph (4)(c);

⁵³ Revoked by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.9 (January 1, 2003: revocation has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

⁵⁴ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.13(2) (April 6, 2010)

⁵⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.13(3) (April 6, 2010)

and in relation to the second of these two cases the chairman is entitled to rely on the information provided by the company's statement of affairs or otherwise in accordance with this Part of the Rules.

(6) If the chairman uses a proxy contrary to Rule 1.15, his vote with that proxy does not count towards any majority under this Rule.

[(7) The chairman's decision on any matter under this Rule is subject to appeal to the court by any creditor or member and paragraphs (5) to (7) of Rule 1.17A apply as regards such an appeal.]⁵⁶

Commencement

Pt 1(5) rule 1.19(1)-(7): December 29, 1986

1.20.— Requisite majorities (members)

(1) Subject as follows, and to any express provision made in the articles, at a company meeting any resolution is to be regarded as passed if voted for by more than one-half [in value]⁵⁷ of the members present in person or by proxy and voting on the resolution. [The value of members is determined by reference to the number of votes conferred on each member by the company's articles.]⁵⁷

(2) [...] ⁵⁸

(3) If the chairman uses a proxy contrary to Rule 1.15, his vote with that proxy does not count towards any majority under this Rule.

Commencement

Pt 1(5) rule 1.20(1)-(3): December 29, 1986

[1.21.—

(1) If the chairman thinks fit, the creditors' meeting and the company meeting may be held together.

(2) The chairman may, and shall if it is so resolved at the meeting in question, adjourn that meeting for not more than 14 days.

(3) If there are subsequently further adjournments, the final adjournment shall not be to a day later than 14 days after the date on which the meeting in question was originally held.

(4) In the case of a proposal by the directors, if the meetings are adjourned under paragraph (2), notice of the fact shall be given by the nominee [as soon as reasonably practicable]⁵⁹ to the court.

⁵⁶ Substituted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.10 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

⁵⁷ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(2) para.5 (January 11, 1988)

⁵⁸ Revoked by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.11 (January 1, 2003: revocation has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

⁵⁹ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

[(4A) Once only in the course of a meeting the chairman may, without an adjournment, declare it suspended for any period up to 1 hour.]⁶⁰

(5) If following the final adjournment of the creditors' meeting the proposal (with or without modifications) has not been approved by the creditors, it is deemed rejected.
] ⁶¹

Commencement

Pt 1(5) rule 1.21(1)-(6): December 29, 1986

SECTION C: IMPLEMENTATION OF THE ARRANGEMENT

1.22.— Resolutions to follow approval

[(1) If the voluntary arrangement is approved (with or without modifications) by the creditors' meeting, a resolution [must] ⁶² be taken by the creditors, where two or more supervisors are appointed, on the question whether acts to be done in connection with the arrangement may be done by any one or more of them, or must be done by all of them.]⁶³

(2) [...] ⁶⁴

(3) If at either meeting a resolution is moved for the appointment of some person other than the nominee to be supervisor of the arrangement, there must be produced to the chairman, at or before the meeting—

- (a) that person's written consent to act (unless he is present and then and there signifies his consent), and
- (b) his written confirmation that he is qualified to act as an insolvency practitioner in relation to the company [or is an authorised person in relation to the company] ⁶⁵ .

Commencement

Pt 1(5) rule 1.22(1)-(3)(b): December 29, 1986

⁶⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.14(2) (April 6, 2010)

⁶¹ Substituted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.12 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

⁶² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.15(2) (April 6, 2010)

⁶³ Substituted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.13(a) (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

⁶⁴ Revoked by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.13(b) (January 1, 2003: revocation has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

⁶⁵ Words inserted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.13(c) (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

[1.22A.— Notice of order made under section 4A(6)]

- (1) This Rule applies where the court makes an order under section 4A(6)⁶⁶.
- (2) The member of the company who applied for the order shall serve sealed copies of it on—
 - (a) the supervisor of the voluntary arrangement; and
 - (b) the directors of the company.
- (3) Service on the directors may be effected by service of a single copy on the company at its registered office.
- (4) The directors or (as the case may be) the supervisor shall [as soon as reasonably practicable]⁶⁷ after receiving a copy of the court's order, give notice of it to all persons who were sent notice of the creditors' or company meetings or who, not having been sent such notice, are affected by the order.
- (5) The person on whose application the order of the court was made shall, within [5 business]⁶⁸ days of the order, deliver [a copy]⁶⁹ to the registrar of companies.
] ⁷⁰

1.23.— Hand-over of property etc. to supervisor

- (1) [Where the decision approving the voluntary arrangement has effect under section 4A—]⁷¹
 - (a) the directors, or
 - (b) where the company is in liquidation or is [in administration]⁷², and a person other than the responsible insolvency practitioner is appointed as supervisor of the voluntary arrangement, the insolvency practitioner,
 shall [as soon as reasonably practicable]⁷³ do all that is required for putting the supervisor into possession of the assets included in the arrangement.
- (2) Where the company is in liquidation or is [in administration]⁷⁴, the supervisor shall on taking possession of the assets discharge any balance due to the insolvency practitioner by way of remuneration or on account of—
 - (a) fees, costs, charges and expenses properly incurred and payable under the Act or the Rules, and

⁶⁶ Section 4A was inserted into the Insolvency Act 1986 by section 2 of, and paragraph 5 of Schedule 2 to, the Insolvency Act 2000.

⁶⁷ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

⁶⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.16(2) (April 6, 2010)

⁶⁹ Words substituted by Insolvency (Amendment) (No. 2) Rules 2009/2472 rule 5(2) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/2472 rule 2)

⁷⁰ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.14 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

⁷¹ Words substituted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.15 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

⁷² Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(1) para.6(a) (September 15, 2003)

⁷³ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

⁷⁴ Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(1) para.6(b)(i) (September 15, 2003)

- (b) any advances made in respect of the company, together with interest on such advances at the rate specified in section 17 of the Judgments Act 1838 at the date on which the company went into liquidation or (as the case may be) [entered administration]⁷⁵ .
- (3) Alternatively, the supervisor must, before taking possession, give the responsible insolvency practitioner a written undertaking to discharge any such balance out of the first realisation of assets.
- (4) The insolvency practitioner has a charge on the assets included in the voluntary arrangement in respect of any sums due as above until they have been discharged, subject only to the deduction from realisations by the supervisor of the proper costs and expenses of such realisations.
- (5) The supervisor shall from time to time out of the realisation of assets discharge all guarantees properly given by the responsible insolvency practitioner for the benefit of the company, and shall pay all the insolvency practitioner's expenses.
- (6) References in this Rule to the responsible insolvency practitioner include, where a company is being wound up by the court, the official receiver, whether or not in his capacity as liquidator; and any sums due to the official receiver take priority over those due to a liquidator.

Commencement

Pt 1(5) rule 1.23(1)-(6): December 29, 1986

1.24.— Report of meetings

- (1) A report of the meetings shall be prepared by the person who was chairman of them.
- (2) The report shall—
- [(a) state whether the proposal for a voluntary arrangement was approved by the creditors of the company alone or by both the creditors and members of the company and in either case whether such approval was with any modifications;]⁷⁶
 - (b) set out the resolutions which were taken at each meeting, and the decision on each one;
 - (c) list the creditors and members of the company (with their respective values) who were present or represented at the meetings, and how they voted on each resolution; [...] ⁷⁷
 - [(ca) state whether, in the opinion of the supervisor, (i) the EC Regulation applies to the voluntary arrangement and (ii) if so, whether the proceedings are main proceedings, secondary proceedings or territorial proceedings; and]⁷⁸
 - (d) include such further information (if any) as the chairman thinks it appropriate to make known to the court.
- (3) A copy of the chairman's report shall, within 4 [business]⁷⁹ days of the meetings being held, be filed in court; and the court shall cause that copy to be endorsed with the date of filing.

⁷⁵ Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(1) para.6(b)(ii) (September 15, 2003)

⁷⁶ Substituted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.16(a) (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

⁷⁷ Word repealed by Insolvency (Amendment) Rules 2002/1307 rule 4(3)(a) (May 31, 2002)

⁷⁸ Added by Insolvency (Amendment) Rules 2002/1307 rule 4(3)(b) (May 31, 2002)

⁷⁹ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.17(2) (April 6, 2010)

(4) In respect of each of the meetings, the persons to whom notice of its result is to be sent by the chairman under section 4(6) are all those who were sent notice of the meeting under this Part of the Rules.

The notice shall be sent [as soon as reasonably practicable]⁸⁰ after a copy of the chairman's report is filed in court under paragraph (3).

(5) [...] ⁸¹ [If the decision approving the voluntary arrangement has effect under section 4A]⁸² (whether or not in the form proposed), the supervisor shall [as soon as reasonably practicable]⁸³ send a copy of the chairman's report to the registrar of companies.

Commencement

Pt 1(5) rule 1.24(1)-(5): December 29, 1986

1.25.— Revocation or suspension of the arrangement

(1) This Rule applies where the court makes an order of revocation or suspension under section 6.

(2) The person who applied for the order shall serve sealed copies of it—

(a) on the supervisor of the voluntary arrangement, and

(b) on the directors of the company or the administrator or liquidator (according to who made the proposal for the arrangement).

Service on the directors may be effected by service of a single copy of the order on the company at its registered office.

(3) If the order includes a direction by the court under section 6(4)(b) for any further meetings to be summoned, notice shall also be given (by the person who applied for the order) to whoever is, in accordance with the direction, required to summon the meetings.

(4) The directors or (as the case may be) the administrator or liquidator shall—

(a) [as soon as reasonably practicable]⁸⁴ after receiving a copy of the court's order, give notice of it to all persons who were sent notice of the creditors' and company meetings or who, not having been sent that notice, appear to be affected by the order;

(b) within [5 business]⁸⁵ days of their receiving a copy of the order (or within such longer period as the court may allow), give notice to the court whether it is intended to make a revised proposal to the company and its creditors, or to invite re-consideration of the original proposal.

⁸⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.17(3) (April 6, 2010)

⁸¹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸² Word substituted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.16(b) (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

⁸³ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁸⁴ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁸⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.18(2) (April 6, 2010)

(5) [...] ⁸⁶ The person on whose application the order of revocation or suspension was made shall, within [5 business] ⁸⁵ days after the making of the order, deliver a copy of the order to the registrar of companies.

Commencement

Pt 1(5) rule 1.25(1)-(5): December 29, 1986

1.26.— [...] ⁸⁷

[1.26A Supervisor's accounts and reports

- (1) Paragraph (2) applies where the voluntary arrangement authorises or requires the supervisor—
 - (a) to carry on the business of the company or trade on its behalf or in its name; or
 - (b) to realise assets of the company; or
 - (c) otherwise to administer or dispose of any of its funds.
- (2) The supervisor must keep accounts and records of the supervisor's acts and dealings in, and in connection with, the arrangement, including in particular records of all receipts and payments of money.
- (3) The supervisor must preserve any accounts and records in paragraph (2) which—
 - (a) were kept by any other person who has acted as supervisor of the arrangement; and
 - (b) are in the supervisor's possession.
- (4) Subject to paragraph (5), the supervisor must in respect of each period of 12 months ending with the anniversary of the commencement of the arrangement send within 2 months of the end of that period a report on the progress and prospects for the full implementation of the voluntary arrangement to—
 - (a) the registrar of companies;
 - (b) the company;
 - (c) all those of the company's creditors who are bound by the voluntary arrangement of whose address the supervisor is aware;
 - (d) subject to paragraph (7) below, the members of the company; and
 - (e) if the company is not in liquidation, the company's auditors (if any) for the time being.
- (5) The supervisor is released from an obligation to send a report under paragraph (4), if an obligation to send a final report under Rule 1.29 arises in the period of 2 months mentioned in paragraph (4).
- (6) Where the supervisor is authorised or required to do any of the things mentioned in paragraph (1)(a) to (c), the report required to be sent pursuant to paragraph (4) must include or be accompanied by—
 - (a) an abstract of receipts and payments required to be recorded by virtue of paragraph (2); or
 - (b) where there have been no such receipts and payments, a statement to that effect.

⁸⁶ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁷ Rule 1.26A substituted for rule 1.26 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.19 (April 6, 2010)

(7) The court may, on application by the supervisor dispense with the sending under this Rule of abstracts or reports to members of the company, either altogether or on the basis that the availability of the abstract or report to members is to be advertised by the supervisor in a specified manner.

]⁸⁸

1.27.— Production of accounts and records to Secretary of State

(1) The Secretary of State may at any time during the course of the voluntary arrangement or after its completion [or termination]⁸⁹ require the supervisor to produce for inspection—

- (a) his records and accounts in respect of the arrangement, and
- (b) copies of abstracts and reports prepared in compliance with [Rule 1.26A]⁹⁰.

(2) The Secretary of State may require production either at the premises of the supervisor or elsewhere; and it is the duty of the supervisor to comply with any requirement imposed on him under this Rule.

(3) The Secretary of State may cause any accounts and records produced to him under this Rule to be audited; and the supervisor shall give to the Secretary of State such further information and assistance as he needs for the purposes of his audit.

Commencement

Pt 1(5) rule 1.27(1)-(3): December 29, 1986

1.28.— Fees, costs, charges and expenses

(1) The fees, costs, charges and expenses that may be incurred for any of the purposes of the voluntary arrangement are—

- (a) any disbursements made by the nominee prior to the [decision approving the arrangement taking effect under section 4A]⁹¹, and any remuneration for his services as such agreed between himself and the company (or, as the case may be, the administrator or liquidator);
- (b) any fees, costs, charges or expenses which—
 - (i) are sanctioned by the terms of the arrangement, or
 - (ii) would be payable, or correspond to those which would be payable, in an administration or winding up.

Commencement

Pt 1(5) rule 1.28(1)-(1)(b)(ii): December 29, 1986

⁸⁸ Rule 1.26A substituted for rule 1.26 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.19 (April 6, 2010)

⁸⁹ Words inserted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.17 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

⁹⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.20(2) (April 6, 2010)

⁹¹ Words substituted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.18 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

[1.29.— Completion or termination of the arrangement]

(1) Not more than 28 days after the final completion or termination of the voluntary arrangement, the supervisor shall send to creditors and members of the company who are bound by it a notice that the voluntary arrangement has been fully implemented or (as the case may be) has terminated.

(2) With the notice there shall be sent to each creditor and member a copy of a report by the supervisor summarising all receipts and payments made by him in pursuance of the arrangement, and explaining in relation to implementation of the arrangement any departure from the proposals as they originally took effect, or (in the case of termination of the arrangement) explaining the reasons why the arrangement has terminated.

(3) [...] ⁹² The supervisor shall, within the 28 days mentioned above, send to the registrar of companies and to the court a copy of the notice to creditors and members under paragraph (1), together with a copy of the report under paragraph (2), and the supervisor shall not vacate office until after such copies have been sent.

[(4) In the report under paragraph (2), the supervisor shall include a statement as to the amount paid, if any, to unsecured creditors by virtue of the application of section 176A (prescribed part).

]⁹³

]⁹⁴

Commencement

Pt 1(5) rule 1.29(1)-(4): December 29, 1986

CHAPTER 6**GENERAL****1.30.— [...] ⁹⁵**

⁹² Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹³ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(1) para.7 (September 15, 2003)

⁹⁴ Substituted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.19 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

⁹⁵ Revoked by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.20 (January 1, 2003: revocation has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

[CHAPTER 7

EC REGULATION—CONVERSION OF VOLUNTARY ARRANGEMENT INTO WINDING UP]⁹⁶**[1.31.— Application for conversion into winding up**

[(1) Where a member State liquidator proposes to apply to the court for conversion of a voluntary arrangement into winding-up proceedings, a witness statement complying with Rule 1.32 must be prepared and filed in court in support of the application.

(1A) In this Rule, and in Rules 1.32 and 1.33, “conversion into winding-up proceedings” means an order under Article 37 of the EC Regulation (conversion of earlier proceedings) that the voluntary arrangement is converted into—

- (a) administration proceedings whose purposes are limited to the winding up of the company through administration and are to exclude the purpose contained in paragraph 3(1)(a) of Schedule B1 to the Act⁹⁷ ;
- (b) a creditors' voluntary winding up; or
- (c) a winding up by the court.

] ⁹⁸

(2) An application under this Rule shall be by originating application.

(3) The application and the [witness statement]⁹⁹ required under this Rule shall be served upon—

- (a) the company; and
- (b) the supervisor.

] ¹⁰⁰**[1.32.— Contents of [witness statement]¹⁰¹**

(1) The [witness statement]¹⁰² shall state—

- (a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;
- (b) the [belief of the person making the statement]¹⁰³ that the conversion of the voluntary arrangement into [winding-up proceedings]¹⁰⁴ would prove to be in the interests of the creditors in the main proceedings;
- [(c) the opinion of the person making the statement as to whether the company ought to go into voluntary liquidation or be wound up by the court; and]¹⁰⁵

⁹⁶ Added by Insolvency (Amendment) Rules 2002/1307 rule 4(4) (May 31, 2002)

⁹⁷ Schedule B1 was inserted by 2002 c. 40, s. 248(2) and Schedule 16.

⁹⁸ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.21(2) (April 6, 2010)

⁹⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.21(3) (April 6, 2010)

¹⁰⁰ Added by Insolvency (Amendment) Rules 2002/1307 rule 4(4) (May 31, 2002)

¹⁰¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.22(2) (April 6, 2010)

¹⁰² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.22(3)(a) (April 6, 2010)

¹⁰³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.22(3)(b)(i) (April 6, 2010)

¹⁰⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.22(3)(b)(ii) (April 6, 2010)

(d) all other matters that, in the opinion of the member State liquidator, would assist the court—

- (i) in deciding whether to make such an order, and
- (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) [A witness statement]¹⁰⁶ under this Rule shall be [made]¹⁰⁷ by, or on behalf of, the member State liquidator.
¹⁰⁸

[1.33.— Power of court

(1) On hearing the application for conversion into [winding-up proceedings]¹⁰⁹ the court may make such order as it thinks [just]¹¹⁰ .

(2) If the court makes an order for conversion into [winding-up proceedings]¹⁰⁹ the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Without prejudice to the generality of paragraph (1), an order under that paragraph may provide that the company be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the order is made.

(4) Where the court makes an order for conversion into [winding-up proceedings]¹⁰⁹ under paragraph (1), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the company's assets.
¹¹¹

[CHAPTER 8

EC REGULATION—MEMBER STATE LIQUIDATOR]¹¹²

[1.34.— Interpretation of creditor and notice to member State liquidator

(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

(2) Where the supervisor is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court, the registrar of companies or the official receiver, the supervisor shall give notice or provide copies, as appropriate, to the member State liquidator.

(3) Paragraph (2) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to cooperate and communicate information).

¹⁰⁵ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.22(3)(c) (April 6, 2010)

¹⁰⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.22(4)(a) (April 6, 2010)

¹⁰⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.22(4)(b) (April 6, 2010)

¹⁰⁸ Added by Insolvency (Amendment) Rules 2002/1307 rule 4(4) (May 31, 2002)

¹⁰⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.23(2) (April 6, 2010)

¹¹⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹¹ Added by Insolvency (Amendment) Rules 2002/1307 rule 4(4) (May 31, 2002)

¹¹² Added by Insolvency (Amendment) Rules 2002/1307 rule 4(4) (May 31, 2002)

J¹¹³

[CHAPTER 9

OBTAINING A MORATORIUM PROCEEDINGS DURING A MORATORIUM NOMINEES
CONSIDERATION OF PROPOSALS WHERE MORATORIUM OBTAINED J¹¹⁴*[SECTION A: OBTAINING A MORATORIUM]*¹¹⁵**[1.35.— Preparation of proposal by directors and submission to nominee**

(1) The document containing the proposal referred to in paragraph 6(1)(a) of Schedule A1 to the Act shall—

- (a) be prepared by the directors;
- (b) comply with the requirements of paragraphs (1) and (2) of Rule 1.3 (save that the reference to preferential creditors shall be to preferential creditors within the meaning of paragraph 31(8) of Schedule A1 to the Act); and
- (c) state the address to which notice of the consent of the nominee to act and the documents referred to in Rule 1.38 shall be sent.

(2) With the agreement in writing of the nominee, the directors may amend the proposal at any time before submission to them by the nominee of the statement required by paragraph 6(2) of Schedule A1 to the Act.

J¹¹⁶**[1.36.— Delivery of documents to the intended nominee etc.**

(1) The documents required to be delivered to the nominee pursuant to paragraph 6(1) of Schedule A1 to the Act shall be delivered to the nominee himself or to a person authorised to take delivery of documents on his behalf.

(2) On receipt of the documents, the nominee shall [as soon as reasonably practicable]¹¹⁷ issue an acknowledgement of receipt of the documents to the directors which shall indicate the date on which the documents were received.

J¹¹⁸

¹¹³ Added by Insolvency (Amendment) Rules 2002/1307 rule 4(4) (May 31, 2002)

¹¹⁴ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹¹⁵ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹¹⁶ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹¹⁷ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹¹⁸ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

[1.37.— Statement of affairs

(1) The statement of the company's affairs required to be delivered to the nominee pursuant to paragraph 6(1)(b) of Schedule A1 to the Act shall be delivered to the nominee [at the same time as]¹¹⁹ the delivery to him of the document setting out the terms of the proposed voluntary arrangement [...]¹²⁰ .

(2) The statement of affairs shall comprise the same particulars as required by Rule 1.5(2) (supplementing or amplifying, so far as is necessary for clarifying the state of the company's affairs, those already given in the directors' proposal).

(3) The statement of affairs shall be made up to a date not earlier than 2 weeks before the date of the delivery of the document containing the proposal for the voluntary arrangement to the nominee under Rule 1.36(1).

However, the nominee may allow an extension of that period to the nearest practicable date (not earlier than 2 months before the date of delivery of the documents referred to in Rule 1.36(1)) and if he does so, he shall give a statement of his reasons in writing to the directors.

(4) [The statement of affairs must be verified by a statement of truth made by at least one director.]¹²¹
]¹²²

[1.38.— The nominee's statement

(1) The nominee shall submit to the directors the statement required by paragraph 6(2) of Schedule A1 to the Act within 28 days of the submission to him of the document setting out the terms of the proposed voluntary arrangement.

(2) The statement shall have annexed to it—

- (a) the nominee's comments on the proposal, unless the statement contains an opinion in the negative on any of the matters referred to in paragraph 6(2)(a) and (b) of Schedule A1 to the Act, in which case he shall instead give his reasons for that opinion, and
- (b) where he is willing to act in relation to the proposed arrangement, a statement of his consent to act.

] ¹²³

[1.39.— Documents submitted to the court to obtain moratorium

(1) Where pursuant to paragraph 7 of Schedule A1 to the Act the directors file the document and statements referred to in that paragraph in court, those documents shall be delivered together with

¹¹⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.24(2)(a) (April 6, 2010)

¹²⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.24(2)(b) (April 6, 2010)

¹²¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.24(3) (April 6, 2010)

¹²² Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹²³ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

4 copies of a schedule listing them within 3 [business]¹²⁴ days of the date of the submission to them of the nominee's statement under paragraph 6(2) of Schedule A1 to the Act.

(2) When the directors file the document and statements referred to in paragraph (1), they shall also file—

- (a) a copy of any statement of reasons made by the nominee pursuant to Rule 1.37(3); and
- (b) a copy of the nominee's comments on the proposal submitted to them pursuant to Rule 1.38(2).

(3) The copies of the schedule shall be endorsed by the court with the date on which the documents were filed in court and 3 copies of the schedule sealed by the court shall be returned by the court to the person who filed the documents in court.

(4) The statement of affairs required to be filed under paragraph 7(1)(b) of Schedule A1 to the Act shall comprise the same particulars as required by Rule 1.5(2).

]

¹²⁵

[1.40.— Notice and advertisement of beginning of a moratorium

(1) After receiving the copies of the schedule endorsed by the court under Rule 1.39(3), the directors shall [as soon as reasonably practicable]¹²⁶ serve 2 of them on the nominee and one on the company.

[(2) On receipt of the copies of the schedule pursuant to paragraph (1), the nominee—

- (a) as soon as reasonably practicable shall cause a notice of the coming into force of the moratorium to be gazetted; and
- (b) may advertise the notice in such other manner as the nominee thinks fit.

]

¹²⁷

[(2A) In addition to the standard contents, the notice under paragraph (2) must state—

- (a) the nature of the business of the company;
- (b) that a moratorium under section 1A¹²⁸ has come into force; and
- (c) the date upon which the moratorium came into force.

]

¹²⁹

(3) [...] ¹³⁰ The nominee shall [as soon as reasonably practicable]¹²⁶ notify the registrar of companies, the company and any petitioning creditor of the company of whose [address the

¹²⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.25(2) (April 6, 2010)

¹²⁵ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹²⁶ Substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹²⁷ Substituted by Insolvency (Amendment) Rules 2009/642 rule 6 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹²⁸ Section 1A was inserted by 2000 c. 39, s. 1 and Schedule 1, paragraphs 1 and 2.

¹²⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.26(2) (April 6, 2010)

¹³⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

nominee]¹³¹ is aware of the coming into force of the moratorium and such notification shall specify the date on which the moratorium came into force [and the court at which the documents to obtain the moratorium were filed]¹³² .

(4) The nominee shall give notice of the coming into force of the moratorium specifying the date on which it came into force to—

- (a) any [enforcement officer]¹³³ or other officer who, to his knowledge, is charged with an execution or other legal process against the company or its property; and
- (b) any person who, to his knowledge, has distrained against the company or its property.

] ¹³⁴

[1.41.— Notice of extension of moratorium

(1) The nominee shall [as soon as reasonably practicable]¹³⁵ notify the registrar of companies and the court of a decision taking effect pursuant to paragraph 36 of Schedule A1 to the Act to extend or further extend the moratorium and such notice shall specify the new expiry date of the moratorium.

(2) [...] ¹³⁶ Where an order is made by the court extending or further extending or renewing or continuing a moratorium, the nominee shall [as soon as reasonably practicable]¹³⁵ after receiving a copy of the same give notice to the registrar of companies and with the notice shall send [a copy]¹³⁷ of the order.

] ¹³⁸

[1.42.— Notice and advertisement of end of moratorium

[(1) After the moratorium comes to an end, the nominee—

- (a) as soon as reasonably practicable shall cause a notice of its coming to an end and the date on which it came to an end to be gazetted; and
- (b) may advertise the notice in such other manner as the nominee thinks fit.

] ¹³⁹

[(1A) In addition to the standard contents, the notice under paragraph (1) must state—

¹³¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.26(3)(a) (April 6, 2010)

¹³² Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.26(3)(b) (April 6, 2010)

¹³³ Word substituted by Insolvency (Amendment) Rules 2005/527 rule 4 (April 1, 2005)

¹³⁴ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹³⁵ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹³⁶ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³⁷ Words substituted by Insolvency (Amendment) (No. 2) Rules 2009/2472 rule 6(2) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/2472 rule 2)

¹³⁸ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹³⁹ Substituted by Insolvency (Amendment) Rules 2009/642 rule 7 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

- (a) the nature of the business of the company;
- (b) that a moratorium under section 1A has come to an end; and
- (c) the date upon which the moratorium came to an end.

]

¹⁴⁰

(2) The nominee shall [as soon as reasonably practicable]¹⁴² give notice of the ending of the moratorium to the registrar of companies, the court, the company and any creditor of the company of whose [address the nominee]¹⁴³ is aware and such notice shall specify the date on which the moratorium came to an end.

]

¹⁴⁴

*[SECTION B: PROCEEDINGS DURING A MORATORIUM]*¹⁴⁵

[1.43.— Disposal of charged property etc. during a moratorium

(1) This Rule applies in any case where the company makes an application to the court under paragraph 20 of Schedule A1 to the Act for [permission]¹⁴⁶ to dispose of property of the company which is subject to a security, or goods in possession of the company under an agreement to which that paragraph relates.

(2) The court shall fix a venue for the hearing of the application and the company shall [as soon as reasonably practicable]¹⁴⁷ give notice of the venue to the person who is the holder of the security or, as the case may be, the owner under the agreement.

(3) If an order is made, the company shall [as soon as reasonably practicable]¹⁴⁷ give notice of it to that person or owner.

(4) The court shall send 2 sealed copies of the order to the company, who shall send one of them to that person or owner.

]

¹⁴⁸

¹⁴⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.27(2) (April 6, 2010)

¹⁴¹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴² Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁴³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.27(3) (April 6, 2010)

¹⁴⁴ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹⁴⁵ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹⁴⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁷ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁴⁸ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

*[SECTION C: NOMINEES]¹⁴⁹***[1.44. Withdrawal of nominee's consent to act**

Where the nominee withdraws his consent to act he shall, pursuant to paragraph 25(5) of Schedule A1 to the Act, [as soon as reasonably practicable]¹⁵⁰ give notice of his withdrawal and the reason for withdrawing his consent to act to—

- (a) [...] ¹⁵¹ the registrar of companies;
- (b) the court;
- (c) the company; and
- (d) any creditor of the company of whose claim [and address the nominee]¹⁵² is aware.

]¹⁵³

[1.45.— Replacement of nominee by the court

(1) Where the directors intend to make an application to the court under paragraph 28 of Schedule A1 to the Act for the nominee to be replaced, they shall give to the nominee at least [5 business]¹⁵⁴ days' notice of their application.

(2) Where the nominee intends to make an application to the court under that paragraph to be replaced, he shall give to the directors at least [5 business]¹⁵⁴ days' notice of his application.

(3) No appointment of a replacement nominee shall be made by the court unless there is filed in court a statement by the replacement nominee indicating [that the replacement nominee—]¹⁵⁵

- [(a) consents to act; and
- (b) is qualified to act as an insolvency practitioner in relation to the company or is an authorised person in relation to the company.]¹⁵⁵

]¹⁵⁶

[1.46. Notification of appointment of a replacement nominee

Where a person is appointed as a replacement nominee, he shall [as soon as reasonably practicable]¹⁵⁷ give notice of his appointment to—

¹⁴⁹ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹⁵⁰ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁵¹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.28(2) (April 6, 2010)

¹⁵³ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹⁵⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.29(2) (April 6, 2010)

¹⁵⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.29(3) (April 6, 2010)

¹⁵⁶ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹⁵⁷ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

- (a) [...] ¹⁵⁸ the registrar of companies;
- (b) the court (in any case where he was not appointed by the court); and
- (c) the person whom he has replaced as nominee.

] ¹⁵⁹

[1.47. Applications to court under paragraphs 26 or 27 of Schedule A1 to the Act

Where any person intends to make an application to the court pursuant to paragraph 26 or 27 of Schedule A1 to the Act, he shall give to the nominee at least [5 business] ¹⁶⁰ days' notice of his application.] ¹⁶¹

[SECTION D: CONSIDERATION OF PROPOSALS WHERE MORATORIUM OBTAINED] ¹⁶²

[1.48.— Summoning of meetings; procedure at meetings etc.

(1) Where the nominee summons meetings of creditors and the company pursuant to paragraph 29(1) of Schedule A1 to the Act, each of those meetings shall be summoned for a date that is not more than 28 days from the date on which the moratorium came into force.

(2) Notices calling the creditors' meetings shall be sent by the nominee to all creditors specified in the statement of affairs and any other creditors of the company of whose address he is aware at least 14 days before the day fixed for the meeting.

(3) Notices calling the company meeting shall be sent by the nominee to all persons who are, to the best of the nominee's belief, members of the company at least 14 days before the day fixed for the meeting.

[(4) Each notice sent under this Rule must—

- (a) specify—
 - (i) the court in which the documents relating to the obtaining of the moratorium were filed and
 - (ii) the court reference; and
- (b) state the effect of paragraphs (2) to (4) of Rule 1.52 (requisite majorities (creditors)).

(4A) With each notice there must be sent-

- (a) a copy of the directors' proposal;
- (b) a copy of the statement of affairs or, if the nominee thinks fit, a summary of it (the summary to include a list of creditors and the amount of their debts); and
- (c) the nominee's comments on the proposal.

¹⁵⁸ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁹ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹⁶⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.30(2) (April 6, 2010)

¹⁶¹ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹⁶² Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

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¹⁶³

(5) The provisions of Rules 1.13 to 1.16 shall apply.

]

¹⁶⁴

[1.49.— Entitlement to vote (creditors)

(1) Subject as follows, every creditor who has notice of the creditors' meeting is entitled to vote at the meeting or any adjournment of it.

(2) Votes are calculated according to the amount of the creditor's debt as at the beginning of the moratorium, after deducting any amounts paid in respect of that debt after that date.

(3) A creditor may vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained and for the purposes of voting (but not otherwise) his debt shall be valued at £1 unless the chairman agrees to put a higher value on it.

]

¹⁶⁵

[1.50.— Procedure for admission of creditors' claims for voting purposes

(1) Subject as follows, at any creditors' meeting the chairman shall ascertain the entitlement of persons wishing to vote and shall admit or reject their claims accordingly.

(2) The chairman may admit or reject a claim in whole or in part.

(3) The chairman's decision on any matter under this Rule or under paragraph (3) of Rule 1.49 is subject to appeal to the court by any creditor or member of the company.

(4) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

(5) If on an appeal the chairman's decision is reversed or varied, or votes are declared invalid, the court may order another meeting to be summoned, or make such order as it thinks just.

The court's power to make an order under this paragraph is exercisable only if it considers that the circumstances giving rise to the appeal are such as give rise to unfair prejudice or material irregularity.

(6) An application to the court by way of appeal against the chairman's decision shall not be made after the end of the period of 28 days beginning with the first day on which the report required by paragraph 30(3) of Schedule A1 to the Act has been made to the court.

(7) The chairman is not personally liable for any costs incurred by any person in respect of an appeal under this Rule.

¹⁶³ Rule 1.48(4) and (4A) substituted for rule 1.48(4) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.31(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁴ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹⁶⁵ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

] ¹⁶⁶

[1.51. Voting rights (members)]

Rule 1.18 shall apply.] ¹⁶⁷

[1.52.— Requisite majorities (creditors)]

[(1) Subject to paragraph (2), at the creditors' meeting, a resolution is passed when a majority (in value) of those present and voting in person or by proxy have voted in favour of it.

(2) A resolution to approve the proposal or a modification is passed when a majority of three-quarters or more (in value) of those present and voting in person or by proxy have voted in favour of it.] ¹⁶⁸

(3) At a meeting of the creditors for any resolution to pass extending (or further extending) a moratorium, or to bring a moratorium to an end before the end of the period of any extension, there must be a majority in excess of three quarters in value of the creditors present in person or by proxy and voting on the resolution. For this purpose paragraph (4)(b) below shall not apply and a secured creditor is entitled to vote in respect of the amount of his claim without deducting the value of his security.

(4) In the following cases there is to be left out of account a creditor's vote in respect of any claim or part of a claim—

- (a) where written notice of the claim was not given, either at the meeting or before it, to the chairman or [nominee] ¹⁶⁹ ;
- (b) where the claim or part is secured;
- (c) where the claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing—
 - (i) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands, and
 - (ii) to estimate the value of the security and (for the purpose of entitlement to vote, but not of any distribution under the arrangement) to deduct it from his claim.

(5) Any resolution is invalid if those voting against it include more than half in value of the creditors, counting in these latter only those—

- (a) who have notice of the meeting;
- (b) whose votes are not to be left out of account under paragraph (4); and
- (c) who are not, to the best of the chairman's belief, persons connected with the company.

¹⁶⁶ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹⁶⁷ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹⁶⁸ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.32(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.32(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(6) It is for the chairman of the meeting to decide whether under this Rule—

(a) a vote is to be left out of account in accordance with paragraph [(4)]¹⁷⁰, or

(b) a person is a connected person for the purposes of paragraph (5)(c);

and in relation to the second of these two cases the chairman is entitled to rely on the information provided by the statement of the company's affairs or otherwise in accordance with this Part of the Rules.

(7) If the chairman uses a proxy contrary to Rule 1.15 as it applies by virtue of [Rule 1.48(5)]¹⁷¹, his vote with that proxy does not count towards any majority under this Rule.

(8) The chairman's decision on any matter under this Rule is subject to appeal to the court by any creditor or member and paragraphs (5) to (7) of Rule 1.50 apply as regards such an appeal.

] ¹⁷²

[1.53.— Requisite majorities (members) and proceedings to obtain agreement on the proposal

(1) Rule 1.20 shall apply.

(2) If the chairman thinks fit, the creditors' meeting and the company meeting may be held together.

(3) The chairman may, and shall if it is so resolved at the meeting in question, adjourn that meeting, but any adjournment shall not be to a day which is more than 14 days after the date on which the moratorium (including any extension) ends.

(4) If the meetings are adjourned under paragraph (3), notice of the fact shall be given by the nominee [as soon as reasonably practicable]¹⁷³ to the court.

[(4A) Once only in the course of a meeting the chairman may, without an adjournment, declare it suspended for any period up to 1 hour.]¹⁷⁴

(5) If following the final adjournment of the creditors' meeting the proposal (with or without modifications) has not been approved by the creditors, it is deemed rejected.

] ¹⁷⁵

[1.54.— Implementation of the arrangement

(1) Where a decision approving the arrangement has effect under paragraph 36 of Schedule A1 to the Act, the directors shall [as soon as reasonably practicable]¹⁷⁶ do all that is required for putting the supervisor into possession of the assets included in the arrangement.

¹⁷⁰ Figure substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(1) para.8(a) (September 15, 2003)

¹⁷¹ Figure substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(1) para.8(b) (September 15, 2003)

¹⁷² Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹⁷³ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁷⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.33(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁵ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹⁷⁶ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

- (2) [...] ¹⁷⁷ Subject to paragraph (3), Rules 1.22, 1.22A and 1.24 to 1.29 apply.
- (3) [...] ¹⁷⁷ The provisions referred to in paragraph (2) are modified as follows—
- (a) [...] ¹⁷⁷ in paragraph (1) of Rule 1.22A the reference to section 4A(6) is to be read as a reference to paragraph 36(5) of Schedule A1 to the Act;
 - (b) [...] ¹⁷⁷ in paragraph (4) of Rule 1.24 the reference to section 4(6) is to be read as a reference to paragraph 30(3) of Schedule A1 to the Act;
 - (c) in paragraph (5) of Rule 1.24 the reference to section 4A is to be read as a reference to paragraph 36 of Schedule A1 to the Act;
 - (d) in paragraph (1) of Rule 1.25 the reference to section 6 is to be read as a reference to paragraph 38 of Schedule A1 to the Act and the references in paragraphs (2) and (4) to the administrator or liquidator shall be ignored;
 - (e) in paragraph (3) of Rule 1.25 the reference to section 6(4)(b) is to be read as a reference to paragraph 38(4)(b) of Schedule A1 to the Act; and
 - (f) in sub-paragraph (a) of paragraph (1) of Rule 1.28 the reference to section 4A is to be read as a reference to paragraph 36 of Schedule A1 to the Act.

]¹⁷⁸

[CHAPTER 10

TIME RECORDING INFORMATION]¹⁷⁹

[1.55 Provision by nominee or supervisor of information about time spent on a proposal or voluntary arrangement

- (1) Subject as set out in this Rule, a person (“the relevant person”) who has acted or is acting as—
- (a) a nominee in respect of a proposed voluntary arrangement;
 - (b) a supervisor in respect of a voluntary arrangement
- must, on request in writing by any person mentioned in paragraph (2), supply free of charge to that person a statement of the kind described in paragraph (3).
- (2) The persons referred to in paragraph (1) are—
- (a) any director of the company;
 - (b) where the proposal has been approved, any creditor or member of the company in respect of the arrangement.
- (3) The statement referred to in paragraph (1)—
- (a) must cover the period beginning with the date of the appointment of the relevant person as nominee or supervisor, as the case may be, and ending—
 - (i) with the date next before the date of making the request on which the relevant person has completed any period as nominee or supervisor, or both, which is a multiple of 6 months or,

¹⁷⁷ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁸ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(1) para.21 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 3(2))

¹⁷⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.34 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (ii) where the relevant person has ceased to act as nominee or supervisor, the date upon which the person so ceased; and
 - (b) must comprise the following details—
 - (i) the total number of hours spent on the voluntary arrangement by the relevant person whether as nominee or supervisor, or both, and any staff assigned to the voluntary arrangement during that period;
 - (ii) for each grade of individual so engaged, the average hourly rate at which any work carried out by individuals in that grade is charged; and
 - (iii) the number of hours spent by each grade of staff during that period.
 - (4) No request pursuant to this Rule may be made where more than 2 years has elapsed since the relevant person ceased to act in any capacity in relation to the proposal or any voluntary arrangement arising out of the approval of the proposal.
 - (5) Any statement required to be provided to any person under this Rule must be supplied within 28 days of the date of the receipt of the request by the person required to supply it.
-]¹⁸⁰

[CHAPTER 11

OMISSION OF INFORMATION FROM STATEMENT OF AFFAIRS]¹⁸¹

[1.56. Omission of Information from Statement of Affairs

The court, on the application of the nominee, the directors or any person appearing to it to have an interest, may direct that specified information may be omitted from any statement of affairs required to be sent to the creditors where the disclosure of such information would be likely to prejudice the conduct of the voluntary arrangement or might reasonably be expected to lead to violence against any person.]¹⁸²

¹⁸⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.34 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.34 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸² Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.34 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

PART 2

ADMINISTRATION PROCEDURE

[CHAPTER 1

PRELIMINARY]¹⁸³

[2.1.— Introductory and interpretation

(1) In this Part—

- (a) Chapter 2 applies in relation to the appointment of an administrator by the court;
- (b) Chapter 3 applies in relation to the appointment of an administrator by the holder of a qualifying floating charge under paragraph 14;
- (c) Chapter 4 applies in relation to the appointment of an administrator by the company or the directors under paragraph 22;
- (d) The following Chapters apply in all the cases mentioned in sub-paragraphs (a)–(c) above:
 - Chapter 5: Process of administration;
 - Chapter 6: Meetings and reports;
 - Chapter 7: The creditors' committee;
 - Chapter 8: Disposal of charged property;
 - Chapter 9: Expenses of the administration;
 - Chapter 10: Distributions to creditors;
 - Chapter 11: The administrator;
 - Chapter 12: Ending administration;
 - Chapter 13: Replacing administrator;
 - Chapter 14: EC Regulation — conversion of administration into winding up;
 - Chapter 15: EC Regulation — member State liquidator.

(2) In this Part of these Rules a reference to a numbered paragraph shall, unless otherwise stated, be to the paragraph so numbered in Schedule B1 to the Act.

]

Commencement

Pt 2(1) rule 2.1(1)–(4): December 29, 1986

2.2.—

[Existing Rule 2.2 is not repealed but has been substituted as part of the amendment substituting Part 2.]¹⁸⁵

¹⁸³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1–15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

¹⁸⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1–15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

¹⁸⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1–15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

Commencement

Pt 2(1) rule 2.2(1)-(3): December 29, 1986

2.3.—

[Existing Rule 2.3 is not repealed but has been substituted as part of the amendment substituting Part 2.]¹⁸⁶

Commencement

Pt 2(1) rule 2.3(1)-(6): December 29, 1986

2.4.—

[Existing Rule 2.4 is not repealed but has been substituted as part of the amendment substituting Part 2.]¹⁸⁷

Commencement

Pt 2(1) rule 2.4(1)-(6)(c): December 29, 1986

2.5.—

[Existing Rule 2.5 is not repealed but has been substituted as part of the amendment substituting Part 2.]¹⁸⁸

Commencement

Pt 2(1) rule 2.5(1)-(4): December 29, 1986

2.6.—

[Existing Rule 2.6 is not repealed but has been substituted as part of the amendment substituting Part 2.]¹⁸⁹

Commencement

Pt 2(1) rule 2.6(1)-(3): December 29, 1986

¹⁸⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

¹⁸⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

¹⁸⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

¹⁸⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

2.6A. [...]¹⁹⁰**2.7.—**

[Existing Rule 2.7 is not repealed but has been substituted as part of the amendment substituting Part 2.]¹⁹¹

Commencement

Pt 2(1) rule 2.7(1)-(5): December 29, 1986

2.8.— Proof of service

[(1) Service of the application must be verified by a certificate of service.

(1A) The certificate of service must be sufficient to identify the application served and must specify—

- (a) the name and registered number of the company or society,
- (b) the address of the registered office of the company or society,
- (c) the name of the applicant,
- (d) the court to which the application was made and the court reference number,
- (e) the date of the application,
- (f) whether the copy served was a sealed copy,
- (g) the date on which service was effected, and
- (h) the manner in which service was effected.

] ¹⁹²

(2) The affidavit, with a sealed copy of the petition exhibited to it, shall be filed in court forthwith after service, and in any event not less than one day before the hearing of the petition.[¹⁹³]¹⁹⁴

Commencement

Pt 2(1) rule 2.8(1)-(2): December 29, 1986

¹⁹⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

¹⁹¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

¹⁹² Rule 2.8(1) and (1A) substituted for rule 2.8(1) by Insolvency (Amendment) Rules 2010/686 Sch.5 para.4(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹³ Except in relation to where a petition for an administration order has been presented to the court before the first commencement date existing Rule 2.8 has been substituted as part of the amendment substituting Part 2.

¹⁹⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

Amendments Pending

Pt 2(1) rule 2.8(2): words substituted by Insolvency (Amendment) Rules 2010/686 Sch. 5 para. 4(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

2.9.—

[Existing Rule 2.9 is not repealed but has been substituted as part of the amendment substituting Part 2.]¹⁹⁵

Commencement

Pt 2(1) rule 2.9(1)-(2): December 29, 1986

2.10.—

[Existing Rule 2.10 is not repealed but has been substituted as part of the amendment substituting Part 2.]¹⁹⁶

Commencement

Pt 2(1) rule 2.10(1)-(5): December 29, 1986

[CHAPTER 2**APPOINTMENT OF ADMINISTRATOR BY COURT]¹⁹⁷****2.11.—**

[Existing Rule 2.11 is not repealed but has been substituted as part of the amendment substituting Part 2.]¹⁹⁸

Commencement

Pt 2(2) rule 2.11(1)-(4): December 29, 1986

¹⁹⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

¹⁹⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

¹⁹⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

¹⁹⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

2.12.—

[Existing Rule 2.12 is not repealed but has been substituted as part of the amendment substituting Part 2.]¹⁹⁹

Commencement

Pt 2(2) rule 2.12(1)-(6): December 29, 1986

2.13.—

[Existing Rule 2.13 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁰⁰

Commencement

Pt 2(2) rule 2.13(1)-(3): December 29, 1986

2.14.— Release from duty to submit statement of affairs; extension of time

(1) The power of the administrator under section 22(5) to give a release from the obligation imposed by that section, or to grant an extension of time, may be exercised at the administrator's own discretion, or at the request of any deponent.

(2) A deponent may, if he requests a release or extension of time and it is refused by the administrator, apply to the court for it.

(3) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for [a hearing without notice to any other party]²⁰¹, of which he has been given at least 7 days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the deponent accordingly.

(4) The deponent shall, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which he (the deponent) intends to adduce in support of it.

(5) The administrator may appear and be heard on the application; and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the court's attention.

If such a report is filed, a copy of it shall be sent by the administrator to the deponent, not later than 5 days before the hearing.

¹⁹⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁰⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁰¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.5 para.5(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(6) Sealed copies of any order made on the application shall be sent by the court to the deponent and the administrator.

(7) On any application under this Rule the applicant's costs shall be paid in any event by him and, unless the court otherwise orders, no allowance towards them shall be made out of the assets.[²⁰²]²⁰³

Commencement

Pt 2(2) rule 2.14(1)-(7): December 29, 1986

2.15.—

[Existing Rule 2.15 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁰⁴

Commencement

Pt 2(2) rule 2.15(1)-(3): December 29, 1986

2.16.

[Existing Rule 2.16 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁰⁵

Commencement

Pt 2(2) rule 2.16(a)-(g): December 29, 1986

2.17.

[Existing Rule 2.17 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁰⁶

Commencement

Pt 2(2) rule 2.17(a)-(b): December 29, 1986

²⁰² Except in relation to where a petition for an administration order has been presented to the court before the first commencement date existing Rule 2.14 has been substituted as part of the amendment substituting Part 2.

²⁰³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁰⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁰⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁰⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[[Witness statement]²⁰⁷ in support of administration application]²⁰⁸

[2.2.—

(1) Where it is proposed to apply to the court for an administration order to be made in relation to a company, the administration application shall be in Form 2.1B and [a witness statement]²⁰⁹ complying with Rule 2.4 must be prepared [...] ²¹⁰ with a view to its being filed with the court in support of the application.

(2) If the administration application is to be made by the company or by the directors, the [witness statement]²¹¹ shall 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.

(3) If the application is to be made by creditors, the [witness statement]²¹¹ shall be made by a person acting under the authority of them all, whether or not himself one of their number. In any case there must be stated in the [witness statement]²¹¹ the nature of his authority and the means of his knowledge of the matters to which the [witness statement]²¹¹ relates.

(4) If the application is to be made by the supervisor of a voluntary arrangement under Part I of the Act, it is to be treated as if it were an application by the company.
] ²¹²

[Form of application]²¹³

[2.3.—

(1) If made by the company or by the directors, the application shall 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.

²⁰⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.35(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁰⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.35(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.35(3)(b) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.35(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²¹³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

(2) If the application is made by the directors, it shall state that it is so made under paragraph 12(1)(b); but from and after making it is to be treated for all purposes as the application of the company.

(3) If made by a single creditor, the application shall state his name and address for service.

(4) If the application is made by two or more creditors, it shall state that it is so made (naming them); but from and after making it is to be treated for all purposes as the application of only one of them, named in the application as applying on behalf of himself and other creditors. An address for service for that one shall be specified.

(5) There shall be attached to the application a written statement which shall be in Form 2.2B by each of the persons proposed to be administrator stating—

- (a) that he consents to accept appointment;
- (b) details of any prior professional relationship(s) that he has had with the company to which he is to be appointed as administrator; and
- (c) his opinion that it is reasonably likely that the purpose of administration will be achieved.

]²¹⁴

[Contents of application and [witness statement]²¹⁵ in support]²¹⁶

[2.4.—

(1) The administration application shall 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 floating charge and is making the application in reliance on paragraph 35.

(2) There shall be attached to the application [a witness statement]²¹⁷ in support which shall 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 paragraph 14. 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 within the immediate knowledge of the applicant;

²¹⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²¹⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.36(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²¹⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.36(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(d) where it is intended to appoint a number of persons as administrators, details of the matters set out in paragraph 100(2) regarding the exercise of the function of the administrators; and

(e) any other matters which, in the opinion of those intending to make the application for an administration order, will assist the court in deciding whether to make such an order, so far as lying within the knowledge or belief of the applicant.

(3) Where the application is made by the holder of a qualifying floating charge in reliance on paragraph 35, he shall give sufficient details in the [witness statement]²¹⁸ in support to satisfy the court that he is entitled to appoint an administrator under paragraph 14.

(4) The [witness statement]²¹⁸ shall state whether, in the opinion of the person making the application, (i) the EC Regulation will apply and (ii) if so, whether the proceedings will be main proceedings [, secondary proceedings]²¹⁹ or territorial proceedings.
²²⁰

[Filing of application]²²¹

[2.5.—

(1) The application (and all supporting documents) shall be filed with the court, with a sufficient number of copies for service and use as provided by Rule 2.6.

(2) Each of the copies filed shall have applied to it the seal of the court and be issued to the applicant; and on each copy there shall be endorsed the date and time of filing.

(3) The court shall fix a venue for the hearing of the application and this also shall be endorsed on each copy of the application issued under paragraph (2).

(4) After the application is filed, it is the duty of the applicant to notify the court in writing of the existence of any insolvency proceedings, and any insolvency proceedings under the EC Regulation, in relation to the company, as soon as he becomes aware of them.
²²²

²¹⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.36(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.36(5) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²²¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²²² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

*[Service of application]*²²³**[2.6.—**

- (1) In the following paragraphs of this Rule, references to the application are to a copy of the application issued by the court under Rule 2.5(2) together with the [witness statement required by Rule 2.4]²²⁴ and the documents attached to the application.
- (2) Notification for the purposes of paragraph 12(2) shall be by way of service in accordance with Rule 2.8, verified in accordance with Rule 2.9.
- (3) The application shall be served in addition to those persons referred to in paragraph 12(2)—
- (a) if an administrative receiver has been appointed, on him;
 - (b) if there is pending a petition for the winding-up of the company, on the petitioner (and also on the provisional liquidator, if any);
 - (c) if a member State liquidator has been appointed in main proceedings in relation to the company, on him;
 - (d) on the person proposed as administrator;
 - (e) on the company, if the application is made by anyone other than the company;
 - (f) if a supervisor of a voluntary arrangement under Part I of the Act has been appointed, on him.

] ²²⁵*[Notice to [officers charged with execution of writs or other process]²²⁶ , etc]²²⁷***[2.7.**

The applicant shall as soon as reasonably practicable after filing the application give notice of its being made to—

- (a) any [enforcement officer]²²⁸ or other officer who to his knowledge is charged with an execution or other legal process against the company or its property; and
- (b) any person who to his knowledge has distrained against the company or its property.

] ²²⁹

²²³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²²⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.37(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²²⁶ Word substituted by Insolvency (Amendment) Rules 2005/527 rule 5(a) (April 1, 2005)

²²⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²²⁸ Word substituted by Insolvency (Amendment) Rules 2005/527 rule 5(b) (April 1, 2005)

²²⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

*[Manner in which service to be effected]*²³⁰

[2.8.—

(1) Service of the application in accordance with Rule 2.6 shall be effected by the applicant, or his solicitor, or by a person instructed by him or his solicitor, not less than 5 [business]²³¹ days before the date fixed for the hearing.

(2) Service shall be effected as follows—

- (a) on the company (subject to paragraph (3) below), by delivering the documents to its registered office;
- (b) on any other person (subject to paragraph (4) below), by delivering the documents to his proper address;
- (c) in either case, in such other manner as the court may direct.

(3) If delivery to a company's registered office is not practicable, service may be effected by delivery to its last known principal place of business in England and Wales.

(4) Subject to paragraph (5), for the purposes of paragraph (2)(b) above, a person's proper address is any which he has previously notified as his address for service; but if he has not notified any such address, service may be effected by delivery to his usual or last known address.

(5) In the case of a person who—

- (a) is an authorised deposit-taker or former authorised deposit-taker;
- (b)
 - (i) has appointed, or is or may be entitled to appoint, an administrative receiver of the company, or
 - (ii) is, or may be, entitled to appoint an administrator of the company under paragraph 14; and
- (c) has not notified an address for service,

the proper address is the address of an office of that person where, to the knowledge of the applicant, the company maintains a bank account or, where no such office is known to the applicant, the registered office of that person, or, if there is no such office, his usual or last known address.

(6) [...] ²³²
] ²³³

²³⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²³¹ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.38(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³² Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.38(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

*[Proof of service]*²³⁴**[2.9.—**

[(1) Service of the application must be verified by a certificate of service.

(1A) The certificate of service must be sufficient to identify the application served and must specify—

- (a) the name and registered number of the company,
- (b) the address of the registered office of the company,
- (c) the name of the applicant,
- (d) the court to which the application was made and the court reference number,
- (e) the date of the application,
- (f) whether the copy served was a sealed copy,
- (g) the date on which service was effected, and
- (h) the manner in which service was effected.

]

²³⁵

(2) The [certificate of service]²³⁶ shall be filed with the court as soon as reasonably practicable after service, and in any event not less than 1 [business]²³⁷ day before the hearing of the application.

]

²³⁸
*[Application to appoint specified person as administrator by holder of qualifying floating charge]*²³⁹**[2.10.—**

(1) Where the holder of a qualifying floating charge applies to the court under paragraph 36(1)(b), he shall produce to the court—

- (a) the written consent of all holders of any prior qualifying floating charge;
- (b) a written statement in the Form 2.2B made by the specified person proposed by him as administrator; and
- (c) sufficient evidence to satisfy the court that he is entitled to appoint an administrator under paragraph 14.

²³⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²³⁵ Rule 2.9(1) and (1A) substituted for rule 2.9(1) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.39(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.39(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁷ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.39(3)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²³⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

(2) If an administration order is made appointing the specified person, the costs of the person who made the administration application and the applicant under paragraph 36(1)(b) shall, unless the court otherwise orders, be paid as an expense of the administration.

]²⁴⁰

*[Application where company in liquidation]*²⁴¹

[2.11.—

(1) Where an administration application is made under paragraph 37 or paragraph 38, the [witness statement required by Rule 2.4]²⁴² shall contain—

- (a) full details of the existing insolvency proceedings, the name and address of the liquidator, the date he was appointed and by whom;
- (b) the reasons why it has subsequently been considered appropriate that an administration application should be made;
- (c) all other matters that would, in the opinion of the applicant, assist the court in considering the need to make provisions in respect of matters arising in connection with the liquidation; and
- (d) the details required in Rules 2.4(2) and (4).

(2) Where the application is made by the holder of a qualifying floating charge he shall set out sufficient evidence in the [witness statement required by Rule 2.4]²⁴³ to satisfy the court that he is entitled to appoint an administrator under paragraph 14.

]²⁴⁴

*[The hearing]*²⁴⁵

[2.12.—

(1) At the hearing of the administration application, any of the following may appear or be represented—

- (a) the applicant;

²⁴⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁴¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁴² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.40(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.40(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁴⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

- (b) the company;
- (c) one or more of the directors;
- (d) if an administrative receiver has been appointed, that person;
- (e) any person who has presented a petition for the winding-up of the company;
- (f) the person proposed for appointment as administrator;
- (g) if a member State liquidator has been appointed in main proceedings in relation to the company, that person;
- (h) any person that is the holder of a qualifying floating charge;
- (j) any supervisor of a voluntary arrangement under Part I of the Act;
- (k) with the permission of the court, any other person who appears to have an interest justifying his appearance.

(2) If the court makes an administration order, it shall be in Form 2.4B.

(3) If the court makes an administration order, the costs of the applicant, and of any person whose costs are allowed by the court, are payable as an expense of the administration.

]²⁴⁶

[2.13.

Where the court makes an administration order in relation to a company upon an application under paragraph 37 or 38, the court shall include in the order—

- (a) in the case of a liquidator appointed in a voluntary winding-up, his removal from office;
- (b) details concerning the release of the liquidator;
- (c) provision for payment of the expenses of the liquidation;
- (d) provisions regarding any indemnity given to the liquidator;
- (e) provisions regarding the handling or realisation of any of the company's assets in the hands of or under the control of the liquidator;
- (f) such provision as the court thinks [just]²⁴⁷ with respect to matters arising in connection with the liquidation; and
- (g) such other provisions as the court shall think [just]²⁴⁷ .

]²⁴⁸

*[Notice of administration order]*²⁴⁹

[2.14.—

(1) If the court makes an administration order, it shall as soon as reasonably practicable send two sealed copies of the order to the person who made the application.

²⁴⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁴⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁴⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

(2) The applicant shall send a sealed copy of the order as soon as reasonably practicable to the person appointed as administrator.

(3) If the court makes an order under paragraph 13(1)(d) or any other order under paragraph 13(1)(f), it shall give directions as to the persons to whom, and how, notice of that order is to be given.

] ²⁵⁰

[CHAPTER 3

APPOINTMENT OF ADMINISTRATOR BY HOLDER OF FLOATING CHARGE] ²⁵¹

[Notice of intention to appoint] ²⁵²

2.18.—

[Existing Rule 2.18 is not repealed but has been substituted as part of the amendment substituting Part 2.] ²⁵³

Commencement

Pt 2(3) rule 2.18(1)-(4): December 29, 1986

2.19.—

[Existing Rule 2.19 is not repealed but has been substituted as part of the amendment substituting Part 2.] ²⁵⁴

Commencement

Pt 2(3) rule 2.19(1)-(7): December 29, 1986

2.20.—

[Existing Rule 2.20 is not repealed but has been substituted as part of the amendment substituting Part 2.] ²⁵⁵

²⁵⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁵¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁵² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁵³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁵⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁵⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

Commencement

Pt 2(3) rule 2.20(1)-(2)(b): December 29, 1986

2.21.—

[Existing Rule 2.21 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁵⁶

Commencement

Pt 2(3) rule 2.21(1)-(6): December 29, 1986

2.22.—

[Existing Rule 2.22 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁵⁷

Commencement

Pt 2(3) rule 2.22(1)-(5): December 29, 1986

2.23.—

[Existing Rule 2.23 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁵⁸

Commencement

Pt 2(3) rule 2.23(1)-(6): December 29, 1986

2.24.

[Existing Rule 2.24 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁵⁹

Commencement

Pt 2(3) rule 2.24: December 29, 1986

²⁵⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁵⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁵⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁵⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

2.25.

[Existing Rule 2.25 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁶⁰

Commencement

Pt 2(3) rule 2.25(a)-(b): December 29, 1986

2.26.

[Existing Rule 2.26 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁶¹

Commencement

Pt 2(3) rule 2.26: December 29, 1986

2.27.—

[Existing Rule 2.27 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁶²

Commencement

Pt 2(3) rule 2.27(1)-(2): December 29, 1986

2.28.—

[Existing Rule 2.28 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁶³

Commencement

Pt 2(3) rule 2.28(1)-(3): December 29, 1986

²⁶⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁶¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁶² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁶³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[2.29.

[Existing Rule 2.29 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁶⁴]²⁶⁵

Commencement

Pt 2(3) rule 2.29: December 29, 1986

2.30.—

[Existing Rule 2.30 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁶⁶

Commencement

Pt 2(3) rule 2.30(1)-(3): December 29, 1986

[2.15.—

(1) The prescribed form for the notice of intention to appoint for the purposes of paragraph 44(2) is Form 2.5B.

(2) For the purposes of paragraph 44(2), a copy of Form 2.5B shall be filed with the court at the same time as it is sent in accordance with paragraph 15(1) to the holder of any prior qualifying floating charge.

(3) The provisions of Rule 2.8(2) to 2.8(6) shall apply to the sending of a notice under this Rule as they apply to the manner in which service of an administration application is effected under that Rule.

] ²⁶⁷

*[Notice of appointment]*²⁶⁸

2.31.—

[Existing Rule 2.31 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁶⁹

²⁶⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁶⁵ Substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(3) para.15 (January 11, 1988)

²⁶⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁶⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁶⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁶⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

Commencement

Pt 2(3) rule 2.31(1)-(6): December 29, 1986

[2.16.—

(1) The notice of appointment for the purposes of an appointment under paragraph 14 shall be in Form 2.6B.

(2) The copies of the notice filed with the court, shall be accompanied by—

(a) the administrator's written statement in Form 2.2B; and

(b) either—

(i) evidence that the person making the appointment has given such notice as may be required by paragraph 15(1)(a); or

(ii) copies of the written consent of all those required to give consent in accordance with paragraph 15(1)(b); and

(c) a statement of those matters provided for in paragraph 100(2), if applicable.

(3) The statutory declaration on Form 2.6B shall be made not more than 5 business days before the form is filed with the court.

(4) Written consent may be given by the holder of a prior qualifying floating charge where a notice of intention to appoint an administrator has been given and filed with the court in accordance with Rule 2.15 above, by completing the section provided on Form 2.5B and returning to the appointor a copy of the form.

(5) Where the holder of a prior qualifying floating charge does not choose to complete the section provided on Form 2.5B to indicate his consent, or no such form has been sent to him, his written consent shall include—

(a) details of the name, address of registered office and registered number of the company in respect of which the appointment is proposed to be made;

(b) details of the charge held by him including the date it was registered and, where applicable, any financial limit and any deeds of priority;

(c) his name and address;

(d) the name and address of the holder of the qualifying floating charge who is proposing to make the appointment;

(e) the date that notice of intention to appoint was given;

(f) the name of the proposed administrator;

(g) a statement of consent to the proposed appointment,

and it shall be [authenticated]²⁷⁰ and dated.

(6) This Rule and the following Rule are subject to Rule 2.19, the provisions of which apply when an appointment is to be made out of court business hours.

]²⁷¹

²⁷⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁷¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[2.17.—

(1) Three copies of the notice of appointment shall be filed with the court and shall have applied to them the seal of the court and be endorsed with the date and time of filing.

(2) The court shall issue two of the sealed copies of the notice of appointment to the person making the appointment, who shall as soon as reasonably practicable send one of the sealed copies to the administrator.

] ²⁷²

[2.18.

Where, after receiving notice that an administration application has been made, the holder of a qualifying floating charge appoints an administrator in reliance on paragraph 14, he shall as soon as reasonably practicable send a copy of the notice of appointment to the person making the administration application and to the court in which the application has been made.] ²⁷³

[Appointment taking place out of court business hours] ²⁷⁴

[2.19.—

(1) The holder of a qualifying floating charge may file a notice of appointment with the court, notwithstanding that the court is not open for public business. When the court is closed (and only when it is closed) a notice of appointment may be filed with the court by faxing that form [or sending it as an attachment to an e-mail in accordance with paragraphs (3) and (3A)] ²⁷⁵. The notice of appointment shall be in Form 2.7B.

(2) The filing of a notice in accordance with this Rule shall have the same effect for all purposes as a notice of appointment filed in accordance with Rule 2.16 with the court specified in the notice as having jurisdiction in the case.

[(3) The notice must be—

(a) faxed to a designated telephone number, or

(b) sent as an attachment by e-mail to a designated e-mail address,

which must be provided by the Court Service for that purpose.

(3A) The Secretary of State must publish the designated telephone number and e-mail address on The Insolvency Service website and, on request to The Insolvency Service, make them available in writing.] ²⁷⁶

²⁷² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁷³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁷⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁷⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.41(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (4) The appointor shall ensure that [—]²⁷⁷
 [(a) a fax transmission report detailing the time and date of the fax transmission and the telephone number to which the notice was faxed and containing a copy of the first page (in part or in full) of the document faxed is created by the fax machine that is used to fax the form, or
 (b) a hard copy of the e-mail is created detailing the time and date of the e-mail and the address to which it was sent and containing a copy of the document sent as an attachment, as the case may be; and the appointor must retain the report or hard copy.]²⁷⁷
- (5) The appointment shall take effect from the date and time of [the fax transmission or sending of the e-mail]²⁷⁸. The appointor shall notify the administrator, as soon as reasonably practicable, that the notice has been filed.
- (6) The copy of the faxed notice of appointment [, or the e-mail (or a hard copy of the e-mail) containing the notice of appointment, as (in either case) received by the Court Service,]²⁷⁹ shall be forwarded as soon as reasonably practicable to the court specified in the notice as the court having jurisdiction in the case, to be placed on the relevant court file.
- (7) The appointor shall take three copies of the notice of appointment that was faxed to the designated telephone number, together with the transmission report [or hard copy required by paragraph (4)]²⁸⁰ and all the necessary supporting documents listed on Form 2.7B, to the court on the next day that the court is open for business.
- (8) The appointor shall attach to the notice a statement providing full reasons for the out of hours filing of the notice of appointment, including why it would have been damaging to the company and its creditors not to have so acted.
- (9) The copies of the notice shall be sealed by the court and shall be endorsed with the date and time when, according to the appointor's fax transmission report [or hard copy of the e-mail]²⁸¹,

²⁷⁶ Rule 2.19(3) and (3A) substituted for rule 2.19(3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.41(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁷⁷ Existing text renumbered as rule 2.19(4)(a), words are inserted and rule 2.19(4)(b) is added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.41(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁷⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.41(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁷⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.41(6) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁸⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.41(7) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁸¹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.41(8)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

the notice was faxed [or sent]²⁸² and the date when the notice and accompanying documents were delivered to the court.

(10) The administrator's appointment shall cease to have effect if the requirements of paragraph (7) are not completed within the time period indicated in that paragraph.

(11) Where any question arises in respect of the date and time that the notice of appointment was filed with the court it shall be a presumption capable of rebuttal that the date and time shown on the appointor's fax transmission report [or hard copy of the e-mail]²⁸³ is the date and time at which the notice was so filed.

(12) The court shall issue two of the sealed copies of the notice of appointment to the person making the appointment, who shall, as soon as reasonably practicable, send one of the copies to the administrator.

] ²⁸⁴

[CHAPTER 4

APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS] ²⁸⁵

2.32.—

[Existing Rule 2.32 is not repealed but has been substituted as part of the amendment substituting Part 2.] ²⁸⁶

Commencement

Pt 2(4) rule 2.32(1)-(3): December 29, 1986

2.33.—

[Existing Rule 2.33 is not repealed but has been substituted as part of the amendment substituting Part 2.] ²⁸⁷

Commencement

Pt 2(4) rule 2.33(1)-(5): December 29, 1986

²⁸² Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.41(8)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁸³ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.41(9) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁸⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁸⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁸⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁸⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

2.34.—

[Existing Rule 2.34 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁸⁸

Commencement

Pt 2(4) rule 2.34(1)-(4): December 29, 1986

2.35.—

[Existing Rule 2.35 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁸⁹

Commencement

Pt 2(4) rule 2.35(1)-(2)(b): December 29, 1986

2.36.

[Existing Rule 2.36 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁹⁰

Commencement

Pt 2(4) rule 2.36: December 29, 1986

2.37.—

[Existing Rule 2.37 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁹¹

Commencement

Pt 2(4) rule 2.37(1)-(6): December 29, 1986

2.38.

[Existing Rule 2.38 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁹²

²⁸⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁸⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁹⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁹¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁹² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

Commencement

Pt 2(4) rule 2.38: December 29, 1986

2.39.—

[Existing Rule 2.39 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁹³

Commencement

Pt 2(4) rule 2.39(1)-(2): December 29, 1986

2.40.

[Existing Rule 2.40 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁹⁴

Commencement

Pt 2(4) rule 2.40: December 29, 1986

2.41.—

[Existing Rule 2.41 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁹⁵

Commencement

Pt 2(4) rule 2.41(1)-(3): December 29, 1986

2.42.—

[Existing Rule 2.42 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁹⁶

Commencement

Pt 2(4) rule 2.42(1)-(3): December 29, 1986

²⁹³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁹⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁹⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁹⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

2.43.—

[Existing Rule 2.43 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁹⁷

Commencement

Pt 2(4) rule 2.43(1)-(5): December 29, 1986

2.44.—

[Existing Rule 2.44 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁹⁸

Commencement

Pt 2(4) rule 2.44(1)-(3): December 29, 1986

2.45.—

[Existing Rule 2.45 is not repealed but has been substituted as part of the amendment substituting Part 2.]²⁹⁹

Commencement

Pt 2(4) rule 2.45(1)-(2): December 29, 1986

2.46.—

[Existing Rule 2.46 is not repealed but has been substituted as part of the amendment substituting Part 2.]³⁰⁰

Commencement

Pt 2(4) rule 2.46(1)-(2): December 29, 1986

2.46A. [...]³⁰¹

²⁹⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁹⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

²⁹⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁰⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁰¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

*[Notice of intention to appoint]*³⁰²

[2.20.—

(1) The notice of intention to appoint an administrator for the purposes of paragraph 26 shall be in Form 2.8B.

(2) A copy of the notice of intention to appoint must, in addition to the persons specified in paragraph 26, be given to—

- (a) any [enforcement officer]³⁰³ who, to the knowledge of the person giving the notice, is charged with execution or other legal process against the company;
- (b) any person who, to the knowledge of the person giving the notice, has distrained against the company or its property;
- (c) any supervisor of a voluntary arrangement under Part I of the Act; and
- (d) the company, if the company is not intending to make the appointment.

(3) The provisions of [Rule 2.8(2) to 2.8(5)]³⁰⁴ shall apply to the sending or giving of a notice under this Rule as they apply to the manner in which service of an administration application is effected under that Rule.

]

³⁰⁵

[2.21.

The statutory declaration on Form 2.8B shall be made not more than 5 business days before the notice is filed with the court.]³⁰⁶

[2.22.

The notice of intention to appoint shall be accompanied by either a copy of the resolution of the company to appoint an administrator (where the company intends to make the appointment) or a record of the decision of the directors (where the directors intend to make the appointment).]³⁰⁷

³⁰² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁰³ Word substituted by Insolvency (Amendment) Rules 2005/527 rule 6 (April 1, 2005)

³⁰⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.42(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁰⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁰⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁰⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

*[Notice of appointment]*³⁰⁸**[2.23.—**

- (1) The notice of appointment for the purposes of an appointment under paragraph 22 shall be in Form 2.9B or Form 2.10B, as appropriate.
- (2) The copies of the notice filed with the court shall be accompanied by—
 - (a) the administrator's written statement in Form 2.2B;
 - (b) the written consent of all those persons to whom notice was given in accordance with paragraph 26(1) unless the period of notice set out in paragraph 26(1) has expired; and
 - (c) a statement of the matters provided for in paragraph 100(2), where applicable.

] ³⁰⁹**[2.24.**

The statutory declaration on Form 2.9B or Form 2.10B shall be made not more than 5 business days before the notice is filed with the court.] ³¹⁰

[2.25.

Where a notice of intention to appoint an administrator has not been given, the notice of appointment shall be accompanied by the documents specified in Rule 2.22 above.] ³¹¹

[2.26.—

- (1) Three copies of the notice of appointment shall be filed with the court and shall have applied to them the seal of the court and be endorsed with the date and time of filing.
- (2) The court shall issue two of the sealed copies of the notice of appointment to the person making the appointment who shall as soon as reasonably practicable send one of the sealed copies to the administrator.

] ³¹²

³⁰⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁰⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³¹⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³¹¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³¹² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[CHAPTER 5 PROCESS OF ADMINISTRATION]³¹³

2.47.—

[Existing Rule 2.47 is not repealed but has been substituted as part of the amendment substituting Part 2.]³¹⁴

Commencement

Pt 2(5) rule 2.47(1)-(7): December 29, 1986

2.48.

[Existing Rule 2.48 is not repealed but has been substituted as part of the amendment substituting Part 2.]³¹⁵

Commencement

Pt 2(5) rule 2.48: December 29, 1986

2.49.—

[Existing Rule 2.49 is not repealed but has been substituted as part of the amendment substituting Part 2.]³¹⁶

Commencement

Pt 2(5) rule 2.49(1)-(4): December 29, 1986

2.50.—

[Existing Rule 2.50 is not repealed but has been substituted as part of the amendment substituting Part 2.]³¹⁷

Commencement

Pt 2(5) rule 2.50(1)-(5): December 29, 1986

³¹³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³¹⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³¹⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³¹⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³¹⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

2.51.—

[Existing Rule 2.51 is not repealed but has been substituted as part of the amendment substituting Part 2.]³¹⁸

Commencement

Pt 2(5) rule 2.51(1)-(4): December 29, 1986

2.52.—

[Existing Rule 2.52 is not repealed but has been substituted as part of the amendment substituting Part 2.]³¹⁹

Commencement

Pt 2(5) rule 2.52(1)-(4): December 29, 1986

2.53.—

[Existing Rule 2.53 is not repealed but has been substituted as part of the amendment substituting Part 2.]³²⁰

Commencement

Pt 2(5) rule 2.53(1)-(3)(c): December 29, 1986

2.54.—

[Existing Rule 2.54 is not repealed but has been substituted as part of the amendment substituting Part 2.]³²¹

Commencement

Pt 2(5) rule 2.54(1)-(3): December 29, 1986

2.55.

[Existing Rule 2.55 is not repealed but has been substituted as part of the amendment substituting Part 2.]³²²

³¹⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³¹⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³²⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³²¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³²² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

Commencement

Pt 2(5) rule 2.55: December 29, 1986

[2.27.— Notification and advertisement of administrator's appointment

[(1) The notice of appointment to be given by the administrator as soon as reasonably practicable after appointment under paragraph 46(2)(b) shall be gazetted [...] ³²³ and may be advertised in such other manner as the administrator thinks fit.] ³²⁴

[(1A) In addition to the standard contents, the notice under paragraph (1) must state—

- (a) that an administrator has been appointed,
- (b) the date of the appointment, and
- (c) the nature of the business of the company.

] ³²⁵

(2) The administrator shall, as soon as reasonably practicable after the date specified in paragraph 46(6), give notice of his appointment—

- (a) if a receiver or an administrative receiver has been appointed, to him;
- (b) if there is pending a petition for the winding up of the company, to the petitioner (and also to the provisional liquidator, if any);
- (c) to any [enforcement officer] ³²⁶ who, to the administrator's knowledge, is charged with execution or other legal process against the company;
- (d) to any person who, to the administrator's knowledge, has distrained against the company or its property; and
- (e) any supervisor of a voluntary arrangement under Part I of the Act.

(3) Where, under a provision of Schedule B1 to the Act or these Rules, the administrator is required to send a notice of his appointment to any person [other than the registrar of companies] ³²⁷ he shall do so in Form 2.12B.

] ³²⁸

[2.28.— Notice requiring statement of affairs

(1) In this Chapter “relevant person” shall have the meaning given to it in paragraph 47(3).

³²³ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.43(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³²⁴ Substituted by Insolvency (Amendment) Rules 2009/642 rule 8 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

³²⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.43(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³²⁶ Word substituted by Insolvency (Amendment) Rules 2005/527 rule 7 (April 1, 2005)

³²⁷ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.43(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³²⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

- (2) The administrator shall send notice in Form 2.13B to each relevant person whom he determines appropriate requiring him to prepare and submit a statement of the company's affairs.
- (3) The notice shall inform each of the relevant persons—
- (a) of the names and addresses of all others (if any) to whom the same notice has been sent;
 - (b) of the time within which the statement must be delivered;
 - (c) of the effect of paragraph 48(4) (penalty for non-compliance); and
 - (d) of the application to him, and to each other relevant person, of section 235 (duty to provide information, and to attend on the administrator, if required).
- (4) The administrator shall furnish each relevant person to whom he has sent notice in Form 2.13B with the forms required for the preparation of the statement of affairs.

]

[2.29.— Verification and filing

- (1) The statement of the company's affairs shall be in Form 2.14B, contain all the particulars required by that form and be verified by a statement of truth by the relevant person.
- (2) The administrator may require any relevant person to submit a statement of concurrence in Form 2.15B stating that he concurs in the statement of affairs. Where the administrator does so, he shall inform the person making the statement of affairs of that fact.
- (3) The statement of affairs shall be delivered by the relevant person making the statement of truth, together with a copy, to the administrator. The relevant person shall also deliver a copy of the statement of affairs to all those persons whom the administrator has required to make a statement of concurrence.
- (4) A person required to submit a statement of concurrence shall do so before the end of the period of 5 business days (or such other period as the administrator may agree) beginning with the day on which the statement of affairs being concurred with is received by him.
- (5) A statement of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the statement of concurrence is not in agreement with the relevant person, or he considers the statement of affairs to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.
- (6) Every statement of concurrence shall be verified by a statement of truth and be delivered to the administrator by the person who makes it, together with a copy of it.
- (7) Subject to Rule 2.30 below, the administrator shall as soon as reasonably practicable send to the registrar of companies [...] a copy of the statement of affairs and any statement of concurrence.

]

³²⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³³⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.44(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³³¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[2.30.— Limited disclosure

- (1) Where the administrator thinks that it would prejudice the conduct of the administration [or might reasonably be expected to lead to violence against any person]³³² for the whole or part of the statement of the company's affairs to be disclosed, he may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it.
- (2) The court may, on such application, order that the statement or, as the case may be, the specified part of it, shall not be filed with the registrar of companies.
- (3) The administrator shall as soon as reasonably practicable send to the registrar of companies [...] ³³³ a copy of the order and the statement of affairs (to the extent provided by the order) and any statement of concurrence.
- (4) If a creditor seeks disclosure of a statement of affairs or a specified part of it in relation to which an order has been made under this Rule, he may apply to the court for an order that the administrator disclose it or a specified part of it. The application shall be supported by written evidence in the form of [a witness statement]³³⁴ .
- (5) The applicant shall give the administrator notice of his application at least 3 [business]³³⁵ days before the hearing.
- (6) The court may make any order for disclosure subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees [just]³³⁶ .
- (7) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the administrator shall, as soon as reasonably practicable after the change, apply to the court for the order or any part of it to be rescinded.
- (8) The administrator shall, as soon as reasonably practicable after the making of an order under paragraph (7) above, file with the registrar of companies [...] ³³⁷ a copy of the statement of affairs to the extent provided by the order.
- (9) When the statement of affairs is filed in accordance with paragraph (8), the administrator shall, where he has sent a statement of proposals under paragraph 49, provide the creditors with a copy of the statement of affairs as filed, or a summary thereof.
- (10) The provisions of Part 31 of the CPR shall not apply to an application under this Rule.

³³² Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.45(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³³³ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.45(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³³⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.45(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³³⁵ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.45(5) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³³⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³³⁷ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.45(6) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

]³³⁸

[2.31.— Release from duty to submit statement of affairs; extension of time

(1) The power of the administrator under paragraph 48(2) to give a release from the obligation imposed by paragraph 47(1), or to grant an extension of time, may be exercised at the administrator's own discretion, or at the request of any relevant person.

(2) A relevant person may, if he requests a release or extension of time and it is refused by the administrator, apply to the court for it.

(3) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it without a hearing but it shall not do so without giving the relevant person at least [5 business]³³⁹ days' notice, upon receipt of which the relevant person may request the court to list the application for a without notice hearing. If the application is not dismissed the court shall fix a venue for it to be heard, and give notice to the relevant person accordingly.

(4) The relevant person shall, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application and of any evidence which he (the relevant person) intends to adduce in support of it.

(5) The administrator may appear and be heard on the application and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the court's attention.

If such a report is filed, a copy of it shall be sent by the administrator to the relevant person, not later than 5 [business]³⁴⁰ days before the hearing.

(6) Sealed copies of any order made on the application shall be sent by the court to the relevant person and the administrator.

(7) On any application under this Rule the relevant person's costs shall be paid in any event by him and, unless the court otherwise orders, no allowance towards them shall be made [as an expense of the administration]³⁴¹ .

]³⁴²

³³⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³³⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.46(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁴⁰ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.46(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁴¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.46(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁴² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[2.32.— Expenses of statement of affairs

(1) A relevant person making the statement of [affairs of the company]³⁴³ or statement of concurrence shall be allowed, and paid by the administrator [as an expense of the administration]³⁴⁴, any expenses incurred by the relevant person in so doing which the administrator considers reasonable.

(2) Any decision by the administrator under this Rule is subject to appeal to the court.

(3) Nothing in this Rule relieves a relevant person from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the administrator.

]³⁴⁵

[2.33.— Administrator's proposals

(1) The administrator shall, under paragraph 49 , make a statement which he shall send to the registrar of companies [...] ³⁴⁶ .

(2) The statement shall include, in addition to those matters set out in paragraph 49–

- (a) details of the court where the proceedings are and the relevant court reference number;
- (b) the full name, registered address, registered number and any other trading names of the company;
- (c) details relating to his appointment as administrator, including the date of appointment and the person making the application or appointment and, where there are joint administrators, details of the matters set out in paragraph 100(2);
- (d) the names of the directors and secretary of the company and details of any shareholdings in the company they may have;
- (e) an account of the circumstances giving rise to the appointment of the administrator;
- (f) if a statement of the company's affairs has been submitted, a copy or summary of it, with the administrator's comments, if any;
- (g) if an order limiting the disclosure of the statement of affairs (under Rule 2.30) has been made, a statement of that fact, as well as–
 - (i) details of who provided the statement of affairs;
 - (ii) the date of the order of limited disclosure; and
 - (iii) the details or a summary of the details that are not subject to that order;
- (h) if a full statement of affairs is not provided, the names, addresses and debts of the creditors including details of any security held;

³⁴³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.47(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁴⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.47(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁴⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁴⁶ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.48(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (j) if no statement of affairs has been submitted, details of the financial position of the company at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the company entered administration), a list of the company's creditors including their names, addresses and details of their debts, including any security held, and an explanation as to why there is no statement of affairs;
- (k) the basis upon which it is proposed that the administrator's remuneration should be fixed under Rule 2.106;
- [(ka) a statement complying with paragraph (2B) of any pre-administration costs charged or incurred by the administrator or, to the administrator's knowledge, by any other person qualified to act as an insolvency practitioner;]³⁴⁷
- (l) (except where the administrator proposes a voluntary arrangement in relation to the company and subject to paragraph (3))—
 - (i) to the best of the administrator's knowledge and belief—
 - (aa) an estimate of the value of the prescribed part (whether or not he proposes to make an application to court under section 176A(5) or section 176A(3) applies); and
 - (bb) an estimate of the value of the company's net property; and
 - (ii) whether, and, if so, why, the administrator proposes to make an application to court under section 176A(5);
- (m) [a statement (which must comply with paragraph (2C) where that paragraph applies) of]³⁴⁸ how it is envisaged the purpose of the administration will be achieved and how it is proposed that the administration shall end [...] ³⁴⁹ ;
- (n) where the administrator has decided not to call a meeting of creditors, his reasons;
- (o) the manner in which the affairs and business of the company—
 - (i) have, since the date of the administrator's appointment, been managed and financed, including, where any assets have been disposed of, the reasons for such disposals and the terms upon which such disposals were made; and
 - (ii) will, if the administrator's proposals are approved, continue to be managed and financed;
- (p) whether—
 - (i) the EC Regulation applies; and
 - (ii) if so, whether the proceedings are main proceedings [, secondary proceedings]³⁵⁰ or territorial proceedings; and
- (q) such other information (if any) as the administrator thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.

[(2A) In this Part—

³⁴⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.48(3)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁴⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.48(3)(b)(i) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁴⁹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.48(3)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁵⁰ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.48(3)(c) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (a) “pre-administration costs” are—
 - (i) fees charged, and
 - (ii) expenses incurred,

by the administrator, or another person qualified to act as an insolvency practitioner, before the company entered administration but with a view to its doing so; and

- (b) “unpaid pre-administration costs” are pre-administration costs which had not been paid when the company entered administration.

(2B) A statement of pre-administration costs complies with this paragraph if it includes—

- (a) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made,
- (b) details of the work done for which the fees were charged and expenses incurred,
- (c) an explanation of why the work was done before the company entered administration and how it would further the achievement of an objective in sub-paragraph (1) of paragraph 3 in accordance with sub-paragraphs (2) to (4) of that paragraph,
- (d) a statement of the amount of the pre-administration costs, setting out separately—
 - (i) the fees charged by the administrator,
 - (ii) the expenses incurred by the administrator,
 - (iii) the fees charged (to the administrator's knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately), and
 - (iv) the expenses incurred (to the administrator's knowledge) by any other person qualified to act as an insolvency practitioner (and, if more than one, by each separately),
- (e) a statement of the amounts of pre-administration costs which have already been paid (set out separately as under sub-paragraph (d)),
- (f) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person set out separately as under sub-paragraph (d),
- (g) a statement of the amounts of unpaid pre-administration costs (set out separately as under sub-paragraph (d)), and
- (h) a statement that the payment of unpaid pre-administration costs as an expense of the administration is—
 - (i) subject to approval under Rule 2.67A, and
 - (ii) not part of the proposals subject to approval under paragraph 53.

(2C) This paragraph applies where it is proposed that the administration will end by the company moving to a creditors' voluntary liquidation; and in that case, the statement required by paragraph (2)(m) must include—

- (a) details of the proposed liquidator;
- (b) where applicable, the declaration required by section 231; and
- (c) a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator in accordance with paragraph 83(7)(a) and Rule 2.117A(2)(b).

]³⁵¹

³⁵¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.48(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) Nothing in paragraph (2)(l) is to be taken as requiring any such estimate to include any information, the disclosure of which could seriously prejudice the commercial interests of the company. If such information is excluded from the calculation the estimate shall be accompanied by a statement to that effect.

(4) Where the court orders, upon an application by the administrator under paragraph 107, an extension of the period of time in paragraph 49(5), the administrator [must as soon as reasonably practicable after the making of the order—]³⁵²

[(a) notify in Form 2.18B every creditor of the company and every member of the company of whose address (in either case) the administrator is aware, and

(b) send a copy of the notification to the registrar of companies.]³⁵²

(5) Where the administrator has made a statement under paragraph 52(1) and has not called an initial meeting of creditors, the proposals sent out under this Rule and paragraph 49 will (if no meeting has been requisitioned under paragraph 52(2) within the period set out in Rule 2.37(1)) be deemed to have been approved by the creditors.

[(5A) Where proposals are deemed under paragraph (5) to have been approved, the administrator must, as soon as reasonably practicable after expiry of the period set out in Rule 2.37(1), give notice of the date on which they were deemed to have been approved to the registrar of companies, the court and the creditors; and a copy of the proposals must be attached to the notice given to the court and to creditors who have not previously received them.]³⁵³

(6) Where the administrator intends to apply to the court (or file a notice under paragraph 80(2)) for the administration to cease at a time before he has sent a statement of his proposals to creditors in accordance with paragraph 49, he shall, at least [7 business]³⁵⁴ days before he makes such an application (or files such a notice), send to all creditors of the company (so far as he is aware of their addresses) a report containing the information required by paragraphs (2)(a)–(p) of this Rule.

[(7) Where the administrator wishes to publish a notice under paragraph 49(6), the notice shall be advertised in such manner as the administrator thinks fit.

[(7A) In addition to the standard contents, the notice under paragraph (7) must state—

(a) that members can write for a copy of the statement of proposals for achieving the purpose of administration; and

(b) the address to which to write.

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] ³⁵⁶

³⁵² Rule 2.33(4)(a) and (b) and words substituted for words by Insolvency (Amendment) Rules 2010/686 Sch.1 para.48(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁵³ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.48(6) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁵⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.48(7) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁵⁵ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.48(8) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁵⁶ Rule 2.33(7) and (7A) substituted for rule 2.33(7) by Insolvency (Amendment) Rules 2009/642 rule 9 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

(8) This notice must be published as soon as reasonably practicable after the administrator sends his statement of proposals to the company's creditors but no later than 8 weeks (or such other period as may be agreed by the creditors or as the court may order) from the date that the company entered administration.

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[2.33A Limited disclosure of para 49 statement 15

(1) Where the administrator thinks that it would prejudice the conduct of the administration or might reasonably be expected to lead to violence against any person for any of the matters specified in Rule 2.33(2)(h) and (j) to be disclosed, the administrator may apply to the court for an order of limited disclosure in respect of any specified part of the statement under paragraph 49.

(2) The court may, on such application, order that some or all of the specified part of the statement must not be sent to the registrar of companies or to creditors or members of the company as otherwise required by paragraph 49(4).

(3) The administrator must as soon as reasonably practicable send to the persons specified in paragraph 49(4) the statement under paragraph 49 (to the extent provided by the order) and an indication of the nature of the matter in relation to which the order was made.

(4) The administrator must also send a copy of the order to the registrar of companies.

(5) A creditor who seeks disclosure of a part of a statement under paragraph 49 in relation to which an order has been made under this Rule may apply to the court for an order that the administrator disclose it. The application must be supported by written evidence in the form of a witness statement.

(6) The applicant must give the administrator notice of the application at least 3 business days before the hearing.

(7) The court may make any order for disclosure subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees just.

(8) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the administrator must, as soon as reasonably practicable after the change, apply to the court for the order or any part of it to be rescinded.

(9) The administrator must, as soon as reasonably practicable after the making of an order under paragraph (8), send to the persons specified in paragraph 49(4) a copy of the statement under paragraph 49 to the extent provided by the order.

(10) The provisions of CPR³⁵⁸ Part 31 do not apply to an application under this Rule.

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³⁵⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁵⁸ Civil Procedure Rules 1998 (S.I. 1998/3132), as defined by 1986/1925, Rule 0.2(1).

³⁵⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.49 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[CHAPTER 6
MEETINGS AND REPORTS]³⁶⁰

2.56.—

[Existing Rule 2.56 is not repealed but has been substituted as part of the amendment substituting Part 2.]³⁶¹

Commencement

Pt 2(6) rule 2.56(1)-(3): December 29, 1986

2.57.—

[Existing Rule 2.57 is not repealed but has been substituted as part of the amendment substituting Part 2.]³⁶²

Commencement

Pt 2(6) rule 2.57(1)-(3): December 29, 1986

2.58.—

[Existing Rule 2.58 is not repealed but has been substituted as part of the amendment substituting Part 2.]³⁶³

Commencement

Pt 2(6) rule 2.58(1)-(2): December 29, 1986

³⁶⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁶¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁶² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁶³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

*[SECTION A: CREDITORS' MEETINGS]*³⁶⁴

[2.34.— Meetings to consider administrator's proposals

[(1) As soon as reasonably practicable after an invitation to the initial creditors' meeting has been sent to the creditors in compliance with the requirements of paragraph 51(1) , the administrator [must have gazetted a notice which, in addition to the standard contents, must state—]³⁶⁵

[(a) that an initial creditors' meeting is to take place; and

(b) the venue fixed for the meeting.]³⁶⁵

]³⁶⁶

[(1A) The information required to be gazetted under paragraph (1) may also be advertised in such other manner as the administrator thinks fit.]³⁶⁷

(2) Notice in Form 2.19B to attend the meeting shall be sent out at the same time to any directors or officers of the company (including persons who have been directors or officers in the past) whose presence at the meeting is, in the administrator's opinion, required.

(3) Where the court orders an extension to the period set out in paragraph 51(2)(b) the administrator shall send a notice in Form 2.18B to each person to whom he is required to send notice by paragraph 49(4).

(4) If at the meeting there is not the requisite majority for approval of the administrator's proposals (with modifications, if any), the chairman may, and shall if a resolution is passed to that effect, adjourn the meeting for not more than 14 days [...] ³⁶⁸ (subject to any direction by the court).

[(5) If there are subsequently further adjournments, the final adjournment must not be to a day later than 14 days after the date on which the meeting was originally held, subject to any direction of the court.

(6) Where a meeting is adjourned under this Rule, proofs and proxies may be used if lodged at any time up to 12.00 hours on the business day immediately before the adjourned meeting.]³⁶⁹

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³⁶⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁶⁵ Words and rule 2.34(1)(a) and (b) substituted for words and rule 2.34(1)(a)-(d) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.50(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁶⁶ Substituted by Insolvency (Amendment) Rules 2009/642 rule 10(a) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

³⁶⁷ Added by Insolvency (Amendment) Rules 2009/642 rule 10(b) (April 6, 2009: insertion has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

³⁶⁸ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.50(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁶⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.50(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁷⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[2.35.— Creditors' meetings generally]

- (1) This Rule applies to creditors' meetings summoned by the administrator under—
- (a) paragraph 51 (initial creditors' meeting);
 - (b) paragraph 52(2) (at the request of the creditors);
 - (c) paragraph 54(2) (to consider revision to the administrator's proposals);
 - (d) paragraph 56(1) (further creditors' meetings); and
 - (e) paragraph 62 (general power to summon meetings of creditors).
- (2) Notice of any of the meetings set out in paragraph (1) above shall be in Form 2.20B.
- (3) In fixing the venue for the meeting, the administrator shall have regard to the convenience of creditors and the meeting shall be summoned for commencement between 10.00 and 16.00 hours on a business day, unless the court otherwise directs.
- (4) Subject to paragraphs (6) and (7) below, at least 14 days' notice of the meeting shall be given to all creditors who are known to the administrator and had claims against the company at the date when the company entered administration unless that creditor has subsequently been paid in full; and the notice shall—
- (a) specify the purpose of the meeting;
 - (b) contain a statement of the effect of Rule 2.38 (entitlement to vote); and
 - (c) contain the forms of proxy.
- [(4A) As soon as reasonably practicable after notice of the meeting has been given, the administrator must have gazetted a notice which, in addition to the standard contents, must state—
- (a) that a creditors' meeting is to take place;
 - (b) the venue fixed for the meeting;
 - (c) the purpose of the meeting; and
 - (d) a statement of the effect of Rule 2.38 (entitlement to vote).
- ³⁷¹]
- (5) If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chairman, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.
- [(6A) If within 30 minutes from the time fixed for the commencement of the meeting those persons attending the meeting do not constitute a quorum, the chairman may adjourn the meeting to such time and place as the chairman may appoint.
- (6B) Once only in the course of the meeting the chairman may, without an adjournment, declare the meeting suspended for any period up to 1 hour.
- (6C) The chairman may, and must if the meeting so resolves, adjourn the meeting to such time and place as seems to the chairman to be appropriate in the circumstances.
An adjournment under this paragraph must not be for a period of more than 14 days, subject to the direction of the court.
- (6D) If there are subsequently further adjournments, the final adjournment must not be to a day later than 14 days after the date on which the meeting was originally held.

³⁷¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.51(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(6E) Where a meeting is adjourned under this Rule, proofs and proxies may be used if lodged at any time up to 12.00 hours on the business day immediately before the adjourned meeting.

(6F) Paragraph (3) applies with regard to the venue fixed for a meeting adjourned under this Rule.
]³⁷²

(7) [...] ³⁷³
]³⁷⁴

[2.36.— The chairman at meetings

(1) At any meeting of creditors summoned by the administrator, either he shall be chairman, or a person nominated by him in writing to act in his place.

(2) A person so nominated must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the company; or
- (b) an employee of the administrator or his firm who is experienced in insolvency matters.

[(3) Where the chairman holds a proxy which includes a requirement to vote for a particular resolution and no other person proposes that resolution—

- (a) the chairman must propose it unless the chairman considers that there is good reason for not doing so, and
- (b) if the chairman does not propose it, the chairman must as soon as reasonably practicable after the meeting notify the principal of the reason why not.

] ³⁷⁵
]³⁷⁶

[2.37.— Meeting requisitioned by creditors

(1) The request for a creditors' meeting under paragraph 52(2) or 56(1) shall be in Form 2.21B. A request for an initial creditors' meeting shall be made within [8 business] ³⁷⁷ days of the date on which the administrator's statement of proposals is sent out. A request under paragraph 52(2) or 56(1) shall include—

- (a) a list of the creditors concurring with the request, showing the amounts of their respective debts in the administration;

³⁷² Rule 2.35(6A)-(6F) substituted for rule 2.35(6) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.51(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁷³ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.51(4) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁷⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁷⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.52(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁷⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁷⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.53(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(b) from each creditor concurring, written confirmation of his concurrence; and
 (c) a statement of the purpose of the proposed meeting,
 but [sub-paragraphs (a) and (b) do]³⁷⁸ not apply if the requisitioning creditor's debt is alone sufficient without the concurrence of other creditors.

(2) A meeting requested under paragraph 52(2) or 56(1) shall be held within 28 days of the administrator's receipt of the notice requesting the meeting.

(3) The expenses of summoning and holding a meeting at the request of a creditor shall be paid by that person, who shall deposit with the administrator security for their payment.

(4) The sum to be deposited shall be such as the administrator may determine, and he shall not act without the deposit having been made.

(5) The meeting may resolve that the expenses of summoning and holding it are to be payable out of the assets of the company as an expense of the administration.

(6) To the extent that any deposit made under this Rule is not required for the payment of expenses of summoning and holding the meeting, it shall be repaid to the person who made it.

]³⁷⁹

[2.37A Notice of meetings by advertisement only

(1) The court may order that notice of any meeting be given by advertisement and not by individual notice to the persons concerned.

(2) In considering whether to act under this Rule, the court must have regard to the cost of advertisement, the amount of assets available and the extent of the interest of creditors, members or any particular class of either.

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[2.38.— Entitlement to vote

(1) Subject as follows, at a meeting of creditors in administration proceedings a person is entitled to vote only if—

(a) he has given to the administrator, not later than 12.00 hours on the business day before the day fixed for the meeting, details in writing of the debt which—

(i) he claims to be due to him from the company; or

(ii) in relation to a member State liquidator, is claimed to be due to creditors in proceedings in relation to which he holds office;

³⁷⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.53(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁷⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁸⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.54 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (b) the claim has been duly admitted under [Rule 2.39 or]³⁸¹ this Rule; and
- (c) there has been lodged with the administrator any proxy which he intends to be used on his behalf,

and details of the debt must include any calculation for the purposes of Rules 2.40 to 2.42.

(2) The chairman of the meeting may allow a creditor to vote, notwithstanding that he has failed to comply with paragraph (1)(a), if satisfied that the failure was due to circumstances beyond the creditor's control.

(3) The chairman of the meeting may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim.

(4) Votes are calculated according to the amount of a creditor's claim as at the date on which the company entered administration, less any payments that have been made to him after that date in respect of his claim and any adjustment by way of set-off in accordance with Rule 2.85 as if that Rule were applied on the date that the votes are counted.

(5) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

(6) No vote shall be cast by virtue of a claim more than once on any resolution put to the meeting.

(7) Where—

- (a) a creditor is entitled to vote under this Rule [and Rule 2.39]³⁸² ;
- (b) has lodged his claim in one or more sets of other proceedings; and
- (c) votes (either in person or by proxy) on a resolution put to the meeting; and
- (d) the member State liquidator casts a vote in respect of the same claim,

only the creditor's vote shall be counted.

(8) Where—

- (a) a creditor has lodged his claim in more than one set of other proceedings; and
- (b) more than one member State liquidator seeks to vote by virtue of that claim,

the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.

(9) For the purposes of paragraph (6), the claim of a creditor and of any member State liquidator in relation to the same debt are a single claim.

(10) For the purposes of paragraphs (7) and (8), “other proceedings” means main proceedings, secondary proceedings or territorial proceedings in another member State.

]³⁸³

³⁸¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.55(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁸² Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.55(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁸³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[2.39.— Admission and rejection of claims

(1) At any creditors' meeting the chairman has power to admit or reject a creditor's claim for the purpose of his entitlement to vote; and the power is exercisable with respect to the whole or any part of the claim.

(2) The chairman's decision under this Rule, or in respect of any matter arising under Rule 2.38, is subject to appeal to the court by any creditor.

(3) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained.

(4) If on an appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks [just]³⁸⁴.

[(5) An application to the court by way of appeal under this Rule against a decision of the chairman must be made not later than 21 days after the date of the meeting.]³⁸⁵

(6) Neither the administrator nor any person nominated by him to be chairman is personally liable for costs incurred by any person in respect of an appeal to the court under this Rule, unless the court makes an order to that effect.

] ³⁸⁶

[2.40.— Secured creditors

(1) At a meeting of creditors a secured creditor is entitled to vote only in respect of the balance (if any) of his debt after deducting the value of his security as estimated by him.

(2) However, in a case where the administrator has made a statement under paragraph 52(1)(b) and an initial creditors' meeting has been requisitioned under paragraph 52(2) then a secured creditor is entitled to vote in respect of the full value of his debt without any deduction of the value of his security.

] ³⁸⁷

[2.41. Holders of negotiable instruments

A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing—

- (a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made (or,

³⁸⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁸⁵ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.56(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁸⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁸⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

in the case of a company, which has not gone into liquidation), as a security in his hands;
and

(b) to estimate the value of the security and, for the purpose of his entitlement to vote [(but not for dividend)]³⁸⁸, to deduct it from his claim.

] ³⁸⁹

[2.42.— Hire-purchase, conditional sale and chattel leasing agreements

(1) Subject as follows, an owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to him by the company on the date that the company entered administration.

(2) In calculating the amount of any debt for this purpose, no account shall be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the making of an administration application, a notice of intention to appoint an administrator or any matter arising as a consequence, or of the company entering administration.

] ³⁹⁰

[2.43.— Resolutions

(1) Subject to paragraph (2), at a creditors' meeting in administration proceedings, a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of it.

(2) Any resolution is invalid if those voting against it include more than half in value of the creditors to whom notice of the meeting was sent and who are not, to the best of the chairman's belief, persons connected with the company.

] ³⁹¹

2.44.— [...] ³⁹²

[2.44A Minutes

(1) The chairman of the meeting must cause minutes of its proceedings to be kept.

(2) The minutes must be authenticated by the chairman, and be retained by the chairman as part of the records of the administration.

³⁸⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.57(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁸⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁹⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁹¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁹² Rule 2.44A substituted for rule 2.44 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.58 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (3) The chairman must also cause to be made up and kept a list of all the creditors who attended the meeting.
- (4) The minutes must include—
- (a) a list of the names of creditors who attended (personally or by proxy) and their claims,
 - (b) if a creditors' committee has been established, the names and addresses of those elected to be members of the committee, and
 - (c) a record of every resolution passed.

]³⁹³

[2.45.— Revision of the administrator's proposals

- (1) The administrator shall, under paragraph 54, make a statement setting out the proposed revisions to his proposals which he shall attach to Form 2.22B and send to all those to whom he is required to send a copy of his revised proposals.
- (2) The statement of revised proposals shall include—
- (a) details of the court where the proceedings are and the relevant court reference number;
 - (b) the full name, registered address, registered number and any other trading names of the company;
 - (c) details relating to his appointment as administrator, including the date of appointment and the person making the administration application or appointment;
 - (d) the names of the directors and secretary of the company and details of any shareholdings in the company they may have;
 - (e) a summary of the initial proposals and the reason(s) for proposing a revision;
 - (f) details of the proposed revision including details of the administrator's assessment of the likely impact of the proposed revision upon creditors generally or upon each class of creditors (as the case may be);
 - (g) where a proposed revision relates to the ending of the administration by a creditors' voluntary liquidation and the nomination of a person to be the proposed liquidator of the company [—]³⁹⁴
 - [(i) details of the proposed liquidator,
 - (ii) where applicable, the declaration required by section 231, and
 - (iii) a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator in accordance with paragraph 83(7)(a) and Rule 2.117A(2)(b); and]³⁹⁴
 - (h) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions.

³⁹³ Rule 2.44A substituted for rule 2.44 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.58 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁹⁴ Rule 2.45(2)(g)(i)-(iii) substituted for words by Insolvency (Amendment) Rules 2010/686 Sch.1 para.59(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) Subject to paragraph 54(3) , within 5 [business]³⁹⁵ days of sending out the statement in paragraph (1) above, the administrator shall send a copy of the statement to every member of the company.

[(4) Any notice to be published by the administrator acting under paragraph 54(3) shall be advertised in such manner as the administrator thinks fit.

(5) The notice must be published as soon as reasonably practicable after the administrator sends the statement to the creditors and in addition to the standard contents must state—

- (a) that members can write for a copy of the statement of revised proposals for the administration; and
- (b) the address to which to write.

] ³⁹⁶

] ³⁹⁷

[2.46. Notice to creditors

As soon as reasonably practicable after the conclusion of a meeting of creditors to consider the administrator's proposals or revised proposals, the administrator shall—

- [(a) send notice in Form 2.23B of the result of the meeting to every creditor and to every other person who received a copy of the original proposals,
- (b) attach a copy of the proposals considered at the meeting to the notice sent to each creditor who did not receive notice of the meeting but of whose claim the administrator has subsequently become aware, and
- (c) file with the court a copy of the proposals considered at the meeting and notice of the result of the meeting.] ³⁹⁸

] ³⁹⁹

[2.47.— Reports to creditors

(1) “Progress report” means a report which includes—

- (a) details of the court where the proceedings are and the relevant court reference number;
- (b) full details of the company's name, address of registered office and registered number;
- (c) full details of the administrator's name and address, date of appointment and name and address of appointor, including any changes in office-holder, and, in the case of joint administrators, their functions as set out in the statement made for the purposes of paragraph 100(2);

³⁹⁵ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.59(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁹⁶ Existing text renumbered as rule 2.45(5) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.59(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁹⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

³⁹⁸ Rule 2.46(a)-(c) substituted for rule 2.46(a) and (b) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.60(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

³⁹⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

- (d) details of any extensions to the initial period of appointment;
- [(da) details of the basis fixed for the remuneration of the administrator under Rule 2.106 (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);
- (db) if the basis of remuneration has been fixed, a statement of—
 - (i) the remuneration charged by the administrator during the period of the report (subject to paragraph (2A)), and
 - (ii) where the report is the first to be made after the basis has been fixed, the remuneration charged by the administrator during the periods covered by the previous reports (subject to paragraph (2A)), together with a description of the things done by the administrator during those periods in respect of which the remuneration was charged,
 irrespective in either case of whether payment was made in respect of that remuneration during the period of the report;
- (dc) a statement of the expenses incurred by the administrator during the period of the report, irrespective of whether payment was made in respect of them during that period;]⁴⁰⁰
- (e) details of progress during the period of the report, including a receipts and payments account (as detailed in paragraph (2) below);
- (f) details of any assets that remain to be realised; [...] ⁴⁰¹
- [(fa) a statement of the creditors' right to request information under Rule 2.48A and their right to challenge the administrator's remuneration and expenses under Rule 2.109; and]⁴⁰²
- (g) any other relevant information for the creditors.

[(2) A receipts and payments account must be in the form of an abstract showing receipts and payments during the period of the report and, where the administrator has ceased to act, must also include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A⁴⁰³ .

(2A) Where the basis for the remuneration is a set amount under Rule 2.106(2)(c), it may be shown as that amount without any apportionment to the period of the report.

(2B) Where the administrator has made a statement of pre-administration costs under Rule 2.33(2)(ka)—

- (a) if they are approved under Rule 2.67A, the first progress report after the approval must include a statement setting out the date of the approval and the amounts approved;
- (b) each successive report, so long as any of the costs remain unapproved, must include a statement either—
 - (i) of any steps taken to get approval, or

⁴⁰⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.61(2)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁰¹ Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.61(2)(b) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁰² Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.61(2)(c) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁰³ Section 176A was inserted by 2002 c. 40, s. 252.

- (ii) that the administrator has decided, or (as the case may be) another insolvency practitioner entitled to seek approval has told the administrator of that practitioner's decision, not to seek approval.

]⁴⁰⁴

[(3) The progress report must, except where paragraph (3A) or (3B) applies, cover the period of 6 months commencing on the date on which the company entered administration and every subsequent period of 6 months.

(3A) The period to be covered by a progress report ends on the date when an administrator ceases to act, and the period to be covered by each subsequent progress report is each successive period of 6 months beginning immediately after that date (subject to the further application of this paragraph when another administrator ceases to act).

(3B) The sending of a progress report to creditors under Rule 2.112 (application for extension of administration) also satisfies paragraph (3) or (3A) of this Rule in respect of the period covered by that report; and the period to be covered by each subsequent progress report under this Rule is each successive period of 6 months beginning with the end of the period covered by the report under Rule 2.112.]⁴⁰⁵

[(4) The administrator must, within 1 month of the end of the period covered by the report, send-

- (a) a copy to the creditors attached to Form 2.24B, and
- (b) a copy to the registrar of companies;

but this paragraph does not apply when the period covered by the report is that of a final progress report under Rule 2.110.

]⁴⁰⁶

(5) The court may, on the administrator's application, extend the period of 1 month mentioned in paragraph (4) above, or make such other order in respect of the content of the report as it thinks [just]⁴⁰⁷.

(6) If the administrator makes default in complying with this Rule, he is liable to a fine and, for continued contravention, to a daily default fine.

]⁴⁰⁸

⁴⁰⁴ Rule 2.47(2)-(2B) substituted for rule 2.47(2) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.61(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁰⁵ Rule 2.47(3)-(3B) substituted for rule 2.47(3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.61(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁰⁶ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.61(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁰⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁰⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[2.48.— Correspondence instead of creditors' meetings]

(1) The administrator may seek to obtain the passing of a resolution by the creditors by sending a notice in Form 2.25B to every creditor who is entitled to be notified of a creditors' meeting under Rule 2.35(4).

(2) In order to be counted, votes must be received by the administrator by 12.00 hours on the closing date specified on Form 2.25B and must be accompanied by the statement in writing on entitlement to vote required by Rule 2.38 [unless it has already been given to the administrator under that Rule]⁴⁰⁹ .

(3) If any votes are received without the statement as to entitlement, or the administrator decides that the creditor is not entitled to vote according to Rules 2.38 and 2.39, then that creditor's votes shall be disregarded.

(4) The closing date shall be set at the discretion of the administrator. In any event it must not be set less than 14 days from the date of issue of the Form 2.25B.

(5) For any business to be transacted the administrator must receive at least 1 valid Form 2.25B by the closing date specified by him.

(6) If no valid Form 2.25B is received by the closing date specified then the administrator shall call a meeting of the creditors in accordance with Rule 2.35.

(7) Any single creditor, or a group of creditors, of the company whose debt(s) amount to at least 10% of the total debts of the company may, within 5 business days from the date of the administrator sending out a resolution or proposals, require him to summon a meeting of creditors to consider the matters raised therein in accordance with Rule 2.37. Any meeting called under this Rule shall be conducted in accordance with Rule 2.35.

(8) [...] ⁴¹⁰

(9) A reference in these Rules to anything done, or required to be done, at, or in connection with, or in consequence of, a creditors' meeting includes a reference to anything done in the course of correspondence in accordance with this Rule.

]⁴¹¹

[2.48A Creditors' request for further information]

(1) If—

(a) within 21 days of receipt of a progress report under Rule 2.47—

(i) a secured creditor, or

(ii) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question), or

(b) with the permission of the court upon an application made within that period of 21 days, any unsecured creditor,

⁴⁰⁹ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.62(2) (April 6, 2010: addition has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴¹⁰ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.62(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴¹¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

makes a request in writing to the administrator for further information about remuneration or expenses (other than pre-administration costs) set out in a statement required by Rule 2.47(1)(db) or (dc), the administrator must, within 14 days of receipt of the request, comply with paragraph (2).

(2) The administrator complies with this paragraph by either—

- (a) providing all of the information asked for, or
- (b) so far as the administrator considers that—
 - (i) the time or cost of preparation of the information would be excessive, or
 - (ii) disclosure of the information would be prejudicial to the conduct of the administration or might reasonably be expected to lead to violence against any person, or
 - (iii) the administrator is subject to an obligation of confidentiality in respect of the information,

giving reasons for not providing all of the information.

(3) Any creditor, who need not be the same as the creditor who requested further information under paragraph (1), may apply to the court within 21 days of—

- (a) the giving by the administrator of reasons for not providing all of the information asked for, or
- (b) the expiry of the 14 days provided for in paragraph (1),

and the court may make such order as it thinks just.

(4) Without prejudice to the generality of paragraph (3), the order of the court under that paragraph may extend the period of 8 weeks provided for in Rule 2.109(1B) by such further period as the court thinks just.

]⁴¹²

*[SECTION B: COMPANY MEETINGS]*⁴¹³

[2.49.— Venue and conduct of company meeting

(1) Where the administrator summons a meeting of members of the company, he shall fix a venue for it having regard to their convenience.

(2) The chairman of the meeting shall be the administrator or a person nominated by him in writing to act in his place.

(3) A person so nominated must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the company; or
- (b) an employee of the administrator or his firm who is experienced in insolvency matters.

(4) If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chairman, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

⁴¹² Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.63 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴¹³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[(5A) Subject to anything to the contrary in the Act and these Rules, the meeting must be summoned and conducted—

(a) in the case of a company incorporated—

(i) in England and Wales, or in Wales, or

(ii) outside the United Kingdom other than in an EEA state,

in accordance with the law of England and Wales, including any applicable provision in or made under the Companies Act⁴¹⁴ ;

(b) in the case of a company incorporated in an EEA state other than the United Kingdom, in accordance with the law of that state applicable to meetings of the company.

] ⁴¹⁵

(7) The chairman of the meeting shall cause minutes of its proceedings to be entered in the company's minute book.

] ⁴¹⁶

[CHAPTER 7

THE CREDITORS' COMMITTEE] ⁴¹⁷

[2.50.— Constitution of committee

(1) Where it is resolved by a creditors' meeting to establish a creditors' committee for the purposes of the administration, the committee shall consist of at least 3 and not more than 5 creditors of the company elected at the meeting.

[(2) A person claiming to be a creditor is entitled to be a member of the committee provided that—

(a) that person's claim has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distribution or dividend; and

(b) the claim mentioned in sub-paragraph (a) is not fully secured.

] ⁴¹⁸

(3) A body corporate may be a member of the committee, but it cannot act as such otherwise than by a representative appointed under Rule 2.55 below.

] ⁴¹⁹

⁴¹⁴ 2006 c. 46.

⁴¹⁵ Rule 2.49(5A) substituted for rule 2.49(5) and (6) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.64(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴¹⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴¹⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴¹⁸ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.65(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴¹⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[2.51.— Formalities of establishment

(1) The creditors' committee does not come into being, and accordingly cannot act, until the administrator has issued a certificate in Form 2.26B of its due constitution.

[(1A) If the chairman of the creditors' meeting which resolves to establish the committee is not the administrator, the chairman must as soon as reasonably practicable give notice of the resolution to the administrator and inform the administrator of the names and addresses of the persons elected to be members of the committee.]⁴²⁰

(2) No person may act as a member of the committee unless and until he has agreed to do so and, unless the relevant proxy or authorisation contains a statement to the contrary, such agreement may be given by his proxy-holder [...] ⁴²¹ present at the meeting establishing the committee [or, in the case of a corporation, by its duly appointed representative] ⁴²² .

(3) The administrator's certificate of the committee's due constitution shall not be issued [before the minimum number of members set out in Rule 2.50 elected] ⁴²³ to be members of the committee have agreed to act and shall be issued as soon as reasonably practicable thereafter.

(4) As and when the others (if any) agree to act, the administrator shall issue an amended certificate in Form 2.26B.

(5) The certificate, and any amended certificate, shall be [...] ⁴²⁴ sent to the registrar of companies by the administrator, as soon as reasonably practicable.

(6) If after the first establishment of the committee there is any change in its membership, the administrator shall as soon as reasonably practicable report the change to the [registrar of companies by filing an amended certificate] ⁴²⁵ .
] ⁴²⁶

⁴²⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.66(2) (April 6, 2010: addition has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴²¹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.66(3)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴²² Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.66(3)(b) (April 6, 2010: addition has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴²³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.66(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴²⁴ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.66(5) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴²⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.66(6) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴²⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[2.52.— Functions and meetings of the committee

(1) [In addition to any functions conferred on the creditors' committee by any provision of the Act, the]⁴²⁷ creditors' committee shall assist the administrator in discharging his functions, and act in relation to him in such manner as may be agreed from time to time.

(2) Subject as follows, meetings of the committee shall be held when and where determined by the administrator.

[(3) The administrator must call a first meeting of the committee to take place within 6 weeks of the committee's establishment.

(3A) After the calling of the first meeting, the administrator must call a meeting—

(a) if so requested by a member of the committee or the member's representative (the meeting then to be held within 21 days of the request being received by the administrator); and

(b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

]⁴²⁸

(4) [Subject to paragraph (5), the]⁴²⁹ administrator shall give [5 business]⁴³⁰ days' written notice of the venue of any meeting to every member of the committee (or his representative designated for that purpose), unless in any case the requirement of notice has been waived by or on behalf of any member. Waiver may be signified either at or before the meeting.

[(5) Where the administrator has determined that a meeting should be conducted and held in the manner referred to in Rule 12A.26(2), the notice period mentioned in paragraph (4) is 7 business days.]⁴³¹

]⁴³²

[2.53.— The chairman at meetings

[(1) The chairman at any meeting of the creditors' committee must be the administrator, or a person appointed by the administrator in writing to act.]⁴³³

⁴²⁷ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.67(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴²⁸ Rule 2.52(3) and (3A) substituted for rule 2.52(3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.67(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴²⁹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.67(4)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴³⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.67(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴³¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.67(5) (April 6, 2010: addition has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴³² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴³³ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.68(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (2) A person so [appointed]⁴³⁴ must be either—
- (a) one who is qualified to act as an insolvency practitioner in relation to the company; or
 - (b) an employee of the administrator or his firm who is experienced in insolvency matters.
-] ⁴³⁵

[2.54. Quorum

A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least 2 members are present or represented.] ⁴³⁶

[2.55.— Committee-members' representatives

(1) A member of the committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.

(2) A person acting as a committee-member's representative must hold a letter of authority entitling him so to act (either generally or specially) and [authenticated] ⁴³⁷ by or on behalf of the committee-member, and for this purpose any proxy [...] ⁴³⁸ in relation to any meeting of creditors of the company shall, unless it contains a statement to the contrary, be treated as a letter of authority to act generally [authenticated] ⁴³⁷ by or on behalf of the committee-member.

(3) The chairman at any meeting of the committee may call on a person claiming to act as a committee-member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

[(4) No member may be represented by—

- (a) another member of the committee;
- (b) a person who is at the same time representing another committee member;
- (c) a body corporate;
- (d) an undischarged bankrupt;
- (e) a disqualified director; or
- (f) a person who is subject to a bankruptcy restrictions order (including an interim order), a bankruptcy restrictions undertaking, a debt relief restrictions order (including an interim order) or a debt relief restrictions undertaking.

] ⁴³⁹

(5) [...] ⁴⁴⁰

⁴³⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.68(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴³⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴³⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴³⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴³⁸ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.69(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴³⁹ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.69(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(6) Where a member's representative [authenticates]⁴³⁷ any document on the member's behalf, the fact that he so [authenticates]⁴³⁷ must be stated below his [authentication]⁴³⁷.]⁴⁴¹

[2.56. Resignation

A member of the committee may resign by notice in writing delivered to the administrator.]⁴⁴²

[2.57.— Termination of membership

- (1) Membership of the creditors' committee is automatically terminated if the member—
- (a) becomes bankrupt [...] ⁴⁴³ ; or
 - (b) at 3 consecutive meetings of the committee is neither present nor represented (unless at the third of those meetings it is resolved that this Rule is not to apply in his case); or
 - [(c) ceases to be a creditor and a period of 3 months has elapsed from the date that that member ceased to be a creditor or is found never to have been a creditor.]⁴⁴⁴
- (2) However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.]⁴⁴⁵

[2.58. Removal

A member of the committee may be removed by resolution at a meeting of creditors' at least 14 days' notice having been given of the intention to move that resolution.]⁴⁴⁶

[2.59.— Vacancies

- (1) The following applies if there is a vacancy in the membership of the creditors' committee.
- (2) The vacancy need not be filled if the administrator and a majority of the remaining members of the committee so agree, provided that the total number of members does not fall below [3]⁴⁴⁷ .

⁴⁴⁰ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.69(4) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁴¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁴² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁴³ Words repealed by Insolvency (Amendment) Rules 2004/584 rule 5 (April 1, 2004)

⁴⁴⁴ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.70(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁴⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁴⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁴⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.71(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) The administrator may appoint any creditor (being qualified under the Rules to be a member of the committee) to fill the vacancy, if a majority of the other members of the committee agree to the appointment, and the creditor concerned consents to act.

[(4) Alternatively, a meeting of creditors may resolve that a creditor be appointed (with that creditor's consent) to fill the vacancy.

(5) Where the vacancy is filled by an appointment made by a creditors' meeting at which the administrator is not present, the chairman of the meeting must report to the administrator the appointment which has been made.]⁴⁴⁸

] ⁴⁴⁹

[2.60.— Procedure at meetings

(1) At any meeting of the creditors' committee, each member of it (whether present himself, or by his representative) has one vote; and a resolution is passed when a majority of the members present or represented have voted in favour of it.

[(2) Every resolution passed must be recorded in writing and authenticated by the chairman, either separately or as part of the minutes of the meeting, and the record must be kept with the records of the proceedings.]⁴⁵⁰

] ⁴⁵¹

[2.61.— Resolutions of creditors' committee [otherwise than at a meeting]]⁴⁵²

(1) In accordance with this Rule, the administrator may seek to obtain the agreement of members of the creditors' committee to a resolution by sending to every member (or his representative designated for the purpose) a copy of the proposed resolution.

(2) Where the administrator makes use of the procedure allowed by this Rule, he shall send out to members of the committee or their representatives (as the case may be) a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent.

(3) Any member of the committee may, within 7 business days from the date of the administrator sending out a resolution, require him to summon a meeting of the committee to consider matters raised by the resolution.

⁴⁴⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.71(3) (April 6, 2010: addition has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁴⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁵⁰ Rule 2.60(2) substituted for rule 2.60(2) and (3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.72(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁵¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁵² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.73(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(4) In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the administrator is notified in writing by a majority of the members that they concur with it.

(5) A copy of every resolution passed under this Rule, and a note that the committee's concurrence was obtained, shall be [kept with the records of the proceedings]⁴⁵³ .

]⁴⁵⁴

[2.62.— Information from administrator

(1) Where the committee resolves to require the attendance of the administrator under paragraph 57(3)(a) , the notice to him shall be in writing [authenticated]⁴⁵⁵ by the majority of the members of the committee for the time being. A member's representative may [authenticate]⁴⁵⁵ for him.

(2) The meeting at which the administrator's attendance is required shall be fixed by the committee for a business day, and shall be held at such time and place as he determines.

(3) Where the administrator so attends, the members of the committee may elect any one of their number to be chairman of the meeting, in place of the administrator or a nominee of his.

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[2.63.— Expenses of members

(1) Subject as follows, the administrator shall, out of the assets of the company, defray [, in the prescribed order of priority,]⁴⁵⁷ any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in relation to their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the administration.

(2) Paragraph (1) does not apply to any meeting of the committee held within 6 weeks of a previous meeting, unless the meeting in question is summoned at the instance of the administrator.

]⁴⁵⁸

⁴⁵³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.73(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁵⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁵⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁵⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁵⁷ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.74(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁵⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[2.64.— Members' dealing with the company

(1) Membership of the committee does not prevent a person from dealing with the company while the company is in administration, provided that any transactions in the course of such dealings are in good faith and for value.

(2) The court may, on the application of any person interested, set aside any transaction which appears to it to be contrary to the requirements of this Rule, and may give such consequential directions as it thinks [just]⁴⁵⁹ for compensating the company for any loss which it may have incurred in consequence of the transaction.

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[2.65. Formal defects

The acts of the creditors' committee established for any administration are valid notwithstanding any defect in the appointment, election or qualifications of any member of the committee or any committee-member's representative or in the formalities of its establishment.]⁴⁶¹

[CHAPTER 8**DISPOSAL OF CHARGED PROPERTY]⁴⁶²****[2.62.—**

[Existing Rule 2.62 is not repealed but has been substituted as part of the amendment substituting Part 2.]⁴⁶³]⁴⁶⁴

[2.66.—

(1) The following applies where the administrator applies to the court under paragraphs 71 or 72 for authority to dispose of property of the company which is subject to a security (other than a floating charge), or goods in the possession of the company under a hire purchase agreement.

(2) The court shall fix a venue for the hearing of the application, and the administrator shall as soon as reasonably practicable give notice of the venue to the person who is the holder of the security or, as the case may be, the owner under the agreement.

(3) If an order is made under paragraphs 71 or 72 the court shall send two sealed copies to the administrator.

⁴⁵⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁶⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁶¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁶² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁶³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁶⁴ Added by Insolvency (Amendment) Rules 2002/1307 rule 5(8) (May 31, 2002)

(4) The administrator shall send one of them to that person who is the holder of the security or owner under the agreement.

[(5) The administrator must send a copy of the sealed order to the registrar of companies.]⁴⁶⁵
]⁴⁶⁶

[CHAPTER 9

EXPENSES OF THE ADMINISTRATION]⁴⁶⁷

[2.67.—

- (1) The expenses of the administration are payable in the following order of priority—
- (a) expenses properly incurred by the administrator in performing his functions in the administration of the company;
 - (b) the cost of any security provided by the administrator in accordance with the Act or the Rules;
 - (c) where an administration order was made, the costs of the applicant and any person appearing on the hearing of the application and where the administrator was appointed otherwise than by order of the court, any costs and expenses of the appointor in connection with the making of the appointment and the costs and expenses incurred by any other person in giving notice of intention to appoint an administrator;
 - (d) any amount payable to a person employed or authorised, under Chapter 5 of this Part of the Rules, to assist in the preparation of a statement of affairs or statement of concurrence;
 - (e) any allowance made, by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs or statement of concurrence;
 - (f) any necessary disbursements by the administrator in the course of the administration (including any expenses incurred by members of the creditors' committee or their representatives and allowed for by the administrator under Rule 2.63, but not including any payment of corporation tax in circumstances referred to in sub-paragraph (j) below);
 - (g) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the company, as required or authorised under the Act or the Rules;
 - [(h) the administrator's remuneration the basis of which has been fixed under Chapter 11 of this Part of the Rules and unpaid pre-administration costs approved under Rule 2.67A;]⁴⁶⁸
 - (j) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company (without regard to whether the realisation is effected by the administrator, a secured creditor, or a receiver or manager appointed to deal with a security).

⁴⁶⁵ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.75(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁶⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁶⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁶⁸ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.76(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) The priorities laid down by paragraph (1) of this Rule are subject to the power of the court to make orders under paragraph (3) of this Rule where the assets are insufficient to satisfy the liabilities.

(3) The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the administration in such order of priority as the court thinks just.

[(4) For the purposes of paragraph 99(3), the former administrator's remuneration and expenses shall comprise all those items set out in paragraph (1) of this Rule.]⁴⁶⁹
⁴⁷⁰

[2.67A Pre-administration costs

(1) Where the administrator has made a statement of pre-administration costs under Rule 2.33(2)(ka), the creditors' committee may determine whether and to what extent the unpaid pre-administration costs set out in the statement are approved for payment.

(2) But if—

- (a) there is no creditors' committee, or
- (b) there is but it does not make the necessary determination, or
- (c) it does do so but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient,

paragraph (3) applies.

(3) When this paragraph applies, determination of whether and to what extent the unpaid pre-administration costs are approved for payment shall be—

- (a) by resolution of a meeting of creditors other than in a case falling in sub-paragraph (b), or
- (b) in a case where the administrator has made a statement under paragraph 52(1)(b)—
 - (i) by the approval of each secured creditor of the company, or
 - (ii) if the administrator has made, or intends to make, a distribution to preferential creditors, by the approval of—
 - (aa) each secured creditor of the company, and
 - (bb) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

(4) The administrator must call a meeting of the creditors' committee or of creditors if so requested for the purposes of paragraphs (1) to (3) by another insolvency practitioner who has charged fees or incurred expenses as pre-administration costs; and the administrator must give notice of the meeting within 28 days of receipt of the request.

(5) If—

- (a) there is no determination under paragraph (1) or (3), or

⁴⁶⁹ Inserted subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 8 (April 1, 2005: insertion has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

⁴⁷⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

(b) there is such a determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient,
the administrator (where the fees were charged or expenses incurred by the administrator) or other insolvency practitioner (where the fees were charged or expenses incurred by that practitioner) may apply to the court for a determination of whether and to what extent the unpaid pre-administration costs are approved for payment.

(6) Paragraphs (2) to (4) of Rule 2.108 apply to an application under paragraph (5) of this Rule as they do to an application under paragraph (1) of that Rule (references to the administrator being read as references to the insolvency practitioner who has charged fees or incurred expenses as pre-administration costs).

(7) Where the administrator fails to call a meeting of the creditors' committee or of creditors in accordance with paragraph (4), the other insolvency practitioner may apply to the court for an order requiring the administrator to do so.

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[CHAPTER 10

DISTRIBUTIONS TO CREDITORS] ⁴⁷²

[SECTION A: APPLICATION OF CHAPTER AND GENERAL] ⁴⁷³

[2.68.—

(1) This Chapter applies where the administrator makes, or proposes to make, a distribution to any class of creditors [other than secured creditors] ⁴⁷⁴ . Where the distribution is to a particular class of creditors, references in this Chapter to creditors shall, in so far as the context requires, be a reference to that class of creditors only.

(2) The administrator shall give notice to the creditors of his intention to declare and distribute a dividend in accordance with Rule 2.95.

(3) Where it is intended that the distribution is to be a sole or final dividend, the administrator shall, after the date specified in the notice referred to in paragraph (2)—

- (a) defray any outstanding expenses of a liquidation (including any of the items mentioned in Rule 4.218) or provisional liquidation that immediately preceded the administration;
- (b) defray any items payable in accordance with the provisions of paragraph 99;
- (c) defray any amounts (including any debts or liabilities and his own remuneration and expenses) which would, if the administrator were to cease to be the administrator of the

⁴⁷¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.77 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁷² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁷³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁷⁴ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.78(2) (April 6, 2010: addition has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

company, be payable out of the property of which he had custody or control in accordance with the provisions of paragraph 99; and

(d) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.

(4) The court may, on the application of any person, postpone the date specified in the notice.

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[2.69. Debts of insolvent company to rank equally

Debts other than preferential debts rank equally between themselves in the administration and, after the preferential debts, shall be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.]

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[2.70.— Supplementary provisions as to dividend

(1) In the calculation and distribution of a dividend the administrator shall make provision for—

- (a) any debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs;
- (b) any debts which are the subject of claims which have not yet been determined; and
- (c) disputed proofs and claims.

(2) A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—

- (a) when he has proved that debt he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive; and
- (b) any dividends payable under sub-paragraph (a) shall be paid before the money is applied to the payment of any such further dividend.

(3) No action lies against the administrator for a dividend; but if he refuses to pay a dividend the court may, if it thinks [just]⁴⁷⁷, order him to pay it and also to pay, out of his own money—

- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838, from the time when it was withheld; and
- (b) the costs of the proceedings in which the order to pay is made.

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⁴⁷⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁷⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁷⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁷⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[2.71. Division of unsold assets

[(1) The administrator may, with the permission of the creditors' committee, or if there is no creditors' committee, the creditors, divide in its existing form amongst the company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) The administrator must—

(a) in the receipts and payments account included in the final progress report under Chapter 12 of this Part, state the estimated value of the property divided amongst the creditors of the company during the period to which the report relates, and

(b) as a note to the account, provide details of the basis of the valuation.

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[SECTION B: MACHINERY OF PROVING A DEBT]⁴⁸¹

[2.72.— Proving a debt

(1) A person claiming to be a creditor of the company and wishing to recover his debt in whole or in part must (subject to any order of the court to the contrary) submit his claim in writing to the administrator.

(2) A creditor who claims is referred to as “proving” for his debt and a document by which he seeks to establish his claim is his “proof”.

(3) Subject to the next paragraph, a proof must—

(a) be made out by, or under the direction of, the creditor and [authenticated]⁴⁸² by him or a person authorised in that behalf; and

(b) state the following matters—

(i) the creditor's name and address;

[(ia) if the creditor is a company, its registered number;]⁴⁸³

[(ii) the total amount of the creditor's claim (including value added tax) as at the date on which the company entered administration (or, if the company was in liquidation when it entered administration, the date on which it went into liquidation), less any payments made after that date in respect of the claim, any deduction under Rule 2.84 and any adjustment by way of set-off in accordance with Rule 2.85;]⁴⁸⁴

⁴⁷⁹ Existing rule 2.71 is renumbered as rule 2.71(1) and rule 2.71(2) is added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.79 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁸⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁸¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁸² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁸³ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.80(2)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (iii) whether or not the claim includes outstanding uncapitalised interest;
- (iv)-(v) [...] ⁴⁸⁵
- (vi) particulars of how and when the debt was incurred by the company;
- (vii) particulars of any security held, the date on which it was given and the value which the creditor puts on it;
- (viii) details of any reservation of title in respect of goods to which the debt refers; and
- (ix) the name, address and authority of the person [authenticating] ⁴⁸² the proof (if other than the creditor himself).

(4) There shall be specified in the proof details of any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such document be attached to the proof or submitted with it.

(5) The administrator may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

[(6) Where an administration is immediately preceded by a winding up, a creditor proving in the winding up is deemed to have proved in the administration.] ⁴⁸⁶
] ⁴⁸⁷

2.73.— [...] ⁴⁸⁸

[2.74. Costs of proving

Unless the court otherwise orders—

- (a) every creditor bears the cost of proving his own debt, including costs incurred in providing documents or evidence under Rule 2.72(5); and
- (b) costs incurred by the administrator in estimating the quantum of a debt under Rule 2.81 are payable out of the assets as an expense of the administration.

] ⁴⁸⁹

[2.75. Administrator to allow inspection of proofs

The administrator shall, so long as proofs lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

⁴⁸⁴ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.80(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁸⁵ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.80(2)(c) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁸⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.80(3) (April 6, 2010: addition has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁸⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁸⁸ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁸⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

- (a) any creditor who has submitted a proof of debt (unless his proof has been wholly rejected for purposes of dividend or otherwise);
- (b) any contributory of the company; and
- (c) any person acting on behalf of either of the above.

]⁴⁹⁰

[2.76.— New administrator appointed

(1) If a new administrator is appointed in place of another, the former administrator [must as soon as reasonably practicable]⁴⁹¹ transmit to him all proofs which he has received, together with an itemised list of them.

(2) The new administrator shall [authenticate]⁴⁹² the list by way of receipt for the proofs, and return it to his predecessor.

[(3) From then on, all proofs of debt must be sent to and retained by the new administrator.]⁴⁹³
]⁴⁹⁴

[2.77.— Admission and rejection of proofs for dividend

(1) A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount.

(2) If the administrator rejects a proof in whole or in part, he shall prepare a written statement of his reasons for doing so, and send it as soon as reasonably practicable to the creditor.

]⁴⁹⁵

[2.78.— Appeal against decision on proof

(1) If a creditor is dissatisfied with the administrator's decision with respect to his proof (including any decision on the question of preference), he may apply to the court for the decision to be reversed or varied. The application must be made within 21 days of his receiving the statement sent under Rule 2.77(2).

⁴⁹⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁹¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.81(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁹² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁹³ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.81(3) (April 6, 2010: addition has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁹⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁹⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

(2) [A member or any]⁴⁹⁶ other creditor may, if dissatisfied with the administrator's decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the administrator's decision.

(3) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to the creditor who lodged the proof in question (if it is not himself) and the administrator.

(4) The administrator shall, on receipt of the notice, file with the court the relevant proof, together (if appropriate) with a copy of the statement sent under Rule 2.77(2).

[(4A) Where the application is made by a member, the court must not disallow the proof (in whole or in part) unless the member shows that there is (or would be but for the amount claimed in the proof), or that it is likely that there will be (or would be but for the amount claimed in the proof), a surplus of assets to which the company would be entitled.]⁴⁹⁷

(5) After the application has been heard and determined, the proof shall, unless it has been wholly disallowed, be returned by the court to the administrator.

(6) The administrator is not personally liable for costs incurred by any person in respect of an application under this Rule unless the court otherwise orders.

] ⁴⁹⁸

[2.79. Withdrawal or variation of proof

A creditor's proof may at any time, by agreement between himself and the administrator, be withdrawn or varied as to the amount claimed.]⁴⁹⁹

[2.80.— Expunging of proof by the court

(1) The court may expunge a proof or reduce the amount claimed—

- (a) on the administrator's application, where he thinks that the proof has been improperly admitted, or ought to be reduced; or
- (b) on the application of a creditor, if the administrator declines to interfere in the matter.

(2) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant—

- (a) in the case of an application by the administrator, to the creditor who made the proof; and
- (b) in the case of an application by a creditor, to the administrator and to the creditor who made the proof (if not himself).

⁴⁹⁶ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.82(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁹⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.82(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁴⁹⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁴⁹⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

] ⁵⁰⁰**SECTION C:***[QUANTIFICATION OF CLAIMS]*⁵⁰¹**[2.81.— Estimate of quantum**

(1) The administrator shall estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value; and he may revise any estimate previously made, if he thinks fit by reference to any change of circumstances or to information becoming available to him. He shall inform the creditor as to his estimate and any revision of it.

(2) Where the value of a debt is estimated under this Rule, the amount provable in the administration in the case of that debt is that of the estimate for the time being.

] ⁵⁰²**[2.82. Negotiable instruments, etc**

Unless the administrator allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or his authorised representative to be a true copy.] ⁵⁰³

[2.83.— Secured creditors

(1) If a secured creditor realises his security, he may prove for the balance of his debt, after deducting the amount realised.

(2) If a secured creditor voluntarily surrenders his security for the general benefit of creditors, he may prove for his whole debt, as if it were unsecured.

] ⁵⁰⁴

⁵⁰⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁰¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁰² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁰³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁰⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[2.84. Discounts

There shall in every case be deducted from the claim all trade and other discounts which would have been available to the company but for its administration except any discount for immediate, early or cash settlement.]⁵⁰⁵

[2.85— Mutual credits and set-off

(1) This Rule applies where the administrator, being authorised to make the distribution in question, has, pursuant to Rule 2.95 given notice that he proposes to make it.

(2) In this Rule “mutual dealings” means mutual credits, mutual debts or other mutual dealings between the company and any creditor of the company proving or claiming to prove for a debt in the administration but does not include any of the following—

- (a) any debt arising out of an obligation incurred after the company entered administration;
- (b) any debt arising out of an obligation incurred at a time when the creditor had notice that—
 - (i) an application for an administration order was pending; or
 - (ii) any person had given notice of intention to appoint an administrator;
- (c) any debt arising out of an obligation where—
 - (i) the administration was immediately preceded by a winding up; and
 - (ii) at the time the obligation was incurred the creditor had notice that a meeting of creditors had been summoned under section 98 or a petition for the winding up of the company was pending;
- (d) any debt arising out of an obligation incurred during a winding up which immediately preceded the administration; or
- (e) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—
 - (i) after the company entered administration;
 - (ii) at a time when the creditor had notice that an application for an administration order was pending;
 - (iii) at a time when the creditor had notice that any person had given notice of intention to appoint an administrator;
 - (iv) where the administration was immediately preceded by a winding up, at a time when the creditor had notice that a meeting of creditors had been summoned under section 98 or that a winding up petition was pending; or
 - (v) during a winding up which immediately preceded the administration.

(3) An account shall be taken as at the date of the notice referred to in paragraph (1) of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.

(4) A sum shall be regarded as being due to or from the company for the purposes of paragraph (3) whether—

- (a) it is payable at present or in the future;
- (b) the obligation by virtue of which it is payable is certain or contingent; or

⁵⁰⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

(c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(5) Rule 2.81 shall apply for the purposes of this Rule to any obligation to or from the company which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value;

(6) Rules 2.86 to 2.88 shall apply for the purposes of this Rule in relation to any sums due to the company which—

- (a) are payable in a currency other than sterling;
- (b) are of a periodical nature; or
- (c) bear interest.

(7) Rule 2.105 shall apply for the purposes of this Rule to any sum due to or from the company which is payable in the future.

(8) Only the balance (if any) of the account owed to the creditor is provable in the administration. Alternatively the balance (if any) owed to the company shall be paid to the administrator as part of the assets except where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) shall be paid if and when that debt becomes due and payable.

(9) In this Rule “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

]⁵⁰⁶

[2.86.— Debt in foreign currency

(1) For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the date when the company entered administration [or, if the administration was immediately preceded by a winding up, on the date that the company went into liquidation]⁵⁰⁷ .

(2) “The official exchange rate” is the middle exchange rate on the London Foreign Exchange Market at the close of business, as published for the date in question. In the absence of any such published rate, it is such rate as the court determines.

]⁵⁰⁸

[2.87.— Payments of a periodical nature

(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date when the company entered administration [or, if the

⁵⁰⁶ Substituted subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 9 (April 1, 2005: substitution has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

⁵⁰⁷ Words inserted subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 10 (April 1, 2005: insertion has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

⁵⁰⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

administration was immediately preceded by a winding up, up to the date that the company went into liquidation]⁵⁰⁹ .

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day.
]⁵¹⁰

[2.88.— Interest

[(A1) In this Rule, “the relevant date” means the date on which the company entered administration or, if the administration was immediately preceded by a winding up, the date on which the company went into liquidation.]⁵¹¹

(1) Where a debt proved in the administration bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after [the relevant date]⁵¹² .

(2) In the following circumstances the creditor's claim may include interest on the debt for periods before [the relevant date]⁵¹³ , although not previously reserved or agreed.

(3) If the debt is due by virtue of a written instrument, and payable at a certain time, interest may be claimed for the period from that time to [the relevant date]⁵¹⁴ .

(4) If the debt is due otherwise, interest may only be claimed if, before [the relevant date]⁵¹⁵ , a demand for payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment.

(5) Interest under paragraph (4) may only be claimed for the period from the date of the demand to [the relevant date]⁵¹⁶ and for all the purposes of the Act and the Rules shall be chargeable at a rate not exceeding that mentioned in paragraph (6).

⁵⁰⁹ Words inserted subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 11 (April 1, 2005: insertion has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

⁵¹⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵¹¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.83(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵¹² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.83(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵¹³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.83(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵¹⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.83(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵¹⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.83(6) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵¹⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.83(7) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (6) The rate of interest to be claimed under paragraphs (3) and (4) is the rate specified in section 17 of the Judgments Act 1838 on [the relevant date]⁵¹⁷ .
- (7) [Any]⁵¹⁸ surplus remaining after payment of the debts proved shall, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since [the relevant date]⁵¹⁹ .
- (8) All interest payable under paragraph (7) ranks equally whether or not the debts on which it is payable rank equally.
- (9) The rate of interest payable under paragraph (7) is whichever is the greater of the rate specified under paragraph (6) [and]⁵²⁰ the rate applicable to the debt apart from the administration.
]⁵²¹

[2.89. Debt payable at future time

A creditor may prove for a debt of which payment was not yet due on the date when the company entered administration, [or, if the administration was immediately preceded by a winding up, up to the date that the company went into liquidation]⁵²² subject to Rule 2.105 (adjustment of dividend where payment made before time).]⁵²³

[2.90.— Value of security

- (1) A secured creditor may, with the agreement of the administrator or the [permission]⁵²⁴ of the court, at any time alter the value which he has, in his proof of debt, put upon his security.
- (2) However, if a secured creditor—
- (a) being the applicant for an administration order or the appointor of the administrator, has in the application or the notice of appointment put a value on his security; or
 - (b) has voted in respect of the unsecured balance of his debt,

⁵¹⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.83(8) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵¹⁸ Words repealed subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 12(b) (April 1, 2005: repeal has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

⁵¹⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.83(9) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵²⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.83(10) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵²¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵²² Words inserted subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 13 (April 1, 2005: insertion has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

⁵²³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵²⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

he may re-value his security only with permission of the court.
]⁵²⁵

[2.91.— Surrender for non-disclosure

(1) If a secured creditor omits to disclose his security in his proof of debt, he shall surrender his security for the general benefit of creditors, unless the court, on application by him, relieves him from the effect of this Rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof of debt to be amended, on such terms as may be just.

(3) Nothing in this Rule or the following two Rules may affect the rights in rem of creditors or third parties protected under Article 5 of the EC Regulation (third parties' rights in rem).
]⁵²⁶

[2.92.— Redemption by administrator

(1) The administrator may at any time give notice to a creditor whose debt is secured that he proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the administrator may allow) in which, if he so wishes, to exercise his right to revalue his security (with the permission of the court, where Rule 2.90(2) applies).

If the creditor re-values his security, the administrator may only redeem at the new value.

(3) If the administrator redeems the security, the cost of transferring it is payable out of the assets.

(4) A secured creditor may at any time, by a notice in writing, call on the administrator to elect whether he will or will not exercise his power to redeem the security at the value then placed on it; and the administrator then has 3 months in which to exercise the power or determine not to exercise it.

] ⁵²⁷

⁵²⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵²⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵²⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[2.93.— Test of security's value

(1) Subject as follows, the administrator, if he is dissatisfied with the value which a secured creditor puts on his security (whether in his proof or by way of re-valuation under [Rule 2.92]⁵²⁸), may require any property comprised in the security to be offered for sale.

(2) The terms of sale shall be such as may be agreed, or as the court may direct; and if the sale is by auction, the administrator on behalf of the company, and the creditor on his own behalf, may appear and bid.

[(3) This Rule does not apply if the security has been revalued and the revaluation has been approved by the court.]⁵²⁹
]⁵³⁰

[2.94. Realisation of security by creditor

If a creditor who has valued his security subsequently realises it (whether or not at the instance of the administrator)–

- (a) the net amount realised shall be substituted for the value previously put by the creditor on the security; and
- (b) that amount shall be treated in all respects as an amended valuation made by him.

] ⁵³¹

[2.95.— Notice of proposed distribution

(1) Where an administrator is proposing to make a distribution to creditors he shall give [...] ⁵³² notice of that fact.

(2) The notice given pursuant to paragraph (1) shall–

- (a) be sent to–
 - (i) all creditors whose addresses are known to the administrator; and
 - (ii) where a member State liquidator has been appointed in relation to the company, to the member State liquidator;
- (b) state whether the distribution is to preferential creditors or preferential creditors and unsecured creditors; and
- (c) where the administrator proposes to make a distribution to unsecured creditors, state the value of the prescribed part, except where the court has made an order under section 176A(5).

⁵²⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.84(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵²⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.84(3) (April 6, 2010: addition has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵³⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵³¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵³² Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.85(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[(3) Subject to paragraph (5)(b), before declaring a dividend the administrator shall by notice invite the creditors to prove their debts. Such notice—

- (a) shall be gazetted; and
- (b) may be advertised in such other manner as the administrator thinks fit.

] ⁵³³

(4) A notice pursuant to [paragraph (1) or (3) must, in addition to the standard contents] ⁵³⁴ –

- (a) state that it is the intention of the administrator to make a distribution to creditors within the period of 2 months from the last date for proving;
- (b) specify whether the proposed dividend is interim or final;
- (c) specify a date up to which proofs may be lodged being a date which–
 - (i) is the same date for all creditors; and
 - (ii) is not less than 21 days from that of the notice.

[(5) Where a dividend is to be declared for preferential creditors—

- (a) the notice pursuant to paragraph (1) need only to be given to those creditors in whose case the administrator has reason to believe that their debts are preferential; and
- (b) the notice pursuant to paragraph (3) need only be given if the administrator thinks fit.

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] ⁵³⁶

[2.96.— Admission or rejection of proofs

(1) Unless he has already dealt with them, within [5 business] ⁵³⁷ days of the last date for proving, the administrator shall—

- (a) admit or reject [(in whole or in part)] ⁵³⁸ proofs submitted to him; or
- (b) make such provision in respect of them as he thinks fit.

(2) The administrator is not obliged to deal with proofs lodged after the last date for proving, but he may do so, if he thinks fit.

(3) In the declaration of a dividend no payment shall be made more than once by virtue of the same debt.

(4) Subject to Rule 2.104, where—

⁵³³ Substituted by Insolvency (Amendment) Rules 2009/642 rule 12(a) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁵³⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.85(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵³⁵ Substituted by Insolvency (Amendment) Rules 2009/642 rule 12(b) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁵³⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵³⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.86(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵³⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.86(2)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (a) a creditor has proved; and
 - (b) a member State liquidator has proved in relation to the same debt,
- payment shall only be made to the creditor.
-]
- ⁵³⁹

[2.96A Postponement or cancellation of dividend

If in the period of 2 months referred to in Rule 2.95(4)(a)—

- (a) the administrator has rejected a proof in whole or in part and application is made to the court for that decision to be reversed or varied, or
 - (b) application is made to the court for the administrator's decision on a proof to be reversed or varied, or for a proof to be expunged, or for a reduction of the amount claimed,
- the administrator may postpone or cancel the dividend.
-]
- ⁵⁴⁰

[2.97.— Declaration of dividend

(1) Subject to paragraph (2), within the 2 month period referred to in Rule 2.95(4)(a) the administrator shall proceed to declare the dividend to one or more classes of creditor of which he gave notice.

(2) Except with the permission of the court, the administrator shall not declare a dividend so long as there is pending any application to the court to reverse or vary a decision of his on a proof, or to expunge a proof or to reduce the amount claimed.

[(3) If the court gives permission under paragraph (2), the administrator must make such provision in respect of the proof in question as the court directs.]

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⁵⁴²

[2.98.— Notice of declaration of a dividend

(1) Where the administrator declares a dividend he shall give notice of that fact to all creditors who have proved their debts and, where a member State liquidator has been appointed in relation to the company, to the member State liquidator.

- (2) The notice shall include the following particulars relating to the administration—
- (a) amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;
 - (b) payments made by the administrator when acting as such;
 - (c) where the administrator proposed to make a distribution to unsecured creditors, the value of the prescribed part, except where the court has made an order under section 176A(5);

⁵³⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁴⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.87 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁴¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.88(2) (April 6, 2010: addition has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁴² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

- (d) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;
 - (e) the total amount of dividend and the rate of dividend;[and]⁵⁴³
 - (f) [...] ⁵⁴³
 - (g) whether, and if so when, any further dividend is expected to be declared.
-]
- ⁵⁴⁴

[2.99.— Payments of dividends and related matters

- (1) The dividend may be distributed simultaneously with the notice declaring it.
 - (2) Payment of dividend may be made by post, or arrangements may be made with any creditor for it to be paid to him in another way, or held for his collection.
 - (3) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend shall be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.
-]
- ⁵⁴⁵

[2.100. Notice of no dividend, or no further dividend

If the administrator gives notice to creditors that he is unable to declare any dividend or (as the case may be) any further dividend, the notice shall contain a statement to the effect either—

- (a) that no funds have been realised; or
 - (b) that the funds realised have already been distributed or used or allocated for defraying the expenses of administration.
-]
- ⁵⁴⁶

[2.101.— Proof altered after payment of dividend

- (1) If after payment of dividend the amount claimed by a creditor in his proof is increased, the creditor is not entitled to disturb the distribution of the dividend; but he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive.
- (2) Any dividend or dividends payable under paragraph (1) shall be paid before the money there referred to is applied to the payment of any such further dividend.
- (3) If, after a creditor's proof has been admitted, the proof is withdrawn or expunged, or the amount is reduced, the creditor is liable to repay to the administrator any amount overpaid by way of dividend.

⁵⁴³ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.89(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁴⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁴⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁴⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

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[2.102.— Secured creditors

(1) The following applies where a creditor re-values his security at a time when a dividend has been declared.

(2) If the revaluation results in a reduction of his unsecured claim ranking for dividend, the creditor shall [as soon as reasonably practicable] ⁵⁴⁸ repay to the administrator, for the credit of the administration, any amount received by him as dividend in excess of that to which he would be entitled having regard to the revaluation of the security.

(3) If the revaluation results in an increase of his unsecured claim, the creditor is entitled to receive from the administrator, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which he has failed to receive, having regard to the revaluation of the security.

However, the creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the revaluation.

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[2.103. Disqualification from dividend

If a creditor contravenes any provision of the Act or the Rules relating to the valuation of securities, the court may, on the application of the administrator, order that the creditor be wholly or partly disqualified from participation in any dividend.] ⁵⁵⁰

[2.104.— Assignment of right to dividend

(1) If a person entitled to a dividend gives notice to the administrator that he wishes the dividend to be paid to another person, or that he has assigned his entitlement to another person, the administrator shall pay the dividend to that other accordingly.

(2) A notice given under this Rule must specify the name and address of the person to whom payment is to be made.

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⁵⁴⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁴⁸ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁵⁴⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁵⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁵¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[2.105.— Debt payable at future time

(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, he is entitled to dividend equally with other creditors, but subject as follows.

[(2) For the purpose of dividend (and no other purpose) the amount of the creditor's admitted proof (or, if a distribution has previously been made to him, the amount remaining outstanding in respect of his admitted proof) shall be reduced by applying the following formula—

$$\frac{X}{1.05}$$

where—

- (a) “X” is the value of the admitted proof; and
 - (b) “n” is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would otherwise be due expressed in years and months in a decimalised form.
- (3) In paragraph (2) “relevant date” means—
- (a) in the case of an administration which was not immediately preceded by a winding up, the date that the company entered administration;
 - (b) in the case of an administration which was immediately preceded by a winding up, the date that the company went into liquidation.

]⁵⁵²

(3) [...] ⁵⁵³

]⁵⁵⁴

[CHAPTER 11**THE ADMINISTRATOR]⁵⁵⁵****[2.106.— Fixing of remuneration**

(1) The administrator is entitled to receive remuneration for his services as such.

(2) [The basis of remuneration]⁵⁵⁶ shall be fixed [...] ⁵⁵⁷ —

- (a) as a percentage of the value of the property with which he has to deal; or

⁵⁵² Rule 2.103(2) and (3) substituted for rule 2.103(2) subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 14(1) (April 1, 2005: substitution has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

⁵⁵³ Subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 14(2) (April 1, 2005: repeal has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

⁵⁵⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁵⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁵⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.90(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁵⁷ Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.90(2)(b) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (b) by reference to the time properly given by the insolvency practitioner (as administrator) and his staff in attending to matters arising in the administration [; or]⁵⁵⁸
- [(c) as a set amount.]⁵⁵⁸

[(3A) The basis of remuneration may be fixed as any one or more of the bases set out in paragraph (2), and different bases may be fixed in respect of different things done by the administrator.

(3B) Where the basis of remuneration is fixed as set out in paragraph (2)(a), different percentages may be fixed in respect of different things done by the administrator.

(3C) It is for the creditors' committee (if there is one) to determine—

- (a) which of the bases set out in paragraph (2) are to be fixed and (where appropriate) in what combination under paragraph (3A), and
- (b) the percentage or percentages (if any) to be fixed under paragraphs (2)(a) and (3B) and the amount (if any) to be set under paragraph (2)(c).

] ⁵⁵⁹

(4) In arriving at that determination, the committee shall have regard to the following matters—

- (a) the complexity (or otherwise) of the case;
- (b) any respects in which, in connection with the company's affairs, there falls on the administrator any responsibility of an exceptional kind or degree;
- (c) the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties as such; and
- (d) the value and nature of the property with which he has to deal.

(5) If there is no creditors' committee, or the committee does not make the requisite determination, [and the case does not fall within paragraph (5A), the basis of]⁵⁶⁰ the administrator's remuneration may be fixed (in accordance with [paragraphs (2), (3A) and (3B)]⁵⁶¹) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.

[(5A) In a case where the administrator has made a statement under paragraph 52(1)(b) , if there is no creditors' committee, or the committee does not make the requisite determination, [the basis of]⁵⁶² the administrator's remuneration may be fixed (in accordance with [paragraphs (2), (3A) and (3B)]⁵⁶¹) by the approval of—

- (a) each secured creditor of the company: or
- (b) if the administrator has made or intends to make a distribution to preferential creditors—
 - (i) each secured creditor of the company; and

⁵⁵⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.90(2)(c) (April 6, 2010: addition has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁵⁹ Rule 2.106(3)-(3C) substituted for rule 2.106(3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.90(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁶⁰ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.90(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁶¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.90(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁶² Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.90(6) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval;
and paragraph (4) applies to them as it does to the creditors' committee.

]⁵⁶³

(6) If not fixed as above, [the basis of]⁵⁶⁴ the administrator's remuneration shall, on his application, be fixed by the court [and the provisions of paragraphs (2) to (4) apply as they do to the fixing of the basis of remuneration by the creditors' committee; but such an application may not be made by the administrator unless the administrator has first sought fixing of the basis in accordance with paragraph (3), (5) or (5A), and in any event may not be made more than 18 months after the date of the administrator's appointment.]⁵⁶⁵ .

(7) Where there are joint administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred—

- (a) to the court, for settlement by order; or
- (b) to the creditors' committee or a meeting of creditors, for settlement by resolution.

(8) If the administrator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the company, profit costs shall not be paid unless this is authorised by the creditors' committee, the creditors or the court.

(9) [...] ⁵⁶⁶
]⁵⁶⁷

[2.107. Recourse to meeting of creditors

[(1) If [the basis of]⁵⁶⁸ the administrator's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, [or the basis to be inappropriate, the administrator may request that the rate or amount be increased or the basis changed]⁵⁶⁹ by resolution of the creditors.

(2) In a case where the administrator has made a statement under paragraph 52(1)(b) , if [the basis of]⁵⁶⁸ the administrator's remuneration has been fixed by the creditors' committee, and he considers

⁵⁶³ Subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 15(1) (April 1, 2005: insertion has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

⁵⁶⁴ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.90(7) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁶⁵ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.90(8) (April 6, 2010: addition has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁶⁶ Subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 15(2) (April 1, 2005: repeal has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

⁵⁶⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁶⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.91(2)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁶⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.91(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

the rate or amount to be insufficient, [or the basis to be inappropriate, the administrator may request that the rate or amount be increased or the basis changed]⁵⁶⁹ by the approval of—

- (a) each secured creditor of the company; or
- (b) if the administrator has made or intends to make a distribution to preferential creditors—
 - (i) each secured creditor of the company; and
 - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

]⁵⁷⁰

]⁵⁷¹

[2.108.— Recourse to the court

(1) If the administrator considers that the [basis of]⁵⁷² remuneration fixed for him by the creditors' committee, or by resolution of the creditors, is insufficient [or inappropriate]⁵⁷³ , he may apply to the court for an order [changing it or]⁵⁷⁴ increasing its amount or rate.

[(1A) In a case where the administrator has made a statement under paragraph 52(1)(b) , if the administrator considers that the [basis of]⁵⁷² remuneration fixed by the approval of the creditors in accordance with Rule 2.107(2) is insufficient [or inappropriate]⁵⁷³ , he may apply to the court for an order [changing it or]⁵⁷⁴ increasing its amount or rate.]⁵⁷⁵

[(1B) Where an application is made under paragraph (1A), the administrator must give notice to each of the creditors whose approval was sought under Rule 2.106(5A).]⁵⁷⁶

(2) The administrator shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear, or be represented, and to be heard on the application.

(3) If there is no creditors' committee, the administrator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

⁵⁷⁰ Existing text renumbered as rule 2.107(1) and (2) inserted subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 16 (April 1, 2005: substitution has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

⁵⁷¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁷² Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.92(2)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁷³ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.92(2)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁷⁴ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.92(2)(c) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁷⁵ Subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 17 (April 1, 2005: substitution has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

⁵⁷⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.92(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(4) The court may, if it appears to be a proper case, order the costs of the administrator's application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the administration.]⁵⁷⁷

[2.109.— Creditors' claim that remuneration is [or other expenses are]⁵⁷⁸ excessive

[(1) Any secured creditor, or any unsecured creditor with either the concurrence of at least 10% in value of the unsecured creditors (including that creditor) or the permission of the court, may apply to the court for one or more of the orders in paragraph (4).

(1A) Application may be made on the grounds that—

- (a) the remuneration charged by the administrator,
- (b) the basis fixed for the administrator's remuneration under Rule 2.106, or
- (c) expenses incurred by the administrator,

is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph (b), inappropriate.

(1B) The application must, subject to any order of the court under Rule 2.48A(4), be made no later than 8 weeks after receipt by the applicant of the progress report which first reports the charging of the remuneration or the incurring of the expenses in question (“the relevant report”).]⁵⁷⁹

(2) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss it without a hearing but it shall not do so without giving the applicant at least [5 business]⁵⁸⁰ days' notice, upon receipt of which the applicant may require the court to list the application for a without notice hearing. If the application is not dismissed, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly.

(3) The applicant shall, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

[(4) If the court considers the application to be well-founded, it must make one or more of the following orders—

- (a) an order reducing the amount of remuneration which the administrator was entitled to charge;
- (b) an order fixing the basis of remuneration at a reduced rate or amount;
- (c) an order changing the basis of remuneration;
- (d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the administration;

⁵⁷⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁷⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.93(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁷⁹ Rule 2.109(1)-(1B) substituted for rule 2.109(1) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.93(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁸⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.93(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(e) an order that the administrator or the administrator's personal representative pay to the company the amount of the excess of remuneration or expenses or such part of the excess as the court may specify;

and may make any other order that it thinks just; but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report.

]⁵⁸¹

(5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the administration.

]⁵⁸²

[2.109A Review of remuneration

(1) Where, after the basis of the administrator's remuneration has been fixed, there is a material and substantial change in the circumstances which were taken into account in fixing it, the administrator may request that it be changed.

(2) The request must be made—

- (a) where the creditors' committee fixed the basis, to the committee;
- (b) where the creditors fixed the basis, to the creditors;
- (c) where the court fixed the basis, by application to the court;

and Rules 2.106 to 2.109 apply as appropriate.

(3) Any change in the basis for remuneration applies from the date of the request under paragraph (2) and not for any earlier period.

]⁵⁸³

[2.109B Remuneration of new administrator

If a new administrator is appointed in place of another, any determination, resolution or court order in effect under the preceding provisions of this Chapter immediately before the former administrator ceased to hold office continues to apply in respect of the remuneration of the new administrator until a further determination, resolution or court order is made in accordance with those provisions.

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[2.109C Apportionment of set fee remuneration

(1) In a case in which the basis of the administrator's remuneration is a set amount under Rule 2.106(2)(c) and the administrator (“the former administrator”) ceases (for whatever reason) to hold office before the time has elapsed or the work has been completed in respect of which the amount was set, application may be made for determination of what portion of the amount should be paid

⁵⁸¹ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.93(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁸² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁸³ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.94 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁸⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.94 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

to the former administrator or the former administrator's personal representative in respect of the time which has actually elapsed or the work which has actually been done.

(2) Application may be made—

- (a) by the former administrator or the former administrator's personal representative within the period of 28 days beginning with the date upon which the former administrator ceased to hold office, or
- (b) by the administrator for the time being in office if the former administrator or the former administrator's personal representative has not applied by the end of that period.

(3) Application must be made—

- (a) where the creditors' committee fixed the basis, to the committee;
- (b) where the creditors fixed the basis, to the creditors for a resolution determining the portion;
- (c) where the court fixed the basis, to the court for an order determining the portion.

(4) The applicant must give a copy of the application to the administrator for the time being in office or to the former administrator or the former administrator's personal representative, as the case may be ("the recipient").

(5) The recipient may within 21 days of receipt of the copy of the application give notice of intent to make representations to the creditors' committee or the creditors or to appear or be represented before the court, as the case may be.

(6) No determination may be made upon the application until expiry of the 21 days referred to in paragraph (5) or, if the recipient does give notice of intent in accordance with that paragraph, until the recipient has been afforded the opportunity to make representations or to appear or be represented, as the case may be.

(7) If the former administrator or the former administrator's personal representative (whether or not the original applicant) considers that the portion determined upon application to the creditors' committee or the creditors is insufficient, that person may apply—

- (a) in the case of a determination by the creditors' committee, to the creditors for a resolution increasing the portion;
- (b) in the case of a resolution of the creditors (whether under paragraph (1) or under sub-paragraph (a)), to the court for an order increasing the portion;

and paragraphs (4) to (6) apply as appropriate.

]⁵⁸⁵

[CHAPTER 12

ENDING ADMINISTRATION]⁵⁸⁶

[2.110.— Final progress reports

(1) In this Chapter reference to a progress report is to a report in the form specified in Rule 2.47.

⁵⁸⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.94 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁸⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

- (2) The final progress report means a progress report which includes a summary of—
- (a) the administrator's proposals;
 - (b) any major amendments to, or deviations from, those proposals;
 - (c) the steps taken during the administration; and
 - (d) the outcome.

]⁵⁸⁷

[2.111.— Notice of automatic end of administration

(1) Where the appointment of an administrator has ceased to have effect, and the administrator is not required by any other Rule to give notice of that fact, he shall, as soon as reasonably practicable, and in any event within 5 business days of the date when the appointment has ceased, file a notice of automatic end of administration in Form 2.30B with the court. The notice shall be accompanied by a final progress report.

(2) A copy of the notice and accompanying document shall be sent as soon as reasonably practicable to the registrar of companies, and to all [other]⁵⁸⁸ persons who received a copy of the administrator's proposals.

(3) If the administrator makes default in complying with this Rule, he is liable to a fine and, for continued contravention, to a daily default fine.

]⁵⁸⁹

[2.112.— Applications for extension of administration

(1) An application to court for an extension of administration shall be accompanied by a progress report for the period since the last progress report (if any) or the date the company entered administration.

(2) When the administrator requests an extension of the period of the administration by consent of creditors, his request shall be accompanied by a progress report for the period since the last progress report (if any) or the date the company entered administration.

[(4) Where the court makes an order extending the administration, the administrator must give notice of the order to the creditors as soon as reasonably practicable, together with a copy of the progress report which accompanied the application to the court.

(5) Where the period of the administration has been extended by consent of creditors, the administrator must give notice to the creditors as soon as reasonably practicable.]⁵⁹⁰

⁵⁸⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁸⁸ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.95(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁸⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

] ⁵⁹¹

[2.113.— Notice of end of administration

(1) Where an administrator who was appointed under paragraph 14 or 22 gives notice that the purpose of administration has been sufficiently achieved he shall use Form 2.32B. The notice shall be accompanied by a final progress report.

(2) The administrator shall send a copy of the notice to the registrar of companies.

(3) Two copies of the notice shall be filed with the court and shall contain a statement that a copy of the notice has been sent to the registrar of companies. The court shall endorse each copy with the date and time of filing. The appointment shall cease to have effect from that date and time.

(4) The court shall give a sealed copy of the notice to the administrator.

(5) The administrator shall, as soon as reasonably practicable, and within 5 business days, send a copy of the notice of end of administration (and the accompanying report) to every creditor of the company of whose claim and address he is aware, to all those persons [(except the registrar of companies — see paragraph (2))] ⁵⁹² who were notified of his appointment and to the company.

[(6) The requirements of paragraph 80(4) shall be taken to be complied with if, within 5 business days of filing the notice of end of administration with the court, the administrator has gazetted a notice undertaking to provide a copy of the notice of the end of administration to any creditor of the company.

(6A) The notice under Rule 2.113(6) may be advertised in such other manner as the administrator thinks fit.] ⁵⁹³

[(7) In addition to the standard contents, the notice under paragraph (6) must state—

(a) the date that the administration ended; and

(b) that creditors can write for a copy of the notice of end of administration and the address to which to write.

] ⁵⁹⁴

] ⁵⁹⁵

⁵⁹⁰ Rule 2.112(4) and (5) substituted for rule 2.112(3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.96(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁹¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁹² Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.97(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁹³ Rule 2.113(6) and (6A) substituted for rule 2.113(6) by Insolvency (Amendment) Rules 2009/642 rule 13 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

⁵⁹⁴ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.97(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁹⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[2.114.— Application to court by administrator]

(1) An application to court under paragraph 79 for an order ending an administration shall have attached to it a progress report for the period since the last progress report (if any) or the date the company entered administration and a statement indicating what the administrator thinks should be the next steps for the company (if applicable).

(2) Where the administrator applies to the court because the creditors' meeting has required him to, he shall also attach a statement to the application in which he shall indicate (giving reasons) whether or not he agrees with the creditors' requirement to him to make the application.

(3) When the administrator applies other than at the request of a creditors' meeting, he shall—

(a) give notice in writing to the applicant for the administration order under which he was appointed, or the person by whom he was appointed and the creditors of his intention to apply to court at least [5 business]⁵⁹⁶ days before the date that he intends to make his application; and

(b) attach to his application to court a statement that he has notified the creditors, and copies of any response from creditors to that notification.

(4) Where the administrator applies to court under paragraph 79 in conjunction with a petition under section 124 for an order to wind up the company, he shall, in addition to the requirements of paragraph (3), notify the creditors whether he intends to seek appointment as liquidator.

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[2.115.— Application to court by creditor]

(1) Where a creditor applies to the court to end the administration a copy of the application shall be served on the administrator and the person who either made the application for the administration order or made the appointment. Where the appointment was made under paragraph 14, a copy of the application shall be served on the holder of the floating charge by virtue of which the appointment was made.

(2) Service shall be effected not less than 5 business days before the date fixed for the hearing. The administrator, applicant or appointor, or holder of the floating charge by virtue of which the appointment was made may appear at the hearing of the application.

(3) Where the court makes an order to end the administration, the court shall send a copy of the order to the administrator.

]

⁵⁹⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.98(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁵⁹⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁵⁹⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[2.116. Notification by administrator of court order

[(1) Where the court makes an order to end the administration, the administrator [must send to the registrar of companies]⁵⁹⁹ a copy of the court order and a copy of his final progress report.
] ⁶⁰⁰

[(2) As soon as reasonably practicable, the administrator must send a copy of the notice and the final progress report to all other persons who received notice of the administrator's appointment.
] ⁶⁰¹
] ⁶⁰²

2.117.— [...] ⁶⁰³**[2.117A Moving from administration to creditors' voluntary liquidation**

(1) As soon as reasonably practicable after the day on which the registrar of companies registers the notice of moving from administration to creditors' voluntary liquidation sent by the administrator for the purposes of paragraph 83(3), the person who at that point ceases to be the administrator must (whether the administrator becomes the liquidator or not) send a final progress report (which must include details of the assets to be dealt with in the liquidation) to the registrar of companies and to all those who received notice of the administrator's appointment.

(2) For the purposes of paragraph 83(7)(a), a person is nominated by the creditors as liquidator by—

- (a) their approval of the statement of the proposed liquidator in the administrator's proposals or revised proposals, or
- (b) their nomination of a different person before their approval of the proposals or revised proposals.

(3) Where the creditors nominate a different person, the nomination must, where applicable, include the declaration required by section 231.

] ⁶⁰⁴

⁵⁹⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.99(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁰⁰ Existing rule 2.116 renumbered as rule 2.116(1) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.99(2) (April 6, 2010: renumbering has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁰¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.99(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁰² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶⁰³ Rule 2.117A substituted for rule 2.117 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.100 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁰⁴ Rule 2.117A substituted for rule 2.117 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.100 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[2.118.— Moving from administration to dissolution

(1) Where, for the purposes of paragraph 84(1), the administrator sends a notice of moving from administration to dissolution to the registrar of companies, [the administrator must]⁶⁰⁵ attach to that notice a final progress report.

(2) As soon as reasonably practicable a copy of the notice and the attached document shall be sent to all [other persons]⁶⁰⁶ who received notice of the administrator's appointment.

(3) Where a court makes an order under paragraph 84(7) it shall, where the applicant is not the administrator, give a copy of the order to the administrator.

(4) [...] ⁶⁰⁷
] ⁶⁰⁸

[CHAPTER 13**REPLACING ADMINISTRATOR] ⁶⁰⁹***[Grounds for resignation] ⁶¹⁰***[2.119.—**

(1) The administrator may give notice of his resignation on grounds of ill health or because—

(a) he intends ceasing to be in practice as an insolvency practitioner; or

(b) there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by him of the duties of administrator.

(2) The administrator may, with the permission of the court, give notice of his resignation on grounds other than those specified in paragraph (1).

] ⁶¹¹

⁶⁰⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.101(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁰⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.101(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁰⁷ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.101(4) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁰⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶⁰⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶¹⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶¹¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

*[Notice of intention to resign]⁶¹²***[2.120.—**

- (1) The administrator shall in all cases give at least [5 business]⁶¹³ days' notice in Form 2.37B of his intention to resign, or to apply for the court's permission to do so, to the following persons—
- (a) if there is a continuing administrator of the company, to him; and
 - (b) if there is a creditors' committee to it; but
 - (c) if there is no such administrator and no creditors' committee, to the company and its creditors.
- (2) Where the administrator gives notice under paragraph (1), he shall also give notice to a member State liquidator, if such a person has been appointed in relation to the company.
- (3) Where the administrator was appointed by the holder of a qualifying floating charge under paragraph 14, the notice of intention to resign shall also be sent to all holders of prior qualifying floating charges, and to the person who appointed the administrator. A copy of the notice shall also be sent to the holder of the floating charge by virtue of which the appointment was made.
- (4) Where the administrator was appointed by the company or the directors of the company under paragraph 22, a copy of the notice of intention to resign shall also be sent to the appointor and all holders of a qualifying floating charge.
-]⁶¹⁴

*[Notice of resignation]⁶¹⁵***[2.121.—**

- (1) The notice of resignation shall be in Form 2.38B.
- (2) Where the administrator was appointed under an administration order, the notice shall be filed with the court, and a copy sent to the registrar of companies. A copy of the notice of resignation shall be sent not more than 5 business days after it has been filed with the court to all those to whom notice of intention to resign was sent.
- (3) Where the administrator was appointed by the holder of a qualifying floating charge under paragraph 14, a copy of the notice of resignation shall be filed with the court and sent to the registrar of companies, and anyone else who received a copy of the notice of intention to resign, within 5 business days of the notice of resignation being sent to the holder of the floating charge by virtue of which the appointment was made.

⁶¹² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶¹³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.102(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶¹⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶¹⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

(4) Where the administrator was appointed by the company or the directors under paragraph 22, a copy of the notice of resignation shall be filed with the court and sent to the registrar of companies and to anyone else who received notice of intention to resign within 5 business days of the notice of resignation being sent to either the company or the directors that made the appointment.

] ⁶¹⁶

[Application to court to remove administrator from office] ⁶¹⁷

[2.122.—

(1) Any application under paragraph 88 shall state the grounds on which it is requested that the administrator should be removed from office.

(2) Service of the notice of the application shall be effected on the administrator, the person who made the application for the administration order or the person who appointed the administrator, the creditors' committee (if any), the joint administrator (if any), and where there is neither a creditors' committee or joint administrator, to the company and all the creditors, including any floating charge holders not less than 5 business days before the date fixed for the application to be heard. Where the appointment was made under paragraph 14, the notice shall be served on the holder of the floating charge by virtue of which the appointment was made.

(3) Where a court makes an order removing the administrator it shall give a copy of the order to the applicant who as soon as reasonably practicable shall send a copy to the administrator.

(4) The applicant shall also within 5 business days of the order being made send a copy of the order to all those to whom notice of the application was sent.

(5) A copy of the order shall also be sent to the registrar of companies [...] ⁶¹⁸ within the same time period.

] ⁶¹⁹

⁶¹⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶¹⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶¹⁸ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.103(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶¹⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

*[Notice of vacation of office when administrator ceases to be qualified to act]*⁶²⁰

[2.123.

Where the administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the company gives notice in accordance with paragraph 89, he shall also give notice to the registrar of companies [...] ⁶²¹ .] ⁶²²

*[Administrator deceased]*⁶²³

[2.124.—

(1) Subject as follows, where the administrator has died, it is the duty of his personal representatives to give notice of the fact to the court, specifying the date of the death. This does not apply if notice has been given under either paragraph (2) or (3) of this Rule.

(2) If the deceased administrator was a partner in [or an employee of] ⁶²⁴ a firm, notice may be given by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners.

(3) Notice of the death may be given by any person producing to the court the relevant death certificate or a copy of it.

(4) Where a person gives notice to the court under this Rule, he shall also give notice to the registrar of companies [...] ⁶²⁵ .] ⁶²⁶

⁶²⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶²¹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.104(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶²² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶²³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶²⁴ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.105(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶²⁵ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.105(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶²⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

*[Application to replace]*⁶²⁷**[2.125.—**

(1) Where an application is made to court under paragraphs 91(1) or 95 to appoint a replacement administrator, the application shall be accompanied by a written statement in Form 2.2B by the person proposed to be the replacement administrator.

(2) Where the original administrator was appointed under an administration order, a copy of the application shall be served, in addition to those persons listed in paragraph 12(2) and Rule 2.6(3), on the person who made the application for the administration order.

(3) Where the application to court is made under paragraph 95, the application shall be accompanied by [a witness statement] ⁶²⁸ setting out the applicant's belief as to the matters set out in that paragraph.

(4) Rule 2.8 shall apply to the service of an application under paragraphs 91(1) and 95 as it applies to service in accordance with Rule 2.6.

(5) Rules 2.9, 2.10, 2.12 and 2.14(1) and (2) apply to an application under paragraphs 91(1) and 95.

] ⁶²⁹

*[Notification and advertisement of appointment of replacement administrator]*⁶³⁰**[2.126.**

Where a replacement administrator is appointed, the same provisions apply in respect of giving notice of, and advertising, the replacement appointment as in the case of the appointment (subject to Rule 2.128), and all statements, consents etc as are required shall also be required in the case of the appointment of a replacement. All forms and notices shall clearly identify that the appointment is of a replacement administrator.] ⁶³¹

⁶²⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶²⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.106(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶²⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶³⁰ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶³¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

*[Notification and advertisement of appointment of joint administrator]*⁶³²

[2.127.

Where, after an initial appointment has been made, an additional person or persons are to be appointed as joint administrator the same Rules shall apply in respect of giving notice of and advertising the appointment as in the case of the initial appointment, subject to Rule 2.128.]⁶³³

[2.128.

The replacement or additional administrator shall send notice of the appointment [...] ⁶³⁴ to the registrar of companies.]⁶³⁵

*[Administrator's duties on vacating office]*⁶³⁶

[2.129.—

(1) Where the administrator ceases to be in office as such, in consequence of removal, resignation or cesser of qualification as an insolvency practitioner, he is under obligation as soon as reasonably practicable to deliver up to the person succeeding him as administrator the assets (after deduction of any expenses properly incurred and distributions made by him) and further to deliver up to that person—

- (a) the records of the administration, including correspondence, proofs and other related papers appertaining to the administration while it was within his responsibility; and
- (b) the company's books, papers and other records.

(2) If the administrator makes default in complying with this Rule, he is liable to a fine and, for continued contravention, to a daily default fine.

] ⁶³⁷

⁶³² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶³³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶³⁴ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.107(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶³⁵ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶³⁶ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶³⁷ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

[CHAPTER 14

EC REGULATION: CONVERSION OF ADMINISTRATION INTO WINDINGUP]⁶³⁸**[2.130.— Application for conversion into winding up**

[(1) Where a member State liquidator proposes to apply to the court for the conversion into winding-up proceedings of an administration, a witness statement complying with Rule 2.131 must be prepared and filed with the court in support of the application.

(1A) In this Rule, and in Rules 2.131 and 2.132, “conversion into winding-up proceedings” means an order under Article 37 of the EC Regulation (conversion of earlier proceedings) that—

- (a) the purposes of the administration are to be limited to the winding up of the company through administration and are to exclude the purpose contained in sub-paragraph (a) of paragraph 3(1);
- (b) the administration is converted into a creditors' voluntary winding up; or
- (c) the administration is converted into a winding up by the court.

] ⁶³⁹

(2) An application under this Rule shall be by originating application.

(3) The application and the [witness statement]⁶⁴⁰ required under this Rule shall be served upon—

- (a) the company; and
- (b) the administrator.

] ⁶⁴¹**[2.131.— Contents of [witness statement] ⁶⁴²**

(1) The [witness statement]⁶⁴³ shall state—

- (a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;

⁶³⁸ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶³⁹ Rule 2.130(1) and (1A) substituted for rule 2.130(1) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.108(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁴⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.108(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁴¹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶⁴² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.109(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁴³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.109(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(b) the [belief of the person making the statement]⁶⁴⁴ that the conversion of the administration into [winding-up proceedings]⁶⁴⁵ would prove to be in the interests of the creditors in the main proceedings;

[(c) the opinion of the person making the statement as to whether the company ought to go into voluntary liquidation or be wound up by the court; and]⁶⁴⁶

(d) all other matters that, in the opinion of the member State liquidator, would assist the court—

(i) in deciding whether to make such an order; and

(ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) [A witness statement]⁶⁴⁷ under this rule shall be [made]⁶⁴⁸ by, or on behalf of, the member State liquidator.

]⁶⁴⁹

[2.132.— Power of court

(1) On hearing the application for conversion into [winding-up proceedings]⁶⁵⁰ the court may make such order as it thinks [just]⁶⁵¹ .

(2) If the court makes an order for conversion into [winding-up proceedings]⁶⁵⁰ the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Without prejudice to the generality of paragraph (1), an order under that paragraph may provide that the company be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the order is made.

⁶⁴⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.109(3)(b)(i) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁴⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.109(3)(b)(ii) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁴⁶ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.109(3)(c) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁴⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.109(4)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁴⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.109(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁴⁹ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶⁵⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.110(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁵¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

] ⁶⁵²

[CHAPTER 15

EC REGULATION: MEMBER STATE LIQUIDATOR] ⁶⁵³**[2.133.— Interpretation of creditor and notice to member State liquidator**

- (1) This Rule applies where a member State liquidator has been appointed in relation to the company.
- (2) For the purposes of the Rules referred to in paragraph (3) the member State liquidator is deemed to be a creditor.
- (3) The Rules referred to in paragraph (2) are Rules 2.34 (notice of creditors' meeting), 2.35(4) (creditors' meeting), 2.37 (requisitioning of creditors' meeting), 2.38 (entitlement to vote), 2.39 (admission and rejection of claims), 2.40 (secured creditors), 2.41 (holders of negotiable instruments), 2.42 (hire-purchase, conditional sale and chattel leasing agreements), 2.46 (notice to creditors), 2.47 (reports to creditors), 2.48 (correspondence instead of creditors' meeting), 2.50(2) (creditors' committee), 2.57(1)(b) and (c) (termination of membership of creditors' committee), 2.59(3) (vacancies in creditors' committee), 2.108(3) (administrator's remuneration—recourse to court) and 2.109 (challenge to administrator's remuneration).
- (4) Paragraphs (2) and (3) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditor's rights).
- (5) Where the administrator is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court, the registrar of companies or the official receiver, the administrator shall give notice or provide copies, as the case may be, to the member State liquidator.
- (6) Paragraph (5) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co-operate and communicate information).

] ⁶⁵⁴

⁶⁵² Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶⁵³ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

⁶⁵⁴ Existing Part 2 is substituted for a new Part 2 consisting of Chapters 1-15 by Insolvency (Amendment) Rules 2003/1730 Sch.1(2) para.9 (September 15, 2003)

PART 3
ADMINISTRATIVE RECEIVERSHIP
CHAPTER 1

APPOINTMENT OF ADMINISTRATIVE RECEIVER

[3.1.— Acceptance and confirmation of acceptance of appointment]

(1) Where two or more persons are appointed as joint receivers or managers of a company's property under powers contained in an instrument, the acceptance of such an appointment shall be made by each of them in accordance with section 33 as if that person were a sole appointee, but the joint appointment takes effect only when all such persons have so accepted and is then deemed to have been made at the time at which the instrument of appointment was received by or on behalf of all such persons.

(2) Subject to the next paragraph, where a person is appointed as the sole or joint receiver of a company's property under powers contained in an instrument, the appointee shall, if he accepts the appointment, within [5 business]⁶⁵⁵ days confirm his acceptance in writing to the person appointing him.

(3) Paragraph (2) does not apply where an appointment is accepted in writing.

(4) Any acceptance or confirmation of acceptance of appointment as a receiver or manager of a company's property, whether under the Act or the Rules, may be given by any person (including, in the case of a joint appointment, any joint appointee) duly authorised for that purpose on behalf of the receiver or manager.

(5) In confirming acceptance the appointee or person authorised for that purpose shall state—
 (a) the time and date of receipt of the instrument of appointment, and
 (b) the time and date of acceptance.

⁶⁵⁷

Commencement

Pt 3(1) rule 3.1(1)-(4)(b): December 29, 1986

3.2.— Notice and advertisement of appointment

(1) This Rule relates to the notice which a person is required by section 46(1) to send and publish, when appointed as administrative receiver.

⁶⁵⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.111(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁵⁶ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(2) para.156(1) (January 11, 1988)

⁶⁵⁷ Substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(4) para.23 (January 11, 1988)

(2) The following matters shall be stated in the [notices sent to the company and the creditors]⁶⁵⁸

-
- (a) the registered name of the company, as at the date of the appointment, and its registered number;
 - (b) any other name with which the company has been registered in the 12 months preceding that date;
 - (c) any name under which the company has traded at any time in those 12 months, if substantially different from its then registered name;
 - (d) the name and address of the administrative receiver, and the date of his appointment;
 - (e) the name of the person by whom the appointment was made;
 - (f) the date of the instrument conferring the power under which the appointment was made, and a brief description of the instrument;
 - (g) a brief description of the assets of the company (if any) in respect of which the person appointed is not made the receiver.

[(3) Subject to paragraph (4), the notice of appointment to be given by the administrative receiver under section 46(1)(a) shall be gazetted and may be advertised in such other manner as the administrative receiver thinks fit.

[(4) In addition to the standard contents, the notice under paragraph (3) must state—

- (a) that an administrative receiver has been appointed;
- (b) the date of the appointment;
- (c) the name of the person who made the appointment, and that the appointment was made by that person; and
- (d) the nature of the business of the company.

] ⁶⁵⁹

] ⁶⁶⁰

Commencement

Pt 3(1) rule 3.2(1)-(4): December 29, 1986

CHAPTER 2

STATEMENT OF AFFAIRS AND REPORT TO CREDITORS

3.3.— Notice requiring statement of affairs

(1) [Where]⁶⁶² the administrative receiver determines to require a statement of the company's affairs to be made out and submitted to him in accordance with section 47, he shall send notice to

⁶⁵⁸ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(4) para.24 (January 11, 1988)

⁶⁵⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.112(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁶⁰ Substituted by Insolvency (Amendment) Rules 2009/642 rule 14 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁶⁶¹ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(2) para.156(2) (January 11, 1988)

⁶⁶² Word substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(4) para.25(1) (January 11, 1988)

each of the persons whom he considers should be made responsible under that section, requiring them to prepare and submit the statement.

(2) The persons to whom the notice is sent are referred to in this Chapter as “the [nominated persons]”⁶⁶³.

(3) The notice shall inform each of the [nominated persons]⁶⁶³ —

- (a) of the names and addresses of all others (if any) to whom the same notice has been sent;
- (b) of the time within which the statement must be delivered;
- (c) of the effect of section 47(6) (penalty for non-compliance); and
- (d) of the application to him, and to each of the other [nominated persons]⁶⁶³, of section 235 (duty to provide information, and to attend on the administrative receiver if required).

(4) The administrative receiver shall, on request, furnish each [nominated person]⁶⁶⁴ with [the forms required for the preparation of the statement of affairs]⁶⁶⁵.

Commencement

Pt 3(2) rule 3.3(1)-(4): December 29, 1986

3.4.— Verification and filing

(1) The statement of affairs shall be in Form 3.2, shall contain all the particulars required by that form and shall be verified by [a statement of truth]⁶⁶⁶ by the [nominated persons]⁶⁶⁷ (using the same form).

(2) The administrative receiver may require any of the persons mentioned in section 47(3) to submit [a statement of concurrence]⁶⁶⁸, stating that he concurs [with the statement of affairs]⁶⁶⁹.

⁶⁶³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.113(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁶⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.113(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁶⁵ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(4) para.25(2) (January 11, 1988)

⁶⁶⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.114(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁶⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.114(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁶⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.114(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁶⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.114(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) [A statement]⁶⁷⁰ of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of [the statement of concurrence]⁶⁷¹ is not in agreement with the [nominated persons]⁶⁷², or he considers the statement to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.

(4) The statement of affairs shall be delivered to the receiver by the [nominated person]⁶⁷³ making the [statement of truth]⁶⁷⁴ (or by one of them, if more than one), together with a copy of the verified statement.

(5) Every [statement]⁶⁷⁵ of concurrence shall be delivered by the person who makes it, together with a copy.

(6) The administrative receiver shall retain the verified copy of the statement [of affairs]⁶⁷⁶ and the [statements]⁶⁷⁷ of concurrence (if any) as part of the records of the receivership.

Commencement

Pt 3(2) rule 3.4(1)-(6): December 29, 1986

3.5.— Limited disclosure

(1) Where the administrative receiver thinks that it would prejudice the conduct of the receivership [or might reasonably be expected to lead to violence against any person]⁶⁷⁸ for the whole or part of the statement of affairs to be disclosed, he may apply to the court for an order of limited disclosure in respect of the statement or a specified part of it.

⁶⁷⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.114(4)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁷¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.114(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁷² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.114(4)(c) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁷³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.114(5)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁷⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.114(5)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁷⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.114(6) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁷⁶ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.114(7)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁷⁷ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.114(7)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁷⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.115(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) The court may on the application order that the statement, or, as the case may be, the specified part of it, be not open to inspection otherwise than with [permission]⁶⁷⁹ of the court.

(3) The court's order may include directions as to the delivery of documents to the registrar of companies and the disclosure of relevant information to other persons.

Commencement

Pt 3(2) rule 3.5(1)-(3): December 29, 1986

3.6.— Release from duty to submit statement of affairs; extension of time

(1) The power of the administrative receiver under section 47(5) to give a release from the obligation imposed by that section, or to grant an extension of time, may be exercised at the receiver's own discretion, or at the request of any [nominated person]⁶⁸⁰.

(2) A [nominated person]⁶⁸⁰ may, if he requests a release or extension of time and it is refused by the receiver, apply to the court for it.

(3) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for [a hearing without notice to any other party]⁶⁸¹, of which he has been given at least [5 business]⁶⁸² days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the [nominated person]⁶⁸⁰ accordingly.

(4) The [nominated person]⁶⁸⁰ shall, at least 14 days before the hearing, send to the receiver a notice stating the venue and accompanied by a copy of the application, and of any evidence which he (the [nominated person]⁶⁸⁰) intends to adduce in support of it.

(5) The receiver may appear and be heard on the application; and, whether or not he appears he may file a written report of any matters which he considers ought to be drawn to the court's attention. If such a report is filed, a copy of it shall be sent by the receiver to the [nominated person]⁶⁸⁰, not later than 5 [business]⁶⁸³ days before the hearing.

(6) Sealed copies of any order made on the application shall be sent by the court to the [nominated person]⁶⁸⁰ and the receiver.

⁶⁷⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁸⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.116(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁸¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.116(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁸² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.116(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁸³ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.116(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(7) On any application under this Rule the applicant's costs shall be paid in any event by him and, unless the court otherwise orders, no allowance towards them shall be made out of the assets under the administrative receiver's control.

Commencement

Pt 3(2) rule 3.6(1)-(7): December 29, 1986

3.7.— Expenses of statement of affairs

(1) A [nominated person]⁶⁸⁴ making the statement of affairs and [statement of truth]⁶⁸⁵ shall be allowed, and paid by the administrative receiver out of his receipts, any expenses incurred by the [nominated person]⁶⁸⁴ in so doing which the receiver thinks reasonable.

(2) Any decision by the receiver under this Rule is subject to appeal to the court.

(3) Nothing in this Rule relieves a [nominated person]⁶⁸⁶ from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the receiver.

Commencement

Pt 3(2) rule 3.7(1)-(3): December 29, 1986

3.8.— Report to creditors

[(1) If an administrative receiver gives notice under section 48(2)(b), the notice—
 (a) shall be gazetted; and
 (b) may be advertised in such other manner as the administrative receiver thinks fit.

]⁶⁸⁷

[(1A) In addition to the standard contents, the notice under paragraph (1) must state that creditors can write for a copy of the report and the address to which to write.]⁶⁸⁸

(2) If he proposes to apply to the court to dispense with the holding of the meeting of unsecured creditors (otherwise required by section 48(2)), he shall in his report to creditors or (as the case

⁶⁸⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.117(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁸⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.117(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁸⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.117(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁸⁷ Substituted by Insolvency (Amendment) Rules 2009/642 rule 15 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

⁶⁸⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.118(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

may be) in the notice published as above, state the venue fixed by the court for the hearing of the application.

(3) Subject to any order of the court under Rule 3.5, the copy of the receiver's report which under section 48(1) is to be sent to the registrar of companies shall have attached to it a copy of any statement of affairs under section 47, and copies of any [statements]⁶⁸⁹ of concurrence.

(4) [...] ⁶⁹⁰ If the statement of affairs or [statements]⁶⁸⁹ of concurrence, if any, have not been submitted to the receiver by the time he sends a copy of his report to the registrar of companies, he shall send a copy of the statement [of affairs]⁶⁹¹ and any [statements]⁶⁸⁹ of concurrence as soon thereafter as he receives them.

[(5) The receiver's report under section 48(1) shall state, to the best of his knowledge and belief—

(a) an estimate of the value of the prescribed part (whether or not he proposes to make an application under section 176A(5) or whether section 176A(3) applies); and

(b) an estimate of the value of the company's net property.

(6) Nothing in this Rule is to be taken as requiring any such estimate to include any information, the disclosure of which could seriously prejudice the commercial interests of the company.

If such information is excluded from the calculation the estimate shall be accompanied by a statement to that effect.

(7) The report shall also state whether, and if so why, the receiver proposes to make an application to court under section 176A(5).]⁶⁹²

Commencement

Pt 3(2) rule 3.8(1)-(4): December 29, 1986

CHAPTER 3

CREDITORS' MEETING

3.9.— Procedure for summoning meeting under s.48(2)

(1) In fixing the venue for a meeting of creditors summoned under section 48(2), the administrative receiver shall have regard to the convenience of the persons who are invited to attend.

(2) The meeting shall be summoned for commencement between 10.00 and 16.00 hours on a business day, unless the court otherwise directs.

⁶⁸⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.118(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁹⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁹¹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.118(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁹² Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(3) para.10 (September 15, 2003)

- (3) At least 14 days' notice of the venue shall be given to all creditors of the company who [...] ⁶⁹³ are known to the receiver and had claims against the company at the date of his appointment.
- (4) With the notice summoning the meeting there shall be sent out forms of proxy.
- (5) The notice shall include a statement to the effect that creditors whose claims are wholly secured are not entitled to attend or be represented at the meeting.
- [(6) The administrative receiver—
- (a) as soon as reasonably practicable must also have gazetted a notice of the meeting; and
 - (b) may advertise the notice of the meeting in such other manner as the administrative receiver thinks fit.
- (6A) In addition to the standard contents, the notice under paragraph (6) must—
- (a) state that a meeting under section 48(2) is to take place;
 - (b) include the statement required by paragraph (5); and
 - (c) state the venue for the meeting.

] ⁶⁹⁴

- (7) The notice to creditors and the [notice given under paragraph (6)] ⁶⁹⁵ shall contain a statement of the effect of Rule 3.11(1) below (voting rights).

Commencement

Pt 3(001) rule 3.9(1)-(7): December 29, 1986

3.10.— The chairman at the meeting

- (1) The chairman at the creditors' meeting shall be the receiver, or a person nominated by him in writing to act in his place.
- (2) A person so nominated must be either—
- (a) one who is qualified to act as an insolvency practitioner in relation to the company, or
 - (b) an employee of the receiver or his firm who is experienced in insolvency matters.

Commencement

Pt 3(001) rule 3.10(1)-(2)(b): December 29, 1986

3.11.— Voting rights

- (1) Subject as follows, at the creditors' meeting a person is entitled to vote only if—

⁶⁹³ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.119(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁹⁴ Rule 3.9(6) and (6A) substituted for rule 3.9(6) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.119(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁹⁵ Words substituted by Insolvency (Amendment) Rules 2009/642 rule 16(b) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

- (a) he has given to the receiver, not later than 12.00 hours on the business day before the day fixed for the meeting, details in writing of the debt that he claims to be due to him from the company, and the claim has been duly admitted under [Rule 3.12 or]⁶⁹⁶ this Rule, and
- (b) there has been lodged with the administrative receiver any proxy which the creditor intends to be used on his behalf [...]⁶⁹⁷

[and details of the debt must include any calculation for the purposes of paragraphs (6) and (7).]⁶⁹⁷

(2) The chairman of the meeting may allow a creditor to vote, notwithstanding that he has failed to comply with paragraph (1)(a), if satisfied that the failure was due to circumstances beyond the creditor's control.

(3) The receiver or (if other) the chairman of the meeting may call for any document or other evidence to be produced to him where he thinks it necessary for the purpose of substantiating the whole or any part of the claim.

(4) Votes are calculated according to the amount of a creditor's debt as at the date of the appointment of the receiver, after deducting any amounts paid in respect of that debt after that date.

(5) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

[(5A) No vote may be cast by virtue of a claim more than once on any resolution put to the meeting.]⁶⁹⁸

(6) A secured creditor is entitled to vote only in respect of the balance (if any) of his debt after deducting the value of his security as estimated by him.

(7) A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing—

- (a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands, and
- (b) to estimate the value of the security and, for the purpose of his entitlement to vote [(but not for dividend)]⁶⁹⁹, to deduct it from his claim.

Commencement

Pt 3(001) rule 3.11(1)-(7)(b): December 29, 1986

⁶⁹⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.120(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁹⁷ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.120(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁹⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.120(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁶⁹⁹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.120(5) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[3.11A Contents of claim

- (1) The following matters must be stated in a creditor's claim under Rule 3.11—
- (a) the creditor's name and address, and, if a company, its company registration number;
 - (b) the total amount of the claim (including any value added tax) as at the date of the appointment of the receiver, less all trade and other discounts available to the company, or which would have been available to the company but for the appointment, except for any discount for immediate, early or cash settlement;
 - (c) whether or not that amount includes outstanding uncapitalised interest;
 - (d) particulars of how and when the debt was incurred by the company;
 - (e) particulars of any security held, the date when it was given and the value which the creditor puts upon it;
 - (f) details of any reservation of title in respect of goods to which the debt refers; and
 - (g) the name, and address and authority of the person making out the claim (if other than the creditor himself).

- (2) The claim must specify any documents by reference to which the debt can be substantiated; but it is not essential that such documents be attached to the claim or submitted with it.

]

3.12.— Admission and rejection of claim

- (1) At the creditors' meeting the chairman has power to admit or reject a creditor's claim for the purpose of his entitlement to vote; and the power is exercisable with respect to the whole or any part of the claim.

- (2) The chairman's decision under this Rule, or in respect of any matter arising under Rule 3.11, is subject to appeal to the court by any creditor.

- (3) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained.

- (4) If on an appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks just.

[(4A) An application to the court by way of appeal under this Rule against a decision of the chairman must be made not later than 21 days after the date of the meeting.]

- (5) Neither the receiver nor any person nominated by him to be chairman is personally liable for costs incurred by any person in respect of an appeal to the court under this Rule, unless the court makes an order to that effect.

Commencement

Pt 3(001) rule 3.12(1)-(5): December 29, 1986

⁷⁰⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.121 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁰¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.122(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

3.13.— [...] ⁷⁰²**3.14.— Adjournment**

(1) The creditors' meeting shall not be adjourned, even if no quorum is present, unless the chairman decides that it is desirable; and in that case he shall adjourn it to such date, time and place as he thinks fit.

(2) Rule 3.9(1) and (2) applies, with necessary modifications, to any adjourned meeting.

[(2A) Once only in the course of a meeting the chairman may, without an adjournment, declare it suspended for any period up to 1 hour.] ⁷⁰³

(3) If there is no quorum, and the meeting is not adjourned, it is deemed to have been duly summoned and held.

Commencement

Pt 3(001) rule 3.14(1)-(3): December 29, 1986

3.15.— Resolutions and minutes

(1) At the creditors' meeting, a resolution is passed when a majority (in value) of those present and voting in person or by proxy have voted in favour of it.

(2) The chairman of the meeting shall cause a record to be made of the proceedings [(including of every resolution passed)] ⁷⁰⁴ , and kept as part of the records of the receivership.

(3) The record shall include a list of the creditors who attended (personally or by proxy) and, if a creditors' committee has been established, the names and addresses of those elected to be members of the committee.

Commencement

Pt 3(001) rule 3.15(1)-(3): December 29, 1986

CHAPTER 4**THE CREDITORS' COMMITTEE****3.16.— Constitution of committee**

(1) Where it is resolved by the creditors' meeting to establish a creditors' committee, the committee shall consist of at least 3 and not more than 5 creditors of the company elected at the meeting.

⁷⁰² Revoked by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(4) para.26 (January 11, 1988)

⁷⁰³ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.123(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁰⁴ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.124(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- [(2) A person claiming to be a creditor is entitled to be a member of the committee provided that—
- (a) that person's claim has not been wholly disallowed for voting purposes; and
 - (b) the claim mentioned in sub-paragraph (a) is not fully secured.

] ⁷⁰⁵

(3) A body corporate may be a member of the committee, but it cannot act as such otherwise than by a representative appointed under Rule 3.21 below.

Commencement

Pt 3(4) rule 3.16(1)-(3): December 29, 1986

3.17.— Formalities of establishment

(1) The creditors' committee does not come into being, and accordingly cannot act, until the administrative receiver has issued a certificate of its due constitution.

[(1A) If the chairman of the creditors' meeting which resolves to establish the committee is not the administrative receiver, the chairman must as soon as reasonably practicable give notice of the resolution to the receiver and inform the receiver of the names and addresses of the persons elected to be members of the committee.] ⁷⁰⁶

[(2) No person may act as a member of the committee unless and until he has agreed to do so and, unless the relevant proxy or authorisation contains a statement to the contrary, such agreement may be given by his proxy-holder [...] ⁷⁰⁷ present at the meeting establishing the committee [or, in the case of a corporation, by its duly appointed representative] ⁷⁰⁸ .

(2A) The receiver's certificate of the committee's due constitution shall not [be issued before the minimum number of members set out in Rule 3.16 elected] ⁷⁰⁹ to be members of the committee have agreed to act [and must be issued as soon as reasonably practicable thereafter] ⁷¹⁰ .] ⁷¹¹

(3) As and when the others (if any) agree to act, the receiver shall issue an amended certificate.

⁷⁰⁵ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.125(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁰⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.126(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁰⁷ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.126(3)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁰⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.126(3)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁰⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.126(4)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷¹⁰ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.126(4)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷¹¹ Paras.(2) and (2A) substituted for para.(2) by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(4) para.27 (January 11, 1988)

(4) [...] ⁷¹² The certificate, and any amended certificate, shall be sent by the receiver to the registrar of companies [as soon as reasonably practicable] ⁷¹³ .

(5) [...] ⁷¹² If, after the first establishment of the committee, there is any change in its membership, the receiver shall report the change to the registrar of companies [as soon as reasonably practicable] ⁷¹⁴ .

Commencement

Pt 3(4) rule 3.17(1)-(5): December 29, 1986

3.18.— Functions and meetings of the committee

(1) [In addition to any functions conferred on the creditors' committee by any provision of the Act, the] ⁷¹⁵ creditors' committee shall assist the administrative receiver in discharging his functions, and act in relation to him in such manner as may be agreed from time to time.

(2) Subject as follows, meetings of the committee shall be held when and where determined by the receiver.

[(3) The receiver must call a first meeting of the committee to take place within 6 weeks of the committee's establishment.

(3A) After the calling of the first meeting, the receiver must call a meeting—

- (a) if so requested by a member of the committee or the member's representative (the meeting then to be held within 21 days of the request being received by the receiver); and
- (b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

] ⁷¹⁶

(4) [Subject to paragraph (5), the] ⁷¹⁷ receiver shall give [5 business] ⁷¹⁸ days' written notice of the venue of any meeting to every member (or his representative designated for that purpose), unless in any case the requirement of notice has been waived by or on behalf of any member.

⁷¹² Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷¹³ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.126(5) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷¹⁴ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.126(6) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷¹⁵ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.127(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷¹⁶ Rule 3.18(3)-(3A) substituted for rule 3.18(3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.127(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷¹⁷ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.127(4)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷¹⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.127(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Waiver may be signified either at or before the meeting.

[(5) Where the receiver has determined that a meeting should be conducted and held in the manner referred to in Rule 12A.26(2), the notice period mentioned in paragraph (4) is 7 business days.]⁷¹⁹

Commencement

Pt 3(4) rule 3.18(1)-(4): December 29, 1986

3.19.— The chairman at meetings

[(1) The chairman at any meeting of the creditors' committee must be the administrative receiver, or a person appointed by the receiver in writing to act.]⁷²⁰

(2) A person so [appointed]⁷²¹ must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the company, or
- (b) an employee of the receiver or his firm who is experienced in insolvency matters.

Commencement

Pt 3(4) rule 3.19(1)-(2)(b): December 29, 1986

3.20.— Quorum

A meeting of the committee is duly constituted if due notice has been given to all the members, and at least 2 members are present or represented.

Commencement

Pt 3(4) rule 3.20: December 29, 1986

3.21.— Committee-members' representatives

(1) A member of the committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.

(2) A person acting as a committee-member's representative must hold a letter of authority entitling him so to act (either generally or specially) and [authenticated] ⁷²² by or on behalf of the committee-member [, and for this purpose any proxy [...] ⁷²³ in relation to any meeting of creditors

⁷¹⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.127(5) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷²⁰ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.128(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷²¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.128(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷²² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷²³ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.129(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

of the company shall, unless it contains a statement to the contrary, be treated as a letter of authority to act generally [authenticated]⁷²² by or on behalf of the committee-member]⁷²⁴ .

(3) The chairman at any meeting of the committee may call on a person claiming to act as a committee-member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

[(4) No member may be represented by—

- (a) another member of the committee;
- (b) a person who is at the same time representing another committee member;
- (c) a body corporate;
- (d) an undischarged bankrupt;
- (e) a disqualified director; or
- (f) a person who is subject to a bankruptcy restrictions order (including an interim order), a bankruptcy restrictions undertaking, a debt relief restrictions order (including an interim order) or a debt relief restrictions undertaking.

] ⁷²⁵

(5) [...] ⁷²⁶

(6) Where a member's representative [authenticates] ⁷²² any document on the member's behalf, the fact that he so [Authenticates] ⁷²² must be stated below his [authentication] ⁷²² .

Commencement

Pt 3(4) rule 3.21(1)-(6): December 29, 1986

3.22. Resignation

A member of the committee may resign by notice in writing delivered to the administrative receiver.

Commencement

Pt 3(4) rule 3.22: December 29, 1986

3.23.— Termination of membership

(1) Membership of the creditors' committee is automatically terminated if the member—

- (a) becomes bankrupt [...] ⁷²⁷ , or
- (b) at 3 consecutive meetings of the committee is neither present nor represented (unless at the third of those meetings it is resolved that this Rule is not to apply in his case), or
- [(c) ceases to be a creditor and a period of 3 months has elapsed from the date that that member ceased to be a creditor or is found never to have been a creditor.] ⁷²⁸

⁷²⁴ Words added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(4) para.28 (January 11, 1988)

⁷²⁵ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.129(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷²⁶ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.129(4) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷²⁷ Words repealed by Insolvency (Amendment) Rules 2004/584 rule 7 (April 1, 2004)

(2) However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.

Commencement

Pt 3(4) rule 3.23(1)-(2): December 29, 1986

3.24. Removal

A member of the committee may be removed by resolution at a meeting of creditors, at least 14 days' notice having been given of the intention to move that resolution.

Commencement

Pt 3(4) rule 3.24: December 29, 1986

3.25.— Vacancies

(1) The following applies if there is a vacancy in the membership of the creditors' committee.

(2) The vacancy need not be filled if the administrative receiver and a majority of the remaining members of the committee so agree, provided that the total number of members does not fall below [3]⁷²⁹.

(3) The receiver may appoint any creditor (being qualified under the Rules to be a member of the committee) to fill the vacancy, if a majority of the other members of the committee agree to the appointment and the creditor concerned consents to act.

[(4) Alternatively, a meeting of creditors may resolve that a creditor be appointed (with that creditor's consent) to fill the vacancy. In this case at least 14 days' notice must have been given of a resolution to make such an appointment (whether or not of a person named in the notice).

(5) Where the vacancy is filled by an appointment made by a creditors' meeting at which the receiver is not present, the chairman of the meeting must report to the receiver the appointment which has been made.]⁷³⁰

Commencement

Pt 3(4) rule 3.25(1)-(3): December 29, 1986

⁷²⁸ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.130(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷²⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.131(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷³⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.131(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

3.26.— Procedure at meetings

(1) At any meeting of the committee, each member of it (whether present himself or by his representative) has one vote; and a resolution is passed when a majority of the members present or represented have voted in favour of it.

[(2) Every resolution passed must be recorded in writing and authenticated by the chairman, either separately or as part of the minutes of the meeting and the record must be kept with the records of the proceedings.]⁷³¹

Commencement

Pt 3(4) rule 3.26(1)-(3): December 29, 1986

3.27.— Resolutions [otherwise than at a meeting]⁷³²

(1) In accordance with this Rule, the administrative receiver may seek to obtain the agreement of members of the creditors' committee to a resolution by sending to every member (or his representative designated for the purpose) a copy of the proposed resolution.

(2) Where the receiver makes use of the procedure allowed by this Rule, he shall send out to members of the committee or their representatives (as the case may be) [a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent]⁷³³.

(3) Any member of the committee may, within 7 business days from the date of the receiver sending out a resolution, require him to summon a meeting of the committee to consider the matters raised by the resolution.

(4) In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the receiver is notified in writing by a majority of the members that they concur with it.

(5) A copy of every resolution passed under this Rule, and a note that the committee's concurrence was obtained, shall be kept with the records of the receivership.

Commencement

Pt 3(4) rule 3.27(1)-(5): December 29, 1986

⁷³¹ Rule 3.26(2) substituted for rule 3.26(2)-(3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.132(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷³² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.133(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷³³ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(4) para.29 (January 11, 1988)

3.28.— Information from receiver

- (1) Where the committee resolves to require the attendance of the administrative receiver under section 49(2), the notice to him shall be in writing [authenticated]⁷³⁴ by the majority of the members of the committee for the time being. A member's representative may [authenticate]⁷³⁴ for him.
- (2) The meeting at which the receiver's attendance is required shall be fixed by the committee for a business day, and shall be held at such time and place as he determines.
- (3) Where the receiver so attends, the members of the committee may elect any one of their number to be chairman of the meeting, in place of the receiver or any nominee of his.

Commencement

Pt 3(4) rule 3.28(1)-(3): December 29, 1986

3.29.— Expenses of members

- (1) Subject as follows, the administrative receiver shall out of the assets of the company defray [, in the prescribed order of priority,]⁷³⁵ any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in relation to their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the receivership.
- (2) Paragraph (1) does not apply to any meeting of the committee held within 3 months of a previous meeting, unless the meeting in question is summoned at the instance of the administrative receiver.

Commencement

Pt 3(4) rule 3.29(1)-(2): December 29, 1986

3.30.— Members' dealings with the company

- (1) Membership of the committee does not prevent a person from dealing with the company while the receiver is acting, provided that any transactions in the course of such dealings are entered into in good faith and for value.
- (2) The court may, on the application of any person interested, set aside a transaction which appears to it to be contrary to the requirements of this Rule, and may give such consequential directions as it thinks [just]⁷³⁶ for compensating the company for any loss which it may have incurred in consequence of the transaction.

Commencement

Pt 3(4) rule 3.30(1)-(2): December 29, 1986

⁷³⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷³⁵ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.134(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷³⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[3.30A. Formal defects

The acts of the creditors' committee established for any administrative receivership are valid notwithstanding any defect in the appointment, election or qualifications of any member of the committee or any committee-member's representative or in the formalities of its establishment.]⁷³⁷

CHAPTER 5**THE ADMINISTRATIVE RECEIVER (MISCELLANEOUS)****3.31.— Disposal of charged property**

- (1) The following applies where the administrative receiver applies to the court under section 43(1) for authority to dispose of property of the company which is subject to a security.
- (2) The court shall fix a venue for the hearing of the application, and the receiver shall [as soon as reasonably practicable]⁷³⁸ give notice of the venue to the person who is the holder of the security.
- [(3) If an order is made under section 43(1), the court must send two sealed copies to the administrative receiver.
- (4) The administrative receiver must send one of them to that person who is the holder of the security.]⁷³⁹

Commencement

Pt 3(5) rule 3.31(1)-(4): December 29, 1986

3.32.— Abstract of receipts and payments

- (1) The administrative receiver shall—
- (a) within 2 months after the end of 12 months from the date of his appointment, and of every subsequent period of 12 months, and
 - (b) within 2 months after he ceases to act as administrative receiver,
- send to the registrar of companies, to the company and to the person by whom he was appointed, and to each member of the creditors' committee (if there is one), the requisite accounts of his receipts and payments as receiver.
- (2) The court may, on the receiver's application, extend the period of 2 months referred to in paragraph (1).
- (3) The accounts are to be in the form of an abstract showing—
- (a) receipts and payments during the relevant period of 12 months, or
 - (b) where the receiver has ceased to act, receipts and payments during the period from the end of the last 12-month period to the time when he so ceased (alternatively, if there has

⁷³⁷ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(4) para.30 (January 11, 1988)

⁷³⁸ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁷³⁹ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.135(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

been no previous abstract, receipts and payments in the period since his appointment as administrative receiver).

(4) This Rule is without prejudice to the receiver's duty to render proper accounts required otherwise than as above.

(5) If the administrative receiver makes default in complying with this Rule, he is liable to a fine and, for continued contravention, to a daily default fine.

Commencement

Pt 3(5) rule 3.32(1)-(5): December 29, 1986

3.33.— Resignation

(1) Subject as follows, before resigning his office the administrative receiver shall give at least [5 business]⁷⁴⁰ days' notice of his intention to do so to—

- (a) the person by whom he was appointed, [...] ⁷⁴¹
- (b) the company or, if it is then in liquidation, its liquidator [, and] ⁷⁴²
- [(c) in any case, to the members of the creditors' committee (if any).] ⁷⁴²

(2) A notice given under this Rule shall specify the date on which the receiver intends his resignation to take effect.

(3) [...] ⁷⁴³

Commencement

Pt 3(5) rule 3.33(1)-(3): December 29, 1986

3.34.— Receiver deceased

If the administrative receiver dies, the person by whom he was appointed shall, [as soon as reasonably practicable]⁷⁴⁴ on his becoming aware of the death, give notice of it to—

- (a) [...] ⁷⁴⁵ the registrar of companies, [...] ⁷⁴⁶
- (b) the company or, if it is in liquidation, the liquidator [, and] ⁷⁴⁷

⁷⁴⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.136(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁴¹ Word omitted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(4) para.31(a) (January 11, 1988)

⁷⁴² Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(4) para.31(b) (January 11, 1988)

⁷⁴³ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.136(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁴⁴ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁷⁴⁵ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁴⁶ Word omitted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(4) para.32(a) (January 11, 1988)

⁷⁴⁷ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(4) para.32(b) (January 11, 1988)

[(c) in any case, to the members of the creditors' committee (if any).]⁷⁴⁷

Commencement

Pt 3(5) rule 3.34(a)-(b): December 29, 1986

3.35.— Vacation of office

(1) The administrative receiver, on vacating office on completion of the receivership, or in consequence of his ceasing to be qualified as an insolvency practitioner, shall [as soon as reasonably practicable]⁷⁴⁸ give notice of his doing so—

[(a) to the company or, if it is in liquidation, the liquidator, and]⁷⁴⁹

(b) [...] ⁷⁵⁰ to the members of the creditors' committee (if any).

(2) Where the receiver's office is vacated, the notice to the registrar of companies which is required by section 45(4) may be given by means of an indorsement on the notice required by [section 871(2)]⁷⁵¹ of the Companies Act (notice for the purposes of the register of charges).

Commencement

Pt 3(5) rule 3.35(1)-(2): December 29, 1986

CHAPTER 6

VAT BAD DEBT RELIEF

3.36.— [...] ⁷⁵²

3.37.— [...] ⁷⁵³

3.38.— [...] ⁷⁵⁴

⁷⁴⁸ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

⁷⁴⁹ Substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(4) para.33 (January 11, 1988)

⁷⁵⁰ Words omitted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(4) para.33 (January 11, 1988)

⁷⁵¹ Words substituted by Insolvency (Amendment) (No. 2) Rules 2009/2472 rule 9(2) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/2472 rule 2)

⁷⁵² Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁵³ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁵⁴ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[CHAPTER 7

SECTION 176A: THE PRESCRIBED PART]⁷⁵⁵**[3.39.— Report to creditors**

(1) This Rule applies where—

- (a) a receiver (other than an administrative receiver) is appointed by the court or otherwise under a charge which as created was a floating charge; and
- (b) section 176A applies.

(2) Within 3 months (or such longer period as the court may allow) of the date of his appointment the receiver shall send to creditors, details of whose names and addresses are available to him, notice of his appointment and a report which will include the following matters—

- (a) to the best of the receiver's knowledge and belief—
 - (i) an estimate of the value of the prescribed part (whether or not he proposes to make an application to the court under section 176A(5) or section 176A(3) applies); and
 - (ii) an estimate of the value of company's net property;
- (b) whether, and if so, why, he proposes to make an application to court under section 176A(5); and
- (c) whether he proposes to present a petition for the winding up of the company.

(3) Nothing in this Rule is to be taken as requiring any such estimate to include any information, the disclosure of which could seriously prejudice the commercial interests of the company. If such information is excluded from the calculation the estimate shall be accompanied by a statement to that effect.

[(4) Where the requirements of paragraph (5) are satisfied, the receiver may, instead of sending the report required under paragraph (2)—

- (a) cause a notice [...] ⁷⁵⁶ to be gazetted; and
- (b) may advertise the notice in such other manner as the receiver thinks fit.

[(4A) In addition to the standard contents, the notice under paragraph (4) must include a statement of the matters required to be included in the receiver's report under paragraph (2).]⁷⁵⁷

(5) The requirements of this paragraph are that—

- (a) full details of the unsecured creditors of the company are not available to the receiver; or
- (b) the receiver thinks it is otherwise impracticable to send the report.

] ⁷⁵⁸

⁷⁵⁵ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(3) para.11 (September 15, 2003)

⁷⁵⁶ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.137(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁵⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.137(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

] ⁷⁵⁹**[3.40. Receiver to deal with prescribed part**

Where Rule 3.39 applies—

- (a) the receiver may present a petition for the winding up of the company if the ground of the petition is that in section 122(1)(f);
- (b) where a liquidator or administrator has been appointed to the company, the receiver shall deliver up the sums representing the prescribed part to him;
- (c) in any other case, the receiver shall apply to the court for directions as to the manner in which he is to discharge his duty under section 176A(2)(a) and shall act in accordance with such directions as are given by the court.

] ⁷⁶⁰**PART 4****COMPANIES WINDING UP****CHAPTER 1****THE SCHEME OF THIS PART OF THE RULES****4.1.— Voluntary winding up; winding up by the court**

- [(1) In a members' voluntary winding up, the Rules in this Part do not apply, except as follows—
- (a) [Rules 4.3 and 4.35 apply] ⁷⁶¹ in the same way as [they apply] ⁷⁶² in a creditors' voluntary winding up;
 - [(aa) Rules 4.49C, 4.49E and 4.49F apply except so far as it is provided (expressly or by necessary implication) that they do not apply;
 - (ab) Rule 4.49G applies only in a members' voluntary winding up, and not otherwise;] ⁷⁶³

⁷⁵⁸ Rule 3.39(4) and (5) substituted for rule 3.39(4) by Insolvency (Amendment) Rules 2009/642 rule 17 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

⁷⁵⁹ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(3) para.11 (September 15, 2003)

⁷⁶⁰ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(3) para.11 (September 15, 2003)

⁷⁶¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.138(2)(a)(i) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁶² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.138(2)(a)(ii) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁶³ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.138(2)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (b) Rule 4.72 (additional provisions concerning meetings in relation to [the Financial Services Authority] ⁷⁶⁴ and [the scheme manager] ⁷⁶⁵) applies in the winding up of [authorised deposit-takers or former authorised deposit-takers] ⁷⁶⁶ , whether members' or creditors' voluntary or by the court;
- (c) Chapters 9 (proof of debts in a liquidation), 10 (secured creditors), 15 (disclaimer) and 18 (special manager) apply wherever, and in the same way as, they apply in a creditors' voluntary winding up;
- (d) Section F of Chapter 11 (the liquidator) applies only in a members' voluntary winding up, and not otherwise;
- (e) Section G of that Chapter (court's power to set aside certain transactions; rule against solicitation) applies in any winding up, whether members' or creditors' voluntary or by the court;
- (f) [Rules 4.126A and 4.182A apply] ⁷⁶⁷ only in a members' voluntary winding up, and not otherwise; and
- (g) Rule 4.223-CVL (liquidator's statements) applies in the same way as it applies in a creditors' voluntary winding up.

] ⁷⁶⁸

(2) Subject as follows, the Rules in this Part apply both in a creditors' voluntary winding up and in a winding up by the court; and for this purpose a winding up is treated as a creditors' voluntary [winding up] ⁷⁶⁹ if, and from the time when, the liquidator forms the opinion that the company will be unable to pay its debts in full, and determines accordingly to summon a creditors' meeting under section 95.

(3) The following Chapters, or Sections of Chapters, of this Part do not apply in a creditors' voluntary winding up—

- Chapter 2—The statutory demand;
- Chapter 3—Petition to winding-up order;
- Chapter 4—Petition by contributories;
- Chapter 5—Provisional liquidator;
- [Chapter 11 (Section F)—The liquidator in a members' voluntary winding up;] ⁷⁷⁰
- Chapter 13—The liquidation committee where winding up follows immediately on administration;
- Chapter 16—Settlement of list of contributories;
- Chapter 17—Calls;
- Chapter 19—Public examination of company officers and others; and

⁷⁶⁴ Words substituted by Bank of England Act 1998 (Consequential Amendments of Subordinate Legislation) Order 1998/1129 Sch.1 para.4(2) (June 1, 1998)

⁷⁶⁵ Words substituted by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.378(1) (December 1, 2001)

⁷⁶⁶ Words substituted by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.377(3) (December 1, 2001)

⁷⁶⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.138(2)(c) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁶⁸ Substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.34(1) (January 11, 1988)

⁷⁶⁹ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.34(2) (January 11, 1988)

⁷⁷⁰ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.34(3)(a) (January 11, 1988)

Chapter 21 (Section A)—Return of capital.

[Chapter 21 (Section C)—Dissolution after winding up.]⁷⁷¹

(4) Where at the head of any Rule, or at the end of any paragraph of a Rule, there appear the words “(NO CVL APPLICATION)”, this signifies that the Rule or, as the case may be, the paragraph does not apply in a creditors' voluntary winding up.

However, this does not affect the court's power to make orders under section 112 (exercise in relation to voluntary winding up of powers available in winding up by the court).

(5) Where to any Rule or paragraph there is given a number incorporating the letter “CVL”, that signifies that the Rule or (as the case may be) the paragraph applies in a creditors' voluntary winding up, and not in a winding up by the court.

[(6) In a voluntary winding up which is commenced by the registration of a notice under paragraph 83(3) of Schedule B1 to the Act, the following provisions of this Part shall not apply—
Rules 4.34, 4.38, 4.49, 4.51, 4.53, 4.62, 4.101, 4.103, 4.106, 4.152, 4.153, 4.206–4.210.
]⁷⁷²

Commencement

Pt 4(1) rule 4.1(1)-(5): December 29, 1986

4.2.— Winding up by the court: the various forms of petition[(NO CVL APPLICATION)]⁷⁷³

(1) Insofar as the Rules in this Part apply to winding up by the court, they apply (subject as follows) whether the petition for winding up is presented under any of the several paragraphs of section 122(1), namely—

paragraph (a)—company special resolution for winding up by the court;

paragraph (b)—public company without certificate under [section 761]⁷⁷⁴ of the Companies Act;

paragraph (c)—old public company;

paragraph (d)—company not commencing business after formation, or suspending business;

paragraph (e)—number of company's members reduced below 2;

paragraph (f)—company unable to pay its debts;

[paragraph (fa)—end of moratorium without approval of voluntary arrangement;]⁷⁷⁵

paragraph (g)—court's power under the “just and equitable” rule,

or under any enactment enabling the presentation of a winding-up petition.

(2) Except as provided by the following two paragraphs or by any particular Rule, the Rules apply whether the petition for winding up is presented by the company, the directors, one or more creditors, one or more contributories, the Secretary of State, the official receiver, or any person entitled under any enactment to present such a petition.

⁷⁷¹ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.34(3)(b) (January 11, 1988)

⁷⁷² Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.12 (September 15, 2003)

⁷⁷³ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.35 (January 11, 1988)

⁷⁷⁴ Words substituted by Insolvency (Amendment) (No. 2) Rules 2009/2472 rule 11(2) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/2472 rule 2)

⁷⁷⁵ Words inserted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(2) para.22 (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 4(2))

(3) Chapter 2 (statutory demand) has no application except in relation to an unpaid creditor of the company satisfying section 123(1)(a) (the first of the two cases specified, in relation to England and Wales, of the company being deemed unable to pay its debts within section 122(1)(f)) or section 222(1) (the equivalent provision in relation to unregistered companies).

(4) Chapter 3 (petition to winding-up order) has no application to a petition for winding up presented by one or more contributories; and in relation to a petition so presented Chapter 4 has effect.

Commencement

Pt 4(1) rule 4.2(1)-(4): December 29, 1986

4.3. Time-limits

Where by any provision of the Act or the Rules about winding up, the time for doing anything is limited, the court may extend the time, either before or after it has expired, on such terms, if any, as it thinks [just]⁷⁷⁶.

Commencement

Pt 4(1) rule 4.3: December 29, 1986

CHAPTER 2

THE STATUTORY DEMAND (NO CVL APPLICATION)

4.4.— Preliminary

(1) This Chapter does not apply where a petition for the winding up of a company is presented under section 124 on or after the date on which the Rules come into force and the petition is based on failure to comply with a written demand served on the company before that date.

(2) A written demand served by a creditor on a company under section 123(1)(a) (registered companies) or 222(1)(a) (unregistered companies) is known [...] ⁷⁷⁷ as “the statutory demand”.

(3) The statutory demand must be dated, and be [authenticated]⁷⁷⁸ either by the creditor himself or by a person stating himself to be authorised to make the demand on the creditor's behalf.

Commencement

Pt 4(2) rule 4.4(1)-(3): December 29, 1986

⁷⁷⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁷⁷ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.139(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁷⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

4.5.— Form and content of statutory demand

(1) The statutory demand must state the amount of the debt and the consideration for it (or, if there is no consideration, the way in which it arises).

(2) If the amount claimed in the demand includes—

- (a) any charge by way of interest not previously notified to the company as included in its liability, or
- (b) any other charge accruing from time to time,

the amount or rate of the charge must be separately identified, and the grounds on which payment of it is claimed must be stated.

In either case the amount claimed must be limited to that which has accrued due at the date of the demand.

Commencement

Pt 4(2) rule 4.5(1)-(2)(b): December 29, 1986

4.6.— Information to be given in statutory demand

(1) The statutory demand must include an explanation to the company of the following matters—

- (a) the purpose of the demand, and the fact that, if the demand is not complied with, proceedings may be instituted for the winding up of the company;
- (b) the time within which it must be complied with, if that consequence is to be avoided; [...]⁷⁷⁹
- (c) the methods of compliance which are open to the company [; and]⁷⁸⁰
- [(d) that the company has the right to make an application to the court for an injunction restraining the creditor from presenting or advertising a petition for the winding up of the company.]⁷⁸⁰

(2) Information must be provided for the company as to how an officer or representative of it may enter into communication with one or more named individuals, with a view to securing or compounding for the debt to the creditor's satisfaction.

In the case of any individual so named in the demand, his address and telephone number (if any) must be given.

Commencement

Pt 4(2) rule 4.6(1)-(2): December 29, 1986

⁷⁷⁹ Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.140(2)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁸⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.140(2)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

CHAPTER 3

PETITION TO WINDING-UP ORDER (NO CVL APPLICATION) (NO APPLICATION TO PETITION BY CONTRIBUTORIES)

[4.6A Injunction to restrain presentation or advertisement of petition

An application by a company for an injunction restraining a creditor from—

- (a) presenting a petition for the winding up of the company must be made to a court having jurisdiction to wind up the company;
- (b) advertising a petition for the winding up of a company must be made to the court in which the petition is pending.

]⁷⁸¹

4.7.— Presentation and filing of petition

(1) The petition, verified by [a statement of truth]⁷⁸² in accordance with Rule 4.12 below, shall be filed in court.

[(2) No petition shall be filed unless there is produced on presentation of the petition a receipt for the deposit payable or paragraph (2A) applies.

(2A) This paragraph applies in any case where the Secretary of State has given written notice to the court that the petitioner has made suitable alternative arrangements for the payment of the deposit to the official receiver and such notice has not been revoked in relation to the petitioner in accordance with paragraph (2B).

(2B) A notice of the kind referred to in paragraph (2A) may be revoked in relation to the petitioner in whose favour it is given by a further notice in writing to the court stating that the earlier notice is revoked in relation to the petitioner.]⁷⁸³

[(3) A petitioner who is a person other than the company must also deliver to the court one copy for service on the company.]⁷⁸⁴

(4) There shall in any case be delivered with the petition—

- (a) if the company is in course of being wound up voluntarily, and a liquidator has been appointed, one copy of the petition to be sent to him;
- (b) [if the company is in administration]⁷⁸⁵, one copy [...] ⁷⁸⁶ to be sent to the administrator;

⁷⁸¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.141 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁸² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.142(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁸³ Rule 4.7(2)-(2B) substituted for rule 4.7(2) by Insolvency (Amendment) Rules 2004/584 rule 8(a) (April 1, 2004)

⁷⁸⁴ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.142(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁸⁵ Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.13(a) (September 15, 2003)

⁷⁸⁶ Words repealed by Insolvency (Amendment) Rules 2004/584 rule 8(b) (April 1, 2004)

- (c) if an administrative receiver has been appointed in relation to the company, one copy to be sent to him;
 - (d) if there is in force for the company a voluntary arrangement under Part I of the Act, one copy for the supervisor of the arrangement; [...] ⁷⁸⁷
 - [(da) if a member State liquidator has been appointed in main proceedings in relation to the company, one copy to be sent to him; and] ⁷⁸⁸
 - [(e) if the company is [an authorised deposit-taker or a former authorised deposit-taker] ⁷⁸⁹ and the petitioner is not the [Financial Services Authority] ⁷⁹⁰ , one copy to be sent to the [Authority] ⁷⁹¹ .] ⁷⁹²
- (5) Each of the copies delivered shall have applied to it the seal of the court, and shall be issued to the petitioner.
- (6) The court shall fix a venue for the hearing of the petition; and this shall be endorsed on any copy issued to the petitioner under paragraph (5).
- [(7) Where a petition is filed at the instance of a company's 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] ⁷⁹³ , and
 - [(c) where applicable, contain an application under paragraph 79 of Schedule B1, requesting that the appointment of the administrator shall cease to have effect.] ⁷⁹⁴
- [(8) Any petition filed in relation to a company in respect of which there is in force a voluntary arrangement under Part I of the Act or which is in administration shall be presented to the court to which the nominee's report under section 2 was submitted or the court having jurisdiction for the administration.] ⁷⁹⁵
- (9) Any petition such as is mentioned in paragraph (7) above or presented by the supervisor of a voluntary arrangement under Part I of the Act in force for the company shall be treated as if it were a petition filed by contributories, and Chapter 4 in this Part of the Rules shall apply accordingly.
- (10) Where a petition contains a request for the appointment of a person as liquidator in accordance with section 140 (appointment of former administrator or supervisor as liquidator) the person whose

⁷⁸⁷ Word repealed by Insolvency (Amendment) Rules 2002/1307 rule 6(1)(a) (May 31, 2002)

⁷⁸⁸ Added by Insolvency (Amendment) Rules 2002/1307 rule 6(1)(b) (May 31, 2002)

⁷⁸⁹ Words substituted by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.377(4) (December 1, 2001)

⁷⁹⁰ Words substituted by Bank of England Act 1998 (Consequential Amendments of Subordinate Legislation) Order 1998/1129 Sch.1 para.4(3)(a) (June 1, 1998)

⁷⁹¹ Word substituted by Bank of England Act 1998 (Consequential Amendments of Subordinate Legislation) Order 1998/1129 Sch.1 para.4(3)(b) (June 1, 1998)

⁷⁹² Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.36(1) (January 11, 1988)

⁷⁹³ Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.13(b) (September 15, 2003)

⁷⁹⁴ Substituted by Insolvency (Amendment) Rules 2005/527 rule 18 (April 1, 2005)

⁷⁹⁵ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.13(d) (September 15, 2003)

appointment is sought shall, not less than 2 [business]⁷⁹⁶ days before the return day for the petition, file in court a report including particulars of-

- (a) a 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]⁷⁹⁷ 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.

] ⁷⁹⁸

Commencement

Pt 4(3) rule 4.7(1)-(6): December 29, 1986

4.8.— Service of petition

(1) The following paragraphs apply as regards service of the petition on the company (where the petitioner is other than the company itself); and references to the petition are to a copy of the petition bearing the seal of the court in which it is presented.

(2) Subject as follows, the petition shall be served at the company's registered office, that is to say—

- (a) the place which is specified, in the company's statement delivered under [section 9]⁷⁹⁹ of the Companies Act as the intended situation of its registered office on incorporation, or
- (b) if notice has been given by the company to the registrar of companies under [section 87]⁸⁰⁰ of that Act (change of registered office), the place specified in that notice or, as the case may be, in the last such notice.

(3) Service of the petition at the registered office may be effected in any of the following ways—

- (a) it may be handed to a person who there and then acknowledges himself to be, or to the best of the server's knowledge, information and belief is, a director or other officer, or employee, of the company; or
- (b) it may be handed to a person who there and then acknowledges himself to be authorised to accept service of documents on the company's behalf; or
- (c) in the absence of any such person as is mentioned in sub-paragraph (a) or (b), it may be deposited at or about the registered office in such a way that it is likely to come to the notice of a person attending at the office.

⁷⁹⁶ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.142(4)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁹⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.142(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁷⁹⁸ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.36(2) (January 11, 1988)

⁷⁹⁹ Words substituted by Insolvency (Amendment) (No. 2) Rules 2009/2472 rule 12(2)(a) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/2472 rule 2)

⁸⁰⁰ Words substituted by Insolvency (Amendment) (No. 2) Rules 2009/2472 rule 12(2)(b) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/2472 rule 2)

[(4) If for any reason service at the registered office is not practicable, or the company has no registered office or is an unregistered company, the petition may be served on the company by leaving it at the company's last known principal place of business in such a way that it is likely to come to the attention of a person attending there, or by delivering it to the secretary or some director, manager or principal officer of the company, wherever that person may be found.]⁸⁰¹

(5) In the case of an [overseas]⁸⁰² company, service may be effected in any manner provided for by [section 1139(2)]⁸⁰² of the Companies Act.

(6) If for any reason it is impracticable to effect service as provided by paragraphs (2) to (5), the petition may be served in such other manner as the court may [approve or]⁸⁰³ direct.

(7) Application for [permission]⁸⁰⁴ of the court under paragraph (6) may be made [by an application without notice to any other party]⁸⁰⁵, [supported by a witness statement]⁸⁰⁶ stating what steps have been taken to comply with paragraphs (2) to (5), and the reasons why it is impracticable to effect service as there provided.

Commencement

Pt 4(3) rule 4.8(1)-(7): December 29, 1986

4.9.— [...] ⁸⁰⁷

[4.9A Proof of Service

- (1) Service of the petition must be proved by a certificate of service.
- (2) The certificate of service must be sufficient to identify the petition served and must specify—
 - (a) the name and registered number of the company,
 - (b) the address of the registered office of the company,
 - (c) the name of the petitioner,
 - (d) the court in which the petition was filed and the court reference number,
 - (e) the date of the petition,
 - (f) whether the copy served was a sealed copy,
 - (g) the date on which service was effected, and

⁸⁰¹ Substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.37(1) (January 11, 1988)

⁸⁰² Words substituted by Insolvency (Amendment) (No. 2) Rules 2009/2472 rule 12(3) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/2472 rule 2)

⁸⁰³ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.37(2) (January 11, 1988)

⁸⁰⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁰⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.143(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁰⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.143(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁰⁷ Rule 4.9A substituted for rule 4.9 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.144 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(h) the manner in which service was effected.

(3) Where substituted service has been ordered, the certificate of service must have attached to it a sealed copy of the order.

(4) The certificate of service must be filed in court as soon as reasonably practicable after service, and in any event not less than 5 business days before the hearing of the petition.

]⁸⁰⁸

4.10.— Other persons to receive copies of petition

(1) If to the petitioner's knowledge the company is in course of being wound up voluntarily, a copy of the petition shall be sent by him to the liquidator.

(2) If to the petitioner's knowledge an administrative receiver has been appointed in relation to the company, or [the company is in administration]⁸⁰⁹, a copy of the petition shall be sent by him to the receiver or, as the case may be, the administrator.

(3) If to the petitioner's knowledge there is in force for the company a voluntary arrangement under Part I of the Act, a copy of the petition shall be sent by him to the supervisor of the voluntary arrangement.

[(3A) If to the petitioner's knowledge, there is a member State liquidator appointed in main proceedings in relation to the company, a copy of the petition shall be sent by him to that person. This does not apply if the petitioner referred to in this paragraph is a member State liquidator.

]⁸¹⁰

(4) If the company is [an authorised institution or former authorised institution within the meaning of the Banking Act 1987]⁸¹¹, a copy of the petition shall be sent by the petitioner to the [Financial Services Authority]⁸¹².

This does not apply if the petitioner is the [Financial Services Authority]⁸¹² itself.

(5) A copy of the petition which is required by this Rule to be sent shall be despatched on the next business day after the day on which the petition is served on the company.

Commencement

Pt 4(3) rule 4.10(1)-(5): December 29, 1986

[4.11.—

(1) Unless the court otherwise directs, the petitioner shall give notice of the petition.

⁸⁰⁸ Rule 4.9A substituted for rule 4.9 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.144 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁰⁹ Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.14 (September 15, 2003)

⁸¹⁰ Added by Insolvency (Amendment) Rules 2002/1307 rule 6(2) (May 31, 2002)

⁸¹¹ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.38 (January 11, 1988)

⁸¹² Words substituted by Bank of England Act 1998 (Consequential Amendments of Subordinate Legislation) Order 1998/1129 Sch.1 para.4(4) (June 1, 1998)

(2) The notice shall be gazetted.

(3) Where compliance with paragraph (2) is not reasonably practicable, the court may direct that instead of the notice being gazetted, it shall be given in such other manner as the court thinks [just]⁸¹³

.

(4) The notice must be made to appear—

- (a) if the petitioner is the company itself, not less than 7 business days before the day appointed for the hearing; and
- (b) otherwise, not less than 7 business days after service of the petition on the company, nor less than 7 business days before the day so appointed.

[(5) In addition to the standard contents, the notice under paragraph (4) must state—

- (a) that a petition has been presented for the winding up of the company;
- (b) in the case of an overseas company, the address at which service of the petition was effected;
- (c) the name and address of the petitioner;
- (d) the date on which the petition was presented;
- (e) the venue fixed for the hearing of the petition;
- (f) the name and address of the petitioner's solicitor (if any); and
- (g) that any person intending to appear at the hearing (whether to support or oppose the petition) must give notice of that intention in accordance with Rule 4.16.

] ⁸¹⁴

(6) If notice of the petition is not given in accordance with this Rule, the court may dismiss it.

] ⁸¹⁵

Commencement

Pt 4(3) rule 4.11(1)-(5): December 29, 1986

4.12.— Verification of petition

(1) The petition shall be verified by [a statement of truth]⁸¹⁶ .

(2) If the petition is in respect of debts due to different creditors, the debts to each creditor must be separately verified.

[(3A) A statement of truth which is not contained in or endorsed upon the petition which it verifies must be sufficient to identify the petition and must specify—

- (a) the name and registered number of the company,

⁸¹³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸¹⁴ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.145(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸¹⁵ Substituted by Insolvency (Amendment) Rules 2009/642 rule 18 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁸¹⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.146(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (b) the name of the petitioner, and
- (c) the court in which the petition is to be presented.

]⁸¹⁷

(4) The [statement of truth must be authenticated]⁸¹⁸ —

- (a) by the petitioner (or if there are two or more petitioners, any one of them), or
- (b) by some person such as a director, company secretary or similar company officer, or a solicitor, who has been concerned in the matters giving rise to the presentation of the petition, or
- (c) by some responsible person who is duly authorised to [authenticate the statement of truth]⁸¹⁹ and has the requisite knowledge of those matters.

(5) Where the [person authenticating the statement of truth]⁸²⁰ is not the petitioner himself, or one of the petitioners, he must in the [statement of truth]⁸²¹ identify himself and state—

- (a) the capacity in which, and the authority by which, he [authenticates]⁸²² it, and
- (b) the means of his knowledge of the matters [verified in the statement of truth]⁸²³ .

(6) [...]⁸²⁴

(7) [A statement of truth]⁸²⁵ 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

⁸¹⁷ Rule 4.12(3A) substituted for rule 4.12(3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.146(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸¹⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.146(4)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸¹⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.146(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸²⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.146(5)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸²¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.146(5)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸²² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.146(5)(c) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸²³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.146(5)(d) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸²⁴ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.146(6) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸²⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.146(7)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

relied on by the petitioner; and a clear and legible photocopy of the [statement of truth must be filed]⁸²⁶ with each petition which it verifies.

[(8) The [statement of truth]⁸²⁷ shall state whether, in the opinion of the person making the application, (i) the EC Regulation will apply and (ii) if so, whether the proceedings will be main proceedings [, secondary proceedings]⁸²⁸ or territorial proceedings.]⁸²⁹

Commencement

Pt 4(3) rule 4.12(1)-(7): December 29, 1986

4.13. Persons entitled to copy of petition

Every director, contributory or creditor of the company is entitled to be furnished by the solicitor for the petitioner (or by the petitioner himself, if acting in person) with a copy of the petition within 2 [business]⁸³⁰ days after requiring it, on payment of the appropriate fee.

Commencement

Pt 4(3) rule 4.13: December 29, 1986

4.14.— Certificate of compliance

(1) The petitioner or his solicitor shall, at least 5 [business]⁸³¹ days before the hearing of the petition, file in court a certificate of compliance with the Rules relating to service and advertisement.

(2) The certificate shall show—

- (a) the date of presentation of the petition,
- (b) the date fixed for the hearing, and

[(c) the date or dates on which the petition was served and notice of it was given in compliance with the Rules.]⁸³²

⁸²⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.146(7)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸²⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.146(8)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸²⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.146(8)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸²⁹ Added by Insolvency (Amendment) Rules 2005/527 rule 20 (April 1, 2005)

⁸³⁰ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.147(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸³¹ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.148(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸³² Substituted by Insolvency (Amendment) Rules 2009/642 rule 19(a) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

[A copy or, where this is not reasonably practicable, a description of the form and content of any notice given shall be filed in court with the certificate.]⁸³³

(3) Non-compliance with this Rule is a ground on which the court may, if it thinks [just]⁸³⁴, dismiss the petition.

Commencement

Pt 4(3) rule 4.14(1)-(3): December 29, 1986

4.15. [Permission]⁸³⁵ for petitioner to withdraw

If at least 5 [business]⁸³⁶ days before the hearing the petitioner, on an [application without notice to any other party]⁸³⁷, satisfies the court that—

- (a) the petition has not been advertised, and
- (b) no notices (whether in support or in opposition) have been received by him with reference to the petition, and
- (c) the company consents to an order being made under this Rule,

the court may order that the petitioner has [permission]⁸³⁵ to withdraw the petition on such terms as to costs as the parties may agree.

Commencement

Pt 4(3) rule 4.15(a)-(c): December 29, 1986

4.16.— Notice of appearance

(1) Every person who intends to appear on the hearing of the petition shall give to the petitioner notice of his intention in accordance with this Rule.

(2) The notice shall specify—

- (a) the name and address of the person giving it, and any telephone number and reference which may be required for communication with him or with any other person (to be also specified in the notice) authorised to speak or act on his behalf;
- (b) whether his intention is to support or oppose the petition; and
- (c) the amount and nature of his debt.

⁸³³ Words substituted by Insolvency (Amendment) Rules 2009/642 rule 19(b) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

⁸³⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸³⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸³⁶ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.149(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸³⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.149(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (3) 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 Rule 4.11; or it may be sent to his solicitor.
- (4) The notice shall be sent so as to reach the addressee not later than 16.00 hours on the business day before that which is appointed for the hearing (or, where the hearing has been adjourned, for the adjourned hearing).
- (5) A person failing to comply with this Rule may appear on the hearing of the petition only with the [permission]⁸³⁸ of the court.

Commencement

Pt 4(3) rule 4.16(1)-(5): December 29, 1986

4.17.— List of appearances

- (1) The petitioner shall prepare for the court a list of the persons (if any) who have given notice under Rule 4.16, specifying their names and addresses and (if known to him) their respective solicitors.
- (2) Against the name of each creditor in the list it shall be stated whether his intention is to support the petition, or to oppose it.
- (3) On the day appointed for the hearing of the petition, a copy of the list shall be handed to the court before the commencement of the hearing.
- (4) If any [permission]⁸³⁹ is given under Rule 4.16(5), the petitioner shall add to the list the same particulars in respect of the person to whom [permission]⁸³⁹ has been given.

Commencement

Pt 4(3) rule 4.17(1)-(4): December 29, 1986

4.18.— [Witness statement]⁸⁴⁰ in opposition

- (1) If the company intends to oppose the petition, its [witness statement]⁸⁴¹ in opposition shall be filed in court not less than [5 business]⁸⁴² days before the date fixed for the hearing.

⁸³⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸³⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁴⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.150(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁴¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.150(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁴² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.150(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) A copy of the [witness statement]⁸⁴³ shall be sent by the company to the petitioner, [as soon as reasonably practicable]⁸⁴⁴ after filing.

Commencement

Pt 4(3) rule 4.18(1)-(2): December 29, 1986

[4.18A Adjournment

- (1) If the court adjourns the hearing of the petition, the following applies.
- (2) Unless the court otherwise directs, the petitioning creditor must forthwith send—
 - (a) to the company, and
 - (b) where any creditor has given notice under Rule 4.16 but was not present at the hearing, to that creditor,
 notice of the making of the order of adjournment. The notice must state the venue for the adjourned hearing.

] ⁸⁴⁵

4.19.— Substitution of creditor or contributory for petitioner

- (1) This Rule applies 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 Rules or such extended time as the court may allow, or
 - (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.
 - (2) The court may, on such terms as it thinks just, substitute as petitioner any creditor or contributory who in its opinion would have a right to present a petition, and who is desirous of prosecuting it.
- [(2A) Where a member State liquidator has been appointed in main proceedings in relation to the company, without prejudice to paragraph (2), the court may, on such terms as it thinks just, substitute the member State liquidator as petitioner, where he is desirous of prosecuting the petition.]⁸⁴⁶
- (3) An order of the court under this Rule may, where a petitioner fails to advertise his petition within the time prescribed by these Rules, or consents to withdraw his petition, be made at any time.

⁸⁴³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.150(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁴⁴ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁸⁴⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.151 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁴⁶ Added by Insolvency (Amendment) Rules 2002/1307 rule 6(3) (May 31, 2002)

Commencement

Pt 4(3) rule 4.19(1)-(3): December 29, 1986

4.20.— Notice and settling of winding-up order

(1) When a winding-up order has been made, the court shall [as soon as reasonably practicable]⁸⁴⁷ give notice of the fact to the official receiver.

(2) The petitioner and every other person who has appeared on the hearing of the petition shall, not later than the business day following that on which the order is made, leave at the court all the documents required for enabling the order to be completed [as soon as reasonably practicable]⁸⁴⁷.

(3) It is not necessary for the court to appoint a venue for any person to attend to settle the order, unless in any particular case the special circumstances make an appointment necessary.

Commencement

Pt 4(3) rule 4.20(1)-(3): December 29, 1986

4.21.— Transmission and advertisement of order

(1) When the winding-up order has been made, 3 copies of it, sealed with the seal of the court, shall be sent [as soon as reasonably practicable]⁸⁴⁸ by the court to the official receiver.

(2) The official receiver shall cause a sealed copy of the order to be served on the company by prepaid letter addressed to it at its registered office (if any) or, if there is no registered office, at its principal or last known principal place of business.

Alternatively, the order may be served on such other person or persons, or in such other manner, as the court directs.

(3) The official receiver shall forward to the registrar of companies the copy of the order which by section 130(1) is directed to be so forwarded by the company.

[(4) The official receiver—

- (a) as soon as reasonably practicable shall cause notice of the order to be gazetted; and
- (b) may advertise notice of the order in such other manner as the official receiver thinks fit.

]⁸⁴⁹

[(5) In addition to the standard contents a notice under paragraph (4) must state—

- (a) that a winding-up order has been made in respect of the company; and

⁸⁴⁷ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁸⁴⁸ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁸⁴⁹ Substituted by Insolvency (Amendment) Rules 2009/642 rule 20 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

- (b) the date of the order.

]⁸⁵⁰

Commencement

Pt 4(3) rule 4.21(1)-(4)(b): December 29, 1986

[4.21A. Expenses of voluntary arrangement

Where a winding-up order is made and there is at the time of the presentation of the petition in force for the company a voluntary arrangement under Part I of the Act, any expenses properly incurred as expenses of the administration of the arrangement in question shall be [payable in priority to any expenses of the liquidation]⁸⁵¹ .]⁸⁵²

[4.21B.— Petition dismissed

(1) Unless the court otherwise directs, when a petition is dismissed, as soon as reasonably practicable the petitioner shall give notice of the dismissal. Such notice shall be—

- (a) gazetted; or
- (b) advertised in accordance with any directions of the court.

[(2) In addition to the standard contents, the notice published under paragraph (1) must state—

- (a) that a petition for the winding up of the company has been dismissed;
- (b) in the case of an overseas company, the address at which service of the petition was effected;
- (c) the name and address of the petitioner;
- (d) the date on which the petition was presented;
- (e) the date on which the petition was gazetted or otherwise advertised; and
- (f) the date of the hearing at which the petition was dismissed.

]⁸⁵³

(3) Where—

- (a) the petitioner is not the company itself; and
- (b) the petitioner has not complied with paragraphs (1) and (2) within 21 days of the date of the hearing at which the petition was dismissed,

the company may give notice of the dismissal itself. Such notice shall be gazetted.

]⁸⁵⁴

⁸⁵⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.152(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁵¹ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(2) (April 6, 2008)

⁸⁵² Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.39 (January 11, 1988)

⁸⁵³ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.153(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁵⁴ Added by Insolvency (Amendment) Rules 2009/642 rule 21 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

CHAPTER 4

PETITION BY CONTRIBUTORIES (NO CVL APPLICATION)

4.22.— Presentation and service of petition

(1) The petition shall specify the grounds on which it is presented [...] ⁸⁵⁵ and shall be filed in court with one copy for service under this Rule.

[(1A) No petition shall be filed unless there is produced with it the receipt for the deposit payable on presentation.] ⁸⁵⁶

(2) The court shall fix a hearing for a day (“the return day”) on which, unless the court otherwise directs, the petitioner and the company shall attend before the registrar [or district judge for—] ⁸⁵⁷

[(a) directions to be given in relation to the procedure on the petition; or

(b) where—

(i) the petition is presented under Rule 4.7(9), and

(ii) the court considers it just in all the circumstances,

the hearing of the petition.

] ⁸⁵⁷

(3) On fixing the return day, the court shall return to the petitioner a sealed copy of the petition for service, endorsed with the return day and time of hearing.

(4) The petitioner shall, at least 14 days before the return day, serve a sealed copy of the petition on the company.

[(5) Where a member State liquidator has been appointed in main proceedings in relation to the company, the petitioner shall send a copy of the petition to him.] ⁸⁵⁸

Commencement

Pt 4(4) rule 4.22(1)-(4): December 29, 1986

4.23.— Return of petition

(1) On the return day, or at any time after it, the court [must or, where the petition is presented under Rule 4.7(9), may] ⁸⁵⁹ give such directions as it thinks appropriate with respect to the following matters—

(a) service of the petition, whether in connection with the venue for a further hearing, or for any other purpose;

⁸⁵⁵ Words omitted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.40(1) (January 11, 1988)

⁸⁵⁶ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.40(2) (January 11, 1988)

⁸⁵⁷ Rule 4.22(2)(a) and (b) and words substituted for words by Insolvency (Amendment) Rules 2010/686 Sch.1 para.154(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁵⁸ Added by Insolvency (Amendment) Rules 2002/1307 rule 6(4) (May 31, 2002)

⁸⁵⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.155(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (b) whether particulars of claim and defence are to be delivered, and generally as to the procedure on the petition;
- (c) whether, and if so by what means, the petition is to be advertised;
- (d) the manner in which any evidence is to be adduced at any hearing before the judge and in particular (but without prejudice to the generality of the above) as to—
 - (i) the taking of evidence wholly or in part by [witness statement]⁸⁶⁰ or orally;
 - (ii) the cross-examination of any [persons authenticating witness statements]⁸⁶¹;
 - (iii) the matters to be dealt with in evidence;
- (e) any other matter affecting the procedure on the petition or in connection with the hearing and disposal of the petition.

(2) In giving directions under paragraph (1)(a), the court shall have regard to whether any of the persons specified in Rule 4.10 should be served with a copy of the petition.

Commencement

Pt 4(4) rule 4.23(1)-(2): December 29, 1986

4.24. Application of Rules in Chapter 3

The following Rules in Chapter 3 apply, with the necessary modifications—

- Rule 4.16 (notice of appearance);
- Rule 4.17 (list of appearances);
- Rule 4.20 (notice and settling of winding-up order); [...] ⁸⁶²
- Rule 4.21 (transmission and advertisement of order) [; and] ⁸⁶³
- [Rule 4.21A (expenses of voluntary arrangement).] ⁸⁶³

Commencement

Pt 4(4) rule 4.24: December 29, 1986

CHAPTER 5

PROVISIONAL LIQUIDATOR (NO CVL APPLICATION)

4.25.— Appointment of provisional liquidator

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

⁸⁶⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.155(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁶¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.155(2)(c) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁶² Word omitted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.41(1) (January 11, 1988)

⁸⁶³ Words added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.41(2) (January 11, 1988)

- (a) the petitioner;
- (b) a creditor of the company;
- (c) a contributory;
- (d) the company;
- (e) the Secretary of State;
- (f) a temporary administrator;
- (g) a member State liquidator appointed in main proceedings; or
- (h) any person who under any enactment would be entitled to present a petition for the winding up of the company.

]⁸⁶⁴

- (2) The application must be supported by [a witness statement]⁸⁶⁵ stating—
- (a) the grounds on which it is proposed that a provisional liquidator should be appointed;
 - (b) if some person other than the official receiver is proposed to be appointed, that the person has consented to act and, to the best of the applicant's belief, is qualified to act as an insolvency practitioner in relation to the company;
 - (c) whether or not the official receiver has been informed of the application and, if so, has been furnished with a copy of it;
 - (d) whether to the applicant's knowledge—
 - (i) there has been proposed or is in force for the company a voluntary arrangement under Part I of the Act, or
 - (ii) an administrator or administrative receiver is acting in relation to the company, or
 - (iii) a liquidator has been appointed for its voluntary winding up; and
 - (e) the applicant's estimate of the value of the assets in respect of which the provisional liquidator is to be appointed.
- (3) The applicant shall send copies of the application and of the [witness statement]⁸⁶⁶ in support to the official receiver, who may attend the hearing and make any representations which he thinks appropriate.
- If for any reason it is not practicable to comply with this paragraph, the official receiver must be informed of the application in sufficient time for him to be able to attend.
- (4) The court may on the application, if satisfied that sufficient grounds are shown for the appointment, make it on such terms as it thinks [just]⁸⁶⁷.

Commencement

Pt 4(5) rule 4.25(1)-(4): December 29, 1986

⁸⁶⁴ Substituted by Insolvency (Amendment) Rules 2002/1307 rule 6(5) (May 31, 2002)

⁸⁶⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.156(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁶⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.156(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁶⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[4.25A.— Notice of appointment**[]⁸⁶⁸**

(1) Where a provisional liquidator has been appointed the court shall [as soon as reasonably practicable]⁸⁶⁹ give notice of the fact to the official receiver.

(2) A copy of that notice shall at the same time be sent by the court to the provisional liquidator where he is not the official receiver.

[(3) Unless the court otherwise directs, on receipt of the notice of appointment, as soon as reasonably practicable the provisional liquidator shall give notice of that appointment. Such notice—

(a) shall be gazetted; and

(b) may be advertised in such other manner as the provisional liquidator thinks fit.

] ⁸⁷⁰

[(4) In addition to the standard contents, the notice under paragraph (3) must state—

(a) that a provisional liquidator has been appointed; and

(b) the date of the appointment.

] ⁸⁷¹**] ⁸⁷²****4.26.— Order of appointment**

(1) The order appointing the provisional liquidator shall specify the functions to be carried out by him in relation to the company's affairs.

(2) The court shall, [as soon as reasonably practicable]⁸⁷³ after the order is made, send sealed copies of the order as follows—

(a) if the official receiver is appointed, [three]⁸⁷⁴ copies to him;

(b) if a person other than the official receiver is appointed—

(i) [three]⁸⁷⁵ copies to that person, and

(ii) one copy to the official receiver;

(c) if there is an administrative receiver acting in relation to the company, one copy to him.

[(3) Of the three copies of the order sent to the official receiver under paragraph (2)(a), or to another person under paragraph (2)(b)(i)—

⁸⁶⁸ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(2) para.156(1) (January 11, 1988)

⁸⁶⁹ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁸⁷⁰ Added by Insolvency (Amendment) Rules 2009/642 rule 22 (April 6, 2009: insertion has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁸⁷¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.157(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁷² Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.42 (January 11, 1988)

⁸⁷³ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁸⁷⁴ Word substituted by Insolvency (Amendment) Rules 2005/527 rule 21(a)(i) (April 1, 2005)

⁸⁷⁵ Word substituted by Insolvency (Amendment) Rules 2005/527 rule 21(a)(ii) (April 1, 2005)

- (i) one shall in each case be sent by the recipient to the company, or if a liquidator has been appointed for the company's voluntary winding-up, to him; and
- (ii) one shall be sent [...] ⁸⁷⁶ to the registrar of companies.

] ⁸⁷⁷

Commencement

Pt 4(5) rule 4.26(1)-(3): December 29, 1986

4.27.— Deposit

(1) Before an order appointing the official receiver as provisional liquidator is issued, the applicant for it shall deposit with him, or otherwise secure to his satisfaction, such sum as the court directs to cover the official receiver's remuneration and expenses.

(2) If the sum deposited or secured subsequently proves to be insufficient, the court may, on application by the official receiver, order that an additional sum be deposited or secured. If the order is not complied with within 2 [business] ⁸⁷⁸ days after service of it on the person to whom it is directed, the court may discharge the order appointing the provisional liquidator.

(3) If a winding-up order is made after a provisional liquidator has been appointed, any money deposited under this Rule shall (unless it is required by reason of insufficiency of assets for payment of remuneration and expenses of the provisional liquidator) be repaid to the person depositing it (or as that person may direct) [as an expense of the liquidation] ⁸⁷⁹, in the prescribed order of priority.

Commencement

Pt 4(5) rule 4.27(1)-(3): December 29, 1986

4.28.— Security

(1) The following applies where an insolvency practitioner is appointed to be provisional liquidator under section 135.

(2) The cost of providing the security required under the Act shall be paid in the first instance by the provisional liquidator; but—

- (a) if a winding-up order is not made, the person so appointed is entitled to be reimbursed out of the property of the company, and the court may make an order on the company accordingly, and

⁸⁷⁶ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.158(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁷⁷ Substituted by Insolvency (Amendment) Rules 2005/527 rule 21(b) (April 1, 2005)

⁸⁷⁸ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.159(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁷⁹ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

- (b) if a winding-up order is made, he is entitled to be reimbursed [as an expense of the liquidation]⁸⁸⁰ in the prescribed order of priority.

Commencement

Pt 4(5) rule 4.28(1)-(2)(b): December 29, 1986

4.29.— Failure to give or keep up security

- (1) If the provisional liquidator fails to give or keep up his security, the court may remove him, and make such order as it thinks [just]⁸⁸¹ as to costs.
- (2) If an order is made under this Rule removing the provisional liquidator, or discharging the order appointing him, the court shall give directions as to whether any, and if so what, steps should be taken for the appointment of another person in his place.

Commencement

Pt 4(5) rule 4.29(1)-(2): December 29, 1986

4.30.— Remuneration

- (1) The remuneration of the provisional liquidator (other than the official receiver) shall be fixed by the court from time to time on his application.
- (2) 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 to deal.
- (3) [Without prejudice to any order the court may make as to costs, the provisional liquidator's remuneration (whether the official receiver or another) shall be paid to him, and the amount of any expenses incurred by him (including the remuneration and expenses of any special manager appointed under section 177) reimbursed—
- (a) if a winding-up order is not made, out of the property of the company, and]⁸⁸²
 - (b) if a winding-up order is made, [as an expense of the liquidation]⁸⁸³ , in the prescribed order of priority,
- or, in either case (the relevant funds being insufficient), out of the deposit under Rule 4.27.

⁸⁸⁰ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

⁸⁸¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁸² Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.43(1) (January 11, 1988)

⁸⁸³ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

[(3A) Unless the court otherwise directs, in a case falling within paragraph (3)(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.]⁸⁸⁴

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

Commencement

Pt 4(5) rule 4.30(1)-(4): December 29, 1986

4.31.— Termination of appointment

(1) The appointment of the provisional liquidator may be terminated by the court on his application, or on that of any of the persons specified in Rule 4.25(1).

(2) If the provisional liquidator's appointment terminates, in consequence of the dismissal of the winding-up petition or otherwise, the court may give such directions as it thinks [just]⁸⁸⁵ with respect to the accounts of his administration or any other matters which it thinks appropriate.

(3) [...] ⁸⁸⁶

[(4) 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 or the court otherwise directs. Such notice—

- (a) as soon as reasonably practicable must be sent to the registrar of companies;
- (b) as soon as reasonably practicable must be gazetted; and
- (c) may be advertised in such other manner as the provisional liquidator thinks fit.

(5) In addition to the standard contents, a notice under paragraph (4)(b) or (c) must state—

- (a) that the appointment as provisional liquidator has been terminated;
- (b) the date of that termination; and
- (c) that the appointment terminated otherwise than on the making of a winding-up order.

] ⁸⁸⁷

Commencement

Pt 4(5) rule 4.31(1)-(3)(b): December 29, 1986

⁸⁸⁴ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.43(2) (January 11, 1988)

⁸⁸⁵ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁸⁶ Revoked by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.44 (January 11, 1988)

⁸⁸⁷ Rule 4.31(4) and (5) substituted for rule 4.31(3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.160(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

CHAPTER 6

STATEMENT OF AFFAIRS AND OTHER INFORMATION

4.32.— Notice requiring statement of affairs (NO CVL APPLICATION)

- (1) The following applies where the official receiver determines to require a statement of the company's affairs to be made out and submitted to him in accordance with section 131.
- (2) He shall send notice to each of the persons whom he considers should be made responsible under that section, requiring them to prepare and submit the statement.
- (3) The persons to whom that notice is sent are referred to in this Chapter as “the [nominated persons]⁸⁸⁸”.
- (4) The notice shall inform each of the [nominated persons]⁸⁸⁸ —
 - (a) of the names and addresses of all others (if any) to whom the same notice has been sent;
 - (b) of the time within which the statement must be delivered;
 - (c) of the effect of section 131(7) (penalty for non-compliance); and
 - (d) of the application to him, and to each of the other [nominated persons]⁸⁸⁸, of section 235 (duty to provide information, and to attend on the official receiver if required).
- (5) The official receiver shall, on request, furnish a [nominated person]⁸⁸⁹ with instructions for the preparation of the statement and with the forms required for that purpose.

Commencement

Pt 4(6) rule 4.32(1)-(5): December 29, 1986

4.33.— Verification and filing (NO CVL APPLICATION)

- (1) The statement of affairs shall be in Form 4.17, shall contain all the particulars required by that form and shall be verified by [a statement of truth]⁸⁹⁰ by the [persons making the statement of affairs]⁸⁹¹ (using the same form).

⁸⁸⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.161(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁸⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.161(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁹⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.162(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁹¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.162(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) The official receiver may require any of the persons mentioned in section 131(3) to submit [a statement of concurrence verified by a statement of truth]⁸⁹², stating that he concurs in the statement of affairs.

(3) [A statement]⁸⁹³ of concurrence made under paragraph (2) may be qualified in respect of matters dealt with in the statement of affairs, where the [maker of the statement of concurrence]⁸⁹⁴ is not in agreement with the [persons making the statement of affairs]⁸⁹⁵, or he considers the statement to be erroneous or misleading, or he is without the direct knowledge necessary for concurring in the statement.

(4) The statement of affairs shall be delivered to the official receiver by the [nominated person]⁸⁹⁶ (or by one of them, if more than one), together with a copy of the verified statement.

(5) Every [statement]⁸⁹⁷ of concurrence shall be delivered to the official receiver by the person who makes it, together with a copy.

[(6) The official receiver must send the verified copy of the statement of affairs and any statements of concurrence to the registrar of companies.]⁸⁹⁸

(7) [...] ⁸⁹⁹

Commencement

Pt 4(6) rule 4.33(1)-(7): December 29, 1986

4.34-CVL.— Statement of affairs

(1) This Rule applies with respect to the statement of affairs made out by the liquidator under section 95(3) or (as the case may be) by the directors under section 99(1).

⁸⁹² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.162(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁹³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.162(4)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁹⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.162(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁹⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.162(4)(c) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁹⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.162(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁹⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.162(6) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁹⁸ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.162(7) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁸⁹⁹ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.162(8) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) Where it is made out by the liquidator, the statement of affairs shall be delivered by him to the registrar of companies within [5 business]⁹⁰⁰ days after the creditors' meeting summoned under section 95(2).

[(3) Where it is made out by the directors under section 99(1) the statement of affairs shall be delivered by them to the liquidator in office following the creditors' meeting summoned under section 98 [as soon as reasonably practicable]⁹⁰¹ after that meeting has been held; and he shall, within [5 business]⁹⁰⁰ days, deliver it to the registrar of companies.

(4) A statement of affairs under section 99(1) may be made up to a date not more than 14 days before that on which the resolution for voluntary winding up is passed by the company.]⁹⁰²

[(5) The liquidator may require any of the directors who has not submitted the statement of affairs to submit a statement of concurrence verified by a statement of truth, stating that that director concurs in the statement of affairs.

(6) A statement of concurrence made under paragraph (5) may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the statement of concurrence—

- (a) is not in agreement with the persons making the statement of affairs, or
- (b) considers the statement to be erroneous or misleading, or
- (c) is without the direct knowledge necessary for concurring in the statement.

(7) Every statement of concurrence must be delivered to the liquidator by the person who makes it, together with a copy.]⁹⁰³

Commencement

Pt 4(6) rule 4.34(1)-(3): December 29, 1986

[4.34A-CVL. Copy statement of affairs

Where a liquidator is nominated by the company at a general meeting held on a day prior to that on which the creditors' meeting summoned under section 98 is held, the directors shall [as soon as reasonably practicable]⁹⁰⁴ after his nomination or the making of the statement of affairs, whichever is the later, deliver to him a copy of the statement of affairs.]⁹⁰⁵

⁹⁰⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.163(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁰¹ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁹⁰² Rule 4_34(3)-(4) substituted for rule 4_34(3) by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.45 (January 11, 1988)

⁹⁰³ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.163(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁰⁴ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁹⁰⁵ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.46 (January 11, 1988)

4.35.— Limited disclosure[...]⁹⁰⁶

(1) Where the official receiver [or liquidator]⁹⁰⁷ thinks that it would prejudice the conduct of the liquidation [or might reasonably be expected to lead to violence against any person]⁹⁰⁸ for the whole or part of the statement of affairs to be disclosed, he may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it.

(2) The court may on the application order that the statement or, as the case may be, the specified part of it be not filed [with the registrar of companies]⁹⁰⁹ .

[(3) The official receiver or liquidator must as soon as reasonably practicable send to the registrar of companies a copy of the order and the statement of affairs (to the extent provided by the order) and any statement of concurrence.

(4) In a voluntary winding up, this Rule does not apply so far as section 95, 98 or 99 does not permit limited disclosure.]⁹¹⁰

Commencement

Pt 4(6) rule 4.35(1)-(2): December 29, 1986

4.36.— Release from duty to submit statement of affairs; extension of time

(NO CVL APPLICATION)

(1) The power of the official receiver under section 131(5) to give a release from the obligation imposed by that section, or to grant an extension of time, may be exercised at the official receiver's own discretion, or at the request of any [nominated person]⁹¹¹ .

(2) A [nominated person]⁹¹¹ may, if he requests a release or extension of time and it is refused by the official receiver, apply to the court for it.

⁹⁰⁶ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.164(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁰⁷ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.164(3)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁰⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.164(3)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁰⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.164(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹¹⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.164(5) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹¹¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.165(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) The court may, if it thinks that no sufficient cause is shown for the application dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for [a]⁹¹² hearing, of which he has been given at least [5 business]⁹¹³ days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the [nominated person]⁹¹¹ accordingly [but which is without notice to any other party]⁹¹⁴ .

(4) The [nominated person]⁹¹¹ shall, at least 14 days before the hearing, send to the official receiver a notice stating the venue and accompanied by a copy of the application, and of any evidence which he (the [nominated person]⁹¹¹) intends to adduce in support of it.

(5) The official receiver may appear and be heard on the application; and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the court's attention.

If such a report is filed, a copy of it shall be sent by the official receiver to the [nominated person]⁹¹¹ , not later than 5 [business]⁹¹⁵ days before the hearing.

(6) Sealed copies of any order made on the application shall be sent by the court to the [nominated person]⁹¹¹ and the official receiver.

(7) On any application under this Rule the applicant's costs shall be paid in any event by him and, [unless and to the extent that the court otherwise orders, shall not be an expense of the liquidation]⁹¹⁶ .

Commencement

Pt 4(6) rule 4.36(1)-(7): December 29, 1986

4.37.— Expenses of statement of affairs (NO CVL APPLICATION)

⁹¹² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.165(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹¹³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.165(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹¹⁴ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.165(3)(c) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹¹⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.165(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹¹⁶ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(3) (April 6, 2008)

- (1) If any [nominated person]⁹¹⁷ cannot himself prepare a proper statement of affairs, the official receiver may, [as an expense of the liquidation]⁹¹⁸, employ some person or persons to assist in the preparation of the statement.
- (2) At the request of any [nominated person]⁹¹⁷, made on the grounds that he cannot himself prepare a proper statement, the official receiver may authorise an allowance, payable [as an expense of the liquidation]⁹¹⁹, towards expenses to be incurred by the [nominated person]⁹¹⁷ in employing some person or persons to assist him in preparing it.
- (3) Any such request by the [nominated person]⁹¹⁷ shall be accompanied by an estimate of the expenses involved; and the official receiver shall only authorise the employment of a named person or a named firm, being in either case approved by him.
- (4) An authorisation given by the official receiver under this Rule shall be subject to such conditions (if any) as he thinks fit to impose with respect to the manner in which any person may obtain access to relevant books and papers.
- (5) Nothing in this Rule relieves a [nominated person]⁹¹⁷ from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the official receiver or the liquidator.
- (6) Any payment [made as an expense of the liquidation]⁹²⁰ under this Rule shall be made in the prescribed order of priority.
- (7) Paragraphs (2) to (6) of this Rule may be applied, on application to the official receiver by any [nominated person]⁹¹⁷, in relation to the making of [a statement of concurrence verified by a statement of truth]⁹²¹.

Commencement

Pt 4(6) rule 4.37(1)-(7): December 29, 1986

4.38-CVL.— Expenses of statement of affairs

(1) Payment may be made out of the company's assets, either before or after the commencement of the winding up, of any reasonable and necessary expenses of preparing the statement of affairs under section 99.

Any such payment is an expense of the liquidation.

(2) Where such a payment is made before the commencement of the winding up, the director presiding at the creditors' meeting held under section 98 shall inform the meeting of the amount of the payment and the identity of the person to whom it was made.

⁹¹⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.166(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹¹⁸ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(4)(a) (April 6, 2008)

⁹¹⁹ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

⁹²⁰ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(4)(b) (April 6, 2008)

⁹²¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.166(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) The liquidator appointed under section 100 may make such a payment (subject to the next paragraph); but if there is a liquidation committee, he must give the committee at least [5 business]⁹²² days' notice of his intention to make it.

(4) Such a payment shall not be made by the liquidator to himself, or to any associate of his, otherwise than with the approval of the liquidation committee, the creditors, or the court.

(5) This Rule is without prejudice to the powers of the court under Rule 4.219 (voluntary winding up superseded by winding up by the court).

Commencement

Pt 4(6) rule 4.38(1)-(5): December 29, 1986

4.39.— Submission of accounts
(NO CVL APPLICATION)

(1) Any of the persons specified in section 235(3) shall, at the request of the official receiver, furnish him with accounts of the company of such nature, as at such date, and for such period, as he may specify.

(2) The period specified may begin from a date up to 3 years preceding the date of the presentation of the winding-up petition, or from an earlier date to which audited accounts of the company were last prepared.

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

(4) Rule 4.37 applies (with the necessary modifications) in relation to accounts to be furnished under this Rule as it applies in relation to the statement of affairs.

(5) The accounts shall, if the official receiver so requires, be verified by [a statement of truth]⁹²³ and (whether or not so verified) delivered to him within 21 days of the request under paragraph (1), or such longer period as he may allow.

(6) [...]⁹²⁴

Commencement

Pt 4(6) rule 4.39(1)-(6): December 29, 1986

⁹²² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.167(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹²³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.168(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹²⁴ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.168(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

4.40-CVL.— Submission of accounts

(1) Any of the persons specified in section 235(3) shall, at the request of the liquidator, furnish him with accounts of the company of such nature, as at such date, and for such period, as he may specify.

(2) The specified period for the accounts may begin from a date up to 3 years preceding the date of the resolution for winding up, or from an earlier date to which audited accounts of the company were last prepared.

(3) The accounts shall, if the liquidator so requires, be verified [by a statement of truth]⁹²⁵ and (whether or not so verified) delivered to him, with [the statement of truth]⁹²⁶ if required, within 21 days from the request under paragraph (1), or such longer period as he may allow.

Commencement

Pt 4(6) rule 4.40(1)-(3): December 29, 1986

4.41-CVL.— Expenses of preparing accounts

(1) Where a person is required under Rule 4.40-CVL to furnish accounts, the liquidator may, with the sanction of the liquidation committee (if there is one) and [as an expense of the liquidation]⁹²⁷, employ some person or persons to assist in the preparation of the accounts.

(2) At the request of the person subject to the requirement, the liquidator may, with that sanction, authorise an allowance, payable [as an expense of the liquidation]⁹²⁸, towards expenses to be incurred by that person in employing others to assist him in preparing the accounts.

(3) Any such request shall be accompanied by an estimate of the expenses involved; and the liquidator shall only authorise the employment of a named person or a named firm, being in either case approved by him.

Commencement

Pt 4(6) rule 4.41(1)-(3): December 29, 1986

**4.42.— Further disclosure
(NO CVL APPLICATION)**

⁹²⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.169(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹²⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.169(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹²⁷ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(5) (April 6, 2008)

⁹²⁸ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

(1) The official receiver may at any time require the [nominated persons]⁹²⁹, or any one or more of them, to submit (in writing) further information amplifying, modifying or explaining any matter contained in the statement of affairs, or in accounts submitted in pursuance of the Act or the Rules.

(2) The information shall, if the official receiver so directs, be verified by [a statement of truth]⁹³⁰, and (whether or not so verified) delivered to him within 21 days of the requirement under paragraph (1), or such longer period as he may allow.

(3) [...]⁹³¹

Commencement

Pt 4(6) rule 4.42(1)-(3): December 29, 1986

CHAPTER 7

INFORMATION TO CREDITORS AND CONTRIBUTORIES

[4.43. Reports by official receiver (NO CVL APPLICATION)]

(1) The official receiver shall, at least once after the making of the winding-up order, send a report to creditors and contributories with respect to the proceedings in the winding up, and the state of the company's affairs.

[(1A) The official receiver shall also include in the report under paragraph (1)–

(a) to the best of his knowledge and belief–

(i) an estimate of the value of the prescribed part (whether or not he proposes to make an application to the court under section 176A(5) or section 176A(3) applies);

(ii) an estimate of the value of the company's net property; and

(b) whether, and if so, why, he proposes to make an application to court under section 176A(5).

(1B) Nothing in this Rule is to be taken as requiring any such estimate to include any information, the disclosure of which could seriously prejudice the commercial interests of the company. If such information is excluded from the calculation the estimate shall be accompanied by a statement to that effect.]⁹³²

(2) [...]⁹³³

⁹²⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.170(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹³⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.170(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹³¹ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.170(4) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹³² Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.15 (September 15, 2003)

]⁹³⁴

Commencement

Pt 4(7) rule 4.43: December 29, 1986

4.44. Meaning of “creditors”

Any reference in this Chapter to creditors is to creditors of the company who are known to the official receiver or (as the case may be) the liquidator [...]⁹³⁵ .

Commencement

Pt 4(7) rule 4.44: December 29, 1986

**4.45.— Report where statement of affairs lodged
(NO CVL APPLICATION)**

(1) Where a statement of affairs has been submitted [...] ⁹³⁶ , the official receiver shall send out to creditors and contributories a report containing a summary of the statement [(if he thinks fit, as amplified, modified or explained by virtue of Rule 4.42)] ⁹³⁷ and such observations (if any) as he thinks fit to make with respect to it, or to the affairs of the company in general.

(2) The official receiver need not comply with paragraph (1) if he has previously reported to creditors and contributories with respect to the company's affairs (so far as known to him) and he is of opinion that there are no additional matters which ought to be brought to their attention.

Commencement

Pt 4(7) rule 4.45(1)-(2): December 29, 1986

**4.46.— Statement of affairs dispensed with
(NO CVL APPLICATION)**

(1) This Rule applies where, in the company's case, release from the obligation to submit a statement of affairs has been granted by the official receiver or the court.

(2) As soon as may be after the release has been granted, the official receiver shall send to creditors and contributories a report containing a summary of the company's affairs (so far as within his

⁹³³ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.171(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹³⁴ Existing rule 4.43 renumbered as rule 4.43(1) and rule 4.43(2) added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.47 (January 11, 1988)

⁹³⁵ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.172(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹³⁶ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.173(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹³⁷ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.48 (January 11, 1988)

knowledge), and his observations (if any) with respect to it, or to the affairs of the company in general.

(3) The official receiver need not comply with paragraph (2) if he has previously reported to creditors and contributories with respect to the company's affairs (so far as known to him) and he is of opinion that there are no additional matters which ought to be brought to their attention.

Commencement

Pt 4(7) rule 4.46(1)-(3): December 29, 1986

**4.47.— General rule as to reporting
(NO CVL APPLICATION)**

(1) The court may, on the official receiver's application, relieve him of any duty imposed on him by this Chapter, or authorise him to carry out the duty in a way other than there required.

(2) In considering whether to act under this Rule, 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.

Commencement

Pt 4(7) rule 4.47(1)-(2): December 29, 1986

**4.48.— Winding up stayed
(NO CVL APPLICATION)**

(1) If proceedings in the winding up are stayed by order of the court, any duty of the official receiver to send reports under the preceding Rules in this Chapter ceases.

(2) Where the court grants a stay, it may include in its order such requirements on the company as it thinks [just]⁹³⁸ with a view to bringing the stay to the notice of creditors and contributories.

Commencement

Pt 4(7) rule 4.48(1)-(2): December 29, 1986

[4.49-CVL. Information to creditors and contributories]

(1) The liquidator shall, within 28 days of a meeting held under section 95 or 98, send to creditors and contributories of the company—

- (a) a copy or summary of the statement of affairs, and
- (b) a report of the proceedings at the meeting.

(2) The report under paragraph (1) shall also include—

- (a) to the best of the liquidator's knowledge and belief—

⁹³⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (i) an estimate of the value of the prescribed part (whether or not he proposes to make an application to court under section 176A(5) or section 176A(3) applies); and
- (ii) an estimate of the value of the company's net property; and
- (b) whether, and if so, why, the liquidator proposes to make an application to court under section 176A(5).

(3) Nothing in this Rule is to be taken as requiring any such estimate to include any information, the disclosure of which could seriously prejudice the commercial interests of the company. If such information is excluded from the calculation the estimate shall be accompanied by a statement to that effect.

] ⁹³⁹

Commencement

Pt 4(7) rule 4.49(a)-(b): December 29, 1986

[4.49A. Further information where liquidation follows administration

Where under section 140 the court appoints as the company's liquidator a person who was formerly its administrator [or a person is appointed as liquidator upon the registration of a notice under paragraph 83(3) of Schedule B1 to the Act] ⁹⁴⁰ and that person becomes aware of creditors not formerly known to him in his capacity as administrator, he shall send to those creditors a copy of any statement or report sent by him to creditors under [Rule 2.33] ⁹⁴¹, so noted as to indicate that it is being sent under this Rule.] ⁹⁴²

[4.49B Reports to creditors and members — winding up by the court (NO CVL APPLICATION)

- (1) “Progress report” means a report which includes—
 - (a) details of the court where the proceedings are and the relevant court reference number;
 - (b) full details of the company's name, address of registered office and registered number;
 - (c) full details of the liquidator's name and address and date of appointment, including any changes in office-holder;
 - (d) details of the basis fixed for the remuneration of the liquidator under Rule 4.127 (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);
 - (e) if the basis of remuneration has been fixed, a statement of—
 - (i) the remuneration charged by the liquidator during the period of the report (subject to paragraph (3)), and
 - (ii) where the report is the first to be made after the basis has been fixed, the remuneration charged by the liquidator during the periods covered by the previous

⁹³⁹ Existing rule 4.49 renumbered and rule 4.49(1) and rule 4.49(2)-(3) inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.16 (September 15, 2003)

⁹⁴⁰ Words inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.17 (September 15, 2003)

⁹⁴¹ Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.17 (September 15, 2003)

⁹⁴² Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.49 (January 11, 1988)

reports (subject to paragraph (3)), together with a description of the things done by the liquidator during those periods in respect of which the remuneration was charged, irrespective in either case of whether payment was made in respect of that remuneration during that period;

(f) a statement of the expenses incurred by the liquidator during the period of the report, irrespective of whether payment was made in respect of them during that period;

(g) details of progress during the period of the report, including a receipts and payments account (as detailed in paragraph (2));

(h) details of any assets that remain to be realised;

(j) a statement of the creditors' right to request information under Rule 4.49E and their right to challenge the liquidator's remuneration and expenses under Rule 4.131; and

(k) any other relevant information for the creditors.

(2) A receipts and payments account must be in the form of an abstract showing receipts and payments during the period of the report and, where the liquidator has ceased to act, must also include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A.

(3) Where the basis for the remuneration is a set amount under Rule 4.127(2)(c), it may be shown as that amount without any apportionment to the period of the report.

(4) The progress report must, except where paragraph (5) or (6) applies, cover the period of 1 year commencing on the date on which the liquidator is appointed and every subsequent period of 1 year.

(5) The period to be covered by a progress report ends on the date when a liquidator ceases to act, and the period to be covered by each subsequent progress report is each successive period of 1 year beginning immediately after that date (subject to the further application of this paragraph when another liquidator ceases to act).

(6) A progress report is not required for any period which ends after the liquidator has sent a draft report to creditors under Rule 4.49D.

(7) The liquidator must send a copy of the progress report within 2 months of the end of the period covered by the report, to the registrar of companies, to the members of the company and to the creditors.

(8) The court may, on the liquidator's application, extend the period of 2 months mentioned in paragraph (7), or make such other order in respect of the content of the report as it thinks just.

(9) This Rule does not apply where the liquidator is the official receiver.

]⁹⁴³

[4.49C CVL Progress reports — voluntary winding up

(1) This Rule applies for the purposes of sections 92A and 104A⁹⁴⁴.

⁹⁴³ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.174 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁴⁴ Sections 92A and 104A were inserted by S.I. 2010/18.

(2) The prescribed period for which the liquidator must produce a progress report, except when the liquidator ceases to act (in which case paragraph (3) applies) and subject to paragraph (4), is the period of 1 year commencing on the date on which the liquidator is appointed and every subsequent period of 1 year.

(3) When a liquidator ceases to act, and subject to paragraph (4)—

- (a) the prescribed period for which the liquidator must produce a progress report ends on the date of that liquidator's ceasing to act, and
- (b) the prescribed period for which the new liquidator (if any) must produce a progress report is the period of 1 year commencing immediately after that date and every subsequent period of 1 year (subject to the further application of this paragraph when that new liquidator ceases to act).

(4) A progress report is not required for any period which ends after the liquidator has sent a draft report to creditors under Rule 4.49D (final report to creditors).

(5) The prescribed matters to which a progress report must relate are those set out in Rule 4.49B(1)(b) to (j), (2) and (3); and for that purpose in a members' voluntary winding up—

- (a) the reference in Rule 4.49B(1)(d) to Rule 4.127 is to be read as a reference to Rule 4.148A,
- (b) the reference in Rule 4.49B(1)(j) to—
 - (i) the creditors' right to request information is to be read as a reference to the members' right to request information,
 - (ii) Rule 4.131 is to be read as a reference to Rule 4.148C, and
- (c) the reference in Rule 4.49B(3) to Rule 4.127(2)(c) is to be read as a reference to Rule 4.148A(2)(c).

(6) The prescribed person (in addition to members and creditors) to whom the liquidator must send a copy of a progress report is the registrar of companies.

(7) The prescribed period commencing with the end of the period prescribed in sub-paragraph (a) or (b) of paragraph (3) within which the liquidator must send a copy of a progress report to members, creditors and the registrar of companies is 2 months.

⁹⁴⁵

[4.49D Final report to creditors]

(1) The liquidator must, at least 8 weeks before holding a final meeting in accordance with section 106 or 146, send to each creditor known to the liquidator a draft of the report which the liquidator intends to lay before the meeting under Rule 4.125 or 4.126.

(2) The draft report must—

- (a) contain such matters and be in such terms as would comply with Rule 4.125 or 4.126, as the case may be, if the report were to be laid before a meeting as soon as reasonably practicable after the draft had been sent to creditors, and
- (b) be accompanied by a statement of the creditors' right to request information under Rule 4.49E and their right to challenge the liquidator's remuneration and expenses under Rule 4.131.

⁹⁴⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.174 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) The liquidator may not send a draft report to creditors under this Rule before giving notice under Rule 4.186 of intention to declare a final dividend or that no dividend or further dividend will be declared.

(4) If any creditor has applied to the court under Rule 4.131 and given a copy of the application to the liquidator, the final meeting may not be held until the application (including any appeal) has been disposed of and the liquidator has complied with any order of the court.

(5) This Rule does not apply where the liquidator is the official receiver.

⁹⁴⁶

[4.49E Creditors' and members' request for further information

(1) If—

- (a) within the period mentioned in paragraph (2)—
 - (i) a secured creditor, or
 - (ii) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question), or
 - (iii) members of the company in a members' voluntary winding up with at least 5% of the total voting rights of all the members having the right to vote at general meetings of the company, or
- (b) with the permission of the court upon an application made within the period mentioned in paragraph (2)—
 - (i) any unsecured creditor, or
 - (ii) any member of the company in a members' voluntary winding up,

makes a request in writing to the liquidator for further information about remuneration or expenses set out in a progress report in accordance with Rule 4.49B(1)(e) or (f) (including by virtue of Rule 4.49C(5)) or in a draft report under Rule 4.49D, the liquidator must, within 14 days of receipt of the request, comply with paragraph (3) except to the extent that the request is in respect of matter in a draft report under Rule 4.49D or a progress report required by Rule 4.108 which (in either case) was previously included in a progress report not required by Rule 4.108.

(2) The period referred to in paragraph (1)(a) and (b) is—

- (a) 7 business days of receipt (by the last of them in the case of an application by more than one member) of the progress report where it is required by Rule 4.108, and
- (b) 21 days of receipt (by the last of them in the case of an application by more than one member) of the report or draft report in any other case.

(3) The liquidator complies with this paragraph by either—

- (a) providing all of the information asked for, or
- (b) so far as the liquidator considers that—
 - (i) the time or cost of preparation of the information would be excessive, or
 - (ii) disclosure of the information would be prejudicial to the conduct of the liquidation or might reasonably be expected to lead to violence against any person, or
 - (iii) the liquidator is subject to an obligation of confidentiality in respect of the information,

⁹⁴⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.174 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

giving reasons for not providing all of the information.

(4) Any creditor, and any member of the company in a members' voluntary winding up, who need not be the same as the creditors or members who asked for the information, may apply to the court within 21 days of—

(a) the giving by the liquidator of reasons for not providing all of the information asked for, or

(b) the expiry of the 14 days provided for in paragraph (1),
and the court may make such order as it thinks just.

(5) Without prejudice to the generality of paragraph (4), the order of the court under that paragraph may extend the period of 8 weeks or, as the case may be, 4 weeks provided for in Rule 4.131(1B) or 4.148C(2) by such further period as the court thinks just.

(6) This Rule does not apply where the liquidator is the official receiver.

]⁹⁴⁷

[4.49F Arrangements under s 110 (acceptance of shares, etc., as consideration for sale of company property)

(1) Where there has been an arrangement under section 110 and a distribution to members has taken place pursuant to subsection (2) or (4) of that section, the liquidator must comply with paragraph (2) in respect of any account or report which the liquidator is required to prepare pursuant to any of the following—

- (a) section 92A (progress report to company at year's end);
- (b) section 94 (final meeting prior to dissolution — members' voluntary winding up);
- (c) section 104A (progress report to company and creditors at year's end);
- (d) section 106 (final meeting prior to dissolution — creditors' voluntary winding up);
- (e) Rule 4.49B (reports to creditors and members — winding up by the court);
- (f) Rule 4.49D (final report to creditors);
- (g) Rule 4.108 (creditors' meeting to receive liquidator's resignation);
- (h) Rule 4.126 (final meeting — creditors' voluntary liquidation);
- (j) Rule 4.142 (company meeting to receive liquidator's resignation).

(2) The liquidator must—

(a) in any account or summary of receipts and payments which is required to be included in the account or report, state the estimated value of—

- (i) the property transferred to the transferee;
- (ii) the property received from the transferee; and
- (iii) the property distributed to members pursuant to section 110(2) or (4), during the period to which the account or report relates, and

(b) as a note to the account or summary of receipts and payments, provide details of the basis of the valuation.

]⁹⁴⁸

⁹⁴⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.174 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁴⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.174 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[4.49G Other distributions to members in specie

(1) In a members' voluntary winding up, where there has been a distribution of property to members in its existing form other than pursuant to an arrangement under section 110, the liquidator must comply with paragraph (2) in respect of any account or report which the liquidator is required to prepare pursuant to any of the following—

- (a) section 92A (progress report to company at year's end);
- (b) section 94 (final meeting prior to dissolution);
- (c) Rule 4.142 (company meeting to receive liquidator's resignation)

(2) The liquidator must—

- (a) in any account or summary of receipts and payments which is required to be included in the account or report, state the estimated value of the property distributed amongst the members of the company during the period to which the account or report relates, and
- (b) as a note to the account or summary of receipts and payments, provide details of the basis of the valuation.

] ⁹⁴⁹

CHAPTER 8**MEETINGS OF CREDITORS AND CONTRIBUTORIES*****SECTION A: RULES OF GENERAL APPLICATION*****4.50.— First meetings**

(NO CVL APPLICATION)

(1) If under section 136(5) the official receiver decides to summon meetings of the company's creditors and contributories for the purpose of nominating a person to be liquidator in place of himself, he shall fix a venue for each meeting, in neither case more than 4 months from the date of the winding-up order.

(2) When for each meeting a venue has been fixed, notice of the meetings shall be given [...] ⁹⁵⁰

—

- (a) in the case of the creditors' meeting, to every creditor who is known to the official receiver [...] ⁹⁵¹ ; and
- (b) in the case of the contributories' meeting, to every person appearing (by the company's books or otherwise) to be a contributory of the company.

[(3) Notice for each meeting must be given at least 14 days before the date fixed for it.] ⁹⁵²

⁹⁴⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.174 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁵⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.175(2)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁵¹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.175(2)(b) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁵² Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.175(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[(4) The notice to creditors must state that proofs and (if applicable) proxies must be lodged at a specified place not later than 12.00 hours on the business day before the date fixed for the meeting in order for creditors to be entitled to vote at the meeting; and the same applies in respect of contributories and their proxies.]⁹⁵³

[(5) Notice of the meetings shall be gazetted and may be advertised in such other manner as the official receiver thinks fit.]⁹⁵⁴

[(5A) In addition to the standard contents, a notice under paragraph (5) must state—

- (a) that a meeting of the creditors or contributories is to take place;
- (b) the venue fixed for the meeting; and
- (c) the time and date by which, and place at which, creditors must lodge proxies and hitherto unlodged proofs in order to be entitled to vote at the meeting.

] ⁹⁵⁵

(6) Where the official receiver receives a request by creditors under section 136(5)(c) for meetings of creditors and contributories to be summoned, and it appears to him that the request is properly made in accordance with the Act, he shall—

- (a) withdraw any notices previously given by him under section 136(5)(b) (that he has decided not to summon such meetings),
- (b) fix the venue of each meeting for not more than 3 months from his receipt of the creditors' request, and
- (c) act in accordance with paragraphs (2) to (5) above, as if he had decided under section 136 to summon the meetings.

(7) Meetings summoned by the official receiver under this Rule are known respectively as “the first meeting of creditors” and “the first meeting of contributories”, and jointly as “the first meetings in the liquidation”.

(8) Where the company is [an authorised deposit-taker or a former authorised deposit-taker] ⁹⁵⁶, additional notices are required by Rule 4.72.

Commencement

Pt 4(8) rule 4.50(1)-(8): December 29, 1986

4.51-CVL.— First meeting of creditors

(1) This Rule applies in the case of a meeting of creditors summoned by the liquidator under section 95 (where, in what starts as a members' voluntary winding up, he forms the opinion that the company will be unable to pay its debts) or a meeting under section 98 (first meeting of creditors in a creditors' voluntary winding up).

⁹⁵³ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.175(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁵⁴ Substituted by Insolvency (Amendment) Rules 2009/642 rule 24 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁹⁵⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.175(5) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁵⁶ Words substituted by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.377(5) (December 1, 2001)

(2) The notice summoning the meeting [state the name of the company and the registered number of the company, and]⁹⁵⁷ shall specify a venue for the meeting and the time (not earlier than 12.00 hours on the business day before the day fixed for the meeting) by which, and the place at which, creditors must lodge [any [proofs and]⁹⁵⁸ proxies necessary to entitle them to vote at the meeting]⁹⁵⁹ .

(3) Where the company is [an authorised deposit-taker or a former authorised deposit-taker]⁹⁶⁰ , additional notices are required by Rule 4.72.

Commencement

Pt 4(8) rule 4.51(1)-(3): December 29, 1986

4.52.— Business at first meetings in the liquidation (NO CVL APPLICATION)

- (1) At the first meeting of creditors, no resolutions shall be taken other than the following—
- (a) a resolution to appoint a named insolvency practitioner to be liquidator, or two or more insolvency practitioners as joint liquidators;
 - (b) a resolution to establish a liquidation committee;
 - (c) (unless it has been resolved to establish a liquidation committee) a resolution specifying the terms on which the liquidator is to be remunerated, or to defer consideration of that matter;
 - (d) (if, and only if, two or more persons are appointed to act jointly as liquidator) a resolution specifying whether acts are to be done by both or all of them, or by only one;
 - (e) (where the meeting has been requisitioned under section 136), a resolution authorising payment [...] ⁹⁶¹ as an expense of the liquidation, of the cost of summoning and holding the meeting and any meeting of contributories so requisitioned and held;
 - (f) a resolution to adjourn the meeting [...] ⁹⁶² ;
 - (g) any other resolution which the chairman thinks it right to allow for special reasons.
- (2) The same applies as regards the first meeting of contributories, but that meeting shall not pass any resolution to the effect of paragraph (1)(c) or (e).
- (3) At neither meeting shall any resolution be proposed which has for its object the appointment of the official receiver as liquidator.

[(3A) The meeting may be adjourned, either in accordance with a resolution under paragraph (1)(f) or if the chairman thinks fit, but for not more than 14 days from the date on which it was fixed to commence, subject to any direction of the court.

⁹⁵⁷ Words inserted by Insolvency (Amendment) Rules 2005/527 rule 22 (April 1, 2005)

⁹⁵⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.176(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁵⁹ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.51(1) (January 11, 1988)

⁹⁶⁰ Words substituted by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.377(6) (December 1, 2001)

⁹⁶¹ Words repealed by Insolvency (Amendment) Rules 2008/737 rule 7(6) (April 6, 2008)

⁹⁶² Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.177(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3B) If there are subsequently further adjournments, the final adjournment must not be to a day later than 14 days after the date on which the meeting was originally held, subject to any direction of the court.

(3C) Where a meeting is adjourned under this Rule, proofs and proxies may be used if lodged at any time up to 12.00 hours on the business day immediately before the adjourned meeting.]⁹⁶³

Commencement

Pt 4(8) rule 4.52(1)-(3): December 29, 1986

4.53-CVL. Business at meeting under s. 95 or 98

Rule 4.52(1), except sub-paragraph (e), applies to a creditors' meeting under section 95 or 98.

Commencement

Pt 4(8) rule 4.53: December 29, 1986

[4.53A-CVL. Effect of adjournment of company meeting

Where a company meeting at which a resolution for voluntary winding up is to be proposed is adjourned, any resolution passed at a meeting under section 98 held before the holding of the adjourned company meeting only has effect on and from the passing by the company of a resolution for winding up.]⁹⁶⁴

[4.53B-CVL.— Report by director, etc.

(1) At any meeting held under section 98 where the statement of affairs laid before the meeting does not state the company's affairs as at the date of the meeting, the directors of the company shall cause to be made to the meeting, either by the director presiding at the meeting or by another person with knowledge of the relevant matters, a report (written or oral) on any material transactions relating to the company occurring between the date of the making of the statement of affairs and that of the meeting.

(2) Any such report shall be recorded in the minutes of the meeting kept under Rule 4.71.]⁹⁶⁵

[4.53C CVL Additional contents of notices gazetted or advertised under s.95

In addition to the statement of duty required under subsection (2A) of section 95⁹⁶⁶, and to the standard contents, notices under paragraphs (c) and (d) of that subsection must state—

- (a) the purpose of the meeting; and

⁹⁶³ Rule 4.52(3A)-(3C) substituted for rule 4.52(3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.177(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁶⁴ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.52 (January 11, 1988)

⁹⁶⁵ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.52 (January 11, 1988)

⁹⁶⁶ Subsection (2A) was inserted by S.I. 2009/864.

- (b) the venue fixed for the meeting.

]⁹⁶⁷

[4.53D CVL Additional contents of notices gazetted or advertised under s 98

In addition to the content required by section 98(2), and the standard contents, notices under section 98(1A) (c) or (d)⁹⁶⁸ must state—

- (a) the purpose of the meeting; and
- (b) the venue fixed for the meeting.

]⁹⁶⁹

4.54.— General power to call meetings

(1) The official receiver or the liquidator may at any time summon and conduct meetings of creditors or of contributories for the purpose of ascertaining their wishes in all matters relating to the liquidation; and in relation to any meeting summoned under the Act or the Rules, the person summoning it is referred to as “the convener”.

(2) When (in either case) a venue for the meeting has been fixed, notice of it shall be given by the convener—

- (a) in the case of a creditors' meeting, to every creditor who is known to him [...] ⁹⁷⁰ ; and
- (b) in the case of a meeting of contributories, to every person appearing (by the company's books or otherwise) to be a contributory of the company.

(3) Notice of the meeting shall be given at least [14]⁹⁷¹ days before the date fixed for it, and shall specify the purpose of the meeting.

[(4) The notice must state that proofs and (if applicable) proxies must be lodged at a specified place not later than 12.00 hours on the business day before the date fixed for the meeting in order for creditors to be entitled to vote at the meeting; and the same applies in respect of contributories and their proxies.

(NO CVL APPLICATION)

]⁹⁷²

⁹⁶⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.178 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁶⁸ Subsection (1A) was inserted by S.I. 2009/864.

⁹⁶⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.178 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁷⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.179(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁷¹ Figure substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.179(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁷² Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.179(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[(5-CVL) The notice must state that proofs and (if applicable) proxies must be lodged at a specified place not later than 12.00 hours on the business day before the date fixed for the meeting in order for creditors to be entitled to vote at the meeting.]⁹⁷³

[(6) Notice of the meeting—

- (a) shall be gazetted; and
- (b) may be advertised in such other manner as the convenor thinks fit.

] ⁹⁷⁴

[(7) In addition to the standard contents, the notice under paragraph (6) must state—

- (a) who summoned the meeting;
- (b) if the meeting was summoned by a creditor, the fact that it was so summoned and the section of the Act under which it was summoned;
- (c) the purpose for which the meeting was summoned;
- (d) the venue fixed for the meeting; and
- (e) the time and date by which, and place at which, creditors must lodge proxies and hitherto unlodged proofs in order to be entitled to vote at the meeting.

] ⁹⁷⁵

Commencement

Pt 4(8) rule 4.54(1)-(6): December 29, 1986

4.55.— The chairman at meetings (NO CVL APPLICATION)

(1) This Rule applies both to a meeting of creditors and to a meeting of contributories.

(2) Where the convener of the meeting is the official receiver, he, or a person nominated by him, shall be chairman.

A nomination under this paragraph shall be in writing, unless the nominee is another official receiver or a deputy official receiver.

(3) Where the convener is other than the official receiver, the chairman shall be he, or a person nominated in writing by him.

A person nominated under this paragraph must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the company, or
- (b) an employee of the liquidator or his firm who is experienced in insolvency matters.

Commencement

Pt 4(8) rule 4.55(1)-(3)(b): December 29, 1986

⁹⁷³ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.179(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁷⁴ Substituted by Insolvency (Amendment) Rules 2009/642 rule 25 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁹⁷⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.179(6) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

4.56-CVL.— The chairman at meetings

(1) This Rule applies both to a meeting of creditors (except a meeting under [section 95 or 98]⁹⁷⁶) and to a meeting of contributories.

(2) The liquidator, or a person nominated by him in writing to act, shall be chairman of the meeting. A person nominated under this paragraph must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the company, or
- (b) an employee of the liquidator or his firm who is experienced in insolvency matters.

Commencement

Pt 4(8) rule 4.56(1)-(2)(b): December 29, 1986

4.57.— Requisitioned meetings

(1) Any request by creditors to the liquidator (whether or not the official receiver) for a meeting of creditors or contributories, or meetings of both, to be summoned shall be accompanied by—

- (a) a list of the creditors concurring with the request and the amount of their respective claims in the winding up;
- (b) from each creditor concurring, written confirmation of his concurrence; and
- (c) a statement of the purpose of the proposed meeting.

Sub-paragraphs (a) and (b) do not apply if the requisitioning creditor's debt is alone sufficient, without the concurrence of other creditors.

(2) The liquidator shall, if he considers the request to be properly made in accordance with the Act, fix a venue for the meeting, not more than [28]⁹⁷⁷ days from his receipt of the request.

(3) The liquidator shall give [14]⁹⁷⁸ days' notice of the meeting, and the venue for it, to creditors.

(4) Paragraphs (1) to (3) above apply to the requisitioning by contributories of contributories' meetings, with the following modifications—

- (a) for the reference in paragraph (1)(a) to the creditors' respective claims substitute the contributories' respective values (being the amounts for which they may vote at any meeting); and
- (b) the persons to be given notice under paragraph (3) are those appearing (by the company's books or otherwise) to be contributories of the company.

(NO CVL APPLICATION)

Commencement

Pt 4(8) rule 4.57(1)-(4)(b): December 29, 1986

⁹⁷⁶ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.53 (January 11, 1988)

⁹⁷⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.180(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁷⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.180(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

4.58.— Attendance at meetings of company's personnel

- (1) This Rule applies to meetings of creditors and to meetings of contributories.
- (2) Whenever a meeting is summoned, the convener shall give at least [14]⁹⁷⁹ days' notice to such of the company's personnel as he thinks should be told of, or be present at, the meeting.
 "The company's personnel" means the persons referred to in paragraphs (a) to (d) of section 235(3) (present and past officers, employees, etc.).
- (3) If the meeting is adjourned, the chairman of the meeting shall, unless for any reason he thinks it unnecessary or impracticable, give notice of the adjournment to such (if any) of the company's personnel as he considers appropriate, being persons who were not themselves present at the meeting.
- (4) The convener may, if he thinks fit, give notice to any one or more of the company's personnel that he is, or they are, required to be present at the meeting, or to be in attendance.
- (5) In the case of any meeting, any one or more of the company's personnel, and any other persons, may be admitted, but—
 - (a) they must have given reasonable notice of their wish to be present, and
 - (b) it is a matter for the chairman's discretion whether they are to be admitted or not, and his decision is final as to what (if any) intervention may be made by any of them.
- (6) If it is desired to put questions to any one of the company's personnel who is not present, the chairman may adjourn the meeting with a view to obtaining his attendance.
- (7) Where one of the company's personnel is present at a meeting, only such questions may be put to him as the chairman may in his discretion allow.

Commencement

Pt 4(8) rule 4.58(1)-(7): December 29, 1986

4.59.— Notice of meetings by advertisement only

- (1) In the case of any meeting of creditors or contributories to be held under the Act or the Rules, the court may order that notice of the meeting be given by [...] ⁹⁸⁰ advertisement, and not by individual notice to the persons concerned.
- (2) In considering whether to act under this Rule, the court shall have regard to the cost of [...] ⁹⁸⁰ advertisement, to the amount of the assets available, and to the extent of the interest of creditors or of contributories, or any particular class of either of them.
- [(3) In addition to the standard contents, the advertisement must state—
 - (a) the venue fixed for the meeting;
 - (b) that proofs and (if applicable) proxies must be lodged at a specified place not later than 12.00 hours on the business day before the date fixed for the meeting;

⁹⁷⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.181(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁸⁰ Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.182(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (c) the date of the court order or the date of the resolution to wind up.

]⁹⁸¹

Commencement

Pt 4(8) rule 4.59(1)-(2): December 29, 1986

4.60.— Venue

- (1) In fixing the venue for a meeting of creditors or contributories, the convener shall have regard to the convenience of the persons (other than whoever is to be chairman) who are invited to attend.
- (2) Meetings shall in all cases be summoned for commencement between the hours of 10.00 and 16.00 hours on a business day, unless the court otherwise directs.
- (3) With every notice summoning a meeting of creditors or contributories there shall be sent out forms of proxy.

Commencement

Pt 4(8) rule 4.60(1)-(3): December 29, 1986

4.61.— Expenses of summoning meetings

- (1) Subject as follows, the expenses of summoning and holding a meeting of creditors or contributories at the instance of any person other than the official receiver or the liquidator shall be paid by that person, who shall deposit with the liquidator security for their payment.
- (2) The sum to be deposited shall be such as the official receiver or liquidator (as the case may be) determines to be appropriate; and neither shall act without the deposit having been made.
- (3) Where a meeting of creditors is so summoned, it may vote that the expenses of summoning and holding it, and of summoning and holding any meeting of contributories requisitioned at the same time, shall be payable [...] ⁹⁸² as an expense of the liquidation.
- (4) Where a meeting of contributories is summoned on the requisition of contributories, it may vote that the expenses of summoning and holding it shall be payable [as an expense of the liquidation] ⁹⁸³, but subject to the right of creditors to be paid in full, with interest.
- (5) To the extent that any deposit made under this Rule is not required for the payment of expenses of summoning and holding a meeting, it shall be repaid to the person who made it.

Commencement

Pt 4(8) rule 4.61(1)-(5): December 29, 1986

⁹⁸¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.182(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁸² Words repealed by Insolvency (Amendment) Rules 2008/737 rule 7(7) (April 6, 2008)

⁹⁸³ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

4.62-CVL.— Expenses of meeting under s. 98

(1) Payment may be made [...] ⁹⁸⁴, either before or after the commencement of the winding up, of any reasonable and necessary expenses incurred in connection with the summoning, advertisement and holding of a creditors' meeting under section 98.

Any such payment is an expense of the liquidation.

(2) Where such payments are made before the commencement of the winding up, the director presiding at the creditors' meeting shall inform the meeting of their amount and the identity of the persons to whom they were made.

(3) The liquidator appointed under section 100 may make such a payment (subject to the next paragraph); but if there is a liquidation committee, he must give the committee at least [5 business] ⁹⁸⁵ days' notice of his intention to make the payment.

(4) Such a payment shall not be made by the liquidator to himself, or to any associate of his, otherwise than with the approval of the liquidation committee, the creditors, or the court.

(5) This Rule is without prejudice to the powers of the court under Rule 4.219 (voluntary winding up superseded by winding up by the court).

Commencement

Pt 4(8) rule 4.62(1)-(5): December 29, 1986

4.63.— Resolutions

(1) [Subject as follows, at] ⁹⁸⁶ a meeting of creditors or contributories, a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of the resolution.

The value of contributories is determined by reference to the number of votes conferred on each contributory by the company's articles.

(2) In the case of a resolution for the appointment of a liquidator—

- (a) [...] ⁹⁸⁷ if on any vote there are two nominees for appointment, the person who obtains the most support is appointed;
- (b) if there are three or more nominees, and one of them has a clear majority over both or all the others together, that one is appointed; and
- (c) in any other case, the chairman of the meeting shall continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time), until a clear majority is obtained for any one nominee.

⁹⁸⁴ Words repealed by Insolvency (Amendment) Rules 2008/737 rule 7(8) (April 6, 2008)

⁹⁸⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.183(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁸⁶ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.54(1) (January 11, 1988)

⁹⁸⁷ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.184(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2A) [...] ⁹⁸⁸

(3) The chairman may at any time put to the meeting a resolution for the joint appointment of any two or more nominees.

(4) Where a resolution is proposed which affects a person in respect of his remuneration or conduct as liquidator, or as proposed or former liquidator, the vote of that person, and of any partner or employee of his, shall not be reckoned in the majority required for passing the resolution.

This paragraph applies with respect to a vote given by a person [(whether personally or on his behalf by a proxy-holder)] ⁹⁸⁹ either as creditor or contributory or as [proxy-holder] ⁹⁹⁰ for a creditor or a contributory (but subject to Rule 8.6 in Part 8 of the Rules).

Commencement

Pt 4(8) rule 4.63(1)-(4): December 29, 1986

[4.63A Resolutions by correspondence

(1) The liquidator may seek to obtain the passing of a resolution by creditors or contributories without holding a meeting by giving notice of the resolution to every creditor or contributory who is entitled to be notified of a meeting at which the resolution could be passed.

(2) In order to be counted, votes must be received by the liquidator in writing by 12.00 hours on the closing date specified in the notice, and in the case of votes cast by creditors must be accompanied by a proof of debt as required by Rule 4.67(1)(a) unless it has already been lodged under that Rule.

(3) If any vote cast by a creditor is received without a proof of debt, or the liquidator decides that the creditor or contributory is not entitled to vote according to Rules 4.67 to 4.70, then that creditor's or contributory's vote must be disregarded.

(4) The closing date shall be set at the discretion of the liquidator; but in any event it must not be set less than 14 days from the giving of notice provided for in paragraph (1).

(5) For the resolution to be passed, the liquidator must receive at least one valid vote by the closing date specified in the notice.

(6) If no valid vote is received by the closing date specified, the liquidator must call a meeting of creditors or contributories at which the resolution could be passed.

(7) Creditors whose debts amount to at least 10% of the total debts of the company may, within 5 business days from the giving of notice provided for in paragraph (1), require the liquidator to summon a meeting of creditors to consider the resolution.

(8) Contributories representing at least 10% of the total voting rights of all contributories having the right to vote at a meeting of contributories may, within 5 business days from the giving of notice provided for in paragraph (1), require the liquidator to summon a meeting of contributories to consider the resolution.

⁹⁸⁸ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.184(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁸⁹ Word inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.54(4)(a) (January 11, 1988)

⁹⁹⁰ Word substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.54(4)(b) (January 11, 1988)

(9) A reference in these Rules to a resolution passed at a creditors' or contributories' meeting includes a reference to a resolution passed under this Rule.

(10) This Rule does not apply in respect of any resolution which the Act requires to be passed at a meeting.

⁹⁹¹

4.64. Chairman of meeting as proxy-holder

Where the chairman at a meeting of creditors or contributories holds a proxy which requires him to vote for a particular resolution, and no other person proposes that resolution—

- (a) he shall himself propose it, unless he considers that there is good reason for not doing so, and
- (b) if he does not propose it, he shall [as soon as reasonably practicable]⁹⁹² after the meeting notify his principal of the reason why not.

Commencement

Pt 4(8) rule 4.64(a)-(b): December 29, 1986

4.65.— Suspension and adjournment

(1) This Rule applies to meetings of creditors and to meetings of contributories.

(2) Once only in the course of any meeting, the chairman may, in his discretion and without an adjournment, declare the meeting suspended for any period up to one hour.

(3) The chairman at any meeting may in his discretion, and shall if the meeting so resolves, adjourn it to such time and place as seems to him to be appropriate in the circumstances.

This is subject to [Rule 4.113(3) or, as the case may be, 4.114-CVL(3),]⁹⁹³ in a case where the liquidator or his nominee is chairman, and a resolution has been proposed for the liquidator's removal.

(4) If within a period of 30 minutes from the time appointed for the commencement of a meeting a quorum is not present, then [the chairman may, at his discretion, adjourn the meeting to such time and place as he may appoint]⁹⁹⁴.

(5) An adjournment under this Rule shall not be for a period of more than [14]⁹⁹⁵ days; and Rule 4.60(1) and (2) applies.

⁹⁹¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.185 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁹² Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

⁹⁹³ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.55(1) (January 11, 1988)

⁹⁹⁴ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.55(2) (January 11, 1988)

⁹⁹⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.186(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(6) If there is no person present to act as chairman, some other person present (being entitled to vote) may make the appointment under paragraph (4), with the agreement of others present (being persons so entitled).

Failing agreement, the adjournment shall be to the same time and place in the next following week or, if that is not a business day, to the business day immediately following.

[(6A) If within 30 minutes from the time appointed for commencement of a meeting there is no person present to act as chairman, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(6B) Paragraph (6A) applies to further adjournments of a final meeting.

(6C) In the case of any other meeting, further adjournment must be to the same time and place in the following week or, if either—

(a) that is not a business day, or

(b) whether or not it is a business day, it is later than 14 days after the date on which the meeting in question was originally held,

to the same time and place on the business day immediately preceding which is not later than 14 days after the date on which the meeting in question was originally held.

]⁹⁹⁶

(7) Where a meeting is adjourned under this Rule, proofs and proxies may be used if lodged at any time up to midday on the business day immediately before the adjourned meeting.

Commencement

Pt 4(8) rule 4.65(1)-(7): December 29, 1986

4.66.— [...] ⁹⁹⁷

4.67.— Entitlement to vote (creditors)

(1) Subject as follows in this Rule and the next, at a meeting of creditors a person is entitled to vote as a creditor only if—

[(a) there has been duly lodged ([...] ⁹⁹⁸ by the time and date stated in the notice of the meeting) a proof of the debt

(i) claimed to be due to him from the company, or

(ii) in relation to a member State liquidator, is claimed to be due to creditors in proceedings in relation to which he holds office,

and the claim has been admitted under Rule 4.70 for the purpose of entitlement to vote, and
]⁹⁹⁹

⁹⁹⁶ Rule 4.65(6A)-(6C) substituted for rule 4.65(6) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.186(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁹⁷ Revoked by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.56 (January 11, 1988)

⁹⁹⁸ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.187(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

⁹⁹⁹ Rule.4.67(1)(a)(i) and (ii) substituted for words by Insolvency (Amendment) Rules 2002/1307 rule 6(6)(a) (May 31, 2002)

(b) there has been lodged, by the time and date stated in the notice of the meeting, any proxy requisite for that entitlement.

(2) The court may, in exceptional circumstances, by order declare the creditors, or any class of them, entitled to vote at creditors' meetings, without being required to prove their debts.

Where a creditor is so entitled, the court may, on the application of the liquidator, make such consequential orders as it thinks [just]¹⁰⁰⁰ (as for example an order treating a creditor as having proved his debt for the purpose of permitting payment of dividend).

(3) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits his proof for that purpose.

(4) A secured creditor is entitled to vote only in respect of the balance (if any) of his debt after deducting the value of his security as estimated by him.

(5) A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing—

(a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands, and

(b) to estimate the value of the security and (for the purpose of entitlement to vote, but not for dividend) to deduct it from his proof.

[(6) No vote shall be cast by virtue of a debt more than once on any resolution put to the meeting.

(7) Where—

(a) a creditor is entitled to vote under this Rule and Rule 4.70 (admission of proof),

(b) has lodged his claim in one or more sets of other proceedings, and

(c) votes (either in person or by proxy) on a resolution put to the meeting,

only the creditor's vote shall be counted.

(8) Where—

(a) a creditor has lodged his claim in more than one set of other proceedings, and

(b) more than one member State liquidator seeks to vote by virtue of that claim,

the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.

(9) For the purposes of paragraphs (7) and (8), “other proceedings” means main proceedings, secondary proceedings or territorial proceedings in another member State.]¹⁰⁰¹

Commencement

Pt 4(8) rule 4.67(1)-(5)(b): December 29, 1986

¹⁰⁰⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁰¹ Added by Insolvency (Amendment) Rules 2002/1307 rule 6(6)(b) (May 31, 2002)

4.68 [...] ¹⁰⁰² . Chairman's discretion to allow vote

At a creditors' meeting [in a creditors' voluntary winding up or a winding up by the court] ¹⁰⁰³ , the chairman may allow a creditor to vote, notwithstanding that he has failed to comply with Rule 4.67(1)(a), if satisfied that the failure was due to circumstances beyond the creditor's control.

Commencement

Pt 4(8) rule 4.68: December 29, 1986

4.69. Entitlement to vote (contributories)

At a meeting of contributories, voting rights are as at a general meeting of the company, subject to any provision in the articles affecting entitlement to vote, either generally or at a time when the company is in liquidation.

Commencement

Pt 4(8) rule 4.69: December 29, 1986

4.70.— Admission and rejection of proof (creditors' meeting)

(1) At any creditors' meeting the chairman has power to admit or reject a creditor's proof for the purpose of his entitlement to vote; and the power is exercisable with respect to the whole or any part of the proof.

(2) The chairman's decision under this Rule, or in respect of any matter arising under Rule 4.67, is subject to appeal to the court by any creditor or contributory.

(3) If the chairman is in doubt whether a proof should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the proof is sustained.

(4) If on an appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks just.

[(4A) An application to the court by way of appeal under this Rule against a decision of the chairman must be made not later than 21 days after the date of the meeting.] ¹⁰⁰⁴

(5) Neither the official receiver, nor any person nominated by him to be chairman, is personally liable for costs incurred by any person in respect of an application under this Rule; and the chairman (if other than the official receiver or a person so nominated) is not so liable unless the court makes an order to that effect.

(NO CVL APPLICATION)

¹⁰⁰² Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.188(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁰³ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.188(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁰⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.189(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(6-CVL) The liquidator or his nominee as chairman is not personally liable for costs incurred by any person in respect of an application under this Rule, unless the court makes an order to that effect.

Commencement

Pt 4(8) rule 4.70(1)-(6CVL): December 29, 1986

4.71.— Record of proceedings

(1) At any meeting, the chairman shall cause minutes of the proceedings to be kept. The minutes shall be [authenticated]¹⁰⁰⁵ by him, and retained as part of the records of the liquidation.

(2) The chairman shall also cause to be made up and kept a list of all the creditors or, as the case may be, contributories who attended the meeting.

(3) The minutes of the meeting shall include a record of every resolution passed [and if a liquidation committee has been established, the names and addresses of those elected to be members of the committee]¹⁰⁰⁶ .

(4) [...] ¹⁰⁰⁷

Commencement

Pt 4(8) rule 4.71(1)-(4): December 29, 1986

SECTION B: WINDING UP OF RECOGNISED BANKS, ETC.

4.72.— Additional provisions as regards certain meetings

[(1) This Rule applies where a company goes, or proposes to go, into liquidation and it is [an “authorised deposit-taker or a former authorised deposit-taker”]¹⁰⁰⁸ .]¹⁰⁰⁹

(2) Notice of any meeting of the company at which it is intended to propose a resolution for its winding up shall be given by the directors to the [Financial Services Authority]¹⁰¹⁰ and [to the

¹⁰⁰⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁰⁶ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.190 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁰⁷ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.190(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁰⁸ Words substituted by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.377(7) (December 1, 2001)

¹⁰⁰⁹ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.57 (January 11, 1988)

¹⁰¹⁰ Words substituted by Bank of England Act 1998 (Consequential Amendments of Subordinate Legislation) Order 1998/1129 Sch.1 para.4(5)(a) (June 1, 1998)

scheme manager established under section 212(1) of the Financial Services and Markets Act 2000]¹⁰¹¹ .

(3) Notice to the [Authority]¹⁰¹² and [the scheme manager]¹⁰¹³ shall be the same as given to members of the company.

(4) Where a creditors' meeting is summoned by the liquidator under section 95 or, in a creditors' voluntary winding up, is summoned under section 98 , the same notice of the meeting must be given to the [Authority]¹⁰¹² and [the scheme manager]¹⁰¹³ as is given to creditors under Rule 4.51-CVL.

(5) Where the company is being wound up by the court, notice of the first meetings of creditors and contributories shall be given to the [Authority]¹⁰¹² and [the scheme manager]¹⁰¹³ by the official receiver.

(6) Where in the winding up (whether voluntary or by the court) a meeting of creditors or contributories or of the company is summoned for the purpose of—

- (a) receiving the liquidator's resignation, or
- (b) removing the liquidator, or
- (c) appointing a new liquidator,

the person summoning the meeting and giving notice of it shall also give notice to the [Authority]¹⁰¹² and [the scheme manager]¹⁰¹³ .

(7) [The scheme manager]¹⁰¹³ is entitled to be represented at any meeting of which it is required by this Rule to be given notice; and Schedule 1 to the Rules has effect with respect to the voting rights of [the scheme manager]¹⁰¹³ at such a meeting.

Commencement

Pt 4(8) rule 4.72(1)-(7): December 29, 1986

CHAPTER 9

PROOF OF DEBTS IN A LIQUIDATION

SECTION A: PROCEDURE FOR PROVING

4.73.— Meaning of “prove”

(1) Where a company is being wound up by the court, a person claiming to be a creditor of the company and wishing to recover his debt in whole or in part must (subject to any order of the court under Rule 4.67(2)) submit his claim in writing to the liquidator. (NO CVL APPLICATION)

¹⁰¹¹ Words substituted by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.378(2)(a) (December 1, 2001)

¹⁰¹² Words substituted by Bank of England Act 1998 (Consequential Amendments of Subordinate Legislation) Order 1998/1129 Sch.1 para.4(5)(b) (June 1, 1998)

¹⁰¹³ Words substituted by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.378(2)(b) (December 1, 2001)

(2-CVL) In a voluntary winding up (whether members' or creditors') the liquidator may require a person claiming to be a creditor of the company and wishing to recover his debt in whole or in part, to submit the claim in writing to him.

(3) A creditor who claims (whether or not in writing) is referred to as “proving” for his debt; and a document by which he seeks to establish his claim is his “proof”.

(4) Subject to the next paragraph, a proof must be in the form known as “proof of debt” (whether the form prescribed by the Rules, or a substantially similar form), which shall be made out by or under the directions of the creditor, and [authenticated]¹⁰¹⁴ by him or a person authorised in that behalf. (NO CVL APPLICATION)

(5) Where a debt is due to a Minister of the Crown or a Government Department, the proof need not be in that form, provided that there are shown all such particulars of the debt as are required in the form used by other creditors, and as are relevant in the circumstances. (NO CVL APPLICATION)

(6-CVL) The creditor's proof may be in any form.

(7) [...] ¹⁰¹⁵

[(8) Where a winding up is immediately preceded by an administration, a creditor proving in the administration shall be deemed to have proved in the winding up.] ¹⁰¹⁶

Commencement

Pt 4(9) rule 4.73(1)-(7): December 29, 1986

[4.74 Supply of Forms

(NO CVL APPLICATION)

A form of proof shall be sent to any creditor of the company by the liquidator where the creditor so requests.

] ¹⁰¹⁷

Commencement

Pt 4(9) rule 4.74(1)-(4): December 29, 1986

4.75.— Contents of proof

(NO CVL APPLICATION)

[(1) Subject to Rule 4.73(5), the following matters shall be stated in a creditor's proof of debt—
 (a) the creditor's name and address, and, if a company, its company registration number;
 (b) the total amount of his claim (including any Value Added Tax) as at the date on which the company went into liquidation [(or, if the liquidation was immediately preceded by an

¹⁰¹⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰¹⁵ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.191(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰¹⁶ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.18 (September 15, 2003)

¹⁰¹⁷ Substituted by Insolvency (Amendment) Rules 2004/584 rule 9 (April 1, 2004)

administration, the date on which the company entered administration), less any payments made after that date in respect of the claim and any deduction under Rule 4.89]¹⁰¹⁸ ;

- (c) whether or not that amount includes outstanding uncapitalised interest;
- (d) particulars of how and when the debt was incurred by the company;
- (e) particulars of any security held, the date when it was given and the value which the creditor puts upon it;
- (f) details of any reservation of title in respect of goods to which the debt refers; and
- (g) the name, and address and authority of the person [authenticating]¹⁰¹⁹ the proof (if other than the creditor himself).

]¹⁰²⁰

(2) There shall be specified in the proof any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such documents be attached to the proof or submitted with it.

(3) The liquidator, or the chairman or convener of any meeting, may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

Commencement

Pt 4(9) rule 4.75(1)-(3): December 29, 1986

4.76-CVL. Particulars of creditor's claim

The liquidator, or the convener or chairman of any meeting, may, if he thinks it necessary for the purpose of clarifying or substantiating the whole or any part of a creditor's claim made in his proof, call for details of any matter specified in paragraphs (a) to (h) of Rule 4.75(1), or for the production to him of such documentary or other evidence as he may require.

Commencement

Pt 4(9) rule 4.76: December 29, 1986

4.77.— [...]¹⁰²¹

4.78.— Cost of proving

(1) Subject as follows, every creditor bears the cost of proving his own debt, including such as may be incurred in providing documents or evidence under Rule 4.75(3) or 4.76-CVL.

¹⁰¹⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.192(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰¹⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰²⁰ Substituted by Insolvency (Amendment) Rules 2004/584 rule 10 (April 1, 2004)

¹⁰²¹ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) Costs incurred by the liquidator in estimating the quantum of a debt under Rule 4.86 (debts not bearing a certain value) are payable [...] ¹⁰²² as an expense of the liquidation.

(3) Paragraphs (1) and (2) apply unless the court otherwise orders.

Commencement

Pt 4(9) rule 4.78(1)-(3): December 29, 1986

4.79. Liquidator to allow inspection of proofs

The liquidator shall, so long as proofs lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

- (a) any creditor who has submitted his proof of debt (unless his proof has been wholly rejected for purposes of dividend or otherwise);
- (b) any contributory of the company;
- (c) any person acting on behalf of either of the above.

Commencement

Pt 4(9) rule 4.79(a)-(c): December 29, 1986

4.80.— Transmission of proofs to liquidator

(NO CVL APPLICATION)

(1) Where a liquidator is appointed, the official receiver shall [as soon as reasonably practicable] ¹⁰²³ transmit to him all the proofs which he has so far received, together with an itemised list of them.

(2) The liquidator shall [authenticate] ¹⁰²⁴ the list by way of receipt for the proofs, and return it to the official receiver.

(3) From then on, all proofs of debt shall be sent to the liquidator, and retained by him.

Commencement

Pt 4(9) rule 4.80(1)-(3): December 29, 1986

¹⁰²² Words repealed by Insolvency (Amendment) Rules 2008/737 rule 7(9) (April 6, 2008)

¹⁰²³ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁰²⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

4.81.— New liquidator appointed

(1) If a new liquidator is appointed in place of another, the former liquidator [must as soon as reasonably practicable]¹⁰²⁵ transmit to him all proofs which he has received, together with an itemised list of them.

(2) The new liquidator shall [authenticate]¹⁰²⁶ the list by way of receipt for the proofs, and return it to his predecessor.

[(3) From then on, all proofs of debt must be sent to and retained by the new liquidator.]¹⁰²⁷

Commencement

Pt 4(9) rule 4.81(1)-(2): December 29, 1986

4.82.— Admission and rejection of proofs for dividend

(1) A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount.

(2) If the liquidator rejects a proof in whole or in part, he shall prepare a written statement of his reasons for doing so, and send it [as soon as reasonably practicable]¹⁰²⁸ to the creditor.

Commencement

Pt 4(9) rule 4.82(1)-(2): December 29, 1986

4.83.— Appeal against decision on proof

(1) If a creditor is dissatisfied with the liquidator's decision with respect to his proof (including any decision on the question of preference), he may apply to the court for the decision to be reversed or varied.

The application must be made within 21 days of his receiving the statement sent under Rule 4.82(2).

(2) A contributory or any other creditor may, if dissatisfied with the liquidator's decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the liquidator's decision.

(3) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to the creditor who lodged the proof in question (if it is not himself) and to the liquidator.

¹⁰²⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.193(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰²⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰²⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.193(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰²⁸ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

(4) The liquidator shall, on receipt of the notice, file in court the relevant proof, together (if appropriate) with a copy of the statement sent under Rule 4.82(2).

[(4A) Where the application is made by a contributory, the court must not disallow the proof (in whole or in part) unless the contributory shows that there is (or would be but for the amount claimed in the proof), or that it is likely that there will be (or would be but for the amount claimed in the proof), a surplus of assets to which the company would be entitled.]¹⁰²⁹

(5) After the application has been heard and determined, the proof shall, unless it has been wholly disallowed, be returned by the court to the liquidator.

(6) The official receiver is not personally liable for costs incurred by any person in respect of an application under this Rule; and the liquidator (if other than the official receiver) is not so liable unless the court makes an order to that effect.

Commencement

Pt 4(9) rule 4.83(1)-(6): December 29, 1986

4.84. Withdrawal or variation of proof

A creditor's proof may at any time, by agreement between himself and the liquidator, be withdrawn or varied as to the amount claimed.

Commencement

Pt 4(9) rule 4.84: December 29, 1986

4.85.— Expunging of proof by the court

(1) The court may expunge a proof or reduce the amount claimed—

- (a) on the liquidator's application, where he thinks that the proof has been improperly admitted, or ought to be reduced; or
- (b) on the application of a creditor, if the liquidator declines to interfere in the matter.

(2) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant—

- (a) in the case of an application by the liquidator, to the creditor who made the proof, and
- (b) in the case of an application by a creditor, to the liquidator and to the creditor who made the proof (if not himself).

Commencement

Pt 4(9) rule 4.85(1)-(2)(b): December 29, 1986

¹⁰²⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.194(2) (April 6, 2010: has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

SECTION B: QUANTIFICATION OF CLAIM

4.86.— Estimate of quantum

(1) The liquidator shall estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value; and he may revise any estimate previously made, if he thinks fit by reference to any change of circumstances or to information becoming available to him.

He shall inform the creditor as to his estimate and any revision of it.

(2) Where the value of a debt is estimated under this Rule, or by the court under section 168(3) or (5), the amount provable in the winding up in the case of that debt is that of the estimate for the time being.

Commencement

Pt 4(9) rule 4.86(1)-(2): December 29, 1986

4.87. Negotiable instruments, etc.

Unless the liquidator allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or his authorised representative to be a true copy.

Commencement

Pt 4(9) rule 4.87: December 29, 1986

4.88.— Secured creditors

(1) If a secured creditor realises his security, he may prove for the balance of his debt, after deducting the amount realised.

(2) If a secured creditor voluntarily surrenders his security for the general benefit of creditors, he may prove for his whole debt, as if it were unsecured.

Commencement

Pt 4(9) rule 4.88(1)-(2): December 29, 1986

4.89. Discounts

There shall in every case be deducted from the claim all trade and other discounts which would have been available to the company but for its liquidation, except any discount for immediate, early or cash settlement.

Commencement

Pt 4(9) rule 4.89: December 29, 1986

[4.90.— Mutual credits and set-off]

(1) This Rule applies where, before the company goes into liquidation there have been mutual credits, mutual debts or other mutual dealings between the company and any creditor of the company proving or claiming to prove for a debt in the liquidation.

(2) The reference in paragraph (1) to mutual credits, mutual debts or other mutual dealings does not include—

(a) any debt arising out of an obligation incurred at a time when the creditor had notice that—

- (i) a meeting of creditors had been summoned under section 98; or
- (ii) a petition for the winding up of the company was pending;

(b) any debt arising out of an obligation where—

- (i) the liquidation was immediately preceded by an administration; and
- (ii) at the time the obligation was incurred the creditor had notice that an application for an administration order was pending or a person had given notice of intention to appoint an administrator;

(c) any debt arising out of an obligation incurred during an administration which immediately preceded the liquidation; or

(d) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—

- (i) after the company went into liquidation;
- (ii) at a time when the creditor had notice that a meeting of creditors had been summoned under section 98;
- (iii) at a time when the creditor had notice that a winding up petition was pending;
- (iv) where the liquidation was immediately preceded by an administration, at a time when the creditor had notice that an application for an administration order was pending or a person had given notice of intention to appoint an administrator; or
- (v) during an administration which immediately preceded the liquidation.

(3) An account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sums due from one party shall be set off against the sums due from the other.

(4) A sum shall be regarded as being due to or from the company for the purposes of paragraph (3) whether—

- (a) it is payable at present or in the future;
- (b) the obligation by virtue of which it is payable is certain or contingent; or
- (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(5) Rule 4.86 shall also apply for the purposes of this Rule to any obligation to or from the company which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.

(6) Rules 4.91 to 4.93 shall apply for the purposes of this Rule in relation to any sums due to the company which—

- (a) are payable in a currency other than sterling;
- (b) are of a periodical nature; or
- (c) bear interest.

(7) Rule 11.13 shall apply for the purposes of this Rule to any sum due to or from the company which is payable in the future.

(8) Only the balance (if any) of the account owed to the creditor is provable in the liquidation. Alternatively the balance (if any) owed to the company shall be paid to the liquidator as part of the assets except where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) shall be paid if and when that debt becomes due and payable.

(9) In this Rule “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

¹⁰³⁰

Commencement

Pt 4(9) rule 4.90(1)-(4): December 29, 1986

4.91.— Debt in foreign currency

(1) For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the date when the company went into liquidation [or, if the liquidation was immediately preceded by an administration, on the date that the company entered administration] ¹⁰³¹ .

(2) “The official exchange rate” is the [middle exchange rate on the London Foreign Exchange Market at the close of business] ¹⁰³² , as published for the date in question. In the absence of any such published rate, it is such rate as the court determines.

Commencement

Pt 4(9) rule 4.91(1)-(2): December 29, 1986

4.92.— Payments of a periodical nature

(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date when the company went into liquidation [or, if the liquidation was immediately preceded by an administration, up to the date that the company entered administration] ¹⁰³³ .

¹⁰³⁰ Subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 23 (April 1, 2005: substitution has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

¹⁰³¹ Words inserted subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 24 (April 1, 2005: insertion has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

¹⁰³² Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.20 (September 15, 2003)

¹⁰³³ Words inserted subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 25 (April 1, 2005: insertion has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day.

Commencement

Pt 4(9) rule 4.92(1)-(2): December 29, 1986

4.93.— Interest

[(A1) In this Rule, “the relevant date” means the date on which the company went into liquidation or, if the liquidation was immediately preceded by an administration, the date on which the company entered administration.]¹⁰³⁴

(1) Where a debt proved in the liquidation bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after [the relevant date]¹⁰³⁵ .

(2) In the following circumstances the creditor's claim may include interest on the debt for periods before [the relevant date]¹⁰³⁶ , although not previously reserved or agreed.

(3) If the debt is due by virtue of a written instrument, and payable at a certain time, interest may be claimed for the period from that time to [the relevant date]¹⁰³⁷ .

(4) If the debt is due otherwise, interest may only be claimed if, before [the relevant date]¹⁰³⁸ , a demand for payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment.

(5) Interest under paragraph (4) may only be claimed for the period from the date of the demand to [the relevant date]¹⁰³⁹ [and for all the purposes of the Act and the Rules shall be chargeable at a rate not exceeding that mentioned in paragraph (6)]¹⁰⁴⁰ .

¹⁰³⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.195(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰³⁵ Possible drafting error - words purportedly substituted after "after" but this word occurs twice so the words are substituted following the first occurrence by Insolvency (Amendment) Rules 2010/686 Sch.1 para.195(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰³⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.195(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰³⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.195(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰³⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.195(6) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰³⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.195(7) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁴⁰ Words added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.59(1) (January 11, 1988)

[(6) The rate of interest to be claimed under paragraphs (3) and (4) is the rate specified in section 17 of the Judgments Act 1838 on [the relevant date]¹⁰⁴¹ .]¹⁰⁴²

Commencement

Pt 4(9) rule 4.93(1)-(6): December 29, 1986

4.94. Debt payable at future time

A creditor may prove for a debt of which payment was not yet due on the date when the company went into liquidation, [or, if the liquidation was immediately preceded by an administration, on the date that the company entered administration]¹⁰⁴³ but subject to Rule 11.13 in Part 11 of the Rules (adjustment of dividend where payment made before time).

Commencement

Pt 4(9) rule 4.94: December 29, 1986

CHAPTER 10

SECURED CREDITORS

4.95.— Value of security

(1) A secured creditor may, with the agreement of the liquidator or the [permission]¹⁰⁴⁴ of the court, at any time alter the value which he has, in his proof of debt, put upon his security.

(2) However, if a secured creditor—

(a) being the petitioner, has in the petition put a value on his security, or

(b) has voted in respect of the unsecured balance of his debt,

he may re-value his security only with [permission]¹⁰⁴⁴ of the court. (NO CVL APPLICATION)

Commencement

Pt 4(10) rule 4.95(1)-(2)(b): December 29, 1986

4.96.— Surrender for non-disclosure

(1) If a secured creditor omits to disclose his security in his proof of debt, he shall surrender his security for the general benefit of creditors, unless the court, on application by him, relieves him

¹⁰⁴¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.195(8) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁴² Substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.59(2) (January 11, 1988)

¹⁰⁴³ Words inserted subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 27 (April 1, 2005: insertion has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

¹⁰⁴⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[from]¹⁰⁴⁵ the effect of this Rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof of debt to be amended, on such terms as may be just.

[(3) Nothing in this Rule or the following two Rules may affect the rights in rem of creditors or third parties protected under Article 5 of the EC Regulation (third parties' rights in rem).]¹⁰⁴⁶

Commencement

Pt 4(10) rule 4.96(1)-(2): December 29, 1986

4.97.— Redemption by liquidator

(1) The liquidator may at any time give notice to a creditor whose debt is secured that he proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the liquidator may allow) in which, if he so wishes, to exercise his right to revalue his security (with the [permission]¹⁰⁴⁷ of the court, where Rule 4.95(2) applies).

If the creditor re-values his security, the liquidator may only redeem at the new value.

(3) If the liquidator redeems the security, the cost of transferring it is payable [as an expense of the liquidation]¹⁰⁴⁸.

(4) A secured creditor may at any time, by a notice in writing, call on the liquidator to elect whether he will or will not exercise his power to redeem the security at the value then placed on it; and the liquidator then has [3 months]¹⁰⁴⁹ in which to exercise the power or determine not to exercise it.

Commencement

Pt 4(10) rule 4.97(1)-(4): December 29, 1986

4.98.— Test of security's value

(1) Subject as follows, the liquidator, if he is dissatisfied with the value which a secured creditor puts on his security (whether in his proof or by way of re-valuation under Rule 4.97), may require any property comprised in the security to be offered for sale.

¹⁰⁴⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.196(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁴⁶ Added by Insolvency (Amendment) Rules 2002/1307 rule 6(8) (May 31, 2002)

¹⁰⁴⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁴⁸ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

¹⁰⁴⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.197(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) The terms of sale shall be such as may be agreed, or as the court may direct; and if the sale is by auction, the liquidator on behalf of the company, and the creditor on his own behalf, may appear and bid.

[(3) This Rule does not apply if the security has been revalued and the revaluation has been approved by the court.]¹⁰⁵⁰

Commencement

Pt 4(10) rule 4.98(1)-(2): December 29, 1986

4.99. Realisation of security by creditor

If a creditor who has valued his security subsequently realises it (whether or not at the instance of the liquidator)—

- (a) the net amount realised shall be substituted for the value previously put by the creditor on the security, and
- (b) that amount shall be treated in all respects as an amended valuation made by him.

Commencement

Pt 4(10) rule 4.99(a)-(b): December 29, 1986

CHAPTER 11

THE LIQUIDATOR

SECTION A: APPOINTMENT AND ASSOCIATED FORMALITIES

4.100.— Appointment by creditors or contributories
(NO CVL APPLICATION)

(1) This Rule applies where a person is appointed as liquidator either by a meeting of creditors or by a meeting of contributories.

(2) The chairman of the meeting shall certify the appointment, but not unless and until the person appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.

[(3) The liquidator's appointment is effective from the date on which the appointment is certified, that date to be endorsed on the certificate.

(4) The chairman of the meeting (if not himself the official receiver) shall send the certificate to the official receiver.

(5) The official receiver shall in any case send the certificate to the liquidator [...] ¹⁰⁵¹ .] ¹⁰⁵²

¹⁰⁵⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.198(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁵¹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.199(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 4(11) rule 4.100(1)-(5): December 29, 1986

4.101-CVL.— Appointment by creditors or by the company

(1) This Rule applies where a person is appointed as liquidator either by a meeting of creditors or by a meeting of the company.

(2) Subject as follows, the chairman of the meeting shall certify the appointment, but not unless and until the person appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act; the liquidator's appointment [takes effect upon the passing of the resolution for that appointment]¹⁰⁵³ .

(3) The chairman shall send the certificate [as soon as reasonably practicable]¹⁰⁵⁴ to the liquidator, who shall keep it as part of the records of the liquidation.

(4) Paragraphs (2) and (3) need not be complied with in the case of a liquidator appointed by a company meeting and replaced by another liquidator appointed on the same day by a creditors' meeting.

Commencement

Pt 4(11) rule 4.101(1)-(4): December 29, 1986

[4.101A-CVL. Power to fill vacancy in office of liquidator

Where a vacancy in the office of liquidator occurs in the manner mentioned in section 104 a meeting of creditors to fill the vacancy may be convened by any creditor or, if there were more liquidators than one, by the continuing liquidators.]¹⁰⁵⁵

[4.101B Official receiver not to be appointed liquidator

The official receiver may not be appointed as liquidator by any meeting of creditors, contributories or the company.]¹⁰⁵⁶

**4.102.— Appointment by the court
(NO CVL APPLICATION)**

¹⁰⁵² Substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.60 (January 11, 1988)

¹⁰⁵³ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.61 (January 11, 1988)

¹⁰⁵⁴ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁰⁵⁵ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.62 (January 11, 1988)

¹⁰⁵⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.200 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(1) This Rule applies where the liquidator is appointed by the court under section 139(4) (different persons nominated by creditors and contributories) or section 140 (liquidation following administration or voluntary arrangement).

(2) The court's order shall not issue unless and until the person appointed has filed in court a statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.

(3) Thereafter, the court shall send 2 copies of the order to the official receiver. One of the copies shall be sealed, and this shall be sent to the person appointed as liquidator.

(4) The liquidator's appointment takes effect from the date of the order.

(4A) [...] ¹⁰⁵⁷

[(5) Within 28 days from appointment, the liquidator shall [...] ¹⁰⁵⁸ —

(a) give notice of it to all creditors and contributories of the company of whom the liquidator is aware; or

(b) advertise it in accordance with any directions given by the court.

] ¹⁰⁵⁹

(6) In his notice [...] ¹⁰⁶⁰ under this Rule the liquidator shall—

(a) state whether he proposes to summon meetings of creditors and contributories for the purpose of establishing a liquidation committee, or proposes to summon only a meeting of creditors for that purpose, and

(b) if he does not propose to summon any such meeting, set out the powers of the creditors under the Act to require him to summon one.

Commencement

Pt 4(11) rule 4.102(1)-(6)(b): December 29, 1986

4.103-CVL.— Appointment by the court

(1) This Rule applies where the liquidator is appointed by the court under section 100(3) or 108.

(2) The court's order shall not issue unless and until the person appointed has filed in court a statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.

(3) Thereafter, the court shall send a sealed copy of the order to the liquidator, whose appointment takes effect from the date of the order.

[(4) Within 28 days from appointment, the liquidator shall—

¹⁰⁵⁷ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.201(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁵⁸ Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.201(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁵⁹ Substituted by Insolvency (Amendment) Rules 2009/642 rule 26(b) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁰⁶⁰ Words repealed by Insolvency (Amendment) Rules 2009/642 rule 26(c) (April 6, 2009: repeal has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

- (a) give notice of it to all creditors of the company of whom the liquidator is aware; or
- (b) advertise it in accordance with any directions given by the court.

]¹⁰⁶¹

Commencement

Pt 4(11) rule 4.103(1)-(4): December 29, 1986

**4.104.— Appointment by Secretary of State
(NO CVL APPLICATION)**

- (1) This Rule applies where the official receiver applies to the Secretary of State to appoint a liquidator in place of himself, or refers to the Secretary of State the need for an appointment.
- (2) If the Secretary of State makes an appointment, he shall send [a copy]¹⁰⁶² of the certificate of appointment to the official receiver, who shall transmit [it]¹⁰⁶³ to the person appointed [...] ¹⁰⁶⁴
- (3) The certificate shall specify the date from which the liquidator's appointment is to be effective.

Commencement

Pt 4(11) rule 4.104(1)-(3): December 29, 1986

4.105. Authentication of liquidator's appointment

A copy of the certificate of the liquidator's appointment or (as the case may be) a sealed copy of the court's order [or a copy of the notice registered in accordance with paragraph 83(3) of Schedule B1 to the Act]¹⁰⁶⁵, may in any proceedings be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of liquidator in the company's winding up.

Commencement

Pt 4(11) rule 4.105: December 29, 1986

4.106.— [...] ¹⁰⁶⁶

¹⁰⁶¹ Substituted by Insolvency (Amendment) Rules 2009/642 rule 27 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁰⁶² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.202(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁶³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.202(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁶⁴ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.202(2)(c) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁶⁵ Words inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.21 (September 15, 2003)

[4.106A Appointment to be gazetted and registered]

- (1) A liquidator appointed in a voluntary winding up in addition to giving notice of the appointment in accordance with section 109(1) may advertise the notice in such other manner as the liquidator thinks fit.
- (2) A liquidator appointed in a winding up by the court—
 - (a) as soon as reasonably practicable must have gazetted a notice of the appointment; and
 - (b) may advertise the notice in such other manner as the liquidator thinks fit.
- (3) In addition to the standard contents, the notice must state—
 - (a) that a liquidator has been appointed; and
 - (b) the date of the appointment.
- (4) As soon as reasonably practicable a liquidator appointed in a winding up by the court must notify the appointment to the registrar of companies.
- (5) At first instance the liquidator must bear the expense of giving notice under this Rule.
- (6) The liquidator is entitled to be reimbursed for such expenditure as an expense of the liquidation.
¹⁰⁶⁷

4.107.— Hand-over of assets to liquidator
 (NO CVL APPLICATION)

- (1) This Rule applies only where the liquidator is appointed in succession to the official receiver acting as liquidator.
- (2) When the liquidator's appointment takes effect, the official receiver shall [as soon as reasonably practicable]¹⁰⁶⁸ do all that is required for putting him into possession of the assets.
- (3) On taking possession of the assets, the liquidator shall discharge any balance due to the official receiver on account of—
 - (a) expenses properly incurred by him and payable under the Act or the Rules, and
 - (b) any advances made by him in respect of the assets, together with interest on such advances at the rate specified in section 17 of the Judgments Act 1838 at the date of the winding-up order.
- (4) Alternatively, the liquidator may (before taking office) give to the official receiver a written undertaking to discharge any such balance out of the first realisation of assets.
- (5) The official receiver has a charge on the assets in respect of any sums due to him under paragraph (3). But, where the liquidator has realised assets with a view to making those payments, the official receiver's charge does not extend in respect of sums deductible by the liquidator from the proceeds of realisation, as being expenses properly incurred therein.

¹⁰⁶⁶ Rule 4.106A substituted for rule 4.106 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.203 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁶⁷ Rule 4.106A substituted for rule 4.106 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.203 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁶⁸ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

(6) The liquidator shall from time to time out of the realisation of assets discharge all guarantees properly given by the official receiver for the benefit of the estate, and shall pay all the official receiver's expenses.

(7) The official receiver shall give to the liquidator all such information relating to the affairs of the company and the course of the winding up as he (the official receiver) considers to be reasonably required for the effective discharge by the liquidator of his duties as such.

(8) The liquidator shall also be furnished with a copy of any report made by the official receiver under Chapter 7 of this Part of the Rules.

Commencement

Pt 4(11) rule 4.107(1)–(8): December 29, 1986

SECTION B: RESIGNATION AND REMOVAL; VACATION OF OFFICE

4.108.— Creditors' meeting to receive liquidator's resignation

(1) Before resigning his office, the liquidator must call a meeting of creditors for the purpose of receiving his resignation. [...] ¹⁰⁶⁹

[(1A) The liquidator must give at least 28 days' notice of the meeting.

(1B) The notice summoning the meeting must—

- (a) indicate that the purpose or one of the purposes of the meeting is to receive the liquidator's resignation; and
- (b) draw the attention of the creditors with respect to the liquidator's release to Rule 4.121 or, as the case may be, Rule 4.122.

] ¹⁰⁶⁹

(2) A copy of the notice shall at the same time also be sent to the official receiver. (NO CVL APPLICATION)

[(3) The notice to creditors under paragraph (1A) must be accompanied by an account of the liquidator's administration of the winding up including—

- (a) where appropriate, a statement that the liquidator has reconciled the account with that held by the Secretary of State in respect of the winding up; and
- (b) a progress report for the period—
 - (i) commencing with the later of the date of—
 - (aa) the appointment of the liquidator; and
 - (bb) the day immediately following the end of the period of the last progress report; and
 - (ii) ending with the date of the meeting.

] ¹⁰⁷⁰

¹⁰⁶⁹ Rule 4.108(1A) and (1B) substituted for words by Insolvency (Amendment) Rules 2010/686 Sch.1 para.204(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁷⁰ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.204 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(4) Subject as follows, the liquidator may only proceed under this Rule on grounds of ill health or because—

- (a) he intends ceasing to be in practice as an insolvency practitioner, or
- (b) there is some conflict of interest or change of personal circumstances which precludes or makes impracticable the further discharge by him of the duties of liquidator.

(5) Where two or more persons are acting as liquidator jointly, any one of them may proceed under this Rule (without prejudice to the continuation in office of the other or others) on the ground that, in his opinion and that of the other or others, it is no longer expedient that there should continue to be the present number of joint liquidators.

[(6) [Except where Rule 4.108A applies, if] ¹⁰⁷¹ there is no quorum present at the meeting summoned to receive the liquidator's resignation, the meeting is deemed to have been held, a resolution is deemed to have been passed that the liquidator's resignation be accepted and the creditors are deemed not to have resolved against the liquidator having his release.

(7) Where paragraph (6) applies any reference in the Rules to a resolution that the liquidator's resignation be accepted is replaced by a reference to the making of a written statement, [authenticated] ¹⁰⁷² by the person who, had there been a quorum present, would have been chairman of the meeting, that no quorum was present and that the liquidator may resign.] ¹⁰⁷³

Commencement

Pt 4(11) rule 4.108(1)-(5): December 29, 1986

[4.108A Resignation (application under Rule 4.131)]

(1) This Rule applies where at the date of a meeting summoned for the purpose of receiving the liquidator's resignation, an application made to the court under Rule 4.131 (including any appeal) has not been disposed of.

(2) At the meeting no resolution may be put regarding the liquidator's release.

(3) If at the meeting the liquidator's resignation is accepted, the meeting must be adjourned (notwithstanding anything in Rule 4.65 (suspension and adjournment)) to a day not less than 14 days after the day on which the application under Rule 4.131 (including any appeal) has been disposed of.

(4) The liquidator must give at least 14 days' notice of the meeting adjourned in accordance with paragraph (3) to the creditors.

(5) At the meeting adjourned in accordance with paragraph (3)—

- (a) a revised version of the account which accompanied the notice of the meeting must be laid showing any changes required as a result, or arising out of the application under Rule 4.131; and

¹⁰⁷¹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.204(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁷² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁷³ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.64 (January 11, 1988)

- (b) a resolution must be put for the release of the liquidator whose resignation has been accepted.
- (6) If there is no quorum present at the adjourned meeting, the meeting is deemed to have been held and the creditors are deemed to have resolved that the liquidator be released.
- (7) Where the creditors have resolved at the adjourned meeting that the liquidator be released (or are deemed to have so resolved by virtue of paragraph (5)), the chairman of the meeting (or the person who, had there been a quorum present would have been chairman of the meeting) must send as soon as reasonably practicable a certificate to that effect with a copy of the revised account to—
 - (a) the official receiver; and (NO CVL APPLICATION)
 - (b) the registrar of companies.
- (8) The official receiver must file a copy of the certificate in court.
- (9) If at the meeting the liquidator's resignation is not accepted, the liquidator must not summon any further meeting under Rule 4.108 until the application under Rule 4.131 (including any appeal) has been disposed of.
- (10) Paragraph (7) is subject to the powers of the court on an application being made to it by the liquidator under Rule 4.111 (permission to resign granted by the court).
- (11) Rule 4.108 applies to any such further meeting with the modification that the progress report required to accompany the notice of the meeting must show any changes from the report which accompanied the notice of the earlier meeting called to receive the liquidator's resignation, and in particular any changes required as a result of the application under Rule 4.131 and any further remuneration charged or expenses incurred.
- (12) The creditors' rights under Rules 4.49E and 4.131 do not apply in respect of any matter included in that report which—
 - (a) was included in the report which accompanied the notice of the earlier meeting called to receive the liquidator's resignation; or
 - (b) was the subject of the order of the court on the application made to it by the liquidator under Rule 4.131.

1¹⁰⁷⁴

4.109.— Action following acceptance of resignation (NO CVL APPLICATION)

- (1) This Rule applies where a meeting is summoned to receive the liquidator's resignation.
- (2) If the chairman of the meeting is other than the official receiver, and there is passed at the meeting any of the following resolutions—
 - (a) that the liquidator's resignation be accepted,
 - (b) that a new liquidator be appointed,
 - (c) that the resigning liquidator be not given his release,

¹⁰⁷⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.205 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

the chairman shall, within 3 [business days of the date of the resolution]¹⁰⁷⁵, send to the official receiver a copy of the resolution.

If it has been resolved to accept the liquidator's resignation, the chairman shall send to the official receiver a certificate to that effect.

(3) If the creditors have resolved to appoint a new liquidator, the certificate of his appointment shall also be sent to the official receiver within that time; and Rule 4.100 shall be complied with in respect of it.

(4) If the liquidator's resignation is accepted, the notice of it required by section 172(6) shall be given by him [as soon as reasonably practicable]¹⁰⁷⁶ after the [resolution has been passed]¹⁰⁷⁷; and he shall send a copy of the notice to the official receiver.

The notice shall be accompanied by a copy of the account sent to creditors under Rule 4.108(3).

(5) The official receiver shall file a copy of the notice in court.

(6) The liquidator's resignation is effective as from the date on which the official receiver files the copy notice in court, that date to be endorsed on the copy notice.

Commencement

Pt 4(11) rule 4.109(1)-(6): December 29, 1986

4.110-CVL.— Action following acceptance of resignation

(1) This Rule applies where a meeting is summoned to receive the liquidator's resignation.

(2) [...] ¹⁰⁷⁸ If his resignation is accepted, the notice of it required by section 171(5) shall be given by him [as soon as reasonably practicable]¹⁰⁷⁹ after the [resolution has been passed]¹⁰⁸⁰.

(3) Where a new liquidator is appointed in place of the one who has resigned, the certificate of his appointment shall be delivered [as soon as reasonably practicable]¹⁰⁷⁹ by the chairman of the meeting to the new liquidator.

¹⁰⁷⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.206(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁷⁶ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁰⁷⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.206(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁷⁸ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁷⁹ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁰⁸⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.207(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 4(11) rule 4.110(1)-(3): December 29, 1986

4.111.— [Permission]¹⁰⁸¹ to resign granted by the court

(1) If at a creditors' meeting summoned to accept the liquidator's resignation it is resolved that it be not accepted, the court may, on the liquidator's application, make an order giving him [permission]¹⁰⁸¹ to resign.

(2) The court's order may include such provision as it thinks [just]¹⁰⁸¹ with respect to matters arising in connection with the resignation, and shall determine the date from which the liquidator's release is effective.

(3) The court shall send two sealed copies of the order to the liquidator, who shall send one of the copies [as soon as reasonably practicable]¹⁰⁸² to the official receiver. (NO CVL APPLICATION)

(4-CVL) [...] ¹⁰⁸³ The court shall send two sealed copies of the order to the liquidator, who shall [as soon as reasonably practicable]¹⁰⁸² send one of them to the registrar of companies.

(5) On sending notice of his resignation to the court, the liquidator shall send a copy of it to the official receiver. (NO CVL APPLICATION)

Commencement

Pt 4(11) rule 4.111(1)-(5): December 29, 1986

4.112. Advertisement of resignation

Where a new liquidator is appointed in place of one who has resigned, the former shall, in giving notice of his appointment, state that his predecessor has resigned and (if it be the case) that he has been given his release.

Commencement

Pt 4(11) rule 4.112: December 29, 1986

**4.113.— Meeting of creditors to remove liquidator
(NO CVL APPLICATION)**

(1) Where a meeting of creditors is summoned for the purpose of removing the liquidator, the notice summoning it shall indicate that this is the purpose, or one of the purposes, of the meeting;

¹⁰⁸¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁸² Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁰⁸³ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

and the notice shall draw the attention of creditors to section 174(4) with respect to the liquidator's release.

(2) A copy of the notice shall at the same time also be sent to the official receiver.

(3) At the meeting, a person other than the liquidator or his nominee may be elected to act as chairman; but if the liquidator or his nominee is chairman and a resolution has been proposed for the liquidator's removal, the chairman shall not adjourn the meeting without the consent of at least one-half (in value) of the creditors present (in person or by proxy) and entitled to vote.

(4) Where the chairman of the meeting is other than the official receiver, and there is passed at the meeting any of the following resolutions—

- (a) that the liquidator be removed,
- (b) that a new liquidator be appointed,
- (c) that the removed liquidator be not given his release,

the chairman shall, within 3 [business]¹⁰⁸⁴ days, send to the official receiver a copy of the resolution. If it has been resolved to remove the liquidator, the chairman shall send to the official receiver a certificate to that effect.

(5) If the creditors have resolved to appoint a new liquidator, the certificate of his appointment shall also be sent to the official receiver within that time; and Rule 4.100 above shall be complied with in respect of it.

Commencement

Pt 4(11) rule 4.113(1)-(5): December 29, 1986

4.114-CVL.— Meeting of creditors to remove liquidator

(1) A meeting held under section 171(2)(b) for the removal of the liquidator shall be summoned by him if requested by 25 per cent. in value of the company's creditors, excluding those who are connected with it.

(2) The notice summoning the meeting shall indicate that the removal of the liquidator is the purpose, or one of the purposes, of the meeting; and the notice shall draw the attention of creditors to section 173(2) with respect to the liquidator's release.

(3) At the meeting, a person other than the liquidator or his nominee may be elected to act as chairman; but if the liquidator or his nominee is chairman and a resolution has been proposed for the liquidator's removal, the chairman shall not adjourn the meeting without the consent of at least one-half (in value) of the creditors present (in person or by proxy) and entitled to vote.

Commencement

Pt 4(11) rule 4.114(1)-(3): December 29, 1986

¹⁰⁸⁴ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.208(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

4.115. Court's power to regulate meetings under Rules 4.113, 4.114-CVL

Where a meeting under Rule 4.113 or 4.114-CVL is to be held, or is proposed to be summoned, the court may, on the application of any creditor, give directions as to the mode of summoning it, the sending out and return of forms of proxy, the conduct of the meeting, and any other matter which appears to the court to require regulation or control under this Rule.

Commencement

Pt 4(11) rule 4.115: December 29, 1986

**4.116.— Procedure on removal
(NO CVL APPLICATION)**

(1) Where the creditors have resolved that the liquidator be removed, the official receiver shall file in court the certificate of removal.

(2) The resolution is effective as from the date on which the official receiver files the certificate of removal in court, and that date shall be endorsed on the certificate.

[(3) The official receiver must send a copy of the certificate, so endorsed, as soon as reasonably practicable to—

- (a) the removed liquidator;
- (b) the new liquidator (if appointed); and
- (c) the registrar of companies.

]¹⁰⁸⁵

(4) The official receiver shall not file the certificate in court unless and until the Secretary of State has certified to him that the removed liquidator has reconciled his account with that held by the Secretary of State in respect of the winding up.

Commencement

Pt 4(11) rule 4.116(1)-(4): December 29, 1986

4.117-CVL. Procedure on removal

Where the creditors have resolved that the liquidator be removed, the chairman of the creditors' meeting shall [as soon as reasonably practicable]¹⁰⁸⁶ —

- (a) [...] ¹⁰⁸⁷ if at the meeting another liquidator was not appointed, send the certificate of the liquidator's removal to the registrar of companies, and
- (b) otherwise, deliver the certificate to the new liquidator, who shall send it to the registrar.

¹⁰⁸⁵ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.209(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁸⁶ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁰⁸⁷ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 4(11) rule 4.117(a)-(b): December 29, 1986

4.118. Advertisement of removal

Where a new liquidator is appointed in place of one removed, the former shall, in giving notice of his appointment, state that his predecessor has been removed and (if it be the case) that he has been given his release.

Commencement

Pt 4(11) rule 4.118: December 29, 1986

**4.119.— Removal of liquidator by the court
(NO CVL APPLICATION)**

(1) This Rule applies where application is made to the court for the removal of the liquidator, or for an order directing the liquidator to summon a meeting of creditors for the purpose of removing him.

(2) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for [a]¹⁰⁸⁸ hearing, of which he has been given at least [5 business]¹⁰⁸⁹ days' notice [but which is without notice to any other party]¹⁰⁹⁰ .

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard.

(3) The court may require the applicant to make a deposit or give security for the costs to be incurred by the liquidator on the application.

(4) The applicant shall, at least 14 days before the hearing, send to the liquidator and the official receiver a notice stating the venue and accompanied by a copy of the application, and of any evidence which he intends to adduce in support of it.

(5) Subject to any contrary order of the court, the costs of the application are not payable [as an expense of the liquidation]¹⁰⁹¹ .

(6) Where the court removes the liquidator—

(a) it shall send copies of the order of removal to him and to the official receiver;

¹⁰⁸⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.210(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁸⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.210(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁹⁰ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.210(2)(c) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁹¹ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

- (b) the order may include such provision as the court thinks [just]¹⁰⁹² with respect to matters arising in connection with the removal; and
- (c) if the court appoints a new liquidator, Rule 4.102 applies.

Commencement

Pt 4(11) rule 4.119(1)-(6)(c): December 29, 1986

4.120-CVL.— Removal of liquidator by the court

- (1) This Rule applies where application is made to the court for the removal of the liquidator, or for an order directing the liquidator to summon a creditors' meeting for the purpose of removing him.
- (2) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for [a]¹⁰⁹³ hearing, of which he has been given at least [5 business]¹⁰⁹⁴ days' notice [but which is without notice to any other party]¹⁰⁹⁵ .
If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard.
- (3) The court may require the applicant to make a deposit or give security for the costs to be incurred by the liquidator on the application.
- (4) The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application, and of any evidence which he intends to adduce in support of it.
- (5) Subject to any contrary order of the court, the costs of the application are not payable [as an expense of the liquidation]¹⁰⁹⁶ .
- (6) Where the court removes the liquidator—
 - (a) [...] ¹⁰⁹⁷ it shall send 2 copies of the order of removal to him, one to be sent by him [as soon as reasonably practicable]¹⁰⁹⁸ to the registrar of companies, with notice of his ceasing to act;

¹⁰⁹² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁹³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.211(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁹⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.211(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁹⁵ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.211(2)(c) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁹⁶ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

¹⁰⁹⁷ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁰⁹⁸ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

- (b) the order may include such provision as the court thinks [just]¹⁰⁹⁹ with respect to matters arising in connection with the removal; and
- (c) if the court appoints a new liquidator, Rule 4.103-CVL applies.

Commencement

Pt 4(11) rule 4.120(1)-(6)(c): December 29, 1986

4.121.— Release of resigning or removed liquidator (NO CVL APPLICATION)

(1) [Subject to paragraph (1A), where]¹¹⁰⁰ the liquidator's resignation is accepted by a meeting of creditors which has not resolved against his release, he has his release from when his resignation is effective under Rule 4.109.

[(1A) Where the liquidator's resignation is accepted under Rule 4.108A, the liquidator's release is effective as from the date on which the official receiver files the copy of the certificate under paragraph (8) of that Rule in court, that date to be endorsed on the copy certificate.]¹¹⁰¹

(2) Where the liquidator is removed by a meeting of creditors which has not resolved against his release, the fact of his release shall be stated in the certificate of removal.

(3) Where—

- (a) the liquidator resigns, and the creditors' meeting called to receive his resignation has resolved against his release, or
- (b) he is removed by a creditors' meeting which has so resolved, or is removed by the court,

he must apply to the Secretary of State for his release.

(4) When the Secretary of State gives the release, he shall certify it accordingly, and send the certificate to the official receiver, to be filed in court.

(5) A copy of the certificate shall be sent by the Secretary of State to the former liquidator, whose release is effective from the date of the certificate.

Commencement

Pt 4(11) rule 4.121(1)-(5): December 29, 1986

¹⁰⁹⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁰⁰ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.212(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁰¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.212(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

4.122-CVL.— Release of resigning or removed liquidator

(1) [...] ¹¹⁰² [Subject to paragraph (1A), where] ¹¹⁰³ the liquidator's resignation is accepted by a meeting of creditors which has not resolved against his release, he has his release from when he gives notice of his resignation to the registrar of companies.

[(1A) Where the liquidator's resignation is accepted under Rule 4.108A, the liquidator's release is effective as from the date of the certificate.] ¹¹⁰⁴

(2) Where the liquidator is removed by a creditors' meeting which has not resolved against his release, the fact of his release shall be stated in the certificate of removal.

(3) Where—

- (a) the liquidator resigns, and the creditors' meeting called to receive his resignation has resolved against his release, or
- (b) he is removed by a creditors' meeting which has so resolved, or is removed by the court,

he must apply to the Secretary of State for his release.

(4) When the Secretary of State gives the release, he shall certify it accordingly, and send the certificate to the registrar of companies.

(5) A copy of the certificate shall be sent by the Secretary of State to the former liquidator, whose release is effective from the date of the certificate.

Commencement

Pt 4(11) rule 4.122(1)–(5): December 29, 1986

**4.123.— Removal of liquidator by Secretary of State
(NO CVL APPLICATION)**

(1) If the Secretary of State decides to remove the liquidator, he shall before doing so notify the liquidator and the official receiver of his decision and the grounds of it, and specify a period within which the liquidator may make representations against implementation of the decision.

(2) If the Secretary of State directs the removal of the liquidator, he shall [as soon as reasonably practicable] ¹¹⁰⁵ —

- (a) file notice of his decision in court, and
- (b) send notice to the liquidator and the official receiver.

(3) If the liquidator is removed by direction of the Secretary of State—

¹¹⁰² Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁰³ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.213(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁰⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.213(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁰⁵ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

- (a) Rule 4.121 applies as regards the liquidator obtaining his release, as if he had been removed by the court, and
- (b) the court may make any such order in his case as it would have power to make if he had been so removed.

Commencement

Pt 4(11) rule 4.123(1)-(3)(b): December 29, 1986

SECTION C: RELEASE ON COMPLETION OF ADMINISTRATION

4.124.— Release of official receiver
(NO CVL APPLICATION)

- (1) The official receiver shall, before giving notice to the Secretary of State under section 174(3) (that the winding up is for practical purposes complete), send out notice of his intention to do so to all creditors [of which he is aware]¹¹⁰⁶ .
- (2) The notice shall in each case be accompanied by a summary of the official receiver's receipts and payments as liquidator.
[(2A) The summary of receipts and payments referred to in paragraph (2) shall also include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A (prescribed part).]¹¹⁰⁷
- (3) The Secretary of State, when he has determined the date from which the official receiver is to have his release, shall give notice to the court that he has done so. The notice shall be accompanied by the summary referred to in paragraph (2).

Commencement

Pt 4(11) rule 4.124(1)-(3): December 29, 1986

4.125.— Final meeting
(NO CVL APPLICATION)

- (1) Where the liquidator is other than the official receiver, he shall give at least 28 days' notice of the final meeting of creditors to be held under section 146 . The notice shall be sent to all creditors [of which he is aware]¹¹⁰⁸ [...] ¹¹⁰⁹ .
- [(1A) The final meeting must not be held unless Rule 4.49D has been complied with; and if for that reason the meeting is not held—

¹¹⁰⁶ Words substituted by Insolvency (Amendment) Rules 2004/584 rule 11 (April 1, 2004)

¹¹⁰⁷ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.22 (September 15, 2003)

¹¹⁰⁸ Words substituted by Insolvency (Amendment) Rules 2004/584 rule 12 (April 1, 2004)

¹¹⁰⁹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.214(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (a) the liquidator must give notice of that fact as soon as reasonably practicable to all to whom notice of the meeting was given, and
- (b) fresh notice of the meeting complying with this Rule must be given when Rule 4.49D has been complied with.

(1B) The liquidator—

- (a) at least 1 month before the meeting is held must have gazetted a notice of the meeting; and
- (b) may advertise the notice in such other manner as the liquidator thinks fit.

(1C) In addition to the standard contents, the notice under paragraph (1B) must state—

- (a) who summoned the meeting;
- (b) if the meeting was summoned at the request of a creditor, the fact that it was so summoned and the section of the Act under which it was requested;
- (c) the purpose for which the meeting is summoned;
- (d) the venue fixed for the meeting; and
- (e) the time and date by which, and place at which, creditors must lodge proxies and hitherto unlodged proofs in order to be entitled to vote at the meeting.

]¹¹¹⁰

(2) The liquidator's report laid before the meeting under that section shall contain an account of the liquidator's administration of the winding up, including—

- (a) a summary of his receipts and payments, [including details of remuneration charged and expenses incurred by the liquidator,]¹¹¹¹
- [(ab) details of the basis fixed for the liquidator's remuneration, and]¹¹¹¹
- (b) a statement by him that he has reconciled his account with that which is held by the Secretary of State in respect of the winding up.

[(2A) The liquidator's report shall also contain a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A (prescribed part).]¹¹¹²

[(2B) Where the liquidator has sent a progress report to creditors in accordance with Rule 4.49B, the report to be laid at the final meeting of creditors must also—

- (a) contain a receipts and payments account in the form of an abstract showing the receipts and payments during the period since the last progress report, and
- (b) include—
 - (i) details of the remuneration charged and expenses incurred by the liquidator during that period, and
 - (ii) a description of the things done by the liquidator during that period in respect of which that remuneration was charged and those expenses incurred.

(2C) In any case where the basis of the liquidator's remuneration had not been fixed by the date to which the last progress report was made up, the receipts and payments account required by

¹¹¹⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.214(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹¹¹ Rule 4.125(2)(ab) and words substituted for words by Insolvency (Amendment) Rules 2010/686 Sch.1 para.214(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹¹² Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.23 (September 15, 2003)

paragraph (2B)(a) must also include details of the remuneration charged in the period of any preceding progress report in which details of remuneration were not included.

(2D) Where the basis of remuneration has been fixed as a set amount only, it is sufficient compliance with paragraph (2B)(b) for the liquidator to state the amount which has been set and to supply details of the expenses charged within the period in question.]¹¹¹³

(3) At the final meeting, the creditors may question the liquidator with respect to any matter contained in his report, and may resolve against him having his release.

(4) The liquidator shall give notice to the court that the final meeting has been held; and the notice shall state whether or not he has been given his release, and be accompanied by a copy of the report laid before the final meeting. A copy of the notice shall be sent by the liquidator to the [Secretary of State]¹¹¹⁴ .

(5) If there is no quorum present at the final meeting, the liquidator shall report to the court that a final meeting was summoned in accordance with the Rules, but there was no quorum present; and the final meeting is then deemed to have been held, and the creditors not to have resolved against the liquidator having his release.

(6) If the creditors at the final meeting have not so resolved, the liquidator is released when the notice under paragraph (4) is filed in court. If they have so resolved, the liquidator must obtain his release from the Secretary of State and Rule 4.121 applies accordingly.

Commencement

Pt 4(11) rule 4.125(1)–(6): December 29, 1986

[4.125A.— Rule as to reporting

(1) The court may, on the liquidator or official receiver's application, relieve him of any duty imposed on him by Rule 4.124 or 4.125, or authorise him to carry out the duty in a way other than there required.

(2) In considering whether to act under this Rule, 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.

] ¹¹¹⁵

¹¹¹³ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.214(5) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹¹⁴ Words substituted by Insolvency (Amendment) Rules 2005/527 rule 28 (April 1, 2005)

¹¹¹⁵ Added by Insolvency (Amendment) Rules 2004/584 rule 13 (April 1, 2004)

4.126-CVL.— Final meeting

(1) The liquidator shall give at least 28 days' notice of the final meeting of creditors to be held under section 106 . The notice shall be sent to all creditors who [are known to the liquidator]¹¹¹⁶

[(1A) In addition to information required by subsection (2) of section 106 and the standard contents, the advertisement required by that subsection must state the time and date by which, and place at which, creditors must lodge proxies and hitherto unlodged proofs in order to be entitled to vote at the meeting.

(1B) In addition to the notice required by paragraph (1) and the advertisement required by section 106(2), the liquidator may advertise notice of the meeting in such other manner as the liquidator thinks fit.

(1C) In addition to the standard contents, notice under paragraph (1B) must state—

- (a) the purpose of the meeting;
- (b) the venue fixed for the meeting; and
- (c) the time and date by which, and place at which, creditors must lodge proxies and hitherto unlodged proofs in order to be entitled to vote at the meeting.

(1D) The final meeting must not be held unless Rule 4.49D has been complied with; and if for that reason the meeting is not held—

- (a) the liquidator must give notice of that fact as soon as reasonably practicable to all to whom notice of the meeting was given, and
- (b) fresh notice of the meeting complying with this Rule must be given when Rule 4.49D has been complied with.

(1E) The liquidator's report laid before the meeting of creditors under section 106 must contain an account of the liquidator's administration of the winding up, including—

- (a) a summary of the liquidator's receipts and payments, including at least the following items separately specified (except where the amount for an item is zero)—
 - (i) the total of all receipts, with separate specification thereunder of—
 - (aa) receipts from trading carried on by the liquidator;
 - (bb) payments made in the course of trading carried on by the liquidator;
 - (cc) the source of all other receipts;
 - (dd) payments to redeem securities;
 - (ee) costs of execution; and
 - (ff) net realisations;
 - (ii) the cost of employing a solicitor;
 - (iii) other legal costs;
 - (iv) the liquidator's remuneration;
 - (v) the cost of employing an auctioneer;
 - (vi) the cost of employing a valuer;
 - (vii) the costs of taking possession of and maintaining the company's property;
 - (viii) the cost of advertising in the Gazette and other newspapers;
 - (ix) incidental outlays;

¹¹¹⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.215(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (x) a statement of the total of costs and charges incurred;
- (xi) the amount paid to holders of debentures of each class of debenture, setting out the amount paid per debenture, the nominal value of each debenture in each class and the total amount paid in respect of each class;
- (xii) the aggregate numbers of preferential and unsecured creditors and the aggregate amounts paid out to them, the aggregates for preferential and unsecured creditors set out separately unless all creditors have been paid in full;
- (xiii) statements of the aggregate dividend paid on each pound of preferential and of unsecured debt and of the estimate of the value of the company's net property which had been made under Rule 4.49(2)(a)(ii);
- (xiv) the amount of interest paid under section 189;
- (xv) the amount paid to contributories in respect of each class of share, setting out the amount per share and the nominal value of each share in each class;
- (xvi) a statement of the total amount paid to holders of debentures, preferential and unsecured creditors and contributories;
- (xvii) a statement of assets which have proved to be unrealisable, including the value of those assets which had been made for the purpose of Rule 4.49(2)(a)(ii);
- (xviii) the amounts paid into the Insolvency Services Account, set out separately, in respect of—
 - (aa) unclaimed dividends payable to creditors in the winding up;
 - (bb) other unclaimed dividends in the winding up;
 - (cc) moneys held by the company in trust in respect of dividends or other sums due before the commencement of the winding up to any person as a member of the company;
- (b) details of the basis fixed for the liquidator's remuneration and by whom it was fixed;
- (c) a statement by the liquidator that the account included in the report has been reconciled with that which is held by the Secretary of State in respect of the winding up;
- (d) any other statement which the liquidator thinks it desirable to make.

]¹¹¹⁷

(2) At the final meeting, the creditors may question the liquidator with respect to any matter contained in the account required under [section 106]¹¹¹⁸ [or paragraph (4) of this Rule]¹¹¹⁹ , and may resolve against the liquidator having his release.

(3) Where the creditors have so resolved, he must obtain his release from the Secretary of State; and Rule 4.122-CVL applies accordingly.

[(4) The account of the winding up required under section 106 shall also include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A (prescribed part).]¹¹²⁰

¹¹¹⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.215(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹¹⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.215(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹¹⁹ Words inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.24(a) (September 15, 2003)

¹¹²⁰ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.24(b) (September 15, 2003)

[(5) Where the liquidator has sent a progress report to creditors in accordance with section 104A, the report to be laid at the final meeting of creditors must also—

- (a) contain a receipts and payments account in the form of an abstract showing the receipts and payments during the period since the last progress report, and
- (b) include—
 - (i) details of the remuneration charged and expenses incurred by the liquidator during that period, and
 - (ii) a description of the things done by the liquidator during that period in respect of which that remuneration was charged and those expenses incurred.

(6) In any case where the basis of the liquidator's remuneration had not been fixed by the date to which the last progress report was made up, the receipts and payments account required by paragraph (5)(a) must also include details of the remuneration charged in the period of any preceding progress report in which details of remuneration were not included.

(7) Where the basis of remuneration has been fixed as a set amount only, it is sufficient compliance with paragraph (5)(b) for the liquidator to state the amount which has been set and to supply details of the expenses charged within the period in question.]¹¹²¹

Commencement

Pt 4(11) rule 4.126(1)-(3): December 29, 1986

[4.126A Final meeting in members' voluntary liquidation (NO CVL APPLICATION)]

(1) In addition to the information required by section 94(2) and the standard contents, the advertisement required by that subsection must state the time and date by which, and place at which, members must lodge proxies in order to be entitled to vote.

(2) In addition to the advertisement required by section 94(2), the liquidator may advertise notice of the meeting in such other manner as the liquidator thinks fit.

(3) In addition to the standard contents, notice given under paragraph (2) must state—

- (a) the purpose of the meeting,
- (b) the venue fixed for the meeting, and
- (c) the time and date by which, and place at which, members must lodge proxies in order to be entitled to vote at the meeting.

(4) The liquidator's report laid before the meeting of the company under section 94 must contain an account of the liquidator's administration of the winding up, including (except where the amount for an item is zero)—

- (a) a summary of the liquidator's receipts and payments, including at least the following items separately specified—
 - (i) the total of all receipts, with separate specification thereunder of—
 - (aa) receipts from trading carried on by the liquidator;
 - (bb) payments made in the course of trading carried on by the liquidator;

¹¹²¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.215(5) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (cc) the source of all other receipts;
- (dd) payments to redeem securities;
- (ee) costs of execution; and
- (ff) net realisations;
- (ii) the cost of employing a solicitor;
- (iii) other legal costs;
- (iv) the liquidator's remuneration;
- (v) the cost of employing an auctioneer;
- (vi) the cost of employing a valuer;
- (vii) the costs of taking possession of and maintaining the company's property;
- (viii) the cost of advertising in the Gazette and other newspapers;
- (ix) incidental outlays;
- (x) a statement of the total of costs and charges incurred;
- (xi) the amount paid to holders of debentures of each class of debenture, setting out the amount paid per debenture, the nominal value of each debenture in each class and the total amount paid in respect of each class;
- (xii) the aggregate amount paid out to creditors;
- (xiii) the amount of interest paid under section 189;
- (xiv) the amount paid to contributories in respect of each class of share, setting out the amount per share and the nominal value of each share in each class;
- (xv) a statement of the total amount paid to holders of debentures, preferential and unsecured creditors and contributories;
- (xvi) a statement of assets which have proved to be unrealisable, including the value of those assets which had been made for the purpose of Rule 4.49(2)(a)(ii);
- (xvii) the amounts paid into the Insolvency Services Account, set out separately, in respect of—
 - (aa) unclaimed dividends payable to creditors in the winding up;
 - (bb) other unclaimed dividends in the winding up;
 - (cc) moneys held by the company in trust in respect of dividends or other sums due before the commencement of the winding up to any person as a member of the company;
- (b) details of the basis fixed for the liquidator's remuneration and by whom it was fixed;
- (c) any other statement which the liquidator thinks it desirable to make.

1¹¹²²

SECTION D: REMUNERATION

4.127.— Fixing of remuneration

- (1) The liquidator is entitled to receive remuneration for his services as such.

¹¹²² Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.216 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (2) [The basis of remuneration]¹¹²³ shall be fixed [...] ¹¹²⁴ —
- (a) as a percentage of the value of the assets which are realised or distributed, or of the one value and the other in combination, or
 - (b) by reference to the time properly given by the insolvency practitioner (as liquidator) and his staff in attending to matters arising in the winding up [, or]¹¹²⁵
 - [(c) as a set amount.]¹¹²⁵
- (3) Where the liquidator is other than the official receiver, it is for the liquidation committee (if there is one) to determine whether the remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.
- [(3A) The basis of remuneration may be fixed as any one or more of the bases set out in paragraph (2), and different bases may be fixed in respect of different things done by the liquidator.
- (3B) Where the basis of remuneration is fixed as set out in paragraph (2)(a), different percentages may be fixed in respect of different things done by the liquidator.
- (3C) Where the liquidator is other than the official receiver, and subject to paragraph (5A), it is for the liquidation committee (if there is one) to determine—
- (a) which of the bases set out in paragraph (2) are to be fixed and (where appropriate) in what combination under paragraph (3A), and
 - (b) the percentage or percentages (if any) to be fixed under paragraphs (2)(a) and (3B) and the amount (if any) to be set under paragraph (2)(c).
- ¹¹²⁶]
- (4) In arriving at that determination, the committee shall have regard to the following matters—
- (a) the complexity (or otherwise) of the case,
 - (b) any respects in which, in connection with the winding up, there falls on the insolvency practitioner (as liquidator) any responsibility of an exceptional kind or degree,
 - (c) the effectiveness with which the insolvency practitioner appears to be carrying out, or to have carried out, his duties as liquidator, and
 - (d) the value and nature of the assets with which the liquidator has to deal.
- (5) If there is no liquidation committee, or the committee does not make the requisite determination, [and subject to paragraph (5A), the basis of]¹¹²⁷ the liquidator's remuneration may be fixed (in

¹¹²³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.217(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹²⁴ Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.217(2)(b) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹²⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.217(2)(c) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹²⁶ Rule 4.127(3A)-(3C) substituted for rule 4.127(3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.217(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹²⁷ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.217(4)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

accordance with [paragraphs (2), (3A) and (3B)]¹¹²⁸) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the liquidation committee.

[(5A) Where—

(a) a company which is in administration moves into winding up under paragraph 83 of Schedule B1 to the Act and the administrator becomes the liquidator, or

(b) a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect and the court under section 140(1)¹¹²⁹ appoints as liquidator the person whose appointment as administrator has ceased to have effect,

the basis of remuneration fixed under Rule 2.106 is treated as having been fixed under this Rule and paragraphs (4) and (5) do not apply.

]¹¹³⁰

[(6) Where the liquidator is not the official receiver and [the basis of]¹¹³¹ his remuneration is not fixed as above [within 18 months after the date of the liquidator's appointment]¹¹³² , the liquidator shall be entitled to remuneration fixed in accordance with the provisions of Rule 4.127A. [(NO CVL APPLICATION)]¹¹³³]¹¹³⁴

[(7-CVL) If not fixed as above, the basis of the liquidator's remuneration shall, on application by the liquidator, be fixed by the court, and the provisions of paragraphs (2) to (4) apply as they do to the fixing of the basis of remuneration by the liquidation committee; but such an application may not be made by the liquidator unless the liquidator has first sought fixing of the basis in accordance with paragraph (3C) or (5), and in any event may not be made more than 18 months after the date of the liquidator's appointment.]¹¹³⁵

Commencement

Pt 4(11) rule 4.127(1)-(6): December 29, 1986

¹¹²⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.217(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹²⁹ Section 140(1) was substituted by 2002 c. 40, s. 248(3) and Schedule 17, paragraphs 9 and 17.

¹¹³⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.217(5) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹³¹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.217(6)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹³² Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.217(6)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹³³ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.217(6)(c) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹³⁴ Substituted by Insolvency (Amendment) Rules 2004/584 rule 14 (April 1, 2004)

¹¹³⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.217(7) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[4.127A.— Liquidator's entitlement to remuneration where it is not fixed under Rule 4.127 [(NO CVL APPLICATION)]¹¹³⁶

(1) This Rule applies where the liquidator is not the official receiver and [the basis of]¹¹³⁷ his remuneration is not fixed [or treated as fixed]¹¹³⁸ in accordance with Rule 4.127.

(2) The liquidator shall be entitled by way of remuneration for his services as such, to such sum as is arrived at by—

(a) first applying the realisation scale set out in Schedule 6 to the monies received by him from the realisation of the assets of the company (including any Value Added Tax thereon but after deducting any sums paid to secured creditors in respect of their securities and any sums spent out of money received in carrying on the business of the company); and

(b) then by adding to the sum arrived at under sub-paragraph (a) such sum as is arrived at by applying the distribution scale set out in Schedule 6 to the value of assets distributed to creditors of the company (including payments made in respect of preferential debts) and to contributories.

]¹¹³⁹

[4.127B.— Liquidator's remuneration where he realises assets on behalf of chargeholder

(1) This Rule applies where the liquidator is not the official receiver and realises assets on behalf of a secured creditor.

(2) Where the assets realised for a secured creditor are subject to a charge which when created was a mortgage or a fixed charge, the liquidator shall be entitled to such sum by way of remuneration as is arrived at by applying the realisation scale set out in Schedule 6 to the monies received by him in respect of the assets realised (including any sums received in respect of Value Added Tax thereon but after deducting any sums spent out of money received in carrying on the business of the company).

(3) Where the assets realised for a secured creditor are subject to a charge which when created was a floating charge, the liquidator shall be entitled to such sum by way of remuneration as is arrived at by—

(a) first applying the realisation scale set out in Schedule 6 to monies received by him from the realisation of those assets (including any Value Added Tax thereon but ignoring any sums received which are spent in carrying on the business of the company); and

¹¹³⁶ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.218(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹³⁷ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.218(3)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹³⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.218(3)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹³⁹ Added by Insolvency (Amendment) Rules 2004/584 rule 15 (April 1, 2004)

(b) then by adding to the sum arrived at under sub-paragraph (a) such sum as is arrived at by applying the distribution scale set out in Schedule 6 to the value of the assets distributed to the holder of the charge [and payments made in respect of preferential debts]¹¹⁴⁰ .

[(4) The sum to which the liquidator is entitled under paragraph (2) or (3) shall be taken out of the proceeds of the realisation effected under that paragraph.]¹¹⁴¹
¹¹⁴²

4.128.— Other matters affecting remuneration

(1) [...] ¹¹⁴³

(2) Where there are joint liquidators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred—

(a) to the court, for settlement by order, or

(b) to the liquidation committee or a meeting of creditors, for settlement by resolution.

(3) If the liquidator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the company, profit costs shall not be paid unless this is authorised by the liquidation committee, the creditors or the court.

Commencement

Pt 4(11) rule 4.128(1)-(3): December 29, 1986

4.129. [...] ¹¹⁴⁴

[4.129A Recourse of liquidator to meeting of creditors

If the basis of the liquidator's remuneration has been fixed by the liquidation committee, or by the creditors' committee under Rule 2.106(3C) in a case falling within Rule 4.127(5A) in which the administrator had not requested an increase under Rule 2.107, and the liquidator considers the rate or amount to be insufficient or the basis to be inappropriate, the liquidator may request that the rate or amount be increased or the basis changed by resolution of the creditors.] ¹¹⁴⁵

¹¹⁴⁰ Words inserted subject to transitional provisions specified in SI 2005/527 rule 3(2) by Insolvency (Amendment) Rules 2005/527 rule 29 (April 1, 2005: insertion has effect subject to transitional provisions specified in SI 2005/527 rule 3(2))

¹¹⁴¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.219(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁴² Added by Insolvency (Amendment) Rules 2004/584 rule 15 (April 1, 2004)

¹¹⁴³ Revoked by Insolvency (Amendment) Rules 2004/584 rule 16 (April 1, 2004)

¹¹⁴⁴ Rule 4.129A substituted for rule 4.129 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.220 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁴⁵ Rule 4.129A substituted for rule 4.129 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.220 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

4.130.— Recourse to the court

[(1) If the liquidator considers that the basis of remuneration fixed by the liquidation committee, or by resolution of the creditors, or as under Rule 4.127(5A) or (6), is insufficient or inappropriate, the liquidator may apply to the court for an order changing it or increasing its amount or rate.]¹¹⁴⁶

(2) The liquidator shall give at least 14 days' notice of his application to the members of the liquidation committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

(3) If there is no liquidation committee, the liquidator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

(4) The court may, if it appears to be a proper case, order the costs of the liquidator's application, including the costs of any member of the liquidation committee appearing [or being represented]¹¹⁴⁷ on it, or any creditor so appearing [or being represented]¹¹⁴⁷, to be paid [as an expense of the liquidation]¹¹⁴⁸.

Commencement

Pt 4(11) rule 4.130(1)-(4): December 29, 1986

4.131.— Creditors' claim that remuneration is [or other expenses are]¹¹⁴⁹ excessive

[(1) Any secured creditor, or any unsecured creditor with either the concurrence of at least 10% in value of the creditors (including that creditor) or the permission of the court, may apply to the court for one or more of the orders in paragraph (4).

(1A) Application may be made on the grounds that—

- (a) the remuneration charged by the liquidator,
- (b) the basis fixed for the liquidator's remuneration under Rule 4.127, or
- (c) expenses incurred by the liquidator,

is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph (b), inappropriate.

(1B) The application must, subject to any order of the court under Rule 4.49E(5), be made no later than 8 weeks (or, in a case falling within Rule 4.108, 4 weeks) after receipt by the applicant of the progress report, or the draft report under Rule 4.49D, which first reports the charging of the remuneration or the incurring of the expenses in question (“the relevant report”).]¹¹⁵⁰

¹¹⁴⁶ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.221(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁴⁷ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.65 (January 11, 1988)

¹¹⁴⁸ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

¹¹⁴⁹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.222(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁵⁰ Rule 4.131(1)-(1B) substituted for rule 4.131(1) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.222(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; but it shall not do so unless the applicant has had an opportunity to attend the court for [a]¹¹⁵¹ hearing, of which he has been given at least [5 business]¹¹⁵² days' notice [but which is without notice to any other party]¹¹⁵³ .

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly.

(3) The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

[(4) If the court considers the application to be well-founded, it must make one or more of the following orders—

- (a) an order reducing the amount of remuneration which the liquidator was entitled to charge;
- (b) an order fixing the basis of remuneration at a reduced rate or amount;
- (c) an order changing the basis of remuneration;
- (d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the liquidation;
- (e) an order that the liquidator or the liquidator's personal representative pay to the company the amount of the excess of remuneration or expenses or such part of the excess as the court may specify;

and may make any other order that it thinks just; but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report.

] ¹¹⁵⁴

(5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable [as an expense of the liquidation]¹¹⁵⁵ .

Commencement

Pt 4(11) rule 4.131(1)-(5): December 29, 1986

[4.131A Review of remuneration

(1) Where, after the basis of the liquidator's remuneration has been fixed, there is a material and substantial change in the circumstances which were taken into account in fixing it, the liquidator may request that it be changed.

¹¹⁵¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.222(4)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁵² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.222(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁵³ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.222(4)(c) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁵⁴ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.222(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁵⁵ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

- (2) The request must be made—
- (a) where the liquidation committee fixed the basis, to the committee;
 - (b) where the creditors fixed the basis, to the creditors;
 - (c) where the court fixed the basis, by application to the court;
 - (d) where the remuneration was determined by application of the realisation scale under Rule 4.127A, to the liquidation committee if there is one or otherwise to the creditors;
- and subject to paragraph (3), Rules 4.127 to 4.131 apply as appropriate.
- (3) Where Rule 4.129A is applied in accordance with paragraph (2) of this Rule, ignore the words “in which the administrator had not requested an increase under Rule 2.107”.
- (4) Any change in the basis for remuneration applies from the date of the request under paragraph (2) and not for any earlier period.
- (5) This Rule does not apply where the liquidator is the official receiver.
- ¹¹⁵⁶

[4.131B Remuneration of new liquidator]

- (1) If a new liquidator is appointed in place of another, any determination, resolution or court order in effect under the preceding provisions of this Section of this Chapter immediately before the former liquidator ceased to hold office continues to apply in respect of the remuneration of the new liquidator until a further determination, resolution or court order is made in accordance with those provisions.
- (2) This Rule does not apply where the new liquidator is the official receiver.
- ¹¹⁵⁷

[4.131C Apportionment of set fee remuneration]

- (1) In a case in which the basis of the liquidator's remuneration is a set amount under Rule 4.127(2)(c) and the liquidator (“the former liquidator”) ceases (for whatever reason) to hold office before the time has elapsed or the work has been completed in respect of which the amount was set, application may be made for determination of what portion of the amount should be paid to the former liquidator or the former liquidator's personal representative in respect of the time which has actually elapsed or the work which has actually been done.
- (2) Application may be made—
- (a) by the former liquidator or the former liquidator's personal representative within the period of 28 days beginning with the date upon which the former liquidator ceased to hold office, or
 - (b) by the liquidator for the time being in office if the former liquidator or the former liquidator's personal representative has not applied by the end of that period.
- (3) Application must be made—
- (a) where the liquidation committee fixed the basis, to the committee;

¹¹⁵⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.223 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁵⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.223 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (b) where the creditors fixed the basis, to the creditors for a resolution determining the portion;
 - (c) where the court fixed the basis, to the court for an order determining the portion.
- (4) The applicant must give a copy of the application to the liquidator for the time being in office or to the former liquidator or the former liquidator's personal representative, as the case may be ("the recipient").
- (5) The recipient may within 21 days of receipt of the copy of the application give notice of intent to make representations to the liquidation committee or the creditors or to appear or be represented before the court, as the case may be.
- (6) No determination may be made upon the application until expiry of the 21 days referred to in paragraph (5) or, if the recipient does give notice of intent in accordance with that paragraph, until the recipient has been afforded the opportunity to make representations or to appear or be represented, as the case may be.
- (7) If the former liquidator or the former liquidator's personal representative (whether or not the original applicant) considers that the portion determined upon application to the liquidation committee or the creditors is insufficient, that person may apply—
- (a) in the case of a determination by the liquidation committee, to the creditors for a resolution increasing the portion;
 - (b) in the case of a resolution of the creditors (whether under paragraph (1) or under sub-paragraph (a)), to the court for an order increasing the portion;
- and paragraphs (4) to (6) apply as appropriate.

]¹¹⁵⁸

SECTION E: SUPPLEMENTARY PROVISIONS

4.132.— Liquidator deceased (NO CVL APPLICATION)

- (1) Subject as follows, where the liquidator (other than the official receiver) has died, it is the duty of his personal representatives to give notice of the fact to the official receiver, specifying the date of the death.
- This does not apply if notice has been given under any of the following paragraphs of this Rule.
- (2) If the deceased liquidator was a partner in [or an employee of]¹¹⁵⁹ a firm, notice may be given to the official receiver by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners.
- (3) Notice of the death may be given by any person producing to the official receiver the relevant death certificate or a copy of it.

¹¹⁵⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.223 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁵⁹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.224(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(4) The official receiver shall give notice to the court, for the purpose of fixing the date of the deceased liquidator's release.

Commencement

Pt 4(11) rule 4.132(1)-(4): December 29, 1986

4.133-CVL.— Liquidator deceased

(1) [...] ¹¹⁶⁰ Subject as follows, where the liquidator has died, it is the duty of his personal representatives to give notice of the fact, and of the date of death, to the registrar of companies and to the liquidation committee (if any) or a member of that committee.

(2) In the alternative, notice of the death may be given—

- (a) if the deceased liquidator was a partner in [or an employee of] ¹¹⁶¹ a firm, by a partner [in the firm] ¹¹⁶² qualified to act as an insolvency practitioner or who is a member of any body approved by the Secretary of State for the authorisation of insolvency practitioners, or
- (b) by any person, if he delivers with the notice a copy of the relevant death certificate.

Commencement

Pt 4(11) rule 4.133(1)-(2)(b): December 29, 1986

**4.134.— Loss of qualification as insolvency practitioner
(NO CVL APPLICATION)**

(1) This Rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company.

(2) He shall [as soon as reasonably practicable] ¹¹⁶³ give notice of his doing so to the official receiver, who shall give notice to the Secretary of State.

The official receiver shall file in court a copy of his notice under this paragraph.

(3) Rule 4.121 applies as regards the liquidator obtaining his release, as if he had been removed by the court.

¹¹⁶⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁶¹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.225(2)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁶² Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.225(2)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁶³ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

Commencement

Pt 4(11) rule 4.134(1)-(3): December 29, 1986

4.135-CVL.— Loss of qualification as insolvency practitioner

- (1) This Rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company.
- (2) He shall [as soon as reasonably practicable]¹¹⁶⁵ give notice of his doing so to the registrar of companies and the Secretary of State.
- (3) Rule 4.122-CVL applies as regards the liquidator obtaining his release, as if he had been removed by the court.

Commencement

Pt 4(11) rule 4.135(1)-(3): December 29, 1986

4.136-CVL. Vacation of office on making of winding-up order

Where the liquidator vacates office in consequence of the court making a winding-up order against the company, Rule 4.122-CVL applies as regards his obtaining his release, as if he had been removed by the court.

Commencement

Pt 4(11) rule 4.136: December 29, 1986

[4.137.— Notice to official receiver of intention to vacate office (NO CVL APPLICATION)]

- (1) Where the liquidator intends to vacate office, whether by resignation or otherwise, he shall give notice of his intention to the official receiver together with notice of any creditors' meeting to be held in respect of his vacation of office, including any meeting to receive his resignation.
- (2) The notice to the official receiver must be given at least 21 days before any such creditors' meeting.
- (3) Where there remains any property of the company which has not been realised, applied, distributed or otherwise fully dealt with in the winding up, the liquidator shall include in his notice to the official receiver details of the nature of that property, its value (or the fact that it has no value), its location, any action taken by the liquidator to deal with that property or any reason for his not dealing with it, and the current position in relation to it.

¹¹⁶⁴ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁶⁵ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

]¹¹⁶⁶

Commencement

Pt 4(11) rule 4.137(1)-(2): December 29, 1986

4.138.— Liquidator's duties on vacating office

(1) Where the liquidator ceases to be in office as such, in consequence of removal, resignation or cesser of qualification as an insolvency practitioner, he is under obligation [as soon as reasonably practicable]¹¹⁶⁷ to deliver up to the person succeeding him as liquidator the assets (after deduction of any expenses properly incurred, and distributions made, by him) and further to deliver up to that person—

- (a) the records of the liquidation, including correspondence, proofs and other related papers appertaining to the administration while it was within his responsibility, and
- (b) the company's books, papers and other records.

(2) [...] ¹¹⁶⁸

[(3) Where the liquidator vacates office under section 172(8) (final meeting of creditors), he shall deliver up to the official receiver the company's books, papers and other records which have not already been disposed of in accordance with general regulations in the course of the liquidation. (NO CVL APPLICATION).] ¹¹⁶⁹

Commencement

Pt 4(11) rule 4.138(1)-(2): December 29, 1986

SECTION F: THE LIQUIDATOR IN A MEMBERS' VOLUNTARY WINDING UP

4.139.— Appointment by the company

(1) This Rule applies where the liquidator is appointed by a meeting of the company.

(2) Subject as follows, the chairman of the meeting shall certify the appointment, but not unless and until the person appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.

(3) The chairman shall send the certificate [as soon as reasonably practicable]¹¹⁷⁰ to the liquidator, who shall keep it as part of the records of the liquidation.

¹¹⁶⁶ Substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.66 (January 11, 1988)

¹¹⁶⁷ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹¹⁶⁸ Revoked by Insolvency (Amendment) Rules 2004/584 rule 17 (April 1, 2004)

¹¹⁶⁹ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.67 (January 11, 1988)

¹¹⁷⁰ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

(4) Not later than 28 days from his appointment, the liquidator shall give notice of it to all creditors of the company of whom he is aware in that period.

Commencement

Pt 4(11) rule 4.139(1)-(4): December 29, 1986

4.140.— Appointment by the court

- (1) This Rule applies where the liquidator is appointed by the court under section 108.
- (2) The court's order shall not issue unless and until the person appointed has filed in court a statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.
- (3) Thereafter, the court shall send a sealed copy of the order to the liquidator, whose appointment takes effect from the date of the order.
- (4) Not later than 28 days from his appointment, the liquidator shall give notice of it to all creditors of the company of whom he is aware in that period.

Commencement

Pt 4(11) rule 4.140(1)-(4): December 29, 1986

4.141. Authentication of liquidator's appointment

A copy of the certificate of the liquidator's appointment or (as the case may be) a sealed copy of the court's order appointing him may in any proceedings be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of liquidator in the company's winding up.

Commencement

Pt 4(11) rule 4.141: December 29, 1986

4.142.— Company meeting to receive liquidator's resignation

- (1) Before resigning his office, the liquidator must call a meeting of the company for the purpose of receiving his resignation. The notice summoning the meeting shall indicate that this is the purpose, or one of the purposes, of it.
- (2) The notice under paragraph (1) must be accompanied by an account of the liquidator's administration of the winding up, including—
 - (a) a summary of his receipts and payments, and
 - (b) a statement by him that he has reconciled his account with that which is held by the Secretary of State in respect of the winding up.
- (3) Subject as follows, the liquidator may only proceed under this Rule on grounds of ill health or because—
 - (a) he intends ceasing to be in practice as an insolvency practitioner, or

(b) there is some conflict of interest or change of personal circumstances which precludes or makes impracticable the further discharge by him of the duties of liquidator.

(4) Where two or more persons are acting as liquidator jointly, any one of them may proceed under this Rule (without prejudice to the continuation in office of the other or others) on the ground that, in his opinion or that of the other or others, it is no longer expedient that there should continue to be the present number of joint liquidators.

[(4A) If there is no quorum present at the meeting summoned to receive the liquidator's resignation, the meeting is deemed to have been held.]¹¹⁷¹

(5) [...] ¹¹⁷² The notice of the liquidator's resignation required by section 171(5) shall be given by him [as soon as reasonably practicable] ¹¹⁷³ after the meeting.

(6) Where a new liquidator is appointed in place of one who has resigned, the former shall, in giving notice of his appointment, state that his predecessor has resigned.

Commencement

Pt 4(11) rule 4.142(1)-(6): December 29, 1986

4.143.— Removal of liquidator by the court

(1) This Rule applies where application is made to the court for the removal of the liquidator, or for an order directing the liquidator to summon a company meeting for the purpose of removing him.

(2) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for [a] ¹¹⁷⁴ hearing, of which he has been given at least [5 business] ¹¹⁷⁵ days' notice [but which is without notice to any other party] ¹¹⁷⁶ .

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard.

(3) The court may require the applicant to make a deposit or give security for the costs to be incurred by the liquidator on the application.

¹¹⁷¹ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.68 (January 11, 1988)

¹¹⁷² Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁷³ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹¹⁷⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.226(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁷⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.226(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁷⁶ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.226(2)(c) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(4) The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application, and of any evidence which he intends to adduce in support of it.

Subject to any contrary order of the court, the costs of the application are not payable [as an expense of the liquidation]¹¹⁷⁷.

(5) Where the court removes the liquidator—

(a) it shall send 2 copies of the order of removal to him, one to be sent by him [as soon as reasonably practicable]¹¹⁷⁹ to the registrar of companies, with notice of his ceasing to act;

(b) the order may include such provision as the court thinks [just]¹¹⁸⁰ with respect to matters arising in connection with the removal; and

(c) if the court appoints a new liquidator, Rule 4.140 applies.

Commencement

Pt 4(11) rule 4.143(1)-(5)(c): December 29, 1986

4.144.— Release of resigning or removed liquidator

(1) [...] ¹¹⁸¹ Where the liquidator resigns, he has his release from the date on which he gives notice of his resignation to the registrar of companies.

(2) [...] ¹¹⁸¹ Where the liquidator is removed by a meeting of the company, he shall [as soon as reasonably practicable]¹¹⁸² give notice to the registrar of companies of his ceasing to act.

(3) Where the liquidator is removed by the court, he must apply to the Secretary of State for his release.

(4) When the Secretary of State gives the release, he shall certify it accordingly, and send the certificate to the registrar of companies.

(5) A copy of the certificate shall be sent by the Secretary of State to the former liquidator, whose release is effective from the date of the certificate.

¹¹⁷⁷ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

¹¹⁷⁸ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁷⁹ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹¹⁸⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁸¹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁸² Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

Commencement

Pt 4(11) rule 4.144(1)-(5): December 29, 1986

4.145.— Liquidator deceased

- (1) [...] ¹¹⁸³ Subject as follows, where the liquidator has died, it is the duty of his personal representatives to give notice of the fact, and of the date of death, to the company's directors, or any one of them, and to the registrar of companies.
- (2) In the alternative, notice of the death may be given—
- (a) if the deceased liquidator was a partner in [or an employee of] ¹¹⁸⁴ a firm, by a partner [in the firm] ¹¹⁸⁵ qualified to act as an insolvency practitioner or who is a member of any body approved by the Secretary of State for the authorisation of insolvency practitioners, or
 - (b) by any person, if he delivers with the notice a copy of the relevant death certificate.

Commencement

Pt 4(11) rule 4.145(1)-(2)(b): December 29, 1986

4.146.— Loss of qualification as insolvency practitioner

- (1) This Rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company.
- (2) He shall [as soon as reasonably practicable] ¹¹⁸⁷ give notice of his doing so to the registrar of companies and the Secretary of State.
- (3) Rule 4.144 applies as regards the liquidator obtaining his release, as if he had been removed by the court.

Commencement

Pt 4(11) rule 4.146(1)-(3): December 29, 1986

¹¹⁸³ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁸⁴ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.227(2)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁸⁵ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.227(2)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁸⁶ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁸⁷ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

4.147. Vacation of office on making of winding-up order

Where the liquidator vacates office in consequence of the court making a winding-up order against the company, Rule 4.144 applies as regards his obtaining his release, as if he had been removed by the court.

Commencement

Pt 4(11) rule 4.147: December 29, 1986

4.148. Liquidator's duties on vacating office

Where the liquidator ceases to be in office as such, in consequence of removal, resignation or cesser of qualification as an insolvency practitioner, he is under obligation [as soon as reasonably practicable]¹¹⁸⁸ to deliver up to the person succeeding him as liquidator the assets (after deduction of any expenses properly incurred, and distributions made, by him) and further to deliver up to that person—

- (a) the records of the liquidation, including correspondence, proofs and other related papers appertaining to the administration while it was within his responsibility, and
- (b) the company's books, papers and other records.

Commencement

Pt 4(11) rule 4.148(a)-(b): December 29, 1986

[4.148A.— Remuneration of liquidator in members' voluntary winding up

(1) The liquidator is entitled to receive remuneration for his services as such.

(2) [The basis of remuneration shall be fixed]¹¹⁸⁹ -

- (a) as a percentage of the value of the assets which are realised or distributed, or of the one value and the other in combination, or
- (b) by reference to the time properly given by the insolvency practitioner (as liquidator) and his staff in attending to matters arising in the winding up [, or]¹¹⁹⁰
- [(c) as a set amount.]¹¹⁹⁰

[(2A) The basis of remuneration may be fixed as any one or more of the bases set out in paragraph (2), and different bases may be fixed in respect of different things done by the liquidator.

(2B) Where the basis of remuneration is fixed as set out in paragraph (2)(a), different percentages may be fixed in respect of different things done by the liquidator.

(2C) It is for the company in general meeting to determine—

¹¹⁸⁸ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹¹⁸⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.228(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁹⁰ Rule 1.484A(2)(c) and rule 1.484A(2A)-(2C) substituted for words by Insolvency (Amendment) Rules 2010/686 Sch.1 para.228(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (a) which of the bases set out in paragraph (2) are to be fixed and (where appropriate) in what combination under paragraph (2A), and
- (b) the percentage or percentages (if any) to be fixed under paragraphs (2)(a) and (2B) and the amount (if any) to be set under paragraph (2)(c).

]¹¹⁹⁰

(3) In arriving at that determination the company in general meeting shall have regard to the matters set out in paragraph (4) of Rule 4.127.

[(4) If not fixed as above, the basis of the liquidator's remuneration shall, on application by the liquidator, be fixed by the court, and the provisions of paragraphs (2) to (3) apply as they do to the fixing of the basis of remuneration by the company in general meeting; but such an application may not be made by the liquidator unless the liquidator has first sought fixing of the basis in accordance with paragraph (2C), and in any event may not be made more than 18 months after the date of the liquidator's appointment.]¹¹⁹¹

(5) Rule 4.128 [and Rule 4.127B]¹¹⁹² shall apply in relation to the remuneration of the liquidator in respect of the matters there mentioned and for this purpose references in that Rule to “the liquidation committee” and “a meeting of creditors” shall be read as references to the company in general meeting.

[(6) If the liquidator considers that the basis of the remuneration fixed by the company in general meeting is insufficient or inappropriate, the liquidator may apply to the court for an order changing it or increasing its amount or rate.]¹¹⁹³

(7) The liquidator shall give at least 14 days' notice of an application under paragraph [(4) or]¹¹⁹⁴ (6) to the company's contributories, or such one or more of them as the court may direct, and the contributories may nominate any one or more of their number to appear or be represented.

(8) The court may, if it appears to be a proper case, order the costs of the liquidator's application, including the costs of any contributory appearing or being represented on it, to be paid [as an expense of the liquidation]¹¹⁹⁵ .

]¹¹⁹⁶

4.148B.— [...]¹¹⁹⁷

¹¹⁹¹ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.228(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁹² Words inserted subject to transitional provisions specified in SI 2005/527 rule 3(2) by Insolvency (Amendment) Rules 2005/527 rule 30 (April 1, 2005: insertion has effect subject to transitional provisions specified in SI 2005/527 rule 3(2))

¹¹⁹³ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.228(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁹⁴ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.228(6) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹¹⁹⁵ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

¹¹⁹⁶ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.69 (January 11, 1988)

¹¹⁹⁷ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[4.148C Members' claim that remuneration is excessive]

(1) Members of the company with at least 10% of the total voting rights of all the members having the right to vote at general meetings of the company, or any member with the permission of the court, may apply to the court for one or more of the orders in paragraph (6) on the grounds that—

- (a) the remuneration charged by the liquidator,
- (b) the basis fixed for the liquidator's remuneration under Rule 4.148A, or
- (c) expenses incurred by the liquidator,

is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph (b), inappropriate.

(2) Application must, subject to any order of the court under Rule 4.49E(5), be made no later than 8 weeks (or 4 weeks when the liquidator has resigned in accordance with Rule 4.142) after receipt by the applicant of the report or account which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report").

(3) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; but it must not do so unless the applicant has had the opportunity to attend the court for a hearing of which the applicant has been given at least 5 business days' notice but which is without notice to any other party.

(4) If the application is not dismissed under paragraph (3), the court must fix a venue for it to be heard and give notice to the applicant accordingly.

(5) The applicant must at least 14 days before the hearing send to the liquidator a notice stating the venue and accompanied by a copy of the application and of any evidence which the applicant intends to adduce in support of it.

(6) If the court considers the application to be well-founded, it must make one or more of the following orders—

- (a) an order reducing the amount of remuneration which the liquidator was entitled to charge;
- (b) an order fixing the basis of remuneration at a reduced rate or amount;
- (c) an order changing the basis of remuneration;
- (d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the liquidation;
- (e) an order that the liquidator or the liquidator's personal representative pay to the company the amount of the excess of remuneration or expenses or such part of the excess as the court may specify;

and may make any other order that it thinks just; but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report.

(7) Unless the court orders otherwise, the costs of the application must be paid by the applicant and are not payable as an expense of the liquidation.

]¹¹⁹⁸

¹¹⁹⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.229 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[4.148D Remuneration of new liquidator

If a new liquidator is appointed in place of another, any determination or court order in effect under Rule 4.148A immediately before the former liquidator ceased to hold office continues to apply in respect of the remuneration of the new liquidator until a further determination or court order is made in accordance with that Rule.]¹¹⁹⁹

[4.148E Apportionment of fixed fee remuneration

(1) In a case in which the basis of the liquidator's remuneration is a set amount under Rule 4.148A(2)(c) and the liquidator ("the former liquidator") ceases (for whatever reason) to hold office before the time has elapsed or the work has been completed in respect of which the amount was set, application may be made for determination of what portion of the amount should be paid to the former liquidator or the former liquidator's personal representative in respect of the time which has actually elapsed or the work which has actually been done.

(2) Application may be made—

- (a) by the former liquidator or the former liquidator's personal representative within the period of 28 days beginning with the date upon which the former liquidator ceased to hold office, or
- (b) by the liquidator for the time being in office if the former liquidator or the former liquidator's personal representative has not applied by the end of that period.

(3) Application must be made—

- (a) where the company in general meeting fixed the basis, to the company for a resolution determining the portion;
- (b) where the court fixed the basis, to the court for an order determining the portion.

(4) The applicant must give a copy of the application to the liquidator for the time being in office or to the former liquidator or the former liquidator's personal representative, as the case may be ("the recipient").

(5) The recipient may within 21 days of receipt of the copy of the application give notice of intent to make representations to the company in general meeting or to appear or be represented before the court, as the case may be.

(6) No determination may be made upon the application until expiry of the 21 days referred to in paragraph (5) or, if the recipient does give notice of intent in accordance with that paragraph, until the recipient has been afforded the opportunity to make representations or to appear or be represented, as the case may be.

(7) If the former liquidator or the former liquidator's personal representative (whether or not the original applicant) considers that the portion determined upon application to the company in general meeting is insufficient, that person may apply to the court for an order increasing the portion; and paragraphs (4) to (6) apply as appropriate.

] ¹²⁰⁰

¹¹⁹⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.229 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁰⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.229 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

SECTION G: RULES APPLYING IN EVERY WINDING UP, WHETHER VOLUNTARY OR BY THE COURT

4.149.— Power of court to set aside certain transactions

- (1) If in the administration of the estate the liquidator enters into any transaction with a person who is an associate of his, the court may, on the application of any person interested, set the transaction aside and order the liquidator to compensate the company for any loss suffered in consequence of it.
- (2) This does not apply if either—
- (a) the transaction was entered into with the prior consent of the court, or
 - (b) it is shown to the court's satisfaction that the transaction was for value, and that it was entered into by the liquidator without knowing, or having any reason to suppose, that the person concerned was an associate.
- (3) Nothing in this Rule is to be taken as prejudicing the operation of any rule of law or equity with respect to a liquidator's dealings with trust property, or the fiduciary obligations of any person.

Commencement

Pt 4(11) rule 4.149(1)-(3): December 29, 1986

4.150.— Rule against solicitation

- (1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the liquidator in obtaining proxies or procuring his appointment, it may order that no remuneration [be allowed as an expense of the liquidation]¹²⁰¹ to any person by whom, or on whose behalf, the solicitation was exercised.
- (2) An order of the court under this Rule overrides any resolution of the liquidation committee or the creditors, or any other provision of the Rules relating to the liquidator's remuneration.

Commencement

Pt 4(11) rule 4.150(1)-(2): December 29, 1986

CHAPTER 12

THE LIQUIDATION COMMITTEE

4.151. Preliminary

(NO CVL APPLICATION)

For the purposes of this Chapter—

- (a) an “insolvent winding up” is where the company is being wound up on grounds which include inability to pay its debts, and

¹²⁰¹ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(10) (April 6, 2008)

- (b) a “solvent winding up” is where the company is being wound up on grounds which do not include that one.

Commencement

Pt 4(12) rule 4.151(a)-(b): December 29, 1986

4.152.— Membership of committee

- (1) Subject to Rule 4.154 below, the liquidation committee shall consist as follows—
- (a) in any case of at least 3, and not more than 5, creditors of the company elected by the meeting of creditors held under section 141 of the Act, and
 - (b) also, in the case of a solvent winding up, where the contributories' meeting held under that section so decides, of up to 3 contributories, elected by that meeting.

(NO CVL APPLICATION)

- (2-CVL) The committee must have at least 3 members before it can be established.

- (3) Any creditor of the company (other than one whose debt is fully secured) is eligible to be a member of the committee, so long as—

- (a) he has lodged a proof of his debt, and
- (b) his proof has neither been wholly disallowed for voting purposes, nor wholly rejected for purposes of distribution or dividend.

- (4) No person can be a member as both a creditor and a contributory.

- (5) A body corporate may be a member of the committee, but it cannot act as such otherwise than by a representative appointed under Rule 4.159.

- (6) Members of the committee elected or appointed to represent the creditors are called “creditor members”; and those elected or appointed to represent the contributories are called “contributory members”.

- [(7) The following categories of person are to be regarded as additional creditor members—

- (a) a representative of the Financial Services Authority who exercises the right under section 371(4)(b) of the Financial Services and Markets Act 2000 to be a member of the committee;
- (b) a representative of the scheme manager who exercises the right under section 215(4) of that Act to be a member of the committee.

¹²⁰²

Commencement

Pt 4(12) rule 4.152(1)-(7): December 29, 1986

¹²⁰² Substituted by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.379 (December 1, 2001)

4.153.— Formalities of establishment

(1) The liquidation committee does not come into being, and accordingly cannot act, until the liquidator has issued a certificate of its due constitution.

(2) If the chairman of the meeting which resolves to establish the committee is not the liquidator, he shall [as soon as reasonably practicable]¹²⁰³ give notice of the resolution to the liquidator (or, as the case may be, the person appointed as liquidator by that same meeting), and inform him of the names and addresses of the persons elected to be members of the committee.

[(3) No person may act as a member of the committee unless and until he has agreed to do so and, unless the relevant proxy or authorisation contains a statement to the contrary, such agreement may be given by his proxy-holder [...] ¹²⁰⁴ present at the meeting establishing the committee [or, in the case of a corporation, by its duly appointed representative] ¹²⁰⁵ .

(3A) The liquidator's certificate of the committee's due constitution shall not [be issued]¹²⁰⁶ before the minimum number of persons (in accordance with Rule 4.152) who are to be members of the committee have agreed to act [and must be issued as soon as reasonably practicable thereafter] ¹²⁰⁷ .] ¹²⁰⁸

(4) As and when the others (if any) agree to act, the liquidator shall issue an amended certificate.

(5) [...] ¹²⁰⁹

(6-CVL) The certificate, and any amended certificate, shall be sent by the liquidator to the registrar of companies [as soon as reasonably practicable] ¹²¹¹ .

(7) [...] ¹²¹²

¹²⁰³ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹²⁰⁴ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.230(2)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁰⁵ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.230(2)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁰⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.230(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁰⁷ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.230(3)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁰⁸ Rule 4.153(3) and (3A) substituted for rule 4.153(3) by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.71 (January 11, 1988)

¹²⁰⁹ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.230(4) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²¹⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²¹¹ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.230(5) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²¹² Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.230(6) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(8-CVL) [...] ¹²¹⁰ If after the first establishment of the committee there is any change in its membership, [as soon as reasonably practicable] ¹²¹³ the liquidator shall report the change to the registrar of companies.

Commencement

Pt 4(12) rule 4.153(1)-(8CVL): December 29, 1986

**4.154.— Committee established by contributories
(NO CVL APPLICATION)**

- (1) The following applies where the creditors' meeting under section 141 does not decide that a liquidation committee should be established, or decides that a committee should not be established.
- (2) The meeting of contributories under that section may appoint one of their number to make application to the court for an order to the liquidator that a further creditors' meeting be summoned for the purpose of establishing a liquidation committee; and—
 - (a) the court may, if it thinks that there are special circumstances to justify it, make that order, and
 - (b) the creditors' meeting summoned by the liquidator in compliance with the order is deemed to have been summoned under section 141.
- (3) If the creditors' meeting so summoned does not establish a liquidation committee, a meeting of contributories may do so.
- (4) The committee shall then consist of at least 3, and not more than 5, contributories elected by that meeting; and Rule 4.153 applies, [substituting for the reference in paragraph (3A) of that Rule to Rule 4.152 a reference to this paragraph] ¹²¹⁴ .

Commencement

Pt 4(12) rule 4.154(1)-(4): December 29, 1986

4.155.— Obligations of liquidator to committee

- (1) Subject as follows, it is the duty of the liquidator to report to the members of the liquidation committee all such matters as appear to him to be, or as they have indicated to him as being, of concern to them with respect to the winding up.
- (2) In the case of matters so indicated to him by the committee, the liquidator need not comply with any request for information where it appears to him that—
 - (a) the request is frivolous or unreasonable, or
 - (b) the cost of complying would be excessive, having regard to the relative importance of the information, or
 - (c) there are not sufficient assets to enable him to comply.

¹²¹³ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.230(7) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²¹⁴ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.72 (January 11, 1988)

(3) Where the committee has come into being more than 28 days after the appointment of the liquidator, he shall report to them, in summary form, what actions he has taken since his appointment, and shall answer all such questions as they may put to him regarding his conduct of the winding up hitherto.

(4) A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report to him by the liquidator, otherwise than in summary form, of any matters previously arising.

(5) Nothing in this Rule disentitles the committee, or any member of it, from having access to the liquidator's records of the liquidation, or from seeking an explanation of any matter within the committee's responsibility.

Commencement

Pt 4(12) rule 4.155(1)-(5): December 29, 1986

4.156.— Meetings of the committee

(1) Subject as follows, meetings of the liquidation committee shall be held when and where determined by the liquidator.

(2) The liquidator shall call a first meeting of the committee to take place within [6 weeks]¹²¹⁵ of his appointment or of the committee's establishment (whichever is the later); and thereafter he shall call a meeting—

- (a) if so requested by a creditor member of the committee or his representative (the meeting then to be held within 21 days of the request being received by the liquidator), and
- (b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

(3) [Subject to paragraph (4), the]¹²¹⁶ liquidator shall give [5 business]¹²¹⁷ days' written notice of the venue of a meeting to every member of the committee (or his representative, if designated for that purpose), unless in any case the requirement of the notice has been waived by or on behalf of any member.

Waiver may be signified either at or before the meeting.

[(4) Where the liquidator has determined that a meeting should be conducted and held in the manner referred to in Rule 12A.26(2), the notice period mentioned in paragraph (3) is 7 business days.

¹²¹⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.231(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²¹⁶ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.231(3)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²¹⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.231(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(5) In addition to any functions conferred on a committee by any provision of the Act, a committee must assist the liquidator in discharging the liquidator's functions and act in relation to that liquidator in such manner as may from time to time be agreed.]¹²¹⁸

Commencement

Pt 4(12) rule 4.156(1)-(3): December 29, 1986

4.157.— The chairman at meetings

(1) The chairman at any meeting of the liquidation committee shall be the liquidator, or a person [appointed by the liquidator in writing]¹²¹⁹ to act.

(2) A person so [appointed]¹²²⁰ must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the company, or
- (b) an employee of the liquidator or his firm who is experienced in insolvency matters.

Commencement

Pt 4(12) rule 4.157(1)-(2)(b): December 29, 1986

4.158.— Quorum

(1) A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least 2 creditor members are present or represented.

(NO CVL APPLICATION)

(2-CVL) A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least 2 members are present or represented.

Commencement

Pt 4(12) rule 4.158(1)-(2CVL): December 29, 1986

4.159.— Committee-members' representatives

(1) A member of the liquidation committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.

¹²¹⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.231(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²¹⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.232(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²²⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.232(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) A person acting as a committee-member's representative must hold a letter of authority entitling him so to act (either generally or specially) and [authenticated] ¹²²¹ by or on behalf of the committee-member [, and for this purpose any proxy [...] ¹²²² in relation to any meeting of creditors (or, as the case may be, members or contributories) of the company shall, unless it contains a statement to the contrary, be treated as such a letter of authority to act generally [authenticated] ¹²²¹ by or on behalf of the committee-member] ¹²²³ .

(3) The chairman at any meeting of the committee may call on a person claiming to act as a committee-member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

[(4) No member may be represented by—

- (a) another member of the committee;
- (b) a person who is at the same time representing another committee member;
- (c) a body corporate;
- (d) an undischarged bankrupt;
- (e) a disqualified director; or
- (f) a person who is subject to a bankruptcy restrictions order (including an interim order), a bankruptcy restrictions undertaking, a debt relief restrictions order (including an interim order) or a debt relief restrictions undertaking.

] ¹²²⁴

(5) [...] ¹²²⁵

(6) Where a member's representative [authenticates] ¹²²¹ any document on the member's behalf, the fact that he so [authenticates] ¹²²¹ must be stated below his [authentication] ¹²²¹ .

Commencement

Pt 4(12) rule 4.159(1)-(6): December 29, 1986

4.160.— Resignation

A member of the liquidation committee may resign by notice in writing delivered to the liquidator.

Commencement

Pt 4(12) rule 4.160: December 29, 1986

¹²²¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²²² Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.233(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²²³ Words added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.73 (January 11, 1988)

¹²²⁴ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.233(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²²⁵ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.233(4) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

4.161.— Termination of membership

- (1) A person's membership of the liquidation committee is automatically terminated if—
- (a) he becomes bankrupt [...] ¹²²⁶, or
 - (b) at 3 consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this Rule is not to apply in his case).
- (2) However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.
- (3) The membership of a creditor member is also automatically terminated if he ceases to be, or is found never to have been, a creditor.

Commencement

Pt 4(12) rule 4.161(1)-(3): December 29, 1986

4.162.— Removal

- (1) A creditor member of the committee may be removed by resolution at a meeting of creditors; and a contributory member may be removed by a resolution of a meeting of contributories.
- (2) In either case, 14 days' notice must be given of the intention to move the resolution.

Commencement

Pt 4(12) rule 4.162(1)-(2): December 29, 1986

4.163.— Vacancy (creditor members)

- (1) The following applies if there is a vacancy among the creditor members of the committee.
- (2) The vacancy need not be filled if the liquidator and a majority of the remaining creditor members so agree, provided that the total number of members does not fall below [3] ¹²²⁷.
- (3) The liquidator may appoint any creditor (being qualified under the Rules to be a member of the committee) to fill the vacancy, if a majority of the other creditor members agree to the appointment, and the creditor concerned consents to act.
- (4) Alternatively, a meeting of creditors may resolve that a creditor be appointed (with his consent) to fill the vacancy. In this case, at least 14 days' notice must have been given of the resolution to make such an appointment (whether or not of a person named in the notice).
- (5) Where the vacancy is filled by an appointment made by a creditors' meeting at which the liquidator is not present, the chairman of the meeting shall report to the liquidator the appointment which has been made.

¹²²⁶ Words repealed by Insolvency (Amendment) Rules 2004/584 rule 21 (April 1, 2004)

¹²²⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.234(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 4(12) rule 4.163(1)-(5): December 29, 1986

4.164.— Vacancy (contributory members)

- (1) The following applies if there is a vacancy among the contributory members of the committee.
- (2) The vacancy need not be filled if the liquidator and a majority of the remaining contributory members so agree, provided that, in the case of a committee of contributory members only, the total number of members does not fall below [3]¹²²⁸.
- (3) The liquidator may appoint any contributory member (being qualified under the Rules to be a member of the committee) to fill the vacancy, if a majority of the other contributory members agree to the appointment, and the contributory concerned consents to act.
- (4) Alternatively, a meeting of contributories may resolve that a contributory be appointed (with his consent) to fill the vacancy. In this case, at least 14 days' notice must have been given of the resolution to make such an appointment (whether or not of a person named in the notice).
- (5-CVL) Where the contributories make an appointment under paragraph (4), the creditor members of the committee may, if they think fit, resolve that the person appointed ought not to be a member of the committee; and—
 - (a) that person is not then, unless the court otherwise directs, qualified to act as a member of the committee, and
 - (b) on any application to the court for a direction under this paragraph the court may, if it thinks [just]¹²²⁹, appoint another person (being a contributory) to fill the vacancy on the committee.
- (6) Where the vacancy is filled by an appointment made by a contributories' meeting at which the liquidator is not present, the chairman of the meeting shall report to the liquidator the appointment which has been made.

Commencement

Pt 4(12) rule 4.164(1)-(6): December 29, 1986

4.165.— Voting rights and resolutions

(NO CVL APPLICATION)

- (1) At any meeting of the committee, each member of it (whether present himself, or by his representative) has one vote; and a resolution is passed when a majority of the creditor members present or represented have voted in favour of it.

¹²²⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.235(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²²⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) Subject to the next paragraph, the votes of contributory members do not count towards the number required for passing a resolution, but the way in which they vote on any resolution shall be recorded.

(3) Paragraph (2) does not apply where, by virtue of Rule 4.154 or 4.171, the only members of the committee are contributories. In that case the committee is to be treated for voting purposes as if all its members were creditors.

(4) Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting. The record shall be [authenticated]¹²³⁰ by the chairman and kept with the records of the liquidation.

Commencement

Pt 4(12) rule 4.165(1)-(4): December 29, 1986

4.166-CVL.— Voting rights and resolutions

(1) At any meeting of the committee, each member of it (whether present himself, or by his representative) has one vote; and a resolution is passed when a majority of the members present or represented have voted in favour of it.

(2) Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting. The record shall be [authenticated]¹²³¹ by the chairman and kept with the records of the liquidation.

Commencement

Pt 4(12) rule 4.166(1)-(2): December 29, 1986

4.167.— Resolutions [otherwise than at a meeting]¹²³²

(1) In accordance with this Rule, the liquidator may seek to obtain the agreement of members of the liquidation committee to a resolution by sending to every member (or his representative designated for the purpose) a copy of the proposed resolution.

(2) Where the liquidator makes use of the procedure allowed by this Rule, he shall send out to members of the committee or their representatives (as the case may be) [a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent]¹²³³

¹²³⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²³¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²³² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.236(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²³³ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.74 (January 11, 1988)

(3) Any creditor member of the committee may, within 7 business days from the date of the liquidator sending out a resolution, require him to summon a meeting of the committee to consider the matters raised by the resolution. (NO CVL APPLICATION)

(4-CVL) Any member of the committee may, within 7 business days from the date of the liquidator sending out a resolution, require him to summon a meeting of the committee to consider the matters raised by the resolution.

(5) In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the liquidator is notified in writing by a majority of the creditor members that they concur with it. (NO CVL APPLICATION)

(6-CVL) In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the liquidator is notified in writing by a majority of the members that they concur with it.

(7) A copy of every resolution passed under this Rule, and a note that the committee's concurrence was obtained, shall be kept with the records of the liquidation.

Commencement

Pt 4(12) rule 4.167(1)-(7): December 29, 1986

4.168.— Liquidator's reports

(1) The liquidator shall, as and when directed by the liquidation committee (but not more often than once in any period of 2 months), send a written report to every member of the committee setting out the position generally as regards the progress of the winding up and matters arising in connection with it, to which he (the liquidator) considers the committee's attention should be drawn.

(2) In the absence of such directions by the committee, the liquidator shall send such a report not less often than once in every period of 6 months.

(3) The obligations of the liquidator under this Rule are without prejudice to those imposed by Rule 4.155.

Commencement

Pt 4(12) rule 4.168(1)-(3): December 29, 1986

4.169. Expenses of members, etc.

The liquidator shall defray [as an expense of the liquidation]¹²³⁴, in the prescribed order of priority, any reasonable travelling expenses directly incurred by members of the liquidation committee or their representatives in respect of their attendance at the committee's meetings, or otherwise on the committee's business.

Commencement

Pt 4(12) rule 4.169: December 29, 1986

¹²³⁴ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

4.170.— Dealings by committee-members and others

- (1) This Rule applies to—
- (a) any member of the liquidation committee,
 - (b) any committee-member's representative,
 - (c) any person who is an associate of a member of the committee or a committee-member's representative, and
 - (d) any person who has been a member of the committee at any time in the last 12 months.
- (2) Subject as follows, a person to whom this Rule applies shall not enter into any transaction whereby he—
- (a) receives [as an expense of the liquidation]¹²³⁵ any payment for services given or goods supplied in connection with the administration, or
 - (b) obtains any profit from the administration, or
 - (c) acquires any asset forming part of the estate.
- (3) Such a transaction may be entered into by a person to whom this Rule applies—
- (a) with the prior [permission]¹²³⁶ of the court, or
 - (b) if he does so as a matter of urgency, or by way of performance of a contract in force before the date on which the company went into liquidation, and obtains the court's [permission]¹²³⁶ for the transaction, having applied for it without undue delay, or
 - (c) with the prior sanction of the liquidation committee, where it is satisfied (after full disclosure of the circumstances) that the person will be giving full value in the transaction.
- (4) Where in the committee a resolution is proposed that sanction be accorded for a transaction to be entered into which, without that sanction or the [permission]¹²³⁶ of the court, would be in contravention of this Rule, no member of the committee, and no representative of a member, shall vote if he is to participate directly or indirectly in the transaction.
- (5) The court may, on the application of any person interested—
- (a) set aside a transaction on the ground that it has been entered into in contravention of this Rule, and
 - (b) make with respect to it such other order as it thinks [just]¹²³⁶, including (subject to the following paragraph) an order requiring a person to whom this Rule applies to account for any profit obtained from the transaction and compensate the estate for any resultant loss.
- (6) In the case of a person to whom this Rule applies as an associate of a member of the committee or of a committee-member's representative, the court shall not make any order under paragraph (5), if satisfied that he entered into the relevant transaction without having any reason to suppose that in doing so he would contravene this Rule.
- (7) The costs of an application to the court for [permission]¹²³⁶ under this Rule are not payable [as an expense of the liquidation]¹²³⁷, unless the court so orders.

Commencement

Pt 4(12) rule 4.170(1)–(7): December 29, 1986

¹²³⁵ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(11) (April 6, 2008)

¹²³⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²³⁷ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

4.171.— [...] ¹²³⁸**[4.171A Composition of committee when creditors paid in full**

- (1) Where the creditors have been paid in full together with interest in accordance with section 189, the liquidator must—
 - (a) issue a certificate to that effect; and
 - (b) send to the registrar of companies a notification to that effect together with a copy of the certificate referred to in sub-paragraph (a).
- (2) On the issue of a certificate pursuant to paragraph (1), the creditor members of the liquidation committee cease to be members of the committee.
- (3) The committee continues in existence unless—
 - (a) it is abolished by a decision of a meeting of contributories; or
 - (b) the number of members is less than 3 and 28 days have elapsed since the issue of the liquidator's certificate.
- (4) At any time in the period referred to in paragraph (3)(b) where the committee consists of less than 3 contributory members it is suspended and cannot act.
- (5) The certificate referred to in paragraph (1)(a) must include the following information—
 - (a) the name of the liquidator; and
 - (b) a statement by the liquidator certifying that the creditors of the company have been paid in full together with interest in accordance with section 189;
 and must be authenticated and dated by the liquidator.

¹²³⁹**4.172.— Committee's functions vested in Secretary of State
(NO CVL APPLICATION)**

- (1) At any time when the functions of the liquidation committee are vested in the Secretary of State under section 141(4) or (5), requirements of the Act or the Rules about notices to be given, or reports to be made, to the committee by the liquidator do not apply, otherwise than as enabling the committee to require a report as to any matter.
- (2) Where the committee's functions are so vested under section 141(5), they may be exercised by the official receiver.

Commencement

Pt 4(12) rule 4.172(1)-(2): December 29, 1986

¹²³⁸ Rule 4.171A substituted for rule 4.171 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.237 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²³⁹ Rule 4.171A substituted for rule 4.171 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.237 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[4.172A. Formal defects]

The acts of the liquidation committee established for any winding up are valid notwithstanding any defect in the appointment, election or qualifications of any member of the committee or any committee-member's representative or in the formalities of its establishment.]¹²⁴⁰

CHAPTER 13

**THE LIQUIDATION COMMITTEE WHERE WINDING UP FOLLOWS IMMEDIATELY ON
ADMINISTRATION (NO CVL APPLICATION)**

4.173.— Preliminary

(1) The Rules in this Chapter apply where—

- (a) the winding-up order has been made [by the court upon an application under paragraph 79 of Schedule B1 to the Act]¹²⁴¹ , [...] ¹²⁴²
- (b) the court makes an order under section 140(1) of the Act appointing as liquidator the person who was previously the administrator [,]¹²⁴³
- [(c) a creditors' committee was established under paragraph 57 of Schedule B1 to the Act, and
- (d) as at the date of the making of the order under section 140(1) the committee has at least three, but not more than five, members (leaving out of account any member whose debt is fully secured).]¹²⁴³

(2) In this Chapter, “insolvent winding up”, “solvent winding up”, “creditor member” and “contributory member” mean the same as in Chapter 12.

Commencement

Pt 4(13) rule 4.173(1)-(2): December 29, 1986

4.174.— [...] ¹²⁴⁴**[4.174A Continuation of creditors' committee]**

Where a committee of the kind mentioned in Rule 4.173 is in existence in the circumstances mentioned in that Rule—

- (a) that committee is deemed to have been established under section 141;
- (b) no action may be taken under section 141(1) to (3) to establish any other committee;

¹²⁴⁰ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.75 (January 11, 1988)

¹²⁴¹ Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(4) para.25 (September 15, 2003)

¹²⁴² Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.238(2)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁴³ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.238(2)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁴⁴ Rule 4.174A substituted for rule 4.174 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.239 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (c) in the case of a solvent winding up, the liquidator must, on not less than 14 days' notice summon a meeting of contributories, in order to elect (if it so wishes) contributory members of the liquidation committee, up to 3 in number; and
- (d) pending the issue of the liquidator's certificate referred to in Rule 4.176 the committee is suspended and cannot act.

] ¹²⁴⁵

4.175.— [...] ¹²⁴⁶

4.176.— Liquidator's certificate

(1) The liquidator [must ascertain whether the members of the committee agree to continue to act as members of the committee; and if the minimum number of 3 members required by Rule 4.152 to form a committee have signified their agreement so to act, the liquidator must] ¹²⁴⁷ issue a certificate of the liquidation committee's continuance, specifying the person who are, or are to be, members of it.

(2) It shall be stated in the certificate whether or not the liquidator has summoned a meeting of contributories under [Rule 4.174A(c)] ¹²⁴⁸, and whether (if so) the meeting has elected contributories to be members of the committee.

(3) [...] ¹²⁴⁹

(4) No person may act, or continue to act, as a member of the committee unless and until he has agreed to do so [...] ¹²⁵⁰.

(5) As and when the others signify their agreement, the liquidator shall issue an amended certificate.

[(6) The liquidator must send the certificate in paragraph (1) or as the case may be the amended certificate in paragraph (5) to the registrar of companies.] ¹²⁵¹

¹²⁴⁵ Rule 4.174A substituted for rule 4.174 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.239 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁴⁶ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁴⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.240(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁴⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.240(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁴⁹ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.240(4) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁵⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.240(5) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁵¹ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.240(6) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(7) If subsequently there is any change in the committee's membership, the liquidator [must send an amended certificate to the registrar of companies]¹²⁵² .

Commencement

Pt 4(13) rule 4.176(1)-(7): December 29, 1986

4.177.— Obligations of liquidator to committee

(1) As soon as [reasonably practicable]¹²⁵³ after the issue of the liquidator's certificate under Rule 4.176, the liquidator shall report to the liquidation committee what actions he has taken since the date on which the company went into liquidation.

(2) A person who becomes a member of the committee after [the date of issue of the liquidator's certificate]¹²⁵⁴ is not entitled to require a report to him by the liquidator, otherwise than in a summary form, of any matters previously arising.

(3) Nothing in this Rule disentitles the committee, or any member of it, from having access to the records of the liquidation (whether relating to the period when he was administrator, or to any subsequent period), or from seeking an explanation of any matter within the committee's responsibility.

Commencement

Pt 4(13) rule 4.177(1)-(3): December 29, 1986

4.178. Application of Chapter 12

Except as provided above in this Chapter, [Rules 4.155 to 4.172A in Chapter 12]¹²⁵⁵ apply to the liquidation committee following the issue of the liquidator's certificate under Rule 4.176, as if it had been established under section 141.

Commencement

Pt 4(13) rule 4.178: December 29, 1986

¹²⁵² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.240(7) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁵³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.241(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁵⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.241(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁵⁵ Word substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.76 (January 11, 1988)

CHAPTER 14

COLLECTION AND DISTRIBUTION OF COMPANY'S ASSETS BY LIQUIDATOR

4.179.— General duties of liquidator (NO CVL APPLICATION)

- (1) The duties imposed on the court by the Act with regard to the collection of the company's assets and their application in discharge of its liabilities are discharged by the liquidator as an officer of the court subject to its control.
- (2) In the discharge of his duties the liquidator, for the purposes of acquiring and retaining possession of the company's property, has the same powers as a receiver appointed by the High Court, and the court may on his application enforce such acquisition or retention accordingly.

Commencement

Pt 4(14) rule 4.179(1)-(2): December 29, 1986

4.180.— Manner of distributing assets

- (1) Whenever the liquidator has sufficient funds in hand for the purpose he shall, subject to the retention of such sums as may be necessary for the expenses of the winding up, declare and distribute dividends among the creditors in respect of the debts which they have respectively proved.
- (2) The liquidator shall give notice of his intention to declare and distribute a dividend.
- (3) Where the liquidator has declared a dividend, he shall give notice of it to the creditors, stating how the dividend is proposed to be distributed. The notice shall contain such particulars with respect to the company, and to its assets and affairs, as will enable the creditors to comprehend the calculation of the amount of the dividend and the manner of its distribution.

Commencement

Pt 4(14) rule 4.180(1)-(3): December 29, 1986

[4.181. Debts of insolvent company to rank equally (NO CVL APPLICATION)

- (1) Debts other than preferential debts rank equally between themselves in the winding up and, after the preferential debts, shall be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

- (2) Paragraph (1) applies whether or not the company is unable to pay its debts.

¹²⁵⁶J

¹²⁵⁶ Existing rule 4.181 renumbered as rule 4.181(1) and rule 4.181(2) is added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.77 (January 11, 1988)

Commencement

Pt 4(14) rule 4.181: December 29, 1986

4.182.— Supplementary provisions as to dividend

- (1) In the calculation and distribution of a dividend the liquidator shall make provision—
- (a) for any debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs,
 - (b) for any debts which are the subject of claims which have not yet been determined, and
 - (c) for disputed proofs and claims.
- (2) A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—
- (a) when he has proved that debt he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive, and
 - (b) any dividend or dividends payable under sub-paragraph (a) shall be paid before that money is applied to the payment of any such further dividend.
- (3) No action lies against the liquidator for a dividend; but if he refuses to pay a dividend the court may, if it thinks [just]¹²⁵⁷, order him to pay it and also to pay, out of his own money—
- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838, from the time when it was withheld, and
 - (b) the costs of the proceedings in which the order to pay is made.

Commencement

Pt 4(14) rule 4.182(1)-(3)(b): December 29, 1986

[4.182A.— Distribution in members' voluntary winding up (NO CVL APPLICATION)]

- [(1) In a members' voluntary winding up the liquidator may give notice of the intention to make a distribution to creditors. Such notice—
- (a) shall be gazetted; and
 - (b) may be advertised in such other manner as the liquidator thinks fit.
- ¹²⁵⁸]
- [(2) In addition to the standard contents, the notice under paragraph (1) must—
- (a) state that the liquidator intends to make a distribution to creditors; and

¹²⁵⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁵⁸ Substituted by Insolvency (Amendment) Rules 2009/642 rule 29 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

(b) specify a date (“the last date for proving”) up to which proofs may be lodged at a specified place, which must be the same date for all creditors and not less than 21 days from that of the notice.

]¹²⁵⁹

(3) The liquidator is not obliged to deal with proofs lodged after the last date for proving; but he may do so, if he thinks fit.

(4) A creditor who has not proved his debt before the last date for proving or after that date increases the claim in his proof is not entitled to disturb, by reason that he has not participated in it, either at all or, as the case may be, to the extent that his increased claim would allow, that distribution or any other distribution made before his debt was proved or his claim increased; but when he has proved his debt or, as the case may be, increased his claim, he is entitled to be paid, out of any money for the time being available for the payment of any further distribution, any distribution or distributions which he has failed to receive.

(5) Where the distribution proposed to be made is to be the only or the final distribution in that winding up, the liquidator may, subject to paragraph (6), make that distribution without regard to the claim of any person in respect of a debt not already proved.

(6) Where the distribution proposed to be made is one specified in paragraph (5), the notice given under paragraph (1) shall state the effect of paragraph (5).

]¹²⁶⁰

4.183. Division of unsold assets

[(1) Without prejudice to provisions of the Act about disclaimer, the liquidator may, with the permission of the liquidation committee [(or if there is no such committee, a meeting of the company's creditors)]¹²⁶¹, divide in its existing form amongst the company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.]¹²⁶²

[(2) The liquidator must comply with paragraph (3) in respect of any account or report which the liquidator is required to prepare pursuant to any of the following—

- (a) section 104A (progress report to company and creditors at year's end);
- (b) section 106 (final meeting prior to dissolution — creditors' voluntary winding up);
- (c) section 146 (duty to summon final meeting — winding up by the court);
- (d) Rule 4.49B (reports to creditors and members — winding up by the court);
- (e) Rule 4.49D (final report to creditors);
- (f) Rule 4.108 (creditors' meeting to receive liquidator's resignation);
- (g) Rule 4.125 (final meeting — winding up by the court);

¹²⁵⁹ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.242(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁶⁰ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.78 (January 11, 1988)

¹²⁶¹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.243(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁶² Rule 4.183 renumbered as rule 4.183(1) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.243(2) (April 6, 2010: renumbering has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (h) Rule 4.126 (final meeting — creditors' voluntary liquidation).
- (3) The liquidator must—
- (a) in any account or summary of receipts and payments which is required to be included in the account or report, state the estimated value of the property distributed amongst the creditors of the company during the period to which the account or report relates, and
 - (b) as a note to the account or summary of receipts and payments, provide details of the basis of the valuation.

]¹²⁶³

Commencement

Pt 4(14) rule 4.183: December 29, 1986

4.184.— General powers of liquidator

(1) Any permission given by the liquidation committee [(or if there is no such committee, a meeting of the company's creditors)]¹²⁶⁴ or the court under [section 165(2) or]¹²⁶⁴ section 167(1)(a), or under the Rules, shall not be a general permission but shall relate to a particular proposed exercise of the liquidator's power in question; and a person dealing with the liquidator in good faith and for value is not concerned to enquire whether any such permission has been given.

(2) Where the liquidator has done anything without that permission, the court or the liquidation committee may, for the purpose of enabling him to meet his expenses out of the assets, ratify what he has done; but neither shall do so unless it is satisfied that the liquidator has acted in a case of urgency and has sought ratification without undue delay.

Commencement

Pt 4(14) rule 4.184(1)-(2): December 29, 1986

**4.185.— Enforced delivery up of company's property
(NO CVL APPLICATION)**

(1) The powers conferred on the court by section 234 (enforced delivery of company property) are exercisable by the liquidator or, where a provisional liquidator has been appointed, by him.

(2) Any person on whom a requirement under section 234(2) is imposed by the liquidator or provisional liquidator shall, without avoidable delay, comply with it.

Commencement

Pt 4(14) rule 4.185(1)-(2): December 29, 1986

¹²⁶³ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.243(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁶⁴ Words inserted by Insolvency (Amendment) Rules 2005/527 rule 31 (April 1, 2005)

4.186.— Final distribution

(1) When the liquidator has realised all the company's assets or so much of them as can, in his opinion, be realised without needlessly protracting the liquidation, he shall give notice, under Part 11 of the Rules, either—

- (a) of his intention to declare a final dividend, or
- (b) that no dividend, or further dividend, will be declared.

(2) The notice shall contain all such particulars as are required by Part 11 of the Rules and shall require claims against the assets to be established by a date specified in the notice.

(3) After that date, the liquidator shall—

- (a) defray any outstanding expenses of the winding up [as an expense of the liquidation]¹²⁶⁵, and
- (b) if he intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.

(4) The court may, on the application of any person, postpone the date specified in the notice.

Commencement

Pt 4(14) rule 4.186(1)-(4): December 29, 1986

CHAPTER 15**DISCLAIMER****4.187.— Liquidator's notice of disclaimer**

(1) Where the liquidator disclaims property under section 178, the notice of disclaimer shall contain such particulars of the property disclaimed as enable it to be easily identified.

[(2) The notice of disclaimer must be authenticated and dated by the liquidator.]¹²⁶⁶

[(3A) As soon as reasonably practicable after authenticating the notice of disclaimer, the liquidator must—

- (a) send a copy of the notice to the registrar of companies; and
- (b) in any case where the disclaimer is of registered land as defined in section 132(1) of the Land Registration Act 2002, send a copy of the notice to the Chief Land Registrar.

] ¹²⁶⁷

¹²⁶⁵ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

¹²⁶⁶ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.244(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁶⁷ Rule 4.187(3A) substituted for rule 4.187(3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.244(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(4) For the purposes of section 178, the date of the prescribed notice is that [on which the liquidator authenticated it]¹²⁶⁸.

Commencement

Pt 4(15) rule 4.187(1)-(4): December 29, 1986

4.188.— Communication of disclaimer to persons interested

[(1) Within 7 business days after the date of the notice of disclaimer, the liquidator shall send or give copies of the notice to the persons mentioned in paragraphs (2) to (4).]¹²⁶⁹

(2) Where the property disclaimed is of a leasehold nature, he shall send or give a copy to every person who (to his knowledge) claims under the company as underlessee or mortgagee.

(3) He shall in any case send or give a copy of the notice to every person who (to his knowledge)—
 (a) claims an interest in the disclaimed property, or
 (b) is under any liability in respect of the property, not being a liability discharged by the disclaimer.

(4) If the disclaimer is of an unprofitable contract, he shall send or give copies of the notice to all such persons as, to his knowledge, are parties to the contract or have interests under it.

(5) If subsequently it comes to the liquidator's knowledge, in the case of any person, that he has such an interest in the disclaimed property as would have entitled him to receive a copy of the notice of disclaimer in pursuance of paragraphs (2) to (4), the liquidator shall then [as soon as reasonably practicable]¹²⁷⁰ send or give to that person a copy of the notice.

But compliance with this paragraph is not required if—

- (a) the liquidator is satisfied that the person has already been made aware of the disclaimer and its date, or
- (b) the court, on the liquidator's application, orders that compliance is not required in that particular case.

Commencement

Pt 4(15) rule 4.188(1)-(5)(b): December 29, 1986

¹²⁶⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.244(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁶⁹ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.245(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁷⁰ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

4.189. Additional notices

The liquidator disclaiming property may, without prejudice to his obligations under sections 178 to 180 and Rules 4.187 and 4.188 , at any time [send or give copies of the]¹²⁷¹ notice of the disclaimer to any persons who in his opinion ought, in the public interest or otherwise, to be informed of [the disclaimer]¹²⁷² .

Commencement

Pt 4(15) rule 4.189: December 29, 1986

4.190. [...]¹²⁷³**[4.190A Records**

The liquidator must include in the liquidator's records of the insolvency a record of—

- (a) the persons to whom that liquidator has sent or given copies of the notice of disclaimer under the two preceding Rules, showing their names and addresses, and the nature of their respective interests;
- (b) the dates on which the copies of the notice of disclaimer were sent or given to those persons;
- (c) the date on which, as required by Rule 4.187(3)(a), a copy of the notice of disclaimer was sent to the registrar of companies; and
- (d) (where applicable) the date on which, as required by Rule 4.187(3)(b), a copy of the notice was sent to the Chief Land Registrar.

] ¹²⁷⁴

4.191. [...]¹²⁷⁵**[4.191A Application to interested party under s 178(5)**

- (1) The following applies where, in the case of any property, application is made to the liquidator by an interested party under section 178(5).
- (2) The application must be delivered to the liquidator—

¹²⁷¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.246(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁷² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.246(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁷³ Rules 4.190A and 4.191A substituted for rules 4.190 and 4.191 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.247 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁷⁴ Rules 4.190A and 4.191A substituted for rules 4.190 and 4.191 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.247 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁷⁵ Rules 4.190A and 4.191A substituted for rules 4.190 and 4.191 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.247 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (a) personally;
- (b) by electronic means in accordance with Part 12A; or
- (c) by any other means of delivery which enables proof of receipt of the application by the liquidator to be provided, if requested.

¹²⁷⁶

4.192.— Interest in property to be declared on request

(1) If, in the case of property which the liquidator has the right to disclaim, it appears to him that there is some person who claims, or may claim, to have an interest in the property, he may give notice to that person calling on him to declare within 14 days whether he claims any such interest and, if so, the nature and extent of it.

(2) Failing compliance with the notice, the liquidator is entitled to assume that the person concerned has no such interest in the property as will prevent or impede its disclaimer.

Commencement

Pt 4(15) rule 4.192(1)-(2): December 29, 1986

4.193. Disclaimer presumed valid and effective

Any disclaimer of property by the liquidator is presumed valid and effective, unless it is proved that he has been in breach of his duty with respect to the giving of notice of disclaimer, or otherwise under sections 178 to 180, or under this Chapter of the Rules.

Commencement

Pt 4(15) rule 4.193: December 29, 1986

4.194.— Application for exercise of court's powers under s. 181

(1) This Rule applies with respect to an application by any person under section 181 for an order of the court to vest or deliver disclaimed property.

(2) The application must be made within 3 months of the applicant becoming aware of the disclaimer, or of his receiving a copy of the liquidator's notice of disclaimer sent under Rule 4.188, whichever is the earlier.

(3) The applicant shall with his application file [a witness statement]¹²⁷⁷ —

- (a) stating whether he applies under paragraph (a) of section 181(2) (claim of interest in the property) or under paragraph (b) (liability not discharged);

¹²⁷⁶ Rules 4.190A and 4.191A substituted for rules 4.190 and 4.191 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.247 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁷⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.248(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (b) specifying the date on which he received a copy of the liquidator's notice of disclaimer, or otherwise became aware of the disclaimer; and
 - (c) specifying the grounds of his application and the order which he desires the court to make under section 181.
- (4) The court shall fix a venue for the hearing of the application; and the applicant shall, not later than [5 business]¹²⁷⁸ days before the date fixed, give to the liquidator notice of the venue, accompanied by copies of the application and the [witness statement required by]¹²⁷⁹ paragraph (3).
- (5) On the hearing of the application, the court may give directions as to other persons (if any) who should be sent or given notice of the application and the grounds on which it is made.
- (6) Sealed copies of any order made on the application shall be sent by the court to the applicant and the liquidator.
- (7) In a case where the property disclaimed is of a leasehold nature, and section 179 applies to suspend the effect of the disclaimer, there shall be included in the court's order a direction giving effect to the disclaimer.
- This paragraph does not apply if, at the time when the order is issued, other applications under section 181 are pending in respect of the same property.

Commencement

Pt 4(15) rule 4.194(1)-(7): December 29, 1986

CHAPTER 16

SETTLEMENT OF LIST OF CONTRIBUTORIES (NO CVL APPLICATION)

4.195. Preliminary

The duties of the court with regard to the settling of the list of contributories are, by virtue of the Rules, delegated to the liquidator.

Commencement

Pt 4(16) rule 4.195: December 29, 1986

4.196.— Duty of liquidator to settle list

- (1) Subject as follows, the liquidator shall, as soon as may be after his appointment, exercise the court's power to settle a list of the company's contributories for the purposes of section 148 and, with the court's approval, rectify the register of members.

¹²⁷⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.248(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁷⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.248(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) The liquidator's duties under this Rule are performed by him as an officer of the court subject to the court's control.

Commencement

Pt 4(16) rule 4.196(1)-(2): December 29, 1986

4.197.— Form of list

(1) The list shall identify—

- (a) the several classes of the company's shares (if more than one), and
- (b) the several classes of contributories, distinguishing between those who are contributories in their own right and those who are so as representatives of, or liable for the debts of, others.

(2) In the case of each contributory there shall in the list be stated—

- (a) his address,
- (b) the number and class of shares, or the extent of any other interest to be attributed to him, and
- (c) if the shares are not fully paid up, the amounts which have been called up and paid in respect of them (and the equivalent, if any, where his interest is other than shares).

Commencement

Pt 4(16) rule 4.197(1)-(2)(c): December 29, 1986

4.198.— Procedure for settling list

(1) Having settled the list, the liquidator shall [as soon as reasonably practicable]¹²⁸⁰ give notice, to every person included in the list, that he has done so.

(2) The notice given to each person shall state—

- (a) in what character, and for what number of shares or what interest, he is included in the list,
- (b) what amounts have been called up and paid up in respect of the shares or interest, and
- (c) that in relation to any shares or interest not fully paid up, his inclusion in the list may result in the unpaid capital being called.

(3) The notice shall inform any person to whom it is given that, if he objects to any entry in, or omission from, the list, he should so inform the liquidator in writing within 21 days from the date of the notice.

(4) On receipt of any such objection, the liquidator shall within 14 days give notice to the objector either—

- (a) that he has amended the list (specifying the amendment), or
- (b) that he considers the objection to be not well-founded and declines to amend the list.

The notice shall in either case inform the objector of the effect of Rule 4.199.

¹²⁸⁰ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

Commencement

Pt 4(16) rule 4.198(1)-(4)(b): December 29, 1986

4.199.— Application to court for variation of the list

(1) If a person objects to any entry in, or exclusion from, the list of contributories as settled by the liquidator and, notwithstanding notice by the liquidator declining to amend the list, maintains his objection, he may apply to the court for an order removing the entry to which he objects or (as the case may be) otherwise amending the list.

(2) The application must be made within 21 days of the service on the applicant of the liquidator's notice under Rule 4.198(4).

Commencement

Pt 4(16) rule 4.199(1)-(2): December 29, 1986

4.200. Variation of, or addition to, the list

The liquidator may from time to time vary or add to the list of contributories as previously settled by him, but subject in all respects to the preceding Rules in this Chapter.

Commencement

Pt 4(16) rule 4.200: December 29, 1986

4.201. Costs not to fall on official receiver

The official receiver is not personally liable for any costs incurred by a person in respect of an application to set aside or vary his act or decision in settling the list of contributories, or varying or adding to the list; and the liquidator (if other than the official receiver) is not so liable unless the court makes an order to that effect.

Commencement

Pt 4(16) rule 4.201: December 29, 1986

CHAPTER 17

CALLS (NO CVL APPLICATION)

4.202. Calls by liquidator

Subject as follows, the powers conferred by the Act with respect to the making of calls on contributories are exercisable by the liquidator as an officer of the court subject to the court's control.

Commencement

Pt 4(17) rule 4.202: December 29, 1986

4.203.— Control by liquidation committee

- (1) Where the liquidator proposes to make a call, and there is a liquidation committee, he may summon a meeting of the committee for the purpose of obtaining its sanction.
- (2) At least [5 business]¹²⁸¹ days' notice of the meeting shall be given by the liquidator to each member of the committee.
- (3) The notice shall contain a statement of the proposed amount of the call, and the purpose for which it is intended to be made.

Commencement

Pt 4(17) rule 4.203(1)-(3): December 29, 1986

4.204.— Application to court for [permission]¹²⁸² to make a call

- (1) For the purpose of obtaining the [permission]¹²⁸² of the court for the making of a call on any contributories of the company, the liquidator shall apply [without notice to any other party]¹²⁸³, supporting his application by [witness statement]¹²⁸⁴.
- (2) There shall in the application be stated the amount of the proposed call, and the contributories on whom it is to be made.
- (3) The court may direct that notice of the order be given to the contributories concerned, or to other contributories, or may direct that the notice be publicly advertised.

Commencement

Pt 4(17) rule 4.204(1)-(3): December 29, 1986

4.205.— Making and enforcement of the call

- (1) Notice of the call shall be given to each of the contributories concerned, and shall specify—

¹²⁸¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.249(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁸² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁸³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.250(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁸⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.250(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (a) the amount or balance due from him in respect of it, and
 - (b) whether the call is made with the sanction of the court or the liquidation committee.
- (2) Payment of the amount due from any contributory may be enforced by order of the court.

Commencement

Pt 4(17) rule 4.205(1)-(2): December 29, 1986

CHAPTER 18

SPECIAL MANAGER

4.206.— Appointment and remuneration

- (1) An application made by the liquidator under section 177 for the appointment of a person to be special manager shall be supported by a report setting out the reasons for the application. The report shall include the applicant's estimate of the value of the [business or property]¹²⁸⁵ in respect of which the special manager is to be appointed.
- (2) This Chapter applies also with respect to an application by the provisional liquidator, where one has been appointed, and references to the liquidator are to be read accordingly as including the provisional liquidator. (NO CVL APPLICATION)
- (3) The court's order appointing the special manager shall specify the duration of his appointment, which may be for a period of time, or until the occurrence of a specified event. Alternatively, the order may specify that the duration of the appointment is to be subject to a further order of the court.
- (4) The appointment of a special manager may be renewed by order of the court.
- (5) The special manager's remuneration shall be fixed from time to time by the court.
- (6) The acts of the special manager are valid notwithstanding any defect in his appointment or qualifications.

Commencement

Pt 4(18) rule 4.206(1)-(6): December 29, 1986

4.207.— Security

- (1) The appointment of the special manager does not take effect until the person appointed has given (or, being allowed by the court to do so, undertaken to give) security to the person who applies for him to be appointed.

¹²⁸⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.251(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) It is not necessary that security shall be given for each separate company liquidation; but it may be given either specially for a particular liquidation, or generally for any liquidation in relation to which the special manager may be employed as such.

(3) The amount of the security shall be not less than the value of the [business or property]¹²⁸⁶ in respect of which he is appointed, as estimated by the applicant in his report under Rule 4.206.

(4) When the special manager has given security to the person applying for his appointment, that person shall file in court a certificate as to the adequacy of the security.

(5) The cost of providing the security shall be paid in the first instance by the special manager; but—

(a) where a winding-up order is not made, he is entitled to be reimbursed out of the property of the company, and the court may make an order on the company accordingly, and

(b) where a winding-up order is made, he is entitled to be reimbursed [as an expense of the liquidation]¹²⁸⁷ in the prescribed order of priority.

(NO CVL APPLICATION)

(6-CVL) The cost of providing the security shall be paid in the first instance by the special manager; but he is entitled to be reimbursed [as an expense of the liquidation]¹²⁸⁷, in the prescribed order of priority.

Commencement

Pt 4(18) rule 4.207(1)-(6CVL): December 29, 1986

4.208.— Failure to give or keep up security

(1) If the special manager fails to give the required security within the time stated for that purpose by the order appointing him, or any extension of that time that may be allowed, the liquidator shall report the failure to the court, which may thereupon discharge the order appointing the special manager.

(2) If the special manager fails to keep up his security, the liquidator shall report his failure to the court, which may thereupon remove the special manager, and make such order as it thinks [just]¹²⁸⁸ as to costs.

(3) If an order is made under this Rule removing the special manager, or discharging the order appointing him, the court shall give directions as to whether any, and if so what, steps should be taken for the appointment of another special manager in his place.

Commencement

Pt 4(18) rule 4.208(1)-(3): December 29, 1986

¹²⁸⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.251(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁸⁷ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

¹²⁸⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

4.209.— Accounting

- (1) The special manager shall produce accounts, containing details of his receipts and payments, for the approval of the liquidator.
- (2) The accounts shall be in respect of 3-month periods for the duration of the special manager's appointment (or for a lesser period, if his appointment terminates less than 3 months from its date, or from the date to which the last accounts were made up).
- (3) When the accounts have been approved, the special manager's receipts and payments shall be added to those of the liquidator.

Commencement

Pt 4(18) rule 4.209(1)-(3): December 29, 1986

4.210.— Termination of appointment

- (1) The special manager's appointment terminates if the winding-up petition is dismissed or if, a provisional liquidator having been appointed, the latter is discharged without a winding-up order having been made. (NO CVL APPLICATION)
- (2) If the liquidator is of opinion that the employment of the special manager is no longer necessary or profitable for the company, he shall apply to the court for directions, and the court may order the special manager's appointment to be terminated.
- (3) The liquidator shall make the same application if a resolution of the creditors is passed, requesting that the appointment be terminated.

Commencement

Pt 4(18) rule 4.210(1)-(3): December 29, 1986

CHAPTER 19**PUBLIC EXAMINATION OF COMPANY OFFICERS AND OTHERS****4.211.— Order for public examination**

- (1) If the official receiver applies to the court under section 133 for the public examination of any person, a copy of the court's order shall, [as soon as reasonably practicable]¹²⁸⁹ after its making, be served on that person.
- (2) Where the application relates to a person falling within section 133(1)(c) (promoters, past managers, etc.), it shall be accompanied by a report by the official receiver indicating—
 - (a) the grounds on which the person is supposed to fall within that paragraph, and

¹²⁸⁹ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

(b) whether, in the official receiver's opinion, it is likely that service of the order on the person can be effected [...] ¹²⁹⁰ at a known address [in accordance with Chapter 3 of Part 12A, (service of court documents), and, if so, by what means] ¹²⁹¹ .

(3) If in his report the official receiver gives it as his opinion that, in a case to which paragraph (2) applies, there is no reasonable certainty that service [at a known address in accordance with Chapter 3 of Part 12A] ¹²⁹² will be effective, the court may direct that the order be served by some means other than, or in [addition to, service in such manner] ¹²⁹³ .

(4) In a case to which paragraphs (2) and (3) apply, the court shall rescind the order if satisfied by the person to whom it is directed that he does not fall within section 133(1)(c).

Commencement

Pt 4(19) rule 4.211(1)-(4): December 29, 1986

4.212.— Notice of hearing

(1) The court's order shall appoint a venue for the examination of the person to whom it is directed (“the examinee”), and direct his attendance thereat.

(2) The official receiver shall give at least 14 days' notice of the hearing—

- (a) if a liquidator has been nominated or appointed, to him;
- (b) if a special manager has been appointed, to him; and
- (c) subject to any contrary direction of the court, to every creditor and contributory of the company who is known to the official receiver [...] ¹²⁹⁴ .

[(3) Subject to paragraph (4), where the official receiver thinks fit, notice of the order—

- (a) shall be gazetted; and
- (b) may be advertised in such other manner as the official receiver thinks fit,

not less than 14 days before the date fixed for the hearing.

] ¹²⁹⁵

[(3A) In addition to the standard contents, the notice under paragraph (3) must state—

- (a) the purpose of the hearing; and

¹²⁹⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.252(2)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁹¹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.252(2)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁹² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.252(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁹³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.252(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁹⁴ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.253(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁹⁵ Substituted by Insolvency (Amendment) Rules 2009/642 rule 30(a) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

(b) the venue for the hearing.

¹²⁹⁶

[(4) [Where the court's order relates to a person falling within section 133(1)(c), unless]¹²⁹⁷ the court otherwise directs, there shall be no publication under paragraph (3) before at least [5 business]¹²⁹⁸ days have elapsed since the examinee was served with the order.]¹²⁹⁹

Commencement

Pt 4(19) rule 4.212(1)-(3): December 29, 1986

4.213.— Order on request by creditors or contributories

(1) A request to the official receiver by creditors or contributories under section 133(2) shall be made in writing and be accompanied by—

(a) a list of the creditors concurring with the request and the amounts of their respective claims in the liquidation or (as the case may be) of the contributories so concurring, with their respective values, and

(b) from each creditor or contributory concurring, written confirmation of his concurrence.

This paragraph does not apply if the requisitioning creditor's debt or, as the case may be, requisitioning contributory's shareholding is alone sufficient, without the concurrence of others.

(2) The request must specify the name of the proposed examinee, the relationship which he has, or has had, to the company and [a statement of]¹³⁰⁰ the reasons why his examination is requested.

(3) Before an application to the court is made on the request, the requisitionists shall deposit with the official receiver such sum as the latter may determine to be appropriate by way of security for the expenses of the hearing of a public examination, if ordered.

(4) Subject as follows, the official receiver shall, within 28 days of receiving the request, make the application to the court required by section 133(2).

(5) If the official receiver is of opinion that the request is an unreasonable one in the circumstances, he may apply to the court for an order relieving him from the obligation to make the application otherwise required by that subsection.

¹²⁹⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.253(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁹⁷ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.253(4)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁹⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.253(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹²⁹⁹ Added by Insolvency (Amendment) Rules 2009/642 rule 30(b) (April 6, 2009: insertion has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹³⁰⁰ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.254(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(6) If the court so orders, and the application for the order was made [without notice to any other party]¹³⁰¹, notice of the order shall be given [as soon as reasonably practicable]¹³⁰² by the official receiver to the requisitionists. If the application for an order is dismissed, the official receiver's application under section 133(2) shall be made [as soon as reasonably practicable]¹³⁰² on conclusion of the hearing of the application first mentioned.

Commencement

Pt 4(19) rule 4.213(1)-(6): December 29, 1986

4.214.— [Examinee]¹³⁰³ unfit for examination

(1) Where the examinee [is a person who lacks capacity within the meaning of the Mental Capacity Act 2005 (c.9) or]¹³⁰⁴ is suffering from any [...] ¹³⁰⁵ physical affliction or disability rendering him unfit to undergo or attend for public examination, the court may, on [an application being made to it under this Rule]¹³⁰⁶, either stay the order for his public examination or direct that it shall be conducted in such manner and at such place as it thinks [just]¹³⁰⁷.

(2) Application under this Rule shall be made—

- (a) by a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the examinee, or
- (b) by a relative or friend of the examinee whom the court considers to be a proper person to make the application, or
- (c) by the official receiver.

(3) Where the application is made by a person other than the official receiver, then—

¹³⁰¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.254(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³⁰² Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹³⁰³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.255(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³⁰⁴ Words inserted by Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007/1898 Sch.1 para.12(2)(a)(ii) (October 1, 2007)

¹³⁰⁵ Words repealed by Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007/1898 Sch.1 para.12(2)(a)(i) (October 1, 2007)

¹³⁰⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.255(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³⁰⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (a) it shall, unless the examinee is a [person who lacks capacity within the meaning of the Mental Capacity Act 2005]¹³⁰⁸, be supported by the [witness statement]¹³⁰⁹ of a registered medical practitioner as to the examinee's mental and physical condition;
- (b) at least 7 days' notice of the application shall be given to the official receiver and the liquidator (if other than the official receiver); and
- (c) before any order is made on the application, the applicant shall deposit with the official receiver such sum as the latter certifies to be necessary for the additional expenses of any examination that may be ordered on the application.

An order made on the application may provide that the expenses of the examination are to be payable, as to a specified proportion, out of the deposit under sub-paragraph (c), instead of [as an expense of the liquidation]¹³¹⁰.

(4) Where the application is made by the official receiver it may be made [without notice to any other party]¹³¹¹, and may be supported by evidence in the form of a report by the official receiver to the court.

Commencement

Pt 4(19) rule 4.214(1)-(4): December 29, 1986

4.215.— Procedure at hearing

- (1) The examinee shall at the hearing be examined on oath; and he shall answer all such questions as the court may put, or allow to be put, to him.
- (2) Any of the persons allowed by section 133(4) to question the examinee may, with the approval of the court (made known either at the hearing or in advance of it), appear by solicitor or counsel; or he may in writing authorise another person to question the examinee on his behalf.
- (3) The examinee may at his own expense employ a solicitor with or without counsel, 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 by him, and may make representations on his behalf.
- (4) There shall be made in writing such record of the examination as the court thinks proper. The record shall be read over either to or by the examinee, [authenticated]¹³¹² by him, and verified by [a statement of truth]¹³¹³ at a venue fixed by the court.

¹³⁰⁸ Words substituted by Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007/1898 Sch.1 para.12(2)(b) (October 1, 2007)

¹³⁰⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.255(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³¹⁰ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

¹³¹¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.255(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³¹² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³¹³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.256(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(5) The written record may, in any proceedings (whether under the Act or otherwise) be used as evidence against the examinee of any statement made by him in the course of his public examination.

(6) If criminal proceedings have been instituted against the examinee, and the court is of opinion that the continuance of the hearing would be calculated to prejudice a fair trial of those proceedings, the hearing may be adjourned.

Commencement

Pt 4(19) rule 4.215(1)-(6): December 29, 1986

4.216.— Adjournment

(1) The public examination may be adjourned by the court from time to time, either to a fixed date or generally.

(2) Where the examination has been adjourned generally, the court may at any time on the application of the official receiver or of the examinee—

- (a) fix a venue for the resumption of the examination, and
- (b) give directions as to the manner in which, and the time within which, notice of the resumed public examination is to be given to persons entitled to take part in it.

(3) Where application under paragraph (2) is made by the examinee, the court may grant it on terms that the expenses of giving the notices required by that paragraph shall be paid by him and that, before a venue for the resumed public examination is fixed, he shall deposit with the official receiver such sum as the latter considers necessary to cover those expenses.

Commencement

Pt 4(19) rule 4.216(1)-(3): December 29, 1986

4.217.— Expenses of examination

(1) Where a public examination of the examinee has been ordered by the court on a creditors' or contributories' requisition under Rule 4.213, the court may order that the expenses of the examination are to be paid, as to be specified proportion, out of the deposit under Rule 4.213(3), instead of [as an expense of the liquidation]¹³¹⁴.

(2) In no case do the costs and expenses of a public examination fall on the official receiver personally.

Commencement

Pt 4(19) rule 4.217(1)-(2): December 29, 1986

¹³¹⁴ Words substituted by Insolvency (Amendment) Rules 2008/737 rule 7(1) (April 6, 2008)

CHAPTER 20

ORDER OF PAYMENT OF COSTS, ETC., OUT OF ASSETS

4.218.— General rule as to priority

(1) [All fees, costs, charges and other expenses incurred in the course of the liquidation are to be regarded as expenses of the liquidation.]¹³¹⁵

(a)-(r) [...] ¹³¹⁵

(2)-(3) [...] ¹³¹⁶

[(2) The expenses of the liquidation are payable out of—

(a) assets of the company available for the payment of general creditors, which shall be taken to include proceeds—

(i) of any legal action which the liquidator has power to bring in his own name or in the name of the company, or

(ii) arising from any award made under any arbitration or other dispute resolution procedure which the liquidator has power to bring in his own name or in the name of the company,

which shall, for the purposes of this subparagraph, also include—

(iii) any payments made under any compromise or other agreement intended to avoid legal action or recourse to arbitration or to any other dispute resolution procedure, and

(iv) payments made as a result of a settlement of any such action, arrangement or procedure in lieu of or prior to any judgment being given or award being made;

(b) subject as provided in Rules 4.218A to 4.218E, property comprised in or subject to a floating charge created by the company.

(3) Subject as provided in Rules 4.218A to 4.218E, the expenses are payable in the following order of priority—

(a) expenses which—

(i) are properly chargeable or incurred by the provisional liquidator in carrying out the functions conferred on him by the court;

(ii) are properly chargeable or incurred by the official receiver or the liquidator in preserving, realising or getting in any of the assets of the company or otherwise in the preparation or conduct of any legal proceedings, arbitration or other dispute resolution procedures, which he has power to bring in his own name or bring or defend in the name of the company or in the preparation or conduct of any negotiations intended to lead or leading to a settlement or compromise of any legal action or dispute to which the proceedings or procedures relate;

(iii) relate to the employment of a shorthand writer, if appointed by an order of the court made at the instance of the official receiver in connection with an examination; or

¹³¹⁵ Rule 4.218(2)-(3) and words substituted for words by Insolvency (Amendment) Rules 2008/737 rule 4 (April 6, 2008)

¹³¹⁶ Revoked by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(2) para.23(d) (January 1, 2003: revocation has effect subject to the conditions specified in SI 2002/2712 rule 4(2))

- (iv) are incurred in holding an examination under Rule 4.214 (examinee unfit) where the application for it was made by the official receiver;
- (b) any other expenses incurred or disbursements made by the official receiver or under his authority, including those incurred or made in carrying on the business of the company;
- (c) the fees payable under any order made under section 414 or section 415A, including those payable to the official receiver (other than the fee referred to in sub-paragraph (d)(i) below), and any remuneration payable to him under general regulations;
- (d)
 - (i) the fee payable under any order made under section 414 for the performance by the official receiver of his general duties as official receiver;
 - (ii) any repayable deposit lodged under any such order as security for the fee mentioned in sub-paragraph (i);
- (e) the cost of any security provided by a provisional liquidator, liquidator or special manager in accordance with the Act or the Rules;
- (f) the remuneration of the provisional liquidator (if any);
- (g) any deposit lodged on an application for the appointment of a provisional liquidator;
- (h) the costs of the petitioner, and of any person appearing on the petition whose costs are allowed by the court;
- (j) the remuneration of the special manager (if any);
- (k) any amount payable to a person employed or authorised, under Chapter 6 of this Part of the Rules, to assist in the preparation of a statement of affairs or of accounts;
- (l) any allowance made, by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs, or for an extension of time for submitting such a statement;
- (la) the costs of employing a shorthand writer in any case other than one appointed by an order of the court at the instance of the official receiver in connection with an examination;
- (m) any necessary disbursements by the liquidator in the course of his administration (including any expenses incurred by members of the liquidation committee or their representatives and allowed by the liquidator under Rule 4.169, but not including any payment of corporation tax in circumstances referred to in sub-paragraph (p) below);
- (n) the remuneration or emoluments of any person who has been employed by the liquidator to perform any services for the company, as required or authorised by or under the Act or the Rules;
- (o) the remuneration of the liquidator, up to any amount not exceeding that which is payable under Schedule 6;
- (p) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company (without regard to whether the realisation is effected by the liquidator, a secured creditor, or a receiver or manager appointed to deal with a security);
- (q) the balance, after payment of any sums due under sub-paragraph (o) above, of any remuneration due to the liquidator;
- (r) any other expenses properly chargeable by the liquidator in carrying out his functions in the liquidation

1¹³¹⁵

Commencement

Pt 4(20) rule 4.218(1)-(3): December 29, 1986

[4.218A.— Litigation expenses and property subject to a floating charge — general provisions

(1) In this Rule and Rules 4.218B to 4.218E—

- (a) “approval” and “authorisation” respectively mean:
 - (i) where yet to be incurred, the approval, and
 - (ii) where already incurred, the authorisation,
 of expenses specified in section 176ZA(3);
- (b) “the creditor” means—
 - (i) a preferential creditor of the company, or
 - (ii) a holder of a debenture secured by, or a holder of, a floating charge created by the company;
- (c) “legal proceedings” means—
 - (i) proceedings under sections 212, 213, 214, 238, 239, 244 and 423 and any arbitration or other dispute resolution proceedings invoked for purposes corresponding to those to which the sections relate and any other proceedings, including arbitration or other dispute resolution procedures, which a liquidator has power to bring in his own name for the purpose of preserving, realising, or getting in any of the assets of the company;
 - (ii) legal actions and proceedings, arbitration or any other dispute resolution procedures which a liquidator has power to bring or defend in the name of the company, and
 - (iii) negotiations intended to lead or leading to a settlement or compromise of any action, proceeding or procedure to which subparagraphs (i) or (ii) relate;
- (d) “litigation expenses” means expenses of a liquidation which—
 - (i) are properly chargeable or incurred in the preparation or conduct of any legal proceedings, and
 - (ii) as expenses in the liquidation, exceed, or in the opinion of the liquidator are likely to exceed (and only in so far as they exceed or are likely to exceed), in the aggregate £5000.

(2) Litigation expenses shall not have the priority provided by section 176ZA over any claims to property comprised in or subject to a floating charge created by the company and shall not be paid out of any such property unless and until approved or authorised in accordance with Rules 4.218B to 4.218E.

¹³¹⁷

[4.218B.— Litigation expenses and property subject to a floating charge — requirement for approval or authorisation

(1) Subject to Rules 4.218C to 4.218E, paragraphs (2) and (3) or (4) apply where, in the course of winding up a company, the liquidator—

- (a) ascertains that property is comprised in or subject to a floating charge;
- (b) has himself instituted or proposes to institute or continue legal proceedings or is in the process of defending or proposes to defend any legal proceeding brought or likely to be brought against the company; and
- (c) prior to or at any stage in those proceedings, is of the opinion that—

¹³¹⁷ Added by Insolvency (Amendment) Rules 2008/737 rule 5 (April 6, 2008)

- (i) the assets of the company available for payment of general creditors are or will be insufficient to pay litigation expenses; and
 - (ii) in order to pay litigation expenses he will have to have recourse to property comprised in or subject to a floating charge created by the company.
- (2) As soon as reasonably practicable after the date on which he forms the opinion referred to in paragraph (1), the liquidator shall identify the creditor who, in his opinion at that time—
 - (a) has a claim to property comprised in or subject to a floating charge created by the company, and,
 - (b) taking into account the value of that claim and any subsisting property then comprised in or secured by such a charge, appears to the liquidator to be the creditor most immediately likely of any persons having such claims to receive some payment in respect of his claim but whose claim would not be paid in full (“the specified creditor”).
- (3) The liquidator shall request from the specified creditor the approval or authorisation of such amount for litigation expenses as the liquidator thinks fit.
- (4) Where, in the liquidator's opinion, two or more creditors who are holders of debentures secured by, or holders of, floating charges created by the company, meet the condition in paragraph (2), the liquidator is to seek from each of them (“the specified creditors”) approval or authorisation of such amount of litigation expenses as the liquidator thinks fit, apportioned between them (“the apportioned amount”) according to the value of the property to the extent covered by their charges.
- (5) For so long as the conditions specified in paragraph (1) subsist, the liquidator may, in the course of a winding up, make such further requests to the specified creditor or creditors for approval or authorisation of such further amount for litigation expenses as he thinks fit to be paid out of property comprised in or subject to a floating charge created by the company, taking into account any amount for litigation expenses previously approved or authorised and the value of the property comprised in or subject to the floating charge.

1¹³¹⁸

[4.218C.— Litigation expenses and property subject to a floating charge — request for approval or authorisation

- (1) All requests made by the liquidator for approval or authorisation shall be in writing whether in Form 4.74 or otherwise, and shall include the following—
 - (a) a statement describing the nature of the legal proceedings, including, where relevant, the statutory provision under which proceedings are or are to be brought and the grounds upon which the liquidator relies;
 - (b) where the power to bring those proceedings is subject to sanction, a statement that the liquidator has sought and been given the relevant permissions or an undertaking that the liquidator will seek the relevant permissions upon authorisation or approval being granted;
 - (c) a statement specifying the amount or apportioned amount of litigation expenses for which approval or authorisation is sought (“the specified amount”);
 - (d) notice that approval or authorisation or other reply to the request must be made in writing (whether by way of Form 4.74 or otherwise) within 28 days from the date of its being received (“the specified time limit”); and

¹³¹⁸ Added by Insolvency (Amendment) Rules 2008/737 rule 5 (April 6, 2008)

- (e) a statement explaining the consequences of a failure to reply within the specified time limit.
- (2) Where anything in paragraph (1) requires the inclusion of any information, the disclosure of which could be seriously prejudicial to the winding up of the company, the liquidator may—
 - (a) exclude such information from any of the above, provided that it is accompanied by a statement to that effect; or
 - (b) include it on terms—
 - (i) that bind the creditor to keep the information confidential, and
 - (ii) that include an undertaking on the part of the liquidator to apply to the court for an order that so much of the information as may be kept in the files of the court, not be open to public inspection.
- (3) The creditor may within the specified time limit apply to the liquidator in writing for such further particulars as is reasonable and in such a case, the time limit specified in paragraph (1)(d) shall apply from the date of the creditor's receipt of the liquidator's response to any such request.
- (4) Where the liquidator requires the approval or authorisation of two or more creditors, he shall send a request to each creditor in writing (whether by way of Form 4.74 or otherwise), containing the matters listed in paragraph (1) and also giving—
 - (a) the number of creditors concerned,
 - (b) the total value of their claims, or if not known, as it is estimated to be by the liquidator immediately prior to sending any such request, and
 - (c) to each preferential creditor, notice that approval or authorisation of the specified amount shall be taken to be given where a majority in value of those preferential creditors who respond within the specified time limit are in favour of it, or
 - (d) where Rule 4.218B(4) applies, notice to the specified creditors that the amount of litigation expenses will be apportioned between them in accordance with that rule and notice of the value of the portion allocated to, and the identity of, the specified creditors affected by that apportionment.

1¹³¹⁹

[4.218D.— Litigation expenses and property subject to a floating charge — grant of approval or authorisation

- (1) Where the liquidator fails to include in his request any one of the matters, statements or notices required to be specified by paragraph (1) or paragraphs (1) and (4), of Rule 4.218C, as the case may be, the request for approval or authorisation shall be treated as not having been made.
- (2) Subject to paragraphs (3), (4) and (5), approval or authorisation shall be taken to have been given where the specified amount has been requested by the liquidator, and—
 - (a) that amount is approved or authorised within the specified time limit; or
 - (b) a different amount is approved or authorised within the specified time limit and the liquidator considers it sufficient.
- (3) Where the liquidator requires the approval or authorisation of two or more preferential creditors, approval or authorisation shall be taken to be given where a majority in value of those who respond within the specified time limit approve or authorise—

¹³¹⁹ Added by Insolvency (Amendment) Rules 2008/737 rule 5 (April 6, 2008)

- (a) the specified amount, or
- (b) a different amount which the liquidator considers sufficient.

(4) Where a majority in value of two or more preferential creditors propose an amount other than that specified by the liquidator, they shall be taken to have approved or authorised an amount equal to the lowest of the amounts so proposed.

(5) In any case in which there is no response in writing within the specified time limit to the liquidator's request—

- (a) at all, or
- (b) at any time following the liquidator's provision of further particulars under Rule 4.218C(3),

the liquidator's request shall be taken to have been approved or authorised from the date of the expiry of that time limit.

¹³²⁰

[4.218E.— Litigation expenses and property subject to a floating charge — application to court by the liquidator

(1) In the circumstances specified below the court may, upon the application of the liquidator, approve or authorise such amount of litigation expenses as it thinks [just]¹³²¹.

(2) Save as provided by paragraph (3), application to the court by a liquidator for an order approving or authorising an amount for litigation expenses may only be made where—

- (a) the specified creditor (or, if more than one, any one of them) is or is intended to be a defendant in the legal proceedings in respect of which the litigation expenses have been or are to be incurred; or
- (b) the specified creditor has been requested to approve or authorise the amount specified under Rule 4.218C(1)(c) and has, in any case—
 - (i) declined to approve or authorise, as the case may be, the specified amount; or
 - (ii) has approved or authorised an amount which is less than the specified amount and which lesser amount the liquidator considers insufficient, or
 - (iii) made such application for further particulars or other response to the liquidator's request as is, in the liquidator's opinion, unreasonable.

(3) Where the liquidator is of the view that circumstances are such that he requires urgent approval or authorisation of litigation expenses, he may apply to the court for approval or authorisation either—

- (a) without seeking approval or authorisation from the specified creditor; or
- (b) if sought, prior to the expiry of the specified time limit.

(4) The court may grant such application for approval or authorisation—

- (a) provided that the liquidator satisfies it of the urgency of the case, and
- (b) subject to such terms and conditions as it thinks [just]¹³²¹.

(5) The liquidator shall, at the same time as making any application to the court under this rule, send copies of it to the specified creditor or creditors, unless the court orders otherwise.

¹³²⁰ Added by Insolvency (Amendment) Rules 2008/737 rule 5 (April 6, 2008)

¹³²¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(6) The specified creditor (including any one or all of them where there are two or more such creditors) is entitled to be heard on any such application unless the court orders otherwise.

(7) The court may grant approval or authorisation subject to such terms and conditions as it may think [just]¹³²¹, including terms and conditions relating to the amount or nature of the litigation expenses and as to any obligation to make further applications to the court under this Rule.

(8) The costs of the liquidator's application under this Rule, including the costs of any specified creditor appearing or represented on it, shall be an expense of the liquidation unless the court orders otherwise.

] ¹³²²

4.219. Winding up commencing as voluntary

In a winding up by the court which follows immediately on a voluntary winding up (whether members' voluntary or creditors' voluntary), such remuneration of the voluntary liquidator and costs and expenses of the voluntary liquidation as the court may allow are to rank in priority with the expenses specified in [Rule 4.218(3)(a)]¹³²³.

Commencement

Pt 4(20) rule 4.219: December 29, 1986

4.220.— Saving for powers of the court

(1) In a winding up by the court, the priorities laid down by Rules 4.218 and 4.219 are subject to the power of the court to make orders under section 156, where the assets are insufficient to satisfy the liabilities.

(2) Nothing in those Rules applies to or affects the power of any court, in proceedings by or against the company, to order costs to be paid by the company, or the liquidator; nor do they affect the rights of any person to whom such costs are ordered to be paid.

Commencement

Pt 4(20) rule 4.220(1)-(2): December 29, 1986

¹³²² Added by Insolvency (Amendment) Rules 2008/737 rule 5 (April 6, 2008)

¹³²³ Word substituted by Insolvency (Amendment) Rules 2008/737 rule 7(14) (April 6, 2008)

CHAPTER 21

MISCELLANEOUS RULES

SECTION A: RETURN OF CAPITAL (NO CVL APPLICATION)

4.221.— Application to court for order authorising return

- (1) This Rule applies where the liquidator intends to apply to the court for an order authorising a return of capital.
- (2) The application shall be accompanied by a list of the persons to whom the return is to be made.
- (3) The list shall include the same details of those persons as appears in the settled list of contributories, with any necessary alterations to take account of matters after settlement of the list, and the amount to be paid to each person.
- (4) Where the court makes an order authorising the return, it shall send a sealed copy of the order to the liquidator.

Commencement

Pt 4(21) rule 4.221(1)-(4): December 29, 1986

4.222.— Procedure for return

- (1) The liquidator shall inform each person to whom a return is made of the rate of return per share, and whether it is expected that any further return will be made.
- (2) Any payments made by the liquidator by way of the return may be sent by post, unless for any reason another method of making the payment has been agreed with the payee.

Commencement

Pt 4(21) rule 4.222(1)-(2): December 29, 1986

SECTION B: CONCLUSION OF WINDING UP

4.223-CVL.— [...] ¹³²⁴

SECTION C: DISSOLUTION AFTER WINDING UP

4.224.— Secretary of State's directions under ss.203, 205

- (1) Where the Secretary of State gives a direction under—

¹³²⁴ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (a) section 203 (where official receiver applies to registrar of companies for a company's early dissolution), or
- (b) section 205 (application by interested person for postponement of dissolution),
- he shall send two copies of the direction to the applicant for it.
- (2) Of those copies one shall be sent by the applicant to the registrar of companies, to comply with section 203(5) or, as the case may be, 205(6).

Commencement

Pt 4(21) rule 4.224(1)-(2): December 29, 1986

4.225. Procedure following appeal under s.203(4) or 205(4)

[...] ¹³²⁵ Following an appeal under section 203(4) or 205(4) (against a decision of the Secretary of State under the applicable section) the court shall send two sealed copies of its order to the person in whose favour the appeal was determined; and that party shall send one of the copies to the registrar of companies to comply with section 203(5) or, as the case may be, 205(6).

Commencement

Pt 4(21) rule 4.225: December 29, 1986

CHAPTER 22

[PERMISSION] ¹³²⁶ TO ACT AS DIRECTOR, ETC., OF COMPANY WITH PROHIBITED NAME (SECTION 216 OF THE ACT)

4.226. Preliminary

The Rules in this Chapter—

- (a) relate to the [permission] ¹³²⁷ required under section 216 (restriction on reuse of name of company in insolvent liquidation) for a person to act as mentioned in section 216(3) in relation to a company with a prohibited name, [...] ¹³²⁸
- (b) prescribe the cases excepted from that provision, that is to say, those in which a person to whom the section applies may so act without that [permission] ¹³²⁷ [, and] ¹³²⁹
- [(c) apply to all windings up to which section 216 applies, whether or not the winding up commenced before the coming into force of the Rules.] ¹³²⁹

¹³²⁵ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³²⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³²⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³²⁸ Word omitted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.81 (January 11, 1988)

¹³²⁹ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.81 (January 11, 1988)

Commencement

Pt 4(22) rule 4.226(a)-(b): December 29, 1986

4.227. [...]¹³³⁰
[4.227A Application for permission under s 216(3)]

(1) At least 14 days notice of any application for permission to act in any of the circumstances which would otherwise be prohibited by section 216(3) must be given by the applicant to the Secretary of State, who may—

- (a) appear at the hearing of the application; and
- (b) whether or not appearing at the hearing, make representations.

(2) When considering an application for permission under section 216, the court may call on the liquidator, or any former liquidator, of the liquidating company for a report of the circumstances in which that company became insolvent and the extent (if any) of the applicant's apparent responsibility for its doing so.

]

¹³³¹
[4.228— First excepted case]

(1) This Rule applies where—

- (a) a person (“the person”) was within the period mentioned in section 216(1) a director, or shadow director, of an insolvent company that has gone into insolvent liquidation
- (b) the person acts in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on (or proposed carrying on) of the whole or substantially the whole of the business of the insolvent company where that business (or substantially the whole of it) is (or is to be) acquired from the insolvent company under arrangements—
 - (i) made by its liquidator; or
 - (ii) made before the insolvent company entered into insolvent liquidation by an office-holder acting in relation to it as administrator, administrative receiver or supervisor of a voluntary arrangement under Part 1 of the Act.

(2) The person, will not be taken to have contravened section 216 if prior to his acting in the circumstances set out in paragraph (1) a notice is, in accordance with the requirements of paragraph (3),—

- (a) given by the person, to every creditor of the insolvent company whose name and address—
 - (i) is known by him; or

¹³³⁰ Rule 4.227A substituted for rule 4.227 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.257 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³³¹ Rule 4.227A substituted for rule 4.227 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.257 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (ii) is ascertainable by him on the making of such enquiries as are reasonable in the circumstances; and
 - (b) published in the Gazette.
- (3) The notice referred to in paragraph (2)—
 - (a) may [...] ¹³³² be given and published before the completion of the arrangements referred to in paragraph (1)(b) but must be given and published no later than 28 days after that completion;
 - (b) must state—
 - (i) the name and registered number of the insolvent company;
 - (ii) the name of the person;
 - (iii) that it is his intention to act (or, where the insolvent company has not entered insolvent liquidation, to act or continue to act) in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on of the whole or substantially the whole of the business of the insolvent company; and
 - (iv) the prohibited name or, where the company has not entered insolvent liquidation, the name under which the business is being, or is to be, carried on which would be a prohibited name in respect of the person in the event of the insolvent company entering insolvent liquidation; and
 - (c) must in the case of notice given to each creditor of the company be given using Form 4.73.
- (4) Notice may in particular be given under this Rule—
 - (a) prior to the insolvent company entering insolvent liquidation where the business (or substantially the whole of the business) is, or is to be, acquired by another company under arrangements made by an office-holder acting in relation to the insolvent company as administrator, administrative receiver or supervisor of a voluntary arrangement (whether or not at the time of the giving of the notice the director is a director of that other company); or
 - (b) at a time where the person is a director of another company where—
 - (i) the other company has acquired, or is to acquire, the whole, or substantially the whole, of the business of the insolvent company under arrangements made by its liquidator; and
 - (ii) it is proposed that after the giving of the notice a prohibited name should be adopted by the other company.

¹³³³

Commencement

Pt 4(22) rule 4.228(1)-(4): December 29, 1986

¹³³² Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.258(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³³³ Substituted subject to transitional provisions specified in SI 2007/1974 rule 2 by Insolvency (Amendment) Rules 2007/1974 rule 3(2) (August 6, 2007: substitution has effect subject to transitional provisions specified in SI 2007/1974 rule 2)

[4.229.— Second excepted case

(1) Where a person to whom section 216 applies as having been a director or shadow director of the liquidating company applies for [permission]¹³³⁴ of the court under that section not later than 7 [business]¹³³⁵ days from the date on which the company went into liquidation, he may, during the period specified in paragraph (2) below, act in any of the ways mentioned in section 216(3), notwithstanding that he has not the [permission]¹³³⁴ of the court under that section.

(2) The period referred to in paragraph (1) begins with the day on which the company goes into liquidation and ends either on the day falling six weeks after that date or on the day on which the court disposes of the application for [permission]¹³³⁴ under section 216, whichever of those days occurs first.

] ¹³³⁶

Commencement

Pt 4(22) rule 4.229(1)-(2)(b): December 29, 1986

4.230. Third excepted case

The court's [permission]¹³³⁷ under section 216(3) is not required where the company there referred to, though known by a prohibited name within the meaning of the section—

(a) has been known by that name for the whole of the period of 12 months ending with the day before the liquidating company went into liquidation, and

(b) has not at any time in those 12 months been dormant within the meaning of [section 1169(1), (2) and (3)(a)]¹³³⁸ of the Companies Act.

Commencement

Pt 4(22) rule 4.230(a)-(b): December 29, 1986

[CHAPTER 23**EC REGULATION—MEMBER STATE LIQUIDATOR] ¹³³⁹****[4.231.— Interpretation of creditor and notice to member State liquidator**

(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

¹³³⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³³⁵ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.259(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³³⁶ Substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(5) para.82 (January 11, 1988)

¹³³⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³³⁸ Words substituted by Insolvency (Amendment) (No. 2) Rules 2009/2472 rule 14(2) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/2472 rule 2)

¹³³⁹ Added by Insolvency (Amendment) Rules 2002/1307 rule 6(9) (May 31, 2002)

(2) For the purposes of the Rules referred to in paragraph (3) the member State liquidator is deemed to be a creditor.

(3) The Rules referred to in paragraph (2) are Rules 4.43(1) (official receiver's report), 4.45(1) (report on statement of affairs), 4.46(2) (report where no statement of affairs), 4.47(2) (general rule on reporting), 4.48(2) (winding up stayed), 4.49 (information to creditors), 4.50(2) (notice of meetings), 4.51(2) (notice of creditors' meeting—CVL), 4.54 (power to call meetings), 4.57(1) (requisitioned meetings), 4.57(3), 4.67 (entitlement to vote (creditors)), 4.68 (chairman's discretion to allow vote—CVL), 4.70 (admission and rejection of proof (creditors' meeting)), 4.73 (meaning of “prove”), 4.74 (supply of forms), 4.75 (contents of proof), 4.76 (particulars of creditor's claim) [...]¹³⁴⁰, 4.78 (cost of proving), 4.79 (inspection of proofs), 4.82 (admission and rejection of proofs for dividend), 4.83(1) (appeal against decision in relation to proof), 4.83(2), 4.84 (withdrawal or variation of proof), 4.85(1) (expunging of proof), 4.86 (estimate of quantum), 4.87 (negotiable instruments, etc.), 4.88 (secured creditors), 4.89 (discounts), 4.90 (mutual credit and set-off), 4.91 (debt in foreign currency), 4.92 (payment of a periodical nature), 4.93 (interest), 4.94 (debt payable at future time), 4.101A (power to fill vacancy in office of liquidator), 4.102(5) (appointment by court), 4.103(4) (appointment by court), 4.113(1) (meeting of creditors to remove liquidator), 4.114(1) (meeting of creditors to remove liquidator), 4.115 (regulation of meetings), 4.124(1) (release of official receiver), 4.125(1) (final meeting), [4.125A(2) (rule on reporting),]¹³⁴¹ 4.126(1) (final meeting), 4.131(1) (challenge to liquidator's remuneration), 4.152(1) (liquidation committee), 4.152(3) (eligibility for liquidation committee), 4.163(3) (vacancy on liquidation committee), 4.175(1) (liquidation committee), 4.180 (notice of dividend) and 4.212(2) (notice of public examination hearing).

(4) Paragraphs (2) and (3) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditor's rights).

(5) Where the liquidator is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court, the registrar of companies or the official receiver, the liquidator shall give notice or provide copies, as the case may be, to the member State liquidator.

(6) Paragraph (5) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to cooperate and communicate information).

¹³⁴²

¹³⁴⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.260(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³⁴¹ Words inserted by Insolvency (Amendment) Rules 2004/584 rule 23 (April 1, 2004)

¹³⁴² Added by Insolvency (Amendment) Rules 2002/1307 rule 6(9) (May 31, 2002)

THE SECOND GROUP OF PARTS

PART 5

INDIVIDUAL VOLUNTARY ARRANGEMENTS

*Introductory***5.1.—**

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁴³

Commencement

Pt 5 rule 5.1(1)-(2): December 29, 1986

*SECTION A: THE DEBTOR'S PROPOSAL***5.2.**

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁴⁴

Commencement

Pt 5 rule 5.2: December 29, 1986

5.3.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁴⁵

Commencement

Pt 5 rule 5.3(1)-(3): December 29, 1986

¹³⁴³ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁴⁴ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁴⁵ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

5.4.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁴⁶

Commencement

Pt 5 rule 5.4(1)-(5): December 29, 1986

5.5.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁴⁷

Commencement

Pt 5 rule 5.5(1)-(4)(c): December 29, 1986

[5.5A.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁴⁸]¹³⁴⁹

5.6.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁵⁰

Commencement

Pt 5 rule 5.6(1)-(4): December 29, 1986

¹³⁴⁶ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁴⁷ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁴⁸ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁴⁹ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(6) para.85 (January 11, 1988)

¹³⁵⁰ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

5.7.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁵¹

Commencement

Pt 5 rule 5.7(1)-(2): December 29, 1986

5.8.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁵²

Commencement

Pt 5 rule 5.8(1)-(5): December 29, 1986

5.9.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁵³

Commencement

Pt 5 rule 5.9(1)-(3): December 29, 1986

5.10.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁵⁴

Commencement

Pt 5 rule 5.10(1)-(5)(c): December 29, 1986

¹³⁵¹ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁵² Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁵³ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁵⁴ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

5.11.

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁵⁵

Commencement

Pt 5 rule 5.11: December 29, 1986

SECTION B: ACTION ON THE PROPOSAL; CREDITORS' MEETING

5.12.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁵⁶

Commencement

Pt 5 rule 5.12(1)-(2): December 29, 1986

5.13.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁵⁷

Commencement

Pt 5 rule 5.13(1)-(3)(c): December 29, 1986

5.14—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁵⁸

Commencement

Pt 5 rule 5.14(1)-(3): December 29, 1986

¹³⁵⁵ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁵⁶ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁵⁷ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁵⁸ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

5.15.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁵⁹

Commencement

Pt 5 rule 5.15(1)-(2)(b): December 29, 1986

5.16.

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁶⁰

Commencement

Pt 5 rule 5.16: December 29, 1986

5.17.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁶¹

Commencement

Pt 5 rule 5.17(1)-(9): December 29, 1986

5.18.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁶²

Commencement

Pt 5 rule 5.18(1)-(7): December 29, 1986

¹³⁵⁹ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁶⁰ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁶¹ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁶² Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

5.19.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁶³

Commencement

Pt 5 rule 5.19(1)-(5): December 29, 1986

*SECTION C: IMPLEMENTATION OF THE ARRANGEMENT***5.20.—**

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁶⁴

Commencement

Pt 5 rule 5.20(1)-(2)(b): December 29, 1986

5.21.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁶⁵

Commencement

Pt 5 rule 5.21(1)-(5): December 29, 1986

5.22.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁶⁶

Commencement

Pt 5 rule 5.22(1)-(4): December 29, 1986

¹³⁶³ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁶⁴ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁶⁵ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁶⁶ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

5.23.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁶⁷

Commencement

Pt 5 rule 5.23(1)-(2): December 29, 1986

5.24.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁶⁸

Commencement

Pt 5 rule 5.24(1)-(2): December 29, 1986

5.25.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁶⁹

Commencement

Pt 5 rule 5.25(1)-(5): December 29, 1986

5.26.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁷⁰

Commencement

Pt 5 rule 5.26(1)-(5): December 29, 1986

¹³⁶⁷ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁶⁸ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁶⁹ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁷⁰ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

5.27.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁷¹

Commencement

Pt 5 rule 5.27(1)-(3): December 29, 1986

5.28.

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁷²

Commencement

Pt 5 rule 5.28(a)-(b)(ii): December 29, 1986

5.29.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁷³

Commencement

Pt 5 rule 5.29(1)-(4): December 29, 1986

*SECTION D: GENERAL***5.30.—**

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁷⁴

Commencement

Pt 5 rule 5.30(1)-(2): December 29, 1986

¹³⁷¹ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁷² Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁷³ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁷⁴ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

SECTION E:***[EC REGULATION—CONVERSION OF VOLUNTARY ARRANGEMENT INTO BANKRUPTCY]***¹³⁷⁵**[5.31.—**

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁷⁶]¹³⁷⁷

[5.32.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁷⁸]¹³⁷⁹

[5.33.—

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁸⁰]¹³⁸¹

SECTION F:***[EC REGULATION—MEMBER STATE LIQUIDATOR]***¹³⁸²**[5.34.—**

[Existing Part 5 is not repealed but has been substituted for a new Part 5 consisting of Rules 5.1–5.38.]¹³⁸³]¹³⁸⁴

¹³⁷⁵ Added by Insolvency (Amendment) Rules 2002/1307 rule 7(3) (May 31, 2002)

¹³⁷⁶ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1–5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁷⁷ Added by Insolvency (Amendment) Rules 2002/1307 rule 7(3) (May 31, 2002)

¹³⁷⁸ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1–5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁷⁹ Added by Insolvency (Amendment) Rules 2002/1307 rule 7(3) (May 31, 2002)

¹³⁸⁰ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1–5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁸¹ Added by Insolvency (Amendment) Rules 2002/1307 rule 7(3) (May 31, 2002)

¹³⁸² Added by Insolvency (Amendment) Rules 2002/1307 rule 7(3) (May 31, 2002)

¹³⁸³ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1–5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁸⁴ Added by Insolvency (Amendment) Rules 2002/1307 rule 7(3) (May 31, 2002)

CHAPTER 1

*[PRELIMINARY]*¹³⁸⁵

[5.1.— Introductory

(1) The Rules in this Part apply in relation to a voluntary arrangement under Part VIII of the Act [, except in relation to voluntary arrangements under section 263A, in relation to which only [Chapters 7 and 10 to 14]¹³⁸⁶ of this Part shall apply]¹³⁸⁷ .

[(2) In this Part, in respect of voluntary arrangements other than voluntary arrangements under section 263A—

- (a) Chapter 2 applies in all cases;
- (b) Chapter 3 applies in cases where an application for an interim order is made;
- (c) Chapter 4 applies in cases where no application for an interim order is or is to be made;
- (d) except where otherwise stated, Chapters 5 and 6 apply in all cases;
- (e) Chapter 8 applies where a bankrupt makes an application under section 261(2)(a); and
- (f) Chapter 9 applies where the official receiver makes an application under section 261(2)(b).

(3) In this Part, in respect of voluntary arrangements under section 263A—

- (a) Chapter 7 applies in all cases; and
- (b) Chapter 10 applies where the official receiver makes an application under section 263D(3).

(4) In this Part, [Chapters 11 to 14]¹³⁸⁸ apply in all cases.]¹³⁸⁹
¹³⁹⁰

CHAPTER 2

¹³⁸⁵ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁸⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.261(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³⁸⁷ Words inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.28(a) (April 1, 2004)

¹³⁸⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.261(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³⁸⁹ Rule 5.1(2)-(4) substituted for rule 5.1(2) by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.28(b) (April 1, 2004)

¹³⁹⁰ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

*[PREPARATION OF THE DEBTOR'S PROPOSAL]*¹³⁹¹

[5.2 Preparation of proposal]

The debtor shall prepare for the intended nominee a proposal on which (with or without amendments to be made under Rule 5.3(3) below) to make his report to the court under [section 256 or the debtor's creditors under section 256A]¹³⁹² .]¹³⁹³

[5.3.— Contents of proposal]

(1) The debtor's proposal shall provide a short explanation why, in his opinion, a voluntary arrangement under Part VIII is desirable, and give reasons why his creditors may be expected to concur with such an arrangement.

(2) The following matters shall be stated, or otherwise dealt with, in the proposal—

(a) the following matters, so far as within the debtor's immediate knowledge—

- (i) his assets, with an estimate of their respective values,
- (ii) the extent (if any) to which the assets are charged in favour of creditors,
- (iii) the extent (if any) to which particular assets are to be excluded from the voluntary arrangement;

(b) particulars of any property, other than assets of the debtor himself, which is proposed to be included in the arrangement, the source of such property and the terms on which it is to be made available for inclusion;

(c) the nature and amount of the debtor's liabilities (so far as within his immediate knowledge), the manner in which they are proposed to be met, modified, postponed or otherwise dealt with by means of the arrangement and (in particular)—

- (i) how it is proposed to deal with preferential creditors (defined in section 258(7)) and creditors who are, or claim to be, secured,
- (ii) how associates of the debtor (being creditors of his) are proposed to be treated under the arrangement, and
- (iii) in any case where the debtor is an undischarged bankrupt, whether, to the debtor's knowledge, claims have been made under section 339 (transactions at an undervalue), section 340 (preferences) or section 343 (extortionate credit transactions), or where the debtor is not an undischarged bankrupt, whether there are circumstances which would give rise to the possibility of such claims in the event that he should be adjudged bankrupt,

and, where any such circumstances are present, whether, and if so how, it is proposed under the voluntary arrangement to make provision for wholly or partly indemnifying the insolvent estate in respect of such claims;

¹³⁹¹ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁹² Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.262(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³⁹³ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

- (d) whether any, and if so what, guarantees have been given of the debtor's debts by other persons, specifying which (if any) of the guarantors are associates of his;
- (e) the proposed duration of the voluntary arrangement;
- (f) the proposed dates of distributions to creditors, with estimates of their amounts;
- (g) how it is proposed to deal with the claims of any person who is bound by the arrangement by virtue of section 260(2)(b)(ii);
- (h) the amount proposed to be paid to the nominee (as such) by way of remuneration and expenses;
- (j) the manner in which it is proposed that the supervisor of the arrangement should be remunerated, and his expenses defrayed;
- (k) whether, for the purposes of the arrangement, any guarantees are to be offered by any persons other than the debtor, and whether (if so) any security is to be given or sought;
- (l) the manner in which funds held for the purposes of the arrangement are to be banked, invested or otherwise dealt with pending distribution to creditors;
- (m) the manner in which funds held for the purpose of payment to creditors, and not so paid on the termination of the arrangement, are to be dealt with;
- (n) if the debtor has any business, the manner in which it is proposed to be conducted during the course of the arrangement;
- (o) details of any further credit facilities which it is intended to arrange for the debtor, and how the debts so arising are to be paid;
- (p) the functions which are to be undertaken by the supervisor of the arrangement;
- (q) the name, address and qualification of the person proposed as supervisor of the voluntary arrangement, and confirmation that he is, so far as the debtor is aware, qualified to act as an insolvency practitioner in relation to him or is an authorised person in relation to him; [...] ¹³⁹⁴
- (r) whether the EC Regulation will apply and, if so, whether the proceedings will be main proceedings or territorial proceedings [;] ¹³⁹⁵
- [(s) within the 24 months preceding the date on which the proposal is delivered to the nominee, whether a proposal for an individual voluntary arrangement in respect of the debtor was submitted—
 - (i) to a meeting of the debtor's creditors for approval and if so,
 - (aa) whether the proposal was approved and the arrangement completed, or
 - (bb) whether the proposal was rejected or the arrangement was terminated and if so, in what respects it differs from the proposal in this Rule;
 - (ii) to the court in connection with an application for an interim order under section 253 and if so, whether the interim order was made.

]

¹³⁹⁵

¹³⁹⁴ Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.263(2)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³⁹⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.263(2)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) With the agreement in writing of the nominee, the debtor's proposal may be amended at any time up to the delivery of the [nominee's]¹³⁹⁶ report to the court under [section 256 or to the debtor's creditors under section 256A]¹³⁹⁷.

]¹³⁹⁸

[5.4.— Notice to the intended nominee

- (1) The debtor shall give to the intended nominee written notice of his proposal.
- (2) The notice, accompanied by a copy of the proposal, shall be delivered either to the nominee himself, or to a person authorised to take delivery of documents on his behalf.
- (3) If the intended nominee agrees to act, he shall cause a copy of the notice to be endorsed to the effect that it has been received by him on a specified date.
- (4) The copy of the notice so endorsed shall be returned by the nominee [as soon as reasonably practicable]¹³⁹⁹ to the debtor at an address specified by him in the notice for that purpose.
- (5) Where the debtor is an undischarged bankrupt and he gives notice of his proposal to the official receiver and (if any) the trustee, the notice must contain the name and address of the insolvency practitioner or (as the case may be) authorised person who has agreed to act as nominee.

]¹⁴⁰⁰

[5.5.— Statement of Affairs

- (1) Subject to paragraph (2), the debtor shall, [at the same time as the]¹⁴⁰¹ proposal is delivered to the nominee, [...] ¹⁴⁰² deliver to the nominee a statement of [the debtor's]¹⁴⁰³ affairs.

¹³⁹⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.263(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³⁹⁷ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.263(3)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹³⁹⁸ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹³⁹⁹ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁴⁰⁰ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴⁰¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.264(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁰² Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.264(2)(b) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁰³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.264(2)(c) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) Paragraph (1) shall not apply where the debtor is an undischarged bankrupt and he has already delivered a statement of affairs under section 272 (debtor's petition) or 288 (creditor's petition) but the nominee may require the debtor to submit a further statement supplementing or amplifying the statement of affairs already submitted.

(3) The statement of affairs shall comprise the following particulars (supplementing or amplifying, so far as is necessary for clarifying the state of the debtor's affairs, those already given in his proposal)—

- (a) a list of his assets, divided into such categories as are appropriate for easy identification, with estimated values assigned to each category;
- (b) in the case of any property on which a claim against the debtor is wholly or partly secured, particulars of the claim and its amount, and of how and when the security was created;
- (c) the names and addresses of the debtor's preferential creditors (defined in section 258(7)), with the amounts of their respective claims;
- (d) the names and addresses of the debtor's unsecured creditors, with the amounts of their respective claims;
- (e) particulars of any debts owed by or to the debtor to or by persons who are associates of his;
- (f) such other particulars (if any) as the nominee may in writing require to be furnished for the purposes of making his report [or to the debtor's creditors as the case may be] ¹⁴⁰⁴ to the court on the debtor's proposal.

(4) The statement of affairs shall be made up to a date not earlier than 2 weeks before the date of the notice to the nominee under Rule 5.4.

However, the nominee may allow an extension of that period to the nearest practicable date (not earlier than 2 months before the date of the notice under Rule 5.4); and if he does so, he shall give his reasons in his report [...] ¹⁴⁰⁵ on the debtor's proposal.

(5) [The statement must be verified by a statement of truth made by the debtor.] ¹⁴⁰⁶
] ¹⁴⁰⁷

[5.6— Additional disclosure for assistance of nominee

(1) If it appears to the nominee that he cannot properly prepare his report on the basis of information in the debtor's proposal and statement of affairs, he may call on the debtor to provide him with—

- (a) further and better particulars as to the circumstances in which, and the reasons why, he is insolvent or (as the case may be) threatened with insolvency;

¹⁴⁰⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.264(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁰⁵ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.264(4) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁰⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.264(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁰⁷ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

- [(aa) further and better particulars of any proposals of the kind, and within the period, referred to in Rule 5.3(2)(s) which have been submitted by the debtor;]¹⁴⁰⁸
- (b) particulars of any previous proposals [other than those referred to in Rule 5.3(2)(s)]¹⁴⁰⁹ which have been made by [the debtor at any time]¹⁴¹⁰ under Part VIII of the Act [and]¹⁴¹¹ ;
- (c) any further information with respect to his affairs which the nominee thinks necessary for the purposes of his report.
- (2) The nominee may call on the debtor to inform him whether and in what circumstances he has at any time—
- (a) been concerned in the affairs of any company (whether or not incorporated in England and Wales) which has become insolvent, or
- (b) been adjudged bankrupt, or entered into an arrangement with his creditors.
- (3) For the purpose of enabling the nominee to consider the debtor's proposal and prepare his report on it, the latter must give [the nominee such access to the debtor's accounts and records as the nominee may require]¹⁴¹² .
-] ¹⁴¹³

CHAPTER 3

¹⁴⁰⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.265(2)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁰⁹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.265(2)(b)(i) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴¹⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.265(2)(b)(ii) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴¹¹ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.265(2)(b)(iii) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴¹² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.265(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴¹³ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

[CASES IN WHICH AN APPLICATION FOR AN INTERIM ORDER IS MADE]¹⁴¹⁴

[5.7.— Application for interim order

(1) An application to the court for an interim order under Part VIII of the Act shall be accompanied by [a witness statement]¹⁴¹⁵ of the following matters—

- (a) the reasons for making the application;
- (b) particulars of any execution or other legal process or levying of any distress which, to the debtor's knowledge, has been commenced against him;
- (c) that he is an undischarged bankrupt or (as the case may be) that he is able to petition for his own bankruptcy;
- (d) that no previous application for an interim order has been made by or in respect of the debtor in the period of 12 months ending with the date of [the witness statement]¹⁴¹⁶ ; [...]¹⁴¹⁷
- (e) that the nominee under the proposal (naming him) is willing to act in relation to the proposal and is a person who is either qualified to act as an insolvency practitioner in relation to the debtor or is authorised to act as nominee in relation to him [; and]¹⁴¹⁸
- [(f) [whether]¹⁴¹⁹ the debtor has [...] ¹⁴²⁰ submitted to the official receiver either the document referred to at section 263B(1)(a) or the statement referred to at section 263B(1)(b) [and, if so, when and with what result.]¹⁴²¹]¹⁴¹⁸

¹⁴¹⁴ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴¹⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.266(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴¹⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.266(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴¹⁷ Word repealed by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.29(a) (April 1, 2004)

¹⁴¹⁸ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.29(c) (April 1, 2004)

¹⁴¹⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.266(2)(c)(i) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴²⁰ Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.266(2)(c)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴²¹ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.266(2)(c)(iii) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) A copy of the notice to the intended nominee under Rule 5.4 , endorsed to the effect that he agrees so to act, and a copy of the debtor's proposal given to the nominee under that Rule, shall be [attached]¹⁴²² to the [witness statement]¹⁴²³ .

(3) On receiving the application and [the witness statement]¹⁴²⁴ , the court shall fix a venue for the hearing of the application.

(4) The applicant shall give at least 2 [business]¹⁴²⁵ days' notice of the hearing—
 (a) where the debtor is an undischarged bankrupt, to the bankrupt, the official receiver and the trustee (whichever of those three is not himself the applicant),
 (b) where the debtor is not an undischarged bankrupt, to any creditor who (to the debtor's knowledge) has presented a bankruptcy petition against him, and
 (c) in either case, to the nominee who has agreed to act in relation to the debtor's proposal.

]

¹⁴²⁶

[5.8.— Court in which application to be made

(1) Except in the case of an undischarged bankrupt, an application to the court under Part VIII of the Act shall be made to a court in which the debtor would be entitled to present his own petition in bankruptcy under [Rule 6.40A]¹⁴²⁷ .

(2) The application shall contain sufficient information to establish that it is brought in the appropriate court.

(3) In the case of an undischarged bankrupt, such an application shall be made to the court having the conduct of his bankruptcy and shall be filed with the bankruptcy proceedings.

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¹⁴²⁸

¹⁴²² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.266(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴²³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.266(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴²⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.266(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴²⁵ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.266(5) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴²⁶ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴²⁷ Figure substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.267(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴²⁸ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

[5.9.— Hearing of the application]

(1) Any of the persons who have been given notice under Rule 5.7(4) may appear or be represented at the hearing of the application.

(2) The court, in deciding whether to make an interim order on the application, shall take into account any representations made by or on behalf of any of those persons (in particular, whether an order should be made containing such provision as is referred to in section 255(3) and (4)).

(3) If the court makes an interim order, it shall fix a venue for consideration of the nominee's report. Subject to the following paragraph, the date for that consideration shall be not later than that on which the interim order ceases to have effect under section 255(6).

(4) If under section 256(4) an extension of time is granted for filing the nominee's report, the court shall, unless there appear to be good reasons against it, correspondingly extend the period for which the interim order has effect.

]¹⁴²⁹

[5.10.— Action to follow making of order]

(1) Where an interim order is made, at least 2 sealed copies of the order shall be sent by the court to the person who applied for it; and that person shall serve one of the copies on the nominee under the debtor's proposal.

(2) The applicant shall also [as soon as reasonably practicable]¹⁴³⁰ give notice of the making of the order to any person who was given notice of the hearing pursuant to Rule 5.7(4) and was not present or represented at it.

]¹⁴³¹

[5.11.— Nominee's report on the proposal]

(1) Where the nominee makes his report to the court under section 256, he shall deliver 2 copies of it to the court not less than 2 [business]¹⁴³² days before the interim order ceases to have effect.

(2) With his report the nominee shall deliver—

- (a) a copy of the debtor's proposal (with amendments, if any, authorised under Rule 5.3(3));
- and
- (b) a copy or summary of any statement of affairs provided by the debtor.

¹⁴²⁹ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴³⁰ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁴³¹ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴³² Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.268(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) If the nominee makes known his opinion that the debtor's proposal has a reasonable prospect of being approved and implemented, and that a meeting of the debtor's creditors should be summoned under section 257, his report shall have annexed to it his comments on the debtor's proposal. If his opinion is otherwise, he shall give his reasons for that opinion.

(4) The court shall upon receipt of the report cause one copy of the report to be endorsed with the date of its filing in court and returned to the nominee.

(5) [...] ¹⁴³³

(6) Where the debtor is an undischarged bankrupt, the nominee shall send to the official receiver and (if any) the trustee—

- (a) a copy of the debtor's proposal,
- (b) a copy of his (the nominee's) report and his comments accompanying it (if any), and
- (c) a copy or summary of the debtor's statement of affairs.

(7) Where the debtor is not an undischarged bankrupt, the nominee shall send a copy of each of the documents referred to in paragraph (6) to any person who has presented a bankruptcy petition against the debtor.

] ¹⁴³⁴

[5.12.— Replacement of nominee

(1) Where the debtor intends to apply to the court under section 256(3) for the nominee to be replaced, he shall give to the nominee at least [5 business] ¹⁴³⁵ days' notice of his application.

(2) No appointment of a replacement nominee shall be made by the court unless there is filed in court a statement by the replacement nominee indicating [that the replacement nominee—] ¹⁴³⁶

- [(a) consents to act; and
- (b) is qualified to act as an insolvency practitioner in relation to the debtor or is an authorised person in relation to the debtor.] ¹⁴³⁶

] ¹⁴³⁷

¹⁴³³ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.268(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴³⁴ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴³⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.269(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴³⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.269(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴³⁷ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

[5.13.— Consideration of nominee's report

(1) At the hearing by the court to consider the nominee's report, any of the persons who have been given notice under Rule 5.7(4) may appear or be represented.

(2) Rule 5.10 applies to any order made by the court at the hearing.

¹⁴³⁸

CHAPTER 4*[CASES WHERE NO INTERIM ORDER IS TO BE OBTAINED]¹⁴³⁹***5.14.— [...] ¹⁴⁴⁰****[5.14A Nominee's report**

(1) This rule applies where the nominee has received the document and statement mentioned in section 256A(2)¹⁴⁴¹.

(2) The nominee must within 14 days (or such longer period as the court may allow)—

- (a) if the nominee has the opinions in section 256A(3)(a) and (b), attach to the report the nominee's comments on the debtor's proposal and comply with paragraph (3); or
- (b) if the nominee does not have the opinions in section 256A(3)(a) and (b), comply with paragraph (5).

(3) Where paragraph (2)(a) applies, the nominee must deliver the documents in paragraph (4) to—

- (a) each of the debtor's creditors of whose address the nominee is aware;
- (b) where the debtor is an undischarged bankrupt, the official receiver and (if any) the trustee; and
- (c) any person who has presented a bankruptcy petition against the debtor.

(4) The documents are—

- (a) a copy of the report;
- (b) a copy of the nominee's comments attached to the report;
- (c) a copy of the debtor's proposal (with amendments, if any, authorised under Rule 5.3(3));
- (d) a copy or summary of any statement of affairs provided by the debtor; and
- (e) a copy of the notice referred to in Rule 5.4(3), and
- (f) a statement that no application for an interim order under section 253 is to be made.

¹⁴³⁸ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴³⁹ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴⁴⁰ Rules 5.14A and 5.14B substituted for rule 5.14 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.270 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁴¹ Section 256A was inserted by 2000 c. 39, s. 3 and Schedule 3, paragraphs 1 and 7.

- (5) Where paragraph (2)(b) applies the nominee must—
- (a) deliver a copy of the report to each of the debtor's creditors of whose address the nominee is aware; and
 - (b) give the reasons for that opinion to the debtor.

]¹⁴⁴²

[5.14B Applications to the court

(1) Subject to paragraph (2), where a report has been made under section 256A any application relating to a voluntary arrangement or a proposal for a voluntary arrangement must be filed in the court in which the debtor would be entitled to present the debtor's petition in bankruptcy under Rule 6.40A.

(2) Where the debtor is an undischarged bankrupt, the appropriate court is the court having the conduct of the debtor's bankruptcy and any application must be filed with the bankruptcy proceedings.

(3) The report must contain sufficient information to identify the appropriate court in which to file an application relating to a voluntary arrangement or to a proposal for a voluntary arrangement.

(4) Where an application is made to the court in relation to any matter relating to a voluntary arrangement or a proposal for a voluntary arrangement, in addition to the documents in support of the application, the applicant must file in court such other documents required by this Part as the applicant considers may assist the court in determining the application.

(5) Where the debtor intends to apply to the court under section 256A(4)(a) or (b) for the nominee to be replaced, the debtor must give to the nominee at least 5 business days' notice of the application.

(6) Where the nominee intends to apply to the court under section 256A(4)(b) to be replaced as nominee, the nominee must give to the debtor at least 5 business days' notice of the application.

(7) The court must not appoint a replacement nominee unless a statement by the replacement nominee indicating consent to act is filed in court.

]¹⁴⁴³

5.15.— [...]¹⁴⁴⁴

5.16.— [...]¹⁴⁴⁵

CHAPTER 5

¹⁴⁴² Rules 5.14A and 5.14B substituted for rule 5.14 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.270 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁴³ Rules 5.14A and 5.14B substituted for rule 5.14 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.270 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁴⁴ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁴⁵ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

*[CREDITORS' MEETINGS]*¹⁴⁴⁶

[5.17.— Summoning of creditors' meeting

(1) If in his report the nominee states that in his opinion a meeting of creditors should be summoned to consider the debtor's proposal, the date on which the meeting is to be held shall be—

(a) in a case where an interim order has not been obtained, [...] ¹⁴⁴⁷ not more than 28 days from that on which the [nominee received the document and statement in section 256A(2)]¹⁴⁴⁸; and

(b) in a case where an interim order is in force, not less than 14 days from the date on which the nominee's report is filed in court nor more than 28 days from that on which the report is considered by the court.

(2) Notices calling the meeting shall be sent by the nominee, at least 14 days before the day fixed for it to be held, to all the creditors [of the debtor of whose address the nominee is aware]¹⁴⁴⁹.

[(3) Each notice sent under this rule must specify—

(a) in a case where an interim order has not been obtained, the court to which application must be made under Rule 5.14B(1) or (2) as the case may be; or

(b) in a case where an interim order is in force, the court in which the nominee's report on the debtor's proposal has been filed under Rule 5.8;

and must state the effect of Rule 5.23(2) to (4) (requisite majorities).

(3A) Unless they have been sent under Rule 5.14A, the following documents must be sent with every notice under paragraph (3)—

(a) a copy of the proposal;

(b) a copy of the statement of affairs or, if the nominee thinks fit, a summary of it (the summary to include a list of the creditors and the amounts of their debts); and

(c) the nominee's report with the comments on the proposal annexed to it.

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] ¹⁴⁵¹

¹⁴⁴⁶ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴⁴⁷ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.271(2)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁴⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.271(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁴⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.271(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁵⁰ Rule 5.17(3) and (3A) substituted for rule 5.17(3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.271(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁵¹ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

[5.18.— Creditors' meeting: supplementary

- (1) Subject as follows, in fixing the venue for the creditors' meeting, the nominee shall have regard to the convenience of creditors.
 - (2) The meeting shall be summoned for commencement between 10.00 and 16.00 hours on a business day.
 - (3) With every notice summoning the meeting there shall be sent out forms of proxy.
-]¹⁴⁵²

[5.19.— The chairman at the meeting

- (1) Subject as follows, the nominee shall be chairman of the creditors' meeting.
 - (2) If for any reason the nominee is unable to attend, he may nominate another person to act as chairman in his place; but a person so nominated must be—
 - (a) a person qualified to act as an insolvency practitioner in relation to the debtor;
 - (b) an authorised person in relation to the debtor; or
 - (c) an employee of the nominee or his firm who is experienced in insolvency matters.
-]¹⁴⁵³

[5.20. The chairman as proxy-holder

The chairman shall not by virtue of any proxy held by him vote to increase or reduce the amount of the remuneration or expenses of the nominee or the supervisor of the proposed arrangement, unless the proxy specifically directs him to vote in that way.]¹⁴⁵⁴

[5.21.— Entitlement to vote

- (1) Subject as follows, every creditor who has notice of the creditors' meeting is entitled to vote at the meeting or any adjournment of it.
- (2) A creditor's entitlement to vote is calculated as follows—
 - (a) where the debtor is not an undischarged bankrupt and an interim order is in force, by reference to the amount of the debt owed to him as at the date of the interim order;
 - (b) where the debtor is not an undischarged bankrupt and an interim order is not in force, by reference to the amount of the debt owed to him at the date of the meeting; and
 - (c) where the debtor is an undischarged bankrupt, by reference to the amount of the debt owed to him as at the date of the bankruptcy order.

¹⁴⁵² Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴⁵³ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴⁵⁴ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

(3) A creditor may vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained, and for the purposes of voting (but not otherwise) his debt shall be valued at £1 unless the chairman agrees to put a higher value on it.

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[5.22.— Procedure for admission of creditors' claims for voting purposes

(1) Subject as follows, at the creditors' meeting the chairman shall ascertain the entitlement of persons wishing to vote and shall admit or reject their claims accordingly.

(2) The chairman may admit or reject a claim in whole or in part.

(3) The chairman's decision on any matter under this Rule or under paragraph (3) of Rule 5.21 is subject to appeal to the court by any creditor or by the debtor.

(4) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

(5) If on an appeal the chairman's decision is reversed or varied, or votes are declared invalid, the court may order another meeting to be summoned, or make such order as it thinks just.

The court's power to make an order under this paragraph is exercisable only if it considers that the circumstances giving rise to the appeal are such as give rise to unfair prejudice or material irregularity.

(6) An application to the court by way of appeal against the chairman's decision shall not be made after the end of the period of 28 days beginning with the first day on which [—]¹⁴⁵⁶

[(a) where the creditors' meeting was summoned under section 257 pursuant to a report to the debtor's creditors under section 256A(3), the notice of the result of the meeting required by section 259(1)(a) has been given; or

(b) where the creditors' meeting was summoned under section 257 pursuant to a report to a court under section 256(1)(aa)¹⁴⁵⁷, the report required by section 259(1)(b) is made to the court.]¹⁴⁵⁶

(7) The chairman is not personally liable for any costs incurred by any person in respect of an appeal under this Rule.

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¹⁴⁵⁵ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴⁵⁶ Rule 5.22(6)(a) and (b) substituted for words by Insolvency (Amendment) Rules 2010/686 Sch.1 para.272(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁵⁷ See 2000 c. 39, s. 3 and Schedule 3, paragraphs 1 and 6(a).

¹⁴⁵⁸ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

[5.23.— Requisite majorities

[(1) Subject to paragraph (2), at the creditors' meeting, a resolution is passed when a majority (in value) of those present and voting in person or by proxy have voted in favour of it.

(2) A resolution to approve the proposal or a modification is passed when a majority of three-quarters or more (in value) of those present and voting in person or by proxy have voted in favour of it.]¹⁴⁵⁹

(3) In the following cases there is to be left out of account a creditor's vote in respect of any claim or part of a claim—

- (a) where written notice of the claim was not given, either at the meeting or before it, to the chairman or the nominee;
- (b) where the claim or part is secured;
- (c) where the claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing—
 - (i) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the debtor, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands, and
 - (ii) to estimate the value of the security and (for the purpose of entitlement to vote, but not of any distribution under the arrangement) to deduct it from his claim.

(4) Any resolution is invalid if those voting against it include more than half in value of the creditors, counting in these latter only those—

- (a) who have notice of the meeting;
- (b) whose votes are not to be left out of account under paragraph (3); and
- (c) who are not, to the best of the chairman's belief, associates of the debtor.

(5) It is for the chairman of the meeting to decide whether under this Rule—

- (a) a vote is to be left out of account in accordance with the paragraph (3), or
- (b) a person is an associate of the debtor for the purposes of paragraph (4)(c);

and in relation to the second of these cases the chairman is entitled to rely on the information provided by the debtor's statement of affairs or otherwise in accordance with this Part of the Rules.

(6) If the chairman uses a proxy contrary to Rule 5.20, his vote with that proxy does not count towards any majority under this Rule.

(7) The chairman's decision on any matter under this Rule is subject to appeal to the court by any creditor or by the debtor and paragraphs (5) to (7) of Rule 5.22 apply as regards such an appeal.

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[5.24.— Proceedings to obtain agreement on the proposal

(1) On the day on which the creditors' meeting is held, it may from time to time be adjourned.

¹⁴⁵⁹ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.273(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁶⁰ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

(2) If on that day the requisite majority for the approval of the voluntary arrangement (with or without modifications) has not been obtained, the chairman may, and shall if it is so resolved, adjourn the meeting for not more than 14 days.

(3) If there are subsequently further adjournments, the final adjournment shall not be to a day later than 14 days after that on which the meeting was originally held.

(4) If the meeting is adjourned under paragraph (2), notice of the fact shall be given by the chairman [as soon as reasonably practicable]¹⁴⁶¹ to the court.

[(4A) Once only in the course of a meeting the chairman may, without an adjournment, declare it suspended for any period up to 1 hour.]¹⁴⁶²

(5) If following any final adjournment of the meeting the proposal (with or without modifications) is not agreed to, it is deemed rejected.
]¹⁴⁶³

CHAPTER 6

*[IMPLEMENTATION OF THE ARRANGEMENT]*¹⁴⁶⁴

[5.25.— Resolutions to follow approval

(1) If the voluntary arrangement is approved (with or without modifications), a resolution [must]¹⁴⁶⁵ be taken by the creditors, where two or more individuals are appointed to act as supervisor, on the question whether acts to be done in connection with the arrangement may be done by any one of them, or must be done by both or all.

(2) If at the creditors' meeting a resolution is moved for the appointment of some person other than the nominee to be supervisor of the arrangement, there must be produced to the chairman, at or before the meeting—

- (a) that person's written consent to act (unless he is present and then and there signifies his consent), and
- (b) his written confirmation that he is qualified to act as an insolvency practitioner in relation to the debtor or is an authorised person in relation to the debtor.

¹⁴⁶¹ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁴⁶² Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.274(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁶³ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴⁶⁴ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴⁶⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.275(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

]¹⁴⁶⁶

[5.26— Hand-over of property, etc to supervisor

(1) [As soon as reasonably practicable]¹⁴⁶⁷ after the approval of the voluntary arrangement, the debtor or, where the debtor is an undischarged bankrupt, the official receiver or the debtor's trustee, shall do all that is required for putting the supervisor into possession of the assets included in the arrangement.

(2) On taking possession of the assets in any case where the debtor is an undischarged bankrupt, the supervisor shall discharge any balance due to the official receiver and (if other) the trustee by way of remuneration or on account of—

(a) fees, costs, charges and expenses properly incurred and payable under the Act or the Rules, and

(b) any advances made in respect of the insolvent estate, together with interest on such advances at the rate specified in section 17 of the Judgments Act 1838 at the date of the bankruptcy order.

(3) Alternatively where the debtor is an undischarged bankrupt, the supervisor must, before taking possession, give the official receiver or the trustee a written undertaking to discharge any such balance out of the first realisation of assets.

(4) Where the debtor is an undischarged bankrupt, the official receiver and (if other) the trustee has a charge on the assets included in the voluntary arrangement in respect of any sums due as above until they have been discharged, subject only to the deduction from realisations by the supervisor of the proper costs and expenses of realisation.

Any sums due to the official receiver take priority over those due to a trustee.

(5) The supervisor shall from time to time out of the realisation of assets discharge all guarantees properly given by the official receiver or the trustee for the benefit of the estate, and shall pay all their expenses.

]¹⁴⁶⁸

[5.27.— Report of creditors' meeting

(1) A report of the creditors' meeting shall be prepared by the chairman of the meeting.

(2) The report shall—

(a) state whether the proposal for a voluntary arrangement was approved or rejected and, if approved, with what (if any) modifications;

(b) set out the resolutions which were taken at the meeting, and the decision on each one;

¹⁴⁶⁶ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴⁶⁷ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁴⁶⁸ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

- (c) list the creditors (with their respective values) who were present or represented at the meeting, and how they voted on each resolution;
 - (d) whether in the opinion of the supervisor,
 - (i) the EC Regulation applies to the voluntary arrangement, and
 - (ii) if so, whether the proceedings are main proceedings or territorial proceedings; and
 - (e) include such further information (if any) as the chairman thinks it appropriate to make known to the court [or the debtor's creditors as the case may be]¹⁴⁶⁹ .
- (3) [Where the creditors' meeting was summoned under section 257 pursuant to a report to a court under section 256(1)(aa), a]¹⁴⁷⁰ copy of the chairman's report shall, within 4 [business]¹⁴⁷¹ days of the meeting being held, be filed in court; and the court shall cause that copy to be endorsed with the date of filing.
- (4) The persons to whom notice of the result is to be given, under section 259(1) , are all those who were sent notice of the meeting under this Part of the Rules and any other creditor of [whose address]¹⁴⁷² the chairman is aware, and where the debtor is an undischarged bankrupt, the official receiver and (if any) the trustee. [...] ¹⁴⁷³
- [(4A) The notice must be sent—
- (a) where the creditors' meeting was summoned under section 257 pursuant to a report to a court under section 256(1)(aa), as soon as reasonably practicable after a copy of the chairman's report is filed in court;
 - (b) where the creditors' meeting was summoned under section 257 pursuant to a report to creditors under section 256A(3), within 4 business days of the meeting being held.
- ¹⁴⁷³
- (5) In a case where no interim order has been obtained the court shall not consider the chairman's report unless an application is made to the court under the Act or the Rules in relation to it.
¹⁴⁷⁴

5.28.— [...] ¹⁴⁷⁵

¹⁴⁶⁹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.276(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁷⁰ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.276(3)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁷¹ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.276(3)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁷² Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.276(4)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁷³ Rule 5.27(4A) substituted for words by Insolvency (Amendment) Rules 2010/686 Sch.1 para.276(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁷⁴ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴⁷⁵ Revoked by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.30 (April 1, 2004)

[5.29.— Reports to Secretary of State

[(1) As soon as reasonably practicable, and in any event, within the period of 14 days after a report that the creditors' meeting has approved the voluntary arrangement has been filed in court or sent to the creditors as the case may be, the chairman of the creditors' meeting must send to the Secretary of State the following information—

- (a) the name and address of the debtor;
- (b) the date on which the arrangement was approved by the creditors;
- (c) the name and address of the supervisor;
- (d) the debtor's gender;
- (e) the debtor's date of birth; and
- (f) any name by which the debtor was or is known, not being the name in which the debtor has entered into the voluntary arrangement.

]¹⁴⁷⁶

(2) A person who is appointed to act as supervisor of an individual voluntary arrangement (whether in the first instance or by way of replacement of another person previously appointed) shall [as soon as reasonably practicable]¹⁴⁷⁷ give written notice to the Secretary of State of his appointment. If he vacates office as supervisor, he shall [as soon as reasonably practicable]¹⁴⁷⁷ give written notice of that fact also to the Secretary of State.

]¹⁴⁷⁸

[5.30.— Revocation or suspension of the arrangement

(1) This Rule applies where the court makes an order of revocation or suspension under section 262.

(2) The person who applied for the order shall serve sealed copies of it—

- (a) in a case where the debtor is an undischarged bankrupt, on the debtor, the official receiver and the trustee;
- (b) in any other case, on the debtor; and
- (c) in either case, on the supervisor of the voluntary arrangement.

(3) If the order includes a direction by the court under section 262(4)(b) for any further creditors' meeting to be summoned, notice shall also be given (by the person who applied for the order) to whoever is, in accordance with the direction, required to summon the meeting.

(4) The debtor or (where the debtor is an undischarged bankrupt) the trustee or (if there is no trustee) the official receiver shall—

- (a) [as soon as reasonably practicable]¹⁴⁷⁹ after receiving a copy of the court's order, give notice of it to all persons who were sent notice of the creditors' meeting which approved

¹⁴⁷⁶ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.277(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁷⁷ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁴⁷⁸ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴⁷⁹ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

the voluntary arrangement or who, not having been sent that notice, are affected by the order;

(b) within [5 business]¹⁴⁸⁰ days of their receiving a copy of the order (or within such longer period as the court may allow), give notice to the court whether it is intended to make a revised proposal to creditors, or to invite reconsideration of the original proposal.

(5) The person on whose application the order of revocation or suspension was made shall, within [5 business]¹⁴⁸⁰ days after the making of the order, give written notice of it to the Secretary of State and shall, in the case of an order of suspension, within [5 business]¹⁴⁸⁰ days of the expiry of any suspension order, give written notice of such expiry to the Secretary of State.

]¹⁴⁸¹

5.31.— [...] ¹⁴⁸²

[5.31A Supervisor's accounts and reports

(1) Paragraph (2) applies where the voluntary arrangement authorises or requires the supervisor—

(a) to carry on the business of the debtor or trade on behalf of or in the name of the debtor; or

(b) to realise assets of the debtor or (in a case where the debtor is an undischarged bankrupt) belonging to the estate; or

(c) otherwise to administer or dispose of any funds of the debtor or the estate.

(2) The supervisor must keep accounts and records of the supervisor's acts and dealings in, and in connection with, the arrangement, including in particular records of all receipts and payments of money.

(3) The supervisor must preserve any accounts and records in paragraph (2) which—

(a) were kept by any other person who has acted as supervisor of the arrangement; and

(b) are in the supervisor's possession.

(4) Subject to paragraph (5), the supervisor must in respect of each period of 12 months ending with the anniversary of the commencement of the arrangement send within 2 months of the end of that period a report on the progress and prospects for the full implementation of the voluntary arrangement to—

(a) the debtor, and

(b) all those of the debtor's creditors who are bound by the voluntary arrangement and of whose address the supervisor is aware.

¹⁴⁸⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.278(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁸¹ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴⁸² Rule 5.31A substituted for rule 5.31 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.279 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(5) The supervisor is released from an obligation to send a report under paragraph (4), if an obligation to send a final report under Rule 5.34 arises in the period of 2 months mentioned in paragraph (4).

(6) Where the supervisor is authorised or required to do any of the things mentioned in paragraph (1)(a) to (c) the report required to be sent pursuant to paragraph (2) must include or be accompanied by—

- (a) an abstract of receipts and payments required to be recorded by virtue of paragraph (2); or
- (b) where there have been no such receipts and payments, a statement to that effect.

]¹⁴⁸³

[5.32— Production of accounts and records to Secretary of State

(1) The Secretary of State may at any time during the course of the voluntary arrangement or after its completion require the supervisor to produce for inspection—

- (a) his records and accounts in respect of the arrangement, and
- (b) copies of abstracts and reports prepared in compliance with [5.31A]¹⁴⁸⁴.

(2) The Secretary of State may require production either at the premises of the supervisor or elsewhere; and it is the duty of the supervisor to comply with any requirement imposed on him under this Rule.

(3) The Secretary of State may cause any accounts and records produced to him under this Rule to be audited; and the supervisor shall give to the Secretary of State such further information and assistance as he needs for the purposes of his audit.

]¹⁴⁸⁵

[5.33. Fees, costs, charges and expenses

The fees, costs, charges and expenses that may be incurred for any purposes of the voluntary arrangement are—

- (a) any disbursements made by the nominee prior to the approval of the arrangement, and any remuneration for his services as such agreed between himself and the debtor, the official receiver or the trustee;
- (b) any fees, costs, charges or expenses which—
 - (i) are sanctioned by the terms of the arrangement, or
 - (ii) would be payable, or correspond to those which would be payable, in the debtor's bankruptcy.

¹⁴⁸³ Rule 5.31A substituted for rule 5.31 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.279 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁸⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.280(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁸⁵ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

]¹⁴⁸⁶

[5.34.— Completion or termination of the arrangement

(1) Not more than 28 days after the final completion or termination of the voluntary arrangement, the supervisor shall send to all creditors of the debtor who are bound by the arrangement, and to the debtor, a notice that the arrangement has been fully implemented or (as the case may be) terminated.

(2) With the notice there shall be sent to each of those persons a copy of a report by the supervisor summarising all receipts and payments made by him in pursuance of the arrangement, and explaining any difference in the actual implementation of it as compared with the proposal as approved by the creditors' meeting or (in the case of termination of the arrangement) explaining the reasons why the arrangement has not been implemented in accordance with the proposal as approved by the creditors' meeting.

[(3) The Supervisor must not vacate office until paragraph (3A) has been complied with.

(3A) Within the period in paragraph (1), a copy of the notice under paragraph (1), together with a copy of the report under paragraph (2) must be—

- (a) sent by the supervisor to the Secretary of State; and
- (b) where the creditors' meeting was summoned under section 257 pursuant to a report to a court under section 256(1)(aa), filed with the court by the supervisor.

]¹⁴⁸⁷

(4) The court may, on application by the supervisor, extend the period of 28 days under paragraphs (1) [...] ¹⁴⁸⁸ .

]¹⁴⁸⁹

CHAPTER 7

¹⁴⁸⁶ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴⁸⁷ Rule 5.34(3) and (3A) substituted for rule 5.34(3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.281(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁸⁸ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.281(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁸⁹ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

[[FAST-TRACK VOLUNTARY ARRANGEMENT]¹⁴⁹⁰]¹⁴⁹¹

[5.35. Application of Chapter

The Rules in this Chapter apply in relation to an individual debtor who intends to submit a proposal for a voluntary arrangement with his creditors to the official receiver in accordance with the provisions of section 263B.]¹⁴⁹²

[5.36. Interpretation

In this Chapter—

“voluntary arrangement” means an individual voluntary arrangement under section 263A;
“proposal” means the document setting out the terms of the voluntary arrangement which the debtor is proposing.

] ¹⁴⁹³

[5.37.— Contents of proposal

- (1) The debtor's proposal submitted under section 263B(1) shall—
 - (a) be accompanied by any fee payable to the official receiver for acting as nominee; and
 - (b) contain—
 - (i) a statement that the debtor is eligible to propose a voluntary arrangement;
 - (ii) a short explanation why, in his opinion, a voluntary arrangement is desirable, and give reasons why his creditors may be expected to concur with such an arrangement; and
 - (iii) a statement that the debtor is aware that he commits an offence under section 262A if, for the purpose of obtaining the approval of his creditors to his proposal, he makes any false representation, or fraudulently does, or omits to do, anything.
- (2) The following matters shall be stated, or otherwise dealt with, in the proposal—
 - (a) the following matters, so far as within the debtor's immediate knowledge—
 - (i) his assets, with an estimate of their respective values;
 - (ii) the extent (if any) to which the assets are charged in favour of creditors; and
 - (iii) the extent (if any) to which particular assets are to be excluded from the voluntary arrangement;
 - (b) particulars of any property, other than assets of the debtor himself, which is proposed to be included in the voluntary arrangement, the source of such property and the terms on which it is to be made available for inclusion;
 - (c) the nature and amount of the debtor's liabilities (so far as within his immediate knowledge), the manner in which they are proposed to be met, modified, postponed or otherwise dealt with by means of the voluntary arrangement and (in particular)–

¹⁴⁹⁰ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁴⁹¹ Existing Part 5 has been substituted for a new Part 5 consisting of rules 5.1-5.38 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(3) para.24 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 5(2))

¹⁴⁹² Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁴⁹³ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

- (i) how it is proposed to deal with preferential creditors (defined in section 258(7)) and creditors who are, or claim to be, secured;
- (ii) how associates of the debtor (being creditors of his) are proposed to be treated under the voluntary arrangement; and
- (iii) whether, to the debtor's knowledge, claims have been made under section 339 (transactions at an undervalue), section 340 (preferences), section 343 (extortionate credit transactions), or whether there are circumstances giving rise to the possibility of such claims,

and, where any such circumstances are present, whether, and if so how, it is proposed under the voluntary arrangement to make provision for wholly or partly indemnifying the insolvent estate in respect of such claims;

- (d) whether any, and if so what, guarantees have been given of the debtor's debts by other persons, specifying which (if any) of the guarantors are associates of his;
- (e) the proposed duration of the voluntary arrangement;
- (f) the proposed dates of distributions to creditors, with estimates of their amounts;
- (g) how it is proposed to deal with the claims of any person who is bound by the arrangement by virtue of section 263D(2)(c);
- (h) an estimate of the fees and expenses that will be incurred in connection with the approval and implementation of the voluntary arrangement;
- (j) whether, for the purposes of the voluntary arrangement, any guarantees are to be offered by any persons other than the debtor, and whether (if so) any security is to be given or sought;
- (k) the manner in which funds held for the purpose of payment to creditors, and not so paid on the termination of the voluntary arrangement, are to be dealt with;
- (l) the functions which are to be undertaken by the supervisor of the voluntary arrangement;
- (m) an address of the official receiver to which correspondence with the official receiver is to be sent;
- (n) the names and addresses of all the debtor's creditors so far as within his immediate knowledge; and
- (o) whether the EC Regulation will apply and, if so, whether the proceedings will be main proceedings or territorial proceedings,

and the proposal shall be [authenticated]¹⁴⁹⁴ [...] ¹⁴⁹⁵ by the debtor.

(3) The official receiver shall on request supply to the debtor the address referred to in paragraph (2)(m).

¹⁴⁹⁶

[5.38.— Requirement for the official receiver's decision

(1) Where the official receiver receives a proposal for a voluntary arrangement in accordance with Rule 5.37 he shall, within 28 days of its receipt, serve a notice on the debtor stating that—

- (a) he agrees to act as nominee in relation to the proposal;

¹⁴⁹⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁹⁵ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.282(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁹⁶ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

- (b) he declines to act as nominee in relation to the proposal and specifying reasons for his decision; or
 - (c) on the basis of the information supplied to him he is unable to reach a decision as to whether to act and specifying what further information he requires.
- (2) Where the debtor, pursuant to a request under paragraph (1)(c), supplies the information requested, the official receiver shall, within 28 days of the receipt of the information, serve a notice on the debtor in accordance with paragraph (1).
-]¹⁴⁹⁷

[5.39.— Arrangements for approval of fast-track voluntary arrangement

- (1) As soon as reasonably practicable after the official receiver agrees to act as nominee, he shall send to the creditors and any trustee who is not the official receiver—
- (a) a copy of the proposal; and
 - (b) a notice inviting creditors to vote to approve or reject the debtor's proposal and stating that—
 - (i) if a majority [...] ¹⁴⁹⁸ of three-quarters [or more] ¹⁴⁹⁹ in value of creditors who vote approve the proposal, the official receiver will, as soon as reasonably practicable, [notify the Secretary of State] ¹⁵⁰⁰ that the proposal has been approved;
 - (ii) under section 263F—
 - (aa) the debtor, a person who was entitled to participate in the arrangements made under section 263B(2) , any trustee who is not the official receiver, or the official receiver, has 28 days from the date the official receiver [notifies the Secretary of State] ¹⁵⁰¹ under section 263C that the proposal has been approved to apply to the court to have the proposal set aside on the grounds set out in section 263F(1);
 - (bb) a creditor, who was not made aware of the arrangements under section 263B(2) at the time when they were made, has 28 days from the date on which he becomes aware of the voluntary arrangement, to apply to have the proposal set aside on the grounds set out in section 263F(1); and
 - (iii) creditors cannot propose modifications to the debtor's proposal; and
 - (c) for the creditors, a copy of Form 5.6 for their use.

¹⁴⁹⁷ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁴⁹⁸ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.283(2)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁴⁹⁹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.283(2)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁰⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.283(2)(c) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁰¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.283(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) The notice shall include a date specified by the official receiver as the final date on which he will accept votes from creditors, being a date not less than 14 days and not more than 28 days from the date of the notice.

]¹⁵⁰²

[5.40.— Approval by creditors

(1) All creditors who wish to vote shall give notice in Form 5.6 to the official receiver of their decision whether to accept or reject the debtor's proposal. Such notification shall be sent to the official receiver at the address specified in the notice.

[(2) That notice may be sent by a representative of a creditor if it is accompanied by a written authority for that representation authenticated by the creditor.]¹⁵⁰³

(3) [...] ¹⁵⁰⁴

]¹⁵⁰⁵

[5.41.— Entitlement to vote

(1) Subject as follows, any creditor who is sent a notice by the official receiver is entitled to vote for the approval or rejection of the proposal.

(2) A creditor's entitlement to vote is calculated by reference to the amount of the creditor's debt at the date of the bankruptcy order.

(3) A creditor may vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained, and for the purposes of voting (but not otherwise) his debt shall be valued at £1 unless the official receiver agrees to put a higher value on it.

]¹⁵⁰⁶

[5.42.— Procedure for admission of creditors' claims for voting purposes

(1) The official receiver has the power to admit or reject a creditor's claim for the purpose of his entitlement to vote, and the power is exercisable with respect to the whole or part of the claim.

(2) The official receiver's decision on entitlement to vote is subject to appeal to the court by any creditor or the debtor.

(3) If on appeal the official receiver's decision is reversed or varied, or votes are declared invalid, the court may order another vote to be held, or make such order as it thinks just.

The court's power to make an order under this paragraph is exercisable only if it considers that the circumstances giving rise to the appeal are such as give rise to unfair prejudice or material irregularity.

¹⁵⁰² Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵⁰³ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.284(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁰⁴ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.284(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁰⁵ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵⁰⁶ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

(4) An application to the court by way of appeal against the official receiver's decision shall not be made after the end of the period of 28 days beginning with the day on which the [official receiver is]¹⁵⁰⁷ required by section 263C [to notify the Secretary of State]¹⁵⁰⁸ .

(5) The official receiver is not personally liable for any costs incurred by any person in respect of an appeal under this Rule.

]¹⁵⁰⁹

[5.43.— Requisite majorities

(1) A proposal is approved by the creditors if [three-quarters or more]¹⁵¹⁰ in value of the creditors who vote approve the proposal.

(2) In the following cases there is to be left out of account a creditor's vote in respect of any claim or part of a claim—

- (a) where the claim or part is secured;
- (b) where the claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing—
 - (i) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the debtor, and against whom a bankruptcy order has not been made (or in the case of a company, which has not gone into liquidation), as a security in his hands; and
 - (ii) to estimate the value of the security and (for the purpose of entitlement to vote, but not of any distribution under the arrangement) to deduct it from his claim.

[(3) A proposal is not approved if those voting against it include more than half in value of the creditors, counting in the latter only those—

- (a) who gave notice to the official receiver in accordance with Rule 5.40;
- (b) whose votes are not to be left out of account under paragraph (2); and
- (c) who are not, to the best of the official receiver's belief, associates of the debtor.

(4) It is for the official receiver to decide whether, under this Rule a person is an associate of the debtor for the purposes of paragraph (3)(c) and in relation to this he is entitled to rely on the information provided by the debtor's statement of affairs or otherwise in accordance with this Part of the Rules.]¹⁵¹¹

]¹⁵¹²

¹⁵⁰⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.285(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁰⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.285(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁰⁹ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵¹⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.286(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵¹¹ Added by Insolvency (Amendment) Rules 2004/584 rule 24 (April 1, 2004)

¹⁵¹² Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

5.44. [...]¹⁵¹³**[5.45.— Notice of appointment as supervisor etc**

(1) Where the official receiver is appointed to act as supervisor of a voluntary arrangement, he shall, as soon as reasonably practicable, give written notice of his appointment to the Secretary of State, and all creditors of [whose address the official receiver]¹⁵¹⁴ is aware, and the trustee (if any) who is not the official receiver.

(2) If the official receiver vacates office as supervisor he [must, as soon as reasonably practicable after doing so,]¹⁵¹⁵ give written notice of that fact to the Secretary of State.

]¹⁵¹⁶

[5.46.— Revocation of the fast-track voluntary arrangement

(1) This Rule applies where the court makes an order of revocation under section 263F.

(2) Where the person who applied for the order is—

- (a) the debtor, he shall serve a sealed copy of the order on the supervisor and any trustee of his estate who is not the official receiver;
- (b) the supervisor, he shall serve a sealed copy of the order on the debtor, and any trustee who is not the official receiver;
- (c) a trustee who is not the official receiver, he shall serve a sealed copy of the order on the debtor and the supervisor; and
- (d) a creditor, he shall serve a sealed copy of the order on the debtor, the supervisor and any trustee who is not the official receiver.

(3) The supervisor shall, as soon as reasonably practicable after receiving a copy of the order, give notice of it, to all persons who were sent a copy of the debtor's proposal under Rule 5.39 and all other persons who are affected by the order.

(4) The person on whose application the order was made shall, within [5 business]¹⁵¹⁷ days after the making of the order, give written notice of it to the Secretary of State.

]¹⁵¹⁸

5.47.— [...]¹⁵¹⁹

¹⁵¹³ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵¹⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.287(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵¹⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.287(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵¹⁶ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵¹⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.288(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵¹⁸ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

[5.47A Supervisor's accounts and reports]

(1) The supervisor must keep accounts and records of the supervisor's acts and dealings in, and in connection with, the arrangement including in particular records of all receipts and payments of money.

(2) Subject to paragraph (3), the supervisor must in respect of each period of 12 months ending with the anniversary of the commencement of the arrangement send within 2 months of the end of that period a report on the progress and prospects for the full implementation of the voluntary arrangement to—

(a) the debtor;

(b) all those of the debtor's creditors who are bound by the voluntary arrangement of whose address the supervisor is aware;

(3) The supervisor is released from an obligation to send a report under paragraph (2), if an obligation to send a final report under Rule 5.50 arises in the period of 2 months mentioned in paragraph (2).

¹⁵²⁰

[5.48. Fees, costs and expenses in respect of the performance of the functions of the official receiver]

The fees, costs and expenses in respect of the performance by the official receiver of his functions in relation to the bankruptcy and those of the trustee who is not the official receiver (including those in connection with the employment of agents) shall be a first charge on any sums realised under the terms of the voluntary arrangement, and those of the official receiver in relation to the voluntary arrangement, shall be a second charge.]¹⁵²¹

[5.49. Employment of agents by the supervisor]

The supervisor may employ agents in connection with the realisation of any assets subject to the terms of the voluntary arrangement.]¹⁵²²

[5.50.— Completion or termination of the fast-track voluntary arrangement]

(1) Not more than 28 days after the final completion or termination of the voluntary arrangement, the supervisor shall send to all creditors of the debtor who are bound by the arrangement, and to

¹⁵¹⁹ Rule 5.47A substituted for rule 5.47 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.289 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵²⁰ Rule 5.47A substituted for rule 5.47 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.289 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵²¹ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵²² Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

the debtor, a notice that the voluntary arrangement has been fully implemented, [or (as)]¹⁵²³ the case may be) terminated.

(2) With the notice there shall be sent to each of those persons a copy of a report by the supervisor summarising all receipts and payments made by him in pursuance of the voluntary arrangement, and explaining any difference in the actual implementation of it compared with the proposal as approved by the creditors.

(3) The supervisor shall, within the 28 days mentioned above, send to the Secretary of State a copy of the notice under paragraph (1), together with a copy of the report under paragraph (2), and he shall not vacate office until after such copies have been sent.

(4) The court may, on application by the supervisor, extend the period of 28 days under paragraphs (1) and (3).

] ¹⁵²⁴

CHAPTER 8

*[APPLICATION BY A BANKRUPT TO ANNUL A BANKRUPTCY ORDER UNDER SECTION 261(2)(a)]*¹⁵²⁵

[5.51. Application of this Chapter

The following Rules apply where a bankrupt applies for an annulment of a bankruptcy order under section 261(2)(a).]¹⁵²⁶

[5.52.— Application to court

(1) An application to the court to annul a bankruptcy order under section 261(2)(a) shall specify the section under which it is made.

(2) The application shall be supported by [a witness statement]¹⁵²⁷ stating—

- (a) that the voluntary arrangement has been approved at a meeting of creditors;
- (b) the date of the approval by the creditors; and
- (c) that the 28 day period in section 262(3)(a) for applications to be made under section 262(1) has expired and no applications or appeal remain to be disposed of.

¹⁵²³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.290(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵²⁴ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵²⁵ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵²⁶ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵²⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.291(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) The application and supporting [witness statement]¹⁵²⁸ shall be filed in court; and the court shall give to the bankrupt notice of the venue fixed for the hearing.

(4) The bankrupt shall give notice of the venue, accompanied by copies of the application and [witness statement]¹⁵²⁹ to the official receiver, any trustee who is not the official receiver, and the supervisor of the voluntary arrangement not less than [5 business]¹⁵³⁰ days before the date of the hearing.

(5) The official receiver, the supervisor of the voluntary arrangement and any trustee who is not the official receiver may attend the hearing or be represented and call to the attention of the court any matters which seem to him to be relevant.

(6) Where the court annuls a bankruptcy order, it shall send sealed copies of the order of annulment in Form 5.7 to the bankrupt, the official receiver, the supervisor of the voluntary arrangement and any trustee who is not the official receiver.

]¹⁵³¹

[5.53.— Notice to creditors

(1) Where the official receiver has notified creditors of the debtor's bankruptcy, and the bankruptcy order is annulled, he shall, as soon as reasonably practicable, notify them of the annulment.

(2) Expenses incurred by the official receiver in giving notice under this Rule are a charge in his favour on the property of the former bankrupt, whether or not actually in his hands.

(3) Where any property is in the hands of a trustee or any person other than the former bankrupt himself, the official receiver's charge is valid subject only to any costs that may be incurred by the trustee or that other person in effecting realisation of the property for the purpose of satisfying the charge.

]¹⁵³²

CHAPTER 9

¹⁵²⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.291(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵²⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.291(4)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵³⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.291(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵³¹ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵³² Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

*[APPLICATION BY OFFICIAL RECEIVER TO ANNUL A BANKRUPTCY ORDER UNDER
SECTION 261(2)(b)]*¹⁵³³

[5.54. Application of this Chapter

The following Rules apply where the official receiver applies for an annulment of a bankruptcy order under section 261(2)(b).]¹⁵³⁴

[5.55.— Application to court

(1) An application to the court to annul a bankruptcy order under section 261(2)(b) shall specify the section under which it is made.

[(2) The official receiver may not make an application under section 261(2)(b) before the expiry of the period of 42 days beginning with the day on which—

- (a) where the creditors' meeting was summoned under section 257 pursuant to a report to a court under section 256(1)(aa), the nominee filed the report of the creditors' meeting with the court; or
- (b) where the creditors' meeting was summoned under section 257 pursuant to a report to the debtor's creditors under section 256A(3), the result of the creditors' meeting was notified to the creditors.

] ¹⁵³⁵

(3) The application shall be supported by a report stating the grounds on which it is made. It shall also state that—

- (a) the time period for application in paragraph (2) above has expired; and
- (b) the official receiver is not aware that any application or appeal remains to be disposed of.

(4) The application and the report shall be filed in court and the court shall give to the official receiver notice of the venue fixed for the hearing.

(5) The official receiver shall give notice of the venue, accompanied by copies of the application and the report to the bankrupt not less than [5 business]¹⁵³⁶ days before the date of the hearing.

(6) Where the court annuls a bankruptcy order, it shall send sealed copies of the order of annulment in Form 5.7 to the official receiver, any trustee who is not the official receiver, the supervisor of the voluntary arrangement and the bankrupt.

] ¹⁵³⁷

¹⁵³³ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵³⁴ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵³⁵ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.292(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵³⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.292(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵³⁷ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

[5.56.— Notice to creditors

- (1) Where the bankruptcy order is annulled, the official receiver shall notify all creditors of [whose address the official receiver]¹⁵³⁸ is aware of the annulment.
- (2) Expenses incurred by the official receiver in giving notice under this Rule are a charge in his favour on the property of the former bankrupt, whether or not actually in his hands.
- (3) Where any property is in the hands of a trustee or any person other than the former bankrupt himself, the official receiver's charge is valid subject only to any costs that may be incurred by the trustee or that other person in effecting realisation of the property for the purpose of satisfying the charge.
¹⁵³⁹

CHAPTER 10

*[APPLICATION BY OFFICIAL RECEIVER TO ANNUL A BANKRUPTCY ORDER UNDER
SECTION 263D(3)]¹⁵⁴⁰*

[5.57. Application of this Chapter

The following Rules apply where the official receiver applies for an annulment of a bankruptcy order under section 263D(3). ¹⁵⁴¹

[5.58.— Application to court

- (1) An application to the court to annul a bankruptcy order under section 263D(3) shall specify the section under which it is made.
- (2) An application under section 263D(3) shall be made within 21 days of the expiry of the relevant period set out in section 263D(4).
- (3) The application shall be supported by a report stating the grounds on which it is made and a statement by the official receiver that he is not aware that any application or appeal under section 263F remains to be disposed of.
- (4) The report shall be accompanied by a copy of the proposal for the voluntary arrangement and a copy of the report under section 263C.
- (5) The application, together with the report and the documents in support, shall be filed in court and the court shall give to the official receiver notice of the venue fixed for the hearing.

¹⁵³⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.293(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵³⁹ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵⁴⁰ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵⁴¹ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

(6) The official receiver shall give notice of the venue, accompanied by copies of the application and the report, to the bankrupt not less than [5 business]¹⁵⁴² days before the date of the hearing.

(7) Where the court annuls a bankruptcy order, it shall send sealed copies of the order of annulment in Form 5.8 to the official receiver and the bankrupt.

]¹⁵⁴³

[5.59.— Notice to creditors

(1) Where the official receiver has notified creditors of the debtor's bankruptcy, and the bankruptcy order is annulled, he shall, as soon as reasonably practicable, notify them of the annulment.

(2) Expenses incurred by the official receiver in giving notice under this Rule are a charge in his favour on the property of the former bankrupt, whether or not actually in his hands.

(3) Where any property is in the hands of a trustee or any person other than the former bankrupt himself, the official receiver's charge is valid subject only to any costs that may be incurred by the trustee or that other person in effecting realisation of the property for the purpose of satisfying the charge.

]¹⁵⁴⁴

CHAPTER 11

[OTHER MATTERS ARISING ON ANNULMENTS UNDER SECTIONS 261(2)(a), 261(2)(b) OR 263D(3)]¹⁵⁴⁵

[5.60.—

(1) In an order under section 261(2)(a), 261(2)(b) or 263D(3) the court shall include provision permitting vacation of the registration of the bankruptcy petition as a pending action, and of the bankruptcy order, in the register of writs and orders affecting land.

(2) The court shall as soon as reasonably practicable give notice of the making of the order to the Secretary of State.

[(3) The former bankrupt may in writing within 28 days of the date of the order require the Secretary of State to give notice of the making of the order. As soon as reasonably practicable the notice shall be—

(a) gazetted; and

(b) advertised in the same manner as the bankruptcy order to which it relates was advertised.

]¹⁵⁴⁶

¹⁵⁴² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.294(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁴³ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵⁴⁴ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵⁴⁵ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

- [(3A) In addition to the standard contents, the notice under paragraph (3) must state—
- (a) the name of the former bankrupt;
 - (b) the date on which the bankruptcy order was made;
 - (c) that the bankruptcy order has been annulled;
 - (d) the date of the annulling order; and
 - (e) the grounds of the annulment.

]¹⁵⁴⁷

(4) [...] ¹⁵⁴⁸

(5) Where the former bankrupt has died, or is a person incapable of managing his affairs (within the meaning of Chapter 7 in Part 7 of the Rules), the references to him in [paragraph (3) is] ¹⁵⁴⁹ to be read as referring to his personal representative or, as the case may be, a person appointed by the court to represent or act for him.

]¹⁵⁵⁰

[5.61.— Trustee's final account

(1) Where a bankruptcy order is annulled under section 261(2)(a), 261(2)(b) or 263D(3), this does not of itself release the trustee from any duty or obligation, imposed on him by or under the Act or the Rules, to account for all his transactions in connection with the former bankrupt's estate.

(2) The trustee shall submit a copy of his final account to the Secretary of State as soon as reasonably practicable after the court's order annulling the bankruptcy order; and he shall file a copy of the final account in court.

(3) The final account must include a summary of the trustee's receipts and payments in the administration, and contain a statement to the effect that he has reconciled his account with that held by the Secretary of State in respect of the bankruptcy.

(4) The trustee is released from such time as the court may determine, having regard to whether paragraph (2) of this Rule has been complied with.

]¹⁵⁵¹

CHAPTER 12

¹⁵⁴⁶ Substituted by Insolvency (Amendment) Rules 2009/642 rule 31 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁵⁴⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.295(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁴⁸ Revoked by Insolvency (Amendment) Rules 2004/584 rule 25(b) (April 1, 2004)

¹⁵⁴⁹ Words substituted by Insolvency (Amendment) Rules 2005/527 rule 34 (April 1, 2005)

¹⁵⁵⁰ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵⁵¹ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

*[EC REGULATION: CONVERSION OF VOLUNTARY ARRANGEMENT INTO BANKRUPTCY]*¹⁵⁵²**[5.62.— Application for conversion of voluntary arrangement into bankruptcy]**

(1) Where a member State liquidator proposes to apply to the court for conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of a voluntary arrangement into a bankruptcy, [a witness statement]¹⁵⁵³ complying with Rule 5.63 must be prepared [...] ¹⁵⁵⁴, and filed in court in support of the application.

(2) The application and the [witness statement]¹⁵⁵⁵ required under this Rule shall be served upon—
 (a) the debtor; and
 (b) the supervisor.

]¹⁵⁵⁶

[5.63.— Contents of [witness statement]]¹⁵⁵⁷

(1) The [witness statement]¹⁵⁵⁸ shall state—
 (a) that the main proceedings have been opened in relation to the debtor in a member State other than the United Kingdom;
 (b) the [belief of the person making the witness statement]¹⁵⁵⁹ that the conversion of the voluntary arrangement into a bankruptcy would prove to be in the interests of the creditors in the main proceedings; and
 (c) all other matters that, in the opinion of the member State liquidator, would assist the court—
 (i) in deciding whether to make an order under Rule 5.64; and
 (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

¹⁵⁵² Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵⁵³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.296(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁵⁴ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.296(2)(b) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁵⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.296(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁵⁶ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵⁵⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.297(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁵⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.297(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁵⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.297(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) [A witness statement]¹⁵⁶⁰ under this Rule shall be [made]¹⁵⁶¹ by, or on behalf of, the member State liquidator.
]¹⁵⁶²

[5.64.— Power of court

(1) On hearing an application for conversion of a voluntary arrangement into a bankruptcy, the court may make such order as it thinks [just]¹⁵⁶³ .

(2) If the court makes an order for conversion of a voluntary arrangement into a bankruptcy under paragraph (1), the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Where the court makes an order for conversion of a voluntary arrangement into a bankruptcy under paragraph (1), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the bankrupt's estate.
]¹⁵⁶⁴

[5.65.— Notices to be given to member State liquidator

(1) This Rule applies where a member State liquidator has been appointed in relation to the debtor.

(2) Where the supervisor is obliged to give notice to, or provide a copy of a document (including an order of the court) to, the court or the official receiver, the supervisor shall give notice or provide copies, as appropriate, to the member State liquidator.
]¹⁵⁶⁵

CHAPTER 13

¹⁵⁶⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.297(4)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁶¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.297(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁶² Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵⁶³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁶⁴ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

¹⁵⁶⁵ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(5) para.31 (April 1, 2004)

*[INFORMATION ABOUT TIME SPENT ON A CASE TO BE PROVIDED BY PERSON ACTING
AS NOMINEE OR SUPERVISOR]¹⁵⁶⁶*

[5.66 Provision of information]

- (1) A person (“the relevant person”) who has acted or is acting as—
 - (a) a nominee in respect of a proposed voluntary arrangement, or
 - (b) a supervisor in respect of a voluntary arrangement must, on request in writing by any person mentioned in paragraph (2), supply free of charge to that person a statement complying with paragraph (3).
- (2) The persons mentioned in this paragraph are—
 - (a) the debtor; and
 - (b) where the proposal has been approved, any creditor of the debtor in respect of the arrangement.
- (3) The statement referred to in paragraph (1)—
 - (a) must cover the period beginning with the date of the appointment of the relevant person as nominee or supervisor, as the case may be, and ending—
 - (i) with the date next before the date of making the request on which the relevant person has completed any period as nominee or supervisor, or both, which is a multiple of 6 months, or
 - (ii) where the relevant person has ceased to act as nominee or supervisor, the date upon which the person so ceased; and
 - (b) must comprise the following details—
 - (i) the total number of hours spent on the voluntary arrangement by the relevant person whether as nominee or supervisor, or both, and any staff assigned to the voluntary arrangement during that period;
 - (ii) for each grade of individual so engaged, the average hourly rate at which any work carried out by individuals in that grade is charged; and
 - (iii) the number of hours spent by each grade of staff during that period.
- (4) No request pursuant to this Rule may be made where more than 2 years has elapsed since the relevant person ceased to act in any capacity in relation to the proposal or any voluntary arrangement arising out of the approval of the proposal.
- (5) Any statement required to be provided to any person under this Rule must be supplied within 28 days of the date of the receipt of the request by the person required to supply it.

¹⁵⁶⁷

CHAPTER 14

¹⁵⁶⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.298 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁶⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.298 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

*[PERSONS AT RISK OF VIOLENCE]*¹⁵⁶⁸

[5.67 Persons at risk of violence]

- (1) The provisions of this Rule apply in any case where disclosure or continuing disclosure to other persons (whether to the public generally or to specific persons) of the current address or whereabouts of a debtor might reasonably be expected to lead to violence against the debtor or against a person who normally resides with the debtor as a member of the debtor's family.
- (2) For the purposes of this Rule—
 - “current address” means, in relation to any debtor, the address of the debtor's current place of residence and any address at which the debtor currently carries on business;
 - “debtor” means a debtor who has entered into an individual voluntary arrangement.
- (3) The court may, on the application of the debtor, the supervisor, the official receiver (whether acting as a supervisor or otherwise) or the Secretary of State, order that—
 - (a) details of the debtor's current address be removed from any part of the court file of the proceedings in relation to the debtor which is open to inspection and be kept on a separate file not open to inspection;
 - (b) the details in respect of the debtor to be entered onto the individual insolvency register under Rule 6A.2A in respect of an individual voluntary arrangement must not include details of the debtor's current address; and
 - (c) that any notice published by the Secretary of State of the making of any order permitting vacation of the registration of a bankruptcy petition referred to in Rule 5.60, must not include details of the bankrupt's address.
- (4) Where the court makes an order under paragraph (3), it may further order that the details in respect of the debtor to be entered onto the register referred to in paragraph (3) must instead include such other details of the debtor's addresses or whereabouts as the court thinks just, including details of any address at which the debtor has previously resided or carried on business.
- (5) In any case where an application is made in respect of a debtor under or by virtue of this Rule, the application must be accompanied by a witness statement referring to this Rule and containing sufficient evidence to satisfy the court that paragraph (1) of this Rule applies to or in respect of that debtor.

¹⁵⁶⁹

CHAPTER 15

¹⁵⁶⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.298 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁶⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.298 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

*[OMISSION OF INFORMATION FROM STATEMENT OF AFFAIRS]*¹⁵⁷⁰

[5.68 Omission of information from statement of affairs]

The court, on the application of the nominee, the debtor or any person appearing to it to have an interest, may direct that specified information may be omitted from any statement of affairs required to be sent to the creditors where the disclosure of such information would be likely to prejudice the conduct of the voluntary arrangement or might reasonably be expected to lead to violence against any person.]¹⁵⁷¹

[PART 5A

DEBT RELIEF ORDERS

] ¹⁵⁷²

[CHAPTER 1

Preliminary]¹⁵⁷³

[5A.1. Scope of this part: introductory and interpretation]

The Rules in this Part apply in relation to debt relief orders and applications for debt relief orders under Part 7A of the Act.]¹⁵⁷⁴

[5A.2. Excluded debts]

For the purposes of that Part of the Act and this Part of the Rules—

“excluded debt” means—

- (a) any fine imposed for an offence and any obligation (including an obligation to pay a lump sum or to pay costs) arising under an order made in family proceedings or any obligation arising under a maintenance assessment made under the Child Support Act 1991
- (b) any obligation arising under a confiscation order made under section 1 of the Drug Trafficking Offences Act 1986 or section 1 of the Criminal Justice (Scotland) Act 1987 or section 71 of the Criminal Justice Act 1988 or under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002 ; [...] ¹⁵⁷⁵

¹⁵⁷⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.298 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁷¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.298 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁷² Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁵⁷³ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁵⁷⁴ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁵⁷⁵ Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.299(2)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(c) any debt or liability to which a debtor is or may become subject in respect of any sum paid or payable to the debtor as a student by way of a loan and which he receives before or after a debt relief order is made in respect of him [; and]¹⁵⁷⁶

[(d) any debt which consists in a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, or to pay damages by virtue of Part 1 of the Consumer Protection Act 1987, being in either case damages in respect of the death of or personal injury (including any disease or other impairment of physical or mental condition) to any person.]¹⁵⁷⁶

“Fine” and “family proceedings” have the meanings given by section 281(8) of the Act (which applies the Magistrates’ Courts Act 1980 and the Matrimonial and Family Proceedings Act 1984).

“Loan” means a loan made pursuant to—

(a) regulations made under section 22(1) of the Teaching and Higher Education Act 1998, or

(b) the Education (Student Loans) Act 1990, or that Act as it continues in force by virtue of any savings made, in connection with its repeal by the Teaching and Higher Education Act 1998, by an order made under section 46(4) of that Act,

including any interest on the loan and any penalties or charges incurred in connection with it

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[5A.3.— Application for a debt relief order — information to be in the application

(1) In addition to the matters referred to in section 251B(2)(a) and (b) of the Act and subject to paragraphs (5) to (11), an application for a debt relief order under section 251A must also state the matters set out in paragraphs (2) to (4) as they subsist at the date of the application.

(2) The application must state—

(a) the debtor’s surname, forenames and occupation (if any);

(b) the debtor’s gender and date of birth;

(c) the debtor’s places of residence during the three years preceding the date of the application;

(d) any name or names used by the debtor for any purpose, if different from the above;

(e) the name, address and nature of any business carried on by the debtor, including any business carried on by—

(i) a firm or partnership of which the debtor is a member;

(ii) an agent or manager for the debtor or for such firm or partnership;

(f) any other liabilities (including those imposed by an order of the court) to which the debtor is subject;

(g) the address of the creditor to whom each debt is owed;

(h) the total amount of the debtor’s monthly income from any source (see Rule 5A.8(1));

(i) the sources of that income and the amount from each source;

¹⁵⁷⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.299(2)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁷⁷ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

- (j) particulars of the expenditure which the debtor claims is necessary to meet the monthly reasonable domestic needs of the debtor and the debtor's family, including the object and the amount of that expenditure (see Rule 5A.8(2));
 - (k) the total amount available from any source to meet the claimed monthly reasonable domestic needs of the debtor and his or her family (see Rule 5A.8(2)); and
 - (l) particulars of the debtor's property and its total estimated value (see Rule 5A.9 and 5A.10).
- (3) The debtor shall also state in the application—
- (a) whether or not the debtor at the date of the application—
 - (i) has given a preference to any person during the period of two years prior to and ending with the application date;
 - (ii) has entered into a transaction with any person at an undervalue during the period of two years prior to and ending with the application date;
 - (iii) is domiciled in England and Wales;
 - (iv) at any time during the period of three years ending with the application date,
 - (aa) was ordinarily resident,
 - (bb) had a place of residence, or
 - (cc) carried on business,in England and Wales;
 - (v) is an undischarged bankrupt;
 - (vi) is subject to a debt relief order;
 - (vii) has been subject to a debt relief order in the six years preceding the date of the application;
 - (viii) is subject to an interim order or a voluntary arrangement under Part 8 of the Act; or
 - (ix) is subject to a bankruptcy restrictions order or undertaking or debt relief restrictions order or undertaking; and
 - (b) whether at the date of the application—
 - (i) a bankruptcy petition has been presented by the debtor or by a creditor against the debtor;
 - (ii) a bankruptcy petition has been presented by the debtor, but the court has referred the debtor for the purpose of making an application for a debt relief order;
 - (iii) any debt management arrangements (see section 251F) are in force in respect of the debtor; and
 - (iv) any other legal action has been taken against the debtor in respect of any of the debtor's existing debts.
- (4) In the application, the debtor must also—
- (a) consent to checks being made by the official receiver for the purpose of verifying that the debtor complies with the conditions to which the making of a debt relief order is subject;
 - (b) state that the debtor is unable to pay his or her debts;
 - (c) request a debt relief order, and
 - (d) indicate the date on which the application is completed.
- (5) The debtor shall submit to the approved intermediary such information and such documents by reference to which the information in the application, including information about each debt, the amount of the debt and the name and address of the creditor, may be substantiated.

(6) In making the application, the debtor must in every case deduct from the amount of the debt all trade and other discounts which are available to the debtor, except any discount for immediate, early or cash settlement.

(7) Subject to paragraph (8), where a debt was incurred or is payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the application date.

(8) The official exchange rate is the middle exchange rate on the London foreign exchange market at the close of business, as published for the date in question or, in the absence of any such published rate for the date in question such rate as the official receiver determines.

(9) Where a debt consists of unpaid payments of a periodical nature, the amount of the debt shall consist of any amounts due and unpaid up to the date of the application.

(10) Where at the application date any payment was accruing due, the debt shall consist of so much as would have fallen due at that date, if accruing from day to day.

(11) A debtor may include a debt of which payment is not yet due at the date of the application, provided that it is for a liquidated sum payable at some certain future time.

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[5A.4.— Application for a debt relief order

(1) Subject to paragraphs (2) and (3), an application for a debt relief order must be completed and sent to the official receiver in electronic form and by electronic means.

(2) In this Rule, an application—

(a) is sent by electronic means, if it is sent initially and received at its destination by means of electronic equipment for the processing (which expression includes digital compression) or storage of data and entirely created, transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means but does not include electronic facsimile transmission or mobile telephonic text messaging;

(b) is completed in electronic form, if it is an application which is created, and sent, by electronic means;

(c) in hard copy form, means an application completed and sent on paper and capable of being read (but is not the product of an electronic facsimile transmission).

(3) An application in electronic form sent by electronic means shall be treated as not having been submitted unless and until its receipt has been acknowledged by the official receiver in the same form and by the same means.

(4) In the event of any malfunction or error in the operation of the electronic form or means referred to, the official receiver shall notify the competent authorities and approved intermediaries—

(a) that approved intermediaries may, for a specified period, complete and send applications in hard copy form; and

(b) of the postal address to which such applications are to be sent and any terms or conditions to which their use is subject.

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¹⁵⁷⁸ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁵⁷⁹ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

[5A.5.— Approved intermediary]

- (1) The approved intermediary, as and when requested by a debtor who proposes to make an application for a debt relief order through him or her, shall create an application for a debt relief order in the name of the debtor.
- (2) The approved intermediary through whom the application for a debt relief order is to be made may assist the debtor—
 - (a) to identify what information is required to complete the application;
 - (b) based upon the documentation and information supplied by the debtor, to ascertain whether—
 - (i) the debtor appears to have debts not exceeding the prescribed amount;
 - (ii) the debtor's surplus income does not exceed the prescribed amount; and
 - (iii) the value of the debtor's property does not exceed the prescribed amount; and
 - (c) to ensure that the application (if any) is completed in full.
- (3) The approved intermediary must draw the debtor's attention to—
 - (a) all the conditions to which an application for, and the making of, a debt relief order is subject;
 - (b) the possible consequences of the making by the debtor of any false representation or omission in the debtor's application; and
 - (c) the fact that verification checks will be made for the purpose of verifying that the debtor complies with the conditions to which the making of a debt relief order is subject and the requirement for the debtor to consent to such checks being made.
- (4) If and when instructed to do so by the debtor, the approved intermediary must send the application to the official receiver on behalf of the debtor.

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[5A.6.— Form, manner and reasons for refusal of application for debt relief order]

- (1) The official receiver must notify the debtor of his or her decision to refuse an application for a debt relief order in accordance with this Rule.
- (2) The official receiver must send a notice in writing to the debtor stating—
 - (a) that the official receiver has decided to refuse the debtor's application, and
 - (b) the reason for which it has been refused.

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[5A.7.— Prescribed verification checks — conditions in paragraphs 1 to 8 of Schedule 4ZA]

- (1) In this Rule, “credit reference agency” means a person licensed to carry on a business comprising the furnishing of information relevant to the financial standing of individuals.
- (2) For the purposes of subsections (4) and (5) of section 251D and the conditions specified in paragraphs 1 to 8 of Schedule 4ZA, the prescribed verification checks are those searches or enquiries specified in relation to the condition in paragraphs (3) to (8) below.

¹⁵⁸⁰ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁵⁸¹ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

(3) For the purpose of verifying a debtor's connection with England and Wales on the application date, verification checks made in, or with, one or more of the following—

- (a) the electoral registers for the areas in England and Wales in which the debtor in, and at the date of, the debtor's application, claims to reside or to carry on business or to have resided or carried on business;
- (b) the individual insolvency register;
- (c) the bankruptcy restrictions register;
- (d) the debt relief restrictions register;
- (e) a credit reference agency.

(4) For the purpose of verifying that a debtor—

- (a) is not, on the determination date—
 - (i) an undischarged bankrupt;
 - (ii) subject to a bankruptcy restrictions order or undertaking;
 - (iii) subject to a debt relief restrictions order or undertaking;
 - (iv) subject to an individual voluntary arrangement; or
- (b) has not been the subject of a debt relief order in the period of 6 years ending with the determination date,

verification checks made in one or more of the registers specified in paragraph (5).

(5) The registers referred to in paragraph (4) are—

- (a) the individual insolvency register;
- (b) the bankruptcy restrictions register;
- (c) the debt relief restrictions register.

(6) For the purpose of verifying—

- (a) that the debtor is not, on the determination date, subject to an interim order;
- (b) whether a debtor's or creditor's bankruptcy petition has been presented against the debtor prior to the determination date;
- (c) where a bankruptcy petition has been presented against the debtor prior to the determination date, whether proceedings in relation to the petition have finally been disposed of before the determination date;
- (d) where a bankruptcy petition has been presented against the debtor prior to the determination date, the status of the proceedings in relation to the petition and whether the court has referred the debtor under section 274A(2) for the purpose of making an application for a debt relief order;
- (e) where a creditor's bankruptcy petition has been presented against the debtor prior to the determination date, the status of the proceedings in relation to the petition and whether the person who presented the petition has consented to the making of the application for a debt relief order,

verification checks made in, or with one or more of the sources specified in paragraph (7).

(7) The sources are—

- (a) the individual insolvency register;
- (b) county or other court records;
- (c) a credit reference agency.

(8) For the purpose of verifying that—

- (a) the amount of the debtor's overall indebtedness;
- (b) the amount of the debtor's monthly surplus income; or

(c) the total value of the debtor's property,
does not exceed the prescribed amount, verification checks made with a credit reference agency.
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[5A.8.— Determination of debtor's monthly surplus income]

(1) For the purposes of this Part, the income of a debtor comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment and (despite anything in section 11 or 12 of the Welfare Reform and Pensions Act 1999 any payment under a pension scheme.

(2) In determining the monthly surplus income of a debtor, the official receiver shall take into account any contribution made by any member of the debtor's family to the amount necessary for the reasonable domestic needs of the debtor and his or her family.
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[5A.9.— Determination of value of a debtor's property]

(1) Subject to Rule 5A.10, the official receiver in determining whether the condition in paragraph 8 of Schedule 4ZA to the Act is met shall regard as a debtor's property for the purposes of this Part—

- (a) all property belonging to or vested in the debtor on the determination date, and
- (b) any property which by virtue of any of the following provisions of this Part is comprised in or is treated as falling within the preceding sub-paragraph.

(2) References in this Part to property, in relation to a debtor, include references to any power exercisable by him or her over or in respect of property except in so far as the power is exercisable over or in respect of property which is not or is deemed not for the time being to be the property of the debtor and cannot be exercised for the benefit of the debtor;
and a power exercisable over or in respect of property is deemed for the purposes of this Part to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person (whether or not it becomes so exercisable at that time).

(3) For the purposes of any such provision in this Part, property belonging to or vested in the debtor so belongs or vests in him or her subject to the rights of any person other than the debtor (whether as a secured creditor of the debtor or otherwise) in relation thereto.

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[5A.10.— Particular descriptions of property to be excluded for the purpose of determining the value of a person's property]

(1) For the purposes of Rule 5A.9, the official receiver shall disregard—

- (a) subject to paragraph (2), a single domestic motor vehicle belonging to or vested in the debtor provided that—

¹⁵⁸² Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁵⁸³ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁵⁸⁴ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

- (i) it has been especially adapted for use by him or her because he or she has a physical impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities; or
 - (ii) the maximum potential realisable value of the vehicle is less than the prescribed amount;
 - (b) subject to paragraph (3), such tools, books and other items of equipment as are necessary to the debtor for use personally by him in his employment, business or vocation;
 - (c) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the debtor and his or her family;
 - (d) property held by the debtor on trust for any other person;
 - (e) the right of nomination to a vacant ecclesiastical benefice;
 - (f) a tenancy which is an assured tenancy or an assured agricultural occupancy, within the meaning of Part I of the Housing Act 1988, and the terms of which inhibit an assignment as mentioned in section 127(5) of the Rent Act 1977;
 - (g) a protected tenancy, within the meaning of the Rent Act 1977, in respect of which, by virtue of any provision of Part IX of that Act, no premium can lawfully be required as a condition of assignment;
 - (h) a tenancy of a dwelling-house by virtue of which the debtor is, within the meaning of the Rent (Agriculture) Act 1976, a protected occupier of the dwelling-house, and the terms of which inhibit an assignment as mentioned in section 127(5) of the Rent Act 1977, or
 - (i) a secure tenancy, within the meaning of Part IV of the Housing Act 1985, which is not capable of being assigned, except in the cases mentioned in section 91(3) of that Act.
- (2) Where—
- (a) a vehicle is to be disregarded by the official receiver by virtue of paragraph (1)(a)(i) of this Rule (adapted vehicle), and
 - (b) it appears to the official receiver that the realisable value of the vehicle exceeds the cost of a reasonable replacement for it,
- the official receiver shall disregard only the value of a reasonable replacement.
- (3) Where—
- (a) property is to be disregarded by the official receiver by virtue of paragraph (1)(b) or (c) of this Rule (tools of trade, household effects, etc), and
 - (b) it appears to the official receiver that the realisable value of the whole or any part of that property exceeds the cost of a reasonable replacement for that property or that part of it,
- the official receiver shall disregard only the value of a reasonable replacement.
- (4) For the purposes of this Rule,
- (a) the prescribed amount is £1000
 - (b) property is a reasonable replacement for other property if it is reasonably adequate for meeting the needs met by the other property.
- (5) This Rule has effect subject to the provisions of any enactment not contained in these Rules or in the Act under which any property is to be excluded from belonging to or being vested in the debtor for the purposes of the determination of a debt relief order.

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¹⁵⁸⁵ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

[5A.11. Making of debt relief order — form of debt relief order

A debt relief order must be in writing and include the following particulars—

- (a) the name and address of the debtor;
- (b) the date of, and the reference number allocated to, the debtor's application;
- (c) a list of the debtor's qualifying debts as at the application date, specifying the amount owed and the creditor's name, address and reference (if any); and
- (d) the date on which the order was made.

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[5A.12.— Other steps to be taken by official receiver or debtor upon making of the order

- (1) In addition to giving a copy of the order to the debtor, the official receiver must—
 - (a) notify the approved intermediary through whom the debtor's application was made, of the making and date of the order; and
 - (b) cause an entry to be made in the individual insolvency register in accordance with Rule 6A.5A.
- (2) In any case in which there are other debt management arrangements or attachment of earnings orders in force in respect of the debtor, the official receiver must notify the court, or the body, as the case may be, responsible for making the debt management arrangements or orders, of the making of the debt relief order.

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[5A.13. Prescribed information to be notified to creditor on making of debt relief order

The official receiver must notify each creditor to whom a qualifying debt specified in the order is owed, of—

- (a) the making, the date and the reference number of the order and its effect;
- (b) the matters to which a creditor may object under section 251K; and
- (c) the name, address and telephone number of the official receiver sending the notice and the address to which any objection under that section may or must be sent.

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[5A.14.— Creditor's objection

- (1) In this Rule, “creditor” means a person specified in a debt relief order as a creditor to whom a specified qualifying debt is owed.
- (2) A creditor who wishes to object to—
 - (a) the making of an order;
 - (b) the inclusion of the debt in the list of the debtor's qualifying debts; or
 - (c) the details of the debt specified in the order,
 must object in writing to the official receiver in accordance with this Rule.

¹⁵⁸⁶ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁵⁸⁷ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁵⁸⁸ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

(3) For an objection to be considered by the official receiver, it must be made during the moratorium period relating to the order and within 28 days of the date on which the creditor was notified of the making of the order and must include—

- (a) the name and address of the creditor;
- (b) the name of the debtor and the reference number of the order;
- (c) which of the matters under section 251K the creditor objects to;
- (d) a statement indicating at least one or more of the grounds listed in paragraph (4), upon which the creditor relies;
- (e) a statement indicating the facts upon which the creditor relies, and
- (f) information and documents in support of the grounds and the facts upon which the creditor relies.

(4) The grounds are that—

- (a) there is an error in, or an omission from, something specified in the debt relief order;
- (b) a bankruptcy order has been made in respect of the debtor;
- (c) the debtor has made a proposal under Part 8 of the Act;
- (d) the official receiver should not have been satisfied that—
 - (i) the debts specified in the order were qualifying debts of the debtor as at the application date;
 - (ii) the conditions specified in Part 1 of Schedule 4ZA to the Act were met;
 - (iii) the conditions specified in Part 2 of that Schedule were met or that any failure to meet such condition did not prevent him or her from making the order;
 - (iv) the condition in paragraph 7 of that Schedule was not met at any time after the order was made;
 - (v) the condition in paragraph 8 of that Schedule was not met at any time after the order was made.

(5) For the purposes of paragraph (4)(d)(iv) and (v) above, paragraph 7 and 8 of Schedule 4ZA to the Act are to be read as if references to the determination date were references to the time in question.

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[5A.15.— Official receiver's response to objection

(1) For the purposes of this Rule—

“the creditor” means the creditor specified in a debt relief order as a creditor to whom a qualifying debt is owed and who has made an objection in relation to that order under the Act and the Rules;

“the debt relief order” means the debt relief order in which the creditor is specified;

“the debtor” means the person subject to the debt relief order.

(2) If, after considering an objection in accordance with section 251K, the official receiver is minded to revoke or amend the debt relief order, he or she shall send to the debtor particulars of—

- (a) the objection;
- (b) the grounds and facts upon which the creditor relies; and
- (c) the address to which the debtor's comments must be sent,

and invite the debtor to comment on them.

¹⁵⁸⁹ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

(3) Before deciding whether to revoke or amend the debt relief order, the official receiver shall consider any comments made by the debtor, provided they are made within 21 days after the particulars were sent to the debtor.

(4) The official receiver must—

(a) within 14 days of coming to a decision specified in section 251K(5)—

(i) send notice to the creditor under and in accordance with Rule 5A.16 of either the revocation or amendment of the debt relief order under section 251L; or

(ii) under Rule 5A.19(b), if he or she would not otherwise be treated as such, treat the creditor as a person interested in any application made under section 251M by the official receiver to the court for directions or an order in relation to any matter arising in connection with the debt relief order, to whom notice of the official receiver's application must be sent; or

(iii) send notice to the creditor of the official receiver's decision to take other steps in relation to the debtor and of the steps he or she proposes to take; or

(b) notify the creditor of the official receiver's decision to do none of the above.

¹⁵⁹⁰

[5A.16.— Procedure to be followed when revoking or amending a debt relief order

(1) Subject to Rule 5A.27, the official receiver must as soon as reasonably practicable after deciding to revoke a debt relief order—

(a) send notice of the decision to revoke to—

(i) the debtor; and

(ii) any creditor specified in the debt relief order as a creditor to whom a qualifying debt is owed; and

(b) upon the revocation taking effect, provided that information concerning a debt relief order has not been deleted under Rule 6A.5B, cause the entry in the individual insolvency register relating to the debt relief order to be amended accordingly.

(2) The notice of the decision to revoke must—

(a) identify the debtor and the date and reference number of the debt relief order;

(b) state the reasons for revocation; and

(c) specify the date (whether under subsection (5) or (7) of section 251L) on or from which the revocation has effect.

(3) Where—

(a) a revocation is to take effect from a specified date, and

(b) the official receiver thinks it appropriate to revoke the order under subsection (7) of section 251L with immediate effect at any time before that date,

any debtor or creditor to whom notice of the specified date has already been sent pursuant to paragraph (1), must be notified by the official receiver of the earlier date on which the revocation has effect.

(4) Upon amendment of a debt relief order, the official receiver shall as soon as reasonably practicable after the amendment—

(a) send notice of the amendment to—

¹⁵⁹⁰ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

- (i) the debtor; and
 - (ii) any creditor specified in the debt relief order as a creditor to whom a qualifying debt is owed;
- (b) in the notice of amendment—
 - (i) identify the debtor and the date and reference number of the debt relief order;
 - (ii) specify the amendment;
 - (iii) specify the date on which the amendment was made; and
 - (iv) state the reasons for it; and
- (c) cause the entry in the individual insolvency register relating to the amended debt relief order to be amended accordingly.

1¹⁵⁹¹

[5A.17.— Notification of official receiver by debtor of matters in section 251J(3) or (5)]

- (1) As soon as reasonably practicable after the debtor becomes aware of—
 - (a) an error in, or omission from, the information supplied to the official receiver in, or in support of, the application, he or she must notify the official receiver of—
 - (i) the nature of the error or omission; and
 - (ii) the reason for it;
 - (b) a change in his or her circumstances between the application date and the determination date that would affect (or would have affected) the determination of the application, he or she must notify the official receiver of—
 - (i) the nature of the change; and
 - (ii) the date of the change.
- (2) Where a debt relief order is made and—
 - (a) there is an increase in the debtor's income during the moratorium period applicable to the order, the debtor shall notify the official receiver, as soon as reasonably practicable after the date of the increase, of—
 - (i) the amount of the increase;
 - (ii) the reason for it;
 - (iii) the date of the increase; and
 - (iv) its expected duration;
 - (b) the debtor acquires any property or any property is devolved upon him during that period, the debtor shall notify the official receiver, as soon as reasonably practicable after the date of the acquisition or the devolution, of—
 - (i) the nature of the acquisition or devolution;
 - (ii) the date of the acquisition or devolution;
 - (iii) the reason for it; and
 - (iv) its value;
 - (c) the debtor becomes aware of any error in or omission from any information supplied by him or her to the official receiver after the determination date, the debtor shall notify the official receiver, as soon as reasonably practicable after the date on which the debtor becomes aware of it, of—
 - (i) the nature of the error or omission;
 - (ii) the reason for it; and

¹⁵⁹¹ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

- (iii) the date on which the debtor becomes aware of it.

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[5A.18.— Persons at risk of violence — debt relief orders, debt relief restrictions orders and debt relief restrictions undertakings]

- (1) For the purposes of this Rule—

“debtor” means a person subject to a debt relief order, or a debt relief restrictions order or a debt relief restrictions undertaking; and

“current address” means in relation to any debtor the address of his or her current place of residence and any address at which he or she currently carries on business.

- (2) This Rule applies in any case where disclosure or continuing disclosure to other persons (whether to the public generally or to specific persons) of the current address or whereabouts of a debtor might reasonably be expected to lead to violence against him or her or against a person who normally resides with him or her as a member of his or her family.

- (3) The court may, subject to paragraph (6)—

- (a) on the application of a debtor subject to a debt relief order or the official receiver in respect of such a debtor, order that—

- (i) the details in respect of the debtor to be entered onto the individual insolvency register under Rule 6A.5A shall not include details of the debtor's current address; or

- (ii) the details of the debtor's current address kept on the individual insolvency register under Part 6A shall be removed from such register;

- (b) on the application of a debtor subject to a debt relief restrictions order or the official receiver in respect of such a debtor, order that—

- (i) details of the debtor's current address shall be removed from any part of the court file of the proceedings in relation to the debtor which is open to inspection and be kept on a separate file not open to inspection;

- (ii) the full title of the proceedings shall be amended by the removal of the details of the debtor's current address from the description of the debtor;

- (iii) the details in respect of the debtor to be entered onto the debt relief restrictions register under Rule 6A.7A shall not include details of the debtor's current address; or

- (iv) the details of the debtor's current address kept on the debt relief restrictions register under Rule 6A shall be removed from such register;

- (c) on the application of a debtor subject to a debt relief restrictions undertaking or the official receiver in respect of such a debtor, order that—

- (i) the details of the debtor's current address shall be excluded from the details in respect of the debtor to be entered onto the debt relief restrictions register under Rule 6A.7A; or

- (ii) the details of the debtor's current address kept on the debt relief restrictions register under Rule 6A shall be removed from such register.

- (4) Where the court makes an order under paragraph (3), it may further order that—

- (a) the full title of any proceedings; or

¹⁵⁹² Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

(b) the details in respect of the debtor kept on or to be entered onto the registers referred to in that paragraph,
as the case may be, shall instead include such other details of the debtor's addresses or whereabouts as the court thinks [just]¹⁵⁹³, including details of any address at which the debtor has previously resided or carried on business.

(5) Proceedings under this Rule may be ordered by the court to be transferred under Rule 7.11 on the application of the person in respect of whom the application is being made.

(6) In any case where an application is made by a debtor under or by virtue of this Rule, the application shall be accompanied by [a witness statement]¹⁵⁹⁴ referring to this Rule and containing sufficient evidence to satisfy the court to which the application was made, that this Rule applies to or in respect of that debtor.

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[5A.19. Application to court under section 251M

Where an application is made to the court under section 251M—

(a) by a person who is dissatisfied by any act, omission or decision of the official receiver in connection with a debt relief order or an application for a debt relief order, if the person making the application—

(i) is the debtor, notice of the application to the court must be sent to the official receiver and to any creditor specified in the debt relief order or in the application for a debt relief order; or

(ii) is a person other than the debtor, notice of the application to the court must be sent to the official receiver and to the debtor;

(b) by the official receiver for directions or an order in relation to any matter arising in connection with a debt relief order or an application for such an order, notice of the application must be sent by the official receiver to the debtor and to any person appearing to the official receiver to have an interest in the application.

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[5A.20. Extension of moratorium period

Where the moratorium period applicable to a debt relief order is extended—

(a) notice of the extension, and the period for which it is extended must be sent,

(i) where extended by the court, to the official receiver, who shall send a copy to the debtor subject to the debt relief order and to the creditors specified in it;

(ii) where extended by the official receiver, to the debtor subject to the debt relief order and to the creditors specified in it; and

(b) the official receiver shall cause to be entered in the individual insolvency register that—

¹⁵⁹³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁹⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.300(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁵⁹⁵ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁵⁹⁶ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

- (i) such an extension has been made in relation to the debtor;
- (ii) the date on which the extension was made;
- (iii) its duration; and
- (iv) the date of the anticipated end of the moratorium period.

¹⁵⁹⁷

[5A.21.— Court in which applications under sections 251M (powers of court in relation to debt relief orders) or 251N (inquiry into debtor's dealings and property) to be made

(1) An application to the court by a debtor under section 251M(1) or by the official receiver under section 251M(2) or 251N shall, if the debtor is resident in England and Wales—

(a) be made to the High Court if the debtor has resided or carried on business in the London insolvency district for the greater part of the 6 months immediately preceding the making of the application, or for a longer period in those 6 months than in any other insolvency district, and

(b) in any other case, (subject to paragraph (2)) be made to the debtor's own county court, which is—

(i) the county court for the insolvency district in which he or she has resided or carried on business for the longest period during those 6 months, or

(ii) if he or she has for the greater part of those 6 months carried on business in one insolvency district and resided in another, the county court for that in which he or she has carried on business, or

(iii) if he or she has during those 6 months carried on business in more than one insolvency district, the county court for that in which is, or has been for the longest period in those 6 months, his or her principal place of business.

(2) If, in a case not falling within paragraph (1)(a), it is more expedient for the debtor with a view to expediting the application—

(a) it may in any case be made to whichever court is specified by Schedule 2 to the Rules as being, in relation to the debtor's own county court, the nearest full-time court, and

(b) it may alternatively, in a case falling within paragraph (1)(b)(ii), be made to the court for the insolvency district in which he or she has resided for the greater part of the 6 months there referred to.

(3) If the debtor is not resident in England and Wales but has resided or carried on business in England and Wales within the 6 months immediately preceding the making of the application, the application—

(a) shall be made to the High Court if the debtor has resided or carried on business in the London insolvency district for the greater part of those 6 months, or for a longer period in those 6 months than in any other insolvency district, and

(b) in any other case, may (subject to paragraph (4)) be made either to the debtor's own county court or to the High Court.

(4) The provisions of paragraph (2) shall apply with any appropriate modifications in any case where in accordance with paragraph (3)(b) the application may be made to the debtor's own county court.

¹⁵⁹⁷ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

(5) If the debtor is not resident in England and Wales and has not resided or carried on business in England and Wales within the 6 months immediately preceding the making of the application, the application shall be made to the High Court.

(6) The application shall contain sufficient information to establish that it is brought in the appropriate court.

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[5A.22. Referral of debtor, by court, to intermediary under section 274A

If, on the hearing of a debtor's bankruptcy petition, the court refers the debtor to an approved intermediary under section 274A for the purposes of making an application for a debt relief order, as soon as reasonably practicable after the making of the order of referral—

- (a) the court shall send to the debtor a sealed copy of the order of referral, and
- (b) the debtor shall send to the approved intermediary a copy of the order and copies of the debtor's petition and statement of affairs.

]¹⁵⁹⁹

[5A.23.— Creditor's bankruptcy petition — where creditor consents to making of application for a debt relief order

(1) This Rule applies where prior to the determination of an application, a creditor's petition for bankruptcy has been presented against a debtor and the proceedings in relation to that petition remain before the court.

(2) In this Rule,

“the petition” means the creditor's bankruptcy petition; and

“the debt” means the debt to which the creditor's bankruptcy petition relates.

(3) If, on the hearing of the petition, the petitioner consents to the making by the debtor of an application for a debt relief order in respect of the debt—

(a) the court shall—

(i) refer the debtor to an approved intermediary (within the meaning of Part 7A) for the purpose of making an application for a debt relief order in relation to the debtor and the debt noting the consent of the creditor on the order for referral;

(ii) stay the proceedings on the petition in relation to the debt on such terms and conditions as it thinks [just]¹⁶⁰⁰; and

(b) the debtor shall send to the approved intermediary as soon as reasonably practicable after the making of the order of referral,

(i) a sealed copy of the order, and

(ii) copies of the petition and (if any), of the creditor's statutory demand.

(4) The approved intermediary shall, on receipt of the order and the copies, as soon as reasonably practicable after the application for a debt relief order has been made, send them to the official

¹⁵⁹⁸ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁵⁹⁹ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁶⁰⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

receiver endorsed with the name of the debtor and the number of the application to which they relate.

(5) If, following the reference by the court, a debt relief order is made in relation to the debt, the petition shall be dismissed in relation to it unless the court otherwise directs.

¹⁶⁰¹

[5A.24.— Application for [permission]¹⁶⁰² under Company Directors Disqualification Act 1986

(1) An application by a person—

(a) in relation to whom a moratorium period under a debt relief order applies, or

(b) in respect of whom a debt relief restrictions order or undertaking is in force,

for [permission]¹⁶⁰² (“the applicant for [permission]¹⁶⁰²”), under section 11 of the Company Directors Disqualification Act 1986, to act as director of, or to take part or be concerned in the promotion, formation or management of a company, shall be supported by [a witness statement]¹⁶⁰³ complying with this Rule.

(2) The [witness statement]¹⁶⁰⁴ must identify the company and specify—

(a) the nature of its business or intended business, and the place or places where that business is, or is to be, carried on;

(b) whether it is, or is to be, a private or a public company;

(c) the persons who are, or are to be, principally responsible for the conduct of its affairs (whether as directors, shadow directors, managers or otherwise);

(d) the manner and capacity in which the applicant for [permission]¹⁶⁰² proposes to take part or be concerned in the promotion or formation of the company or, as the case may be, its management; and

(e) the emoluments and other benefits to be obtained from the directorship.

(3) If the company is already in existence, the [witness statement]¹⁶⁰⁴ must specify the date of its incorporation and the amount of its nominal and issued share capital; and if not, it must specify the amount, or approximate amount, of its proposed commencing share capital, and the sources from which that capital is to be obtained.

(4) Where the applicant for [permission]¹⁶⁰² intends to take part or be concerned in the promotion or formation of a company, the [witness statement]¹⁶⁰⁴ must contain an undertaking by the applicant for [permission]¹⁶⁰² that he or she will, within not less than [5 business]¹⁶⁰⁵ days of the company

¹⁶⁰¹ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁶⁰² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁰³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.301(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁰⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.301(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁰⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.301(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

being incorporated, file in court a copy of its memorandum of association and certificate of incorporation under section 13 of the Companies Act.

(5) The court shall fix a venue for the hearing of the application, and shall give notice to the applicant for [permission]¹⁶⁰² accordingly.
¹⁶⁰⁶

[5A.25.— Application for [permission]¹⁶⁰⁷ under Company Directors Disqualification Act 1986 — report of official receiver

(1) The applicant for [permission]¹⁶⁰⁷ shall, not less than 28 days before the date fixed for the hearing, give to the official receiver, notice of the venue, accompanied by copies of the application and the [witness statement]¹⁶⁰⁸ under Rule 5A.24.

(2) The official receiver may, not less than 14 days before the date fixed for the hearing, file in court a report of any matters which he considers ought to be drawn to the court's attention. A copy of the report shall be sent by him, as soon as reasonably practicable after it is filed, to the applicant for [permission]¹⁶⁰⁷.

(3) The applicant for [permission]¹⁶⁰⁷ may, not later than [5 business]¹⁶⁰⁹ days before the date of the hearing, file in court a notice specifying any statements in the official receiver's report which he or she intends to deny or dispute.

(4) If he or she gives notice under this paragraph, he or she shall send copies of it, not less than 4 [business]¹⁶¹⁰ days before the date of the hearing, to the official receiver.

(5) The official receiver may appear on the hearing of the application, and may make representations and put to the applicant for [permission]¹⁶⁰⁷ such questions as the court may allow.
¹⁶¹¹

[5A.26.— Application for [permission]¹⁶¹² under Company Directors Disqualification Act 1986 — court's order on application

(1) If the court grants the application for [permission]¹⁶¹² under section 11 of the Company Directors Disqualification Act 1986, its order shall specify that which by virtue of the order the applicant has [permission]¹⁶¹² to do.

¹⁶⁰⁶ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁶⁰⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁰⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.302(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁰⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.302(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶¹⁰ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.302(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶¹¹ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁶¹² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) The court may at the same time, having regard to any representations made by the official receiver on the hearing of the application, exercise in relation to the moratorium period or the debt relief order to which the applicant for [permission]¹⁶¹² is subject, any power which it has under section 251M.

(3) Whether or not the application is granted, copies of the order shall be sent by the court to the applicant and the official receiver.

]¹⁶¹³

[5A.27.— Death of debtor at a time when a moratorium period under a debt relief order applies in relation to him or her

(1) This Rule applies where a debtor dies at a time when a moratorium period under a debt relief order applies in relation to him or her.

(2) The official receiver shall, as soon as reasonably practicable after receiving notice of the death of the debtor—

- (a) revoke the debt relief order;
- (b) cause a note of the fact and the date of the death to be entered on the individual insolvency register under Rule 6A.8; and
- (c) send notice of the revocation—
 - (i) to any creditor specified in the debt relief order as a creditor to whom a qualifying debt is owed, and
 - (ii) to the personal representatives of the deceased debtor.

(3) In the notice of revocation, the official receiver shall—

- (a) identify the debtor;
- (b) state the reason for the revocation, and
- (c) specify the date on which the revocation took effect.

]¹⁶¹⁴

PART 6

BANKRUPTCY

CHAPTER 1

THE STATUTORY DEMAND

6.1.— Form and content of statutory demand

(1) A statutory demand under section 268 must be dated, and be [authenticated]¹⁶¹⁵ either by the creditor himself or by a person stating himself to be authorised to make the demand on the creditor's behalf.

¹⁶¹³ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁶¹⁴ Added by Insolvency (Amendment) Rules 2009/642 Sch.1 para.1 (April 6, 2009)

¹⁶¹⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (2) The statutory demand must specify whether it is made under section 268(1) (debt payable immediately) or section 268(2) (debt not so payable).
- (3) The demand must state the amount of the debt, and the consideration for it (or, if there is no consideration, the way in which it arises) and—
- (a) if made under section 268(1) and founded on a judgment or order of a court, it must give details of the judgment or order, and
 - (b) if made under section 268(2), it must state the grounds on which it is alleged that the debtor appears to have no reasonable prospect of paying the debt.
- (4) If the amount claimed in the demand includes—
- (a) any charge by way of interest not previously notified to the debtor as a liability of his, or
 - (b) any other charge accruing from time to time,
- the amount or rate of the charge must be separately identified, and the grounds on which payment of it is claimed must be stated.
- In either case the amount claimed must be limited to that which has accrued due at the date of the demand.
- (5) If the creditor holds any security in respect of the debt, the full amount of the debt shall be specified, but—
- (a) there shall in the demand be specified the nature of the security, and the value which the creditor puts upon it as at the date of the demand, and
 - (b) the amount of which payment is claimed by the demand shall be the full amount of the debt, less the amount specified as the value of the security.

Commencement

Pt 6(1) rule 6.1(1)-(5)(b): December 29, 1986

6.2.— Information to be given in statutory demand

- (1) The statutory demand must include an explanation to the debtor of the following matters—
- (a) the purpose of the demand, and the fact that, if the debtor does not comply with the demand, bankruptcy proceedings may be commenced against him;
 - (b) the time within which the demand must be complied with, if that consequence is to be avoided;
 - (c) the methods of compliance which are open to the debtor; and
 - (d) his right to apply to the court for the statutory demand to be set aside.
- (2) The demand must specify one or more named individuals with whom the debtor may, if he wishes, enter into communication with a view to securing or compounding for the debt to the satisfaction of the creditor or (as the case may be) establishing to the creditor's satisfaction that there is a reasonable prospect that the debt will be paid when it falls due.
- In the case of any individual so named in the demand, his address and telephone number (if any) must be given.

Commencement

Pt 6(1) rule 6.2(1)-(2): December 29, 1986

6.3.— Requirements as to service

(1) Rule 6.11 in Chapter 2 below has effect as regards service of the statutory demand, and proof of that service by [a certificate of service]¹⁶¹⁶ to be filed with a bankruptcy petition.

(2) The creditor is, by virtue of the Rules, under an obligation to do all that is reasonable for the purpose of bringing the statutory demand to the debtor's attention and, if practicable in the particular circumstances, to cause personal service of the demand to be effected.

(3) Where the statutory demand is for payment of a sum due under a judgment or order of any court and the creditor knows, or believes with reasonable cause—

(a) that the debtor has absconded or is keeping out of the way with a view to avoiding service, and

(b) there is no real prospect of the sum due being recovered by execution or other process, [the creditor may advertise the demand in such manner as the creditor thinks fit]¹⁶¹⁷; and the time limited for compliance with the demand runs from the date of the advertisement's appearance or (as the case may be) its first appearance.

Commencement

Pt 6(1) rule 6.3(1)-(3)(b): December 29, 1986

6.4.— Application to set aside statutory demand

(1) The debtor may, within the period allowed by this Rule, apply to the appropriate court for an order setting the statutory demand aside.

That period is 18 days from the date of the service on him of the statutory demand or, where the demand is advertised [...] ¹⁶¹⁸ pursuant to Rule 6.3, from the date of the advertisement's appearance or (as the case may be) its first appearance.

[(2) Subject to paragraph (2A), an application to the court under this Rule must be made to the court to which the debtor would in accordance with Rule 6.40A present the petition for the debtor's bankruptcy.

(2A) A debtor may make an application to the High Court where the High Court is not the court to which the debtor would in accordance with Rule 6.40A present the petition for the debtor's bankruptcy if—

(a) the creditor issuing the statutory demand is a Minister of the Crown or a Government Department;

(b) the debt in respect of which the statutory demand is made, or a part of it equal to or exceeding the bankruptcy level (within the meaning of section 267), is the subject of a judgment or order of any court; and

(c) the statutory demand—

¹⁶¹⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.303(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶¹⁷ Words substituted by Insolvency (Amendment) Rules 2009/642 rule 33 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3)

¹⁶¹⁸ Words repealed by Insolvency (Amendment) Rules 2009/642 rule 34 (April 6, 2009: repeal has effect subject to transitional provisions specified in SI 2009/642 rule3)

- (i) specifies the date of the judgment or order and the court in which it was obtained; and
- (ii) indicates the creditor's intention to present a bankruptcy petition against the debtor in the High Court.

] ¹⁶¹⁹

(3) As from (inclusive) the date on which the application is filed in court, the time limited for compliance with the statutory demand ceases to run, subject to any order of the court under Rule 6.5(6).

- (4) The debtor's application shall be supported by [a witness statement] ¹⁶²⁰ —
- (a) specifying the date on which the statutory demand came into his hands, and
 - (b) stating the grounds on which he claims that it should be set aside.

[...] ¹⁶²¹

[(5) The witness statement must have attached to it a copy of the statutory demand.] ¹⁶²²

Commencement

Pt 6(1) rule 6.4(1)-(4)(b): December 29, 1986

6.5.— Hearing of application to set aside

(1) On receipt of an application under Rule 6.4, the court may, if satisfied that no sufficient cause is shown for it, dismiss it without giving notice to the creditor. As from (inclusive) the date on which the application is dismissed, the time limited for compliance with the statutory demand runs again.

(2) If the application is not dismissed under paragraph (1), the court shall fix a venue for it to be heard, and shall give at least [5 business] ¹⁶²³ days' notice of it to—

- (a) the debtor or, if the debtor's application was made by a solicitor acting for him, to the solicitor,
- (b) the creditor, and
- (c) whoever is named in the statutory demand as the person with whom the debtor may enter into communication with reference to the demand (or, if more than one person is so named, the first of them).

¹⁶¹⁹ Rule 6.4(2) and (2A) substituted for rule 6.4(2) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.304(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶²⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.304(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶²¹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.304(3)(b) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶²² Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.304(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶²³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.305(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) On the hearing of the application, the court shall consider the evidence then available to it, and may either summarily determine the application or adjourn it, giving such directions as it thinks appropriate.

(4) The court may grant the application if—

- (a) the debtor appears to have a counterclaim, set-off or cross demand which equals or exceeds the amount of the debt or debts specified in the statutory demand; or
- (b) the debt is disputed on grounds which appear to the court to be substantial; or
- (c) it appears that the creditor holds some security in respect of the debt claimed by the demand, and either Rule 6.1(5) is not complied with in respect of it, or the court is satisfied that the value of the security equals or exceeds the full amount of the debt; or
- (d) the court is satisfied, on other grounds, that the demand ought to be set aside.

(5) Where the creditor holds some security in respect of his debt, and Rule 6.1(5) is complied with in respect of it but the court is satisfied that the security is under-valued in the statutory demand, the creditor may be required to amend the demand accordingly (but without prejudice to his right to present a bankruptcy petition by reference to the original demand).

(6) If the court dismisses the application, it shall make an order authorising the creditor to present a bankruptcy petition either [as soon as reasonably practicable]¹⁶²⁴, or on or after a date specified in the order.

A copy of the order shall be sent by the court [as soon as reasonably practicable]¹⁶²⁴ to the creditor.

Commencement

Pt 6(1) rule 6.5(1)-(6): December 29, 1986

CHAPTER 2

BANKRUPTCY PETITION (CREDITOR'S)

6.6. Preliminary

The Rules in this Chapter relate to a creditor's petition, and the making of a bankruptcy order thereon; and in those Rules “the debt” means, except where the context otherwise requires, the debt (or debts) in respect of which the petition is presented.

Those Rules also apply to a petition under section 264(1)(c) (supervisor of, or person bound by, voluntary arrangement), with any necessary modifications.

Commencement

Pt 6(2) rule 6.6: December 29, 1986

6.7.— Identification of debtor

(1) The petition shall state the following matters with respect to the debtor, so far as they are within the petitioner's knowledge—

¹⁶²⁴ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

- (a) his name, place of residence and occupation (if any);
- (b) the name or names in which he carries on business, if other than his true name, and whether, in the case of any business of a specified nature, he carries it on alone or with others;
- (c) the nature of his business, and the address or addresses at which he carries it on;
- (d) any name or names, other than his true name, in which he has carried on business at or after the time when the debt was incurred, and whether he has done so alone or with others;
- (e) any address or addresses at which he has resided or carried on business at or after that time, and the nature of that business.
- [(f) whether the debtor has his centre of main interests or an establishment in another member State.]¹⁶²⁵

(2) The particulars of the debtor given under this Rule determine the full title of the proceedings.

(3) If to the petitioner's personal knowledge the debtor has used any name other than the one specified under paragraph (1)(a), that fact shall be stated in the petition.

Commencement

Pt 6(2) rule 6.7(1)-(3): December 29, 1986

6.8.— Identification of debt

(1) There shall be stated in the petition, with reference to every debt in respect of which it is presented—

- (a) the amount of the debt, the consideration for it (or, if there is no consideration, the way in which it arises) and the fact that it is owed to the petitioner;
- (b) when the debt was incurred or became due;
- (c) if the amount of the debt includes—
 - (i) any charge by way of interest not previously notified to the debtor as a liability of his, or
 - (ii) any other charge accruing from time to time,

the amount or rate of the charge (separately identified) and the grounds on which it is claimed to form part of the debt [, provided that such amount or rate must, in the case of a petition based on a statutory demand, be limited to that claimed in that demand]¹⁶²⁶ ;

- (d) either—
 - (i) that the debt is for a liquidated sum payable immediately, and the debtor appears to be unable to pay it, or
 - (ii) that the debt is for a liquidated sum payable at some certain, future time (that time to be specified), and the debtor appears to have no reasonable prospect of being able to pay it,

and, in either case (subject to section 269) that the debt is unsecured.

(2) Where the debt is one for which, under section 268, a statutory demand must have been served on the debtor—

¹⁶²⁵ Added by Insolvency (Amendment) Rules 2002/1307 rule 8(1) (May 31, 2002)

¹⁶²⁶ Words added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.91 (January 11, 1988)

- (a) there shall be specified the date and manner of service of the statutory demand, and
 - (b) it shall be stated that, to the best of the creditor's knowledge and belief—
 - (i) the demand has been neither complied with nor set aside in accordance with the Rules, and
 - (ii) no application to set it aside is outstanding.
- (3) If the case is within section 268(1)(b) (debt arising under judgment or order of court; execution returned unsatisfied), the court from which the execution or other process issued shall be specified, and particulars shall be given relating to the return.

Commencement

Pt 6(2) rule 6.8(1)-(3): December 29, 1986

6.9.— [...] ¹⁶²⁷

[6.9A Court in which petition to be presented]

- (1) If the debtor is resident in England and Wales, the petition must, in the following cases, be presented to the High Court—
- (a) if the petition is presented by a Minister of the Crown or a Government Department, and either—
 - (i) in any statutory demand on which the petition is based the creditor has indicated the intention to present a bankruptcy petition to that Court, or
 - (ii) the petition is presented under section 268(1)(b);
 - (b) if, for the greater part of the 6 months immediately preceding the presentation of the petition, the debtor—
 - (i) has carried on a business in the London insolvency district; or
 - (ii) has not carried on a business in England and Wales but has resided in the London insolvency district; or
 - (c) if the petitioner is unable to ascertain the debtor's residence or place of business within England and Wales.
- (2) Where the debtor is resident in England and Wales and paragraph (1) does not apply, the petition must be presented to the debtor's own county court if the debtor—
- (a) has carried on a business in England and Wales other than in the London insolvency district, or
 - (b) has not carried on a business in England and Wales and has resided outside the London insolvency district.
- (3) In this Rule the debtor's own county court is—
- (a) where the debtor has carried on a business within the 6 months immediately preceding the presentation of the petition, the county court for the insolvency district where for the greater part of that period of 6 months—
 - (i) the debtor carried on the business, or

¹⁶²⁷ Rule 6.9A substituted for rule 6.9 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.306 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (ii) the principal place of business was located, if the business was carried on in more than one insolvency district; or
 - (b) where the debtor has not carried on a business in the 6 months immediately preceding the presentation of the petition, the county court for the insolvency district where the debtor resided for the greater part of that 6 month period.
- (4) If the debtor is not resident in England and Wales but was resident or carried on business in England and Wales within the 6 months immediately preceding the presentation of the petition, the petition—
 - (a) must be presented to the High Court if the debtor—
 - (i) carried on a business in the London insolvency district for a longer period in those 6 months than in any other insolvency district, or
 - (ii) did not carry on a business in England and Wales but resided in the London insolvency district for a longer period in those 6 months than in any other insolvency district; and
 - (b) in any other case, may be presented either to the debtor's own county court or to the High Court.
- (5) The petition must be presented to the High Court if the debtor is not resident in England and Wales and—
 - (a) has not resided or carried on business in England and Wales within the 6 months immediately preceding the presentation of the petition, or
 - (b) the petitioner is unable to ascertain the debtor's residence or place of business.
- (6) Notwithstanding any other provision of this Rule, where there is in force for the debtor a voluntary arrangement under Part 8 of the Act, the petition must be presented to the court to which the nominee's report under section 256 was submitted.
- (7) The petition must contain sufficient information to establish that it is presented in the appropriate court.

]¹⁶²⁸

6.10.— Procedure for presentation and filing

(1) The petition, verified by [a statement of truth]¹⁶²⁹ in accordance with Rule 6.12(1) below, shall be filed in court.

[(2) No petition shall be filed unless there is produced on presentation of the petition a receipt for the deposit payable or paragraph (2A) applies.

(2A) This paragraph applies in any case where the Secretary of State has given written notice to the court that the petitioner has made suitable alternative arrangements for the payment of the deposit to the official receiver and such notice has not been revoked in relation to the petitioner in accordance with paragraph (2B).

¹⁶²⁸ Rule 6.9A substituted for rule 6.9 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.306 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶²⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.307(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2B) A notice of the kind referred to in paragraph (2A) may be revoked in relation to the petitioner in whose favour it is given by a further notice in writing to the court stating that the earlier notice is revoked in relation to the petitioner.]¹⁶³⁰

(3) The following copies of the petition shall also be delivered to the court with the petition—

(a) one for service on the debtor, [and]¹⁶³¹ [...] ¹⁶³²

(b) [...] ¹⁶³³

[(c) if there is in force for the debtor a voluntary arrangement under Part VIII of the Act, and the petitioner is not the supervisor of the arrangement, one copy for him.]¹⁶³⁴

Each of these copies shall have applied to it the seal of the court, and shall be issued to the petitioner.

(4) The date and time of filing the petition shall be endorsed on the petition and on any copy issued under paragraph (3).

(5) The court shall fix a venue for hearing the petition, and this also shall be endorsed on the petition and on any copy so issued.

[(6) Where a petition contains a request for the appointment of a person as trustee in accordance with section 297(5) (appointment of former supervisor as trustee) the person whose appointment is sought shall, not less than 2 [business]¹⁶³⁵ days before the day appointed for hearing the petition, file in court a report including particulars of-

(a) a date on which he gave written notification to creditors bound by the arrangement of the intention to seek his appointment as trustee, such date to be at least [7 business]¹⁶³⁶ days before the day on which the report under this paragraph is filed, and

(b) details of any response from creditors to that notice, including any objections to his appointment.

] ¹⁶³⁷

Commencement

Pt 6(2) rule 6.10(1)-(5): December 29, 1986

¹⁶³⁰ Rule 6.10(2)-(2B) substituted for 6.10(2) by Insolvency (Amendment) Rules 2004/584 rule 26 (April 1, 2004)

¹⁶³¹ Word added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.307(3)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶³² Word omitted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.93(1) (January 11, 1988)

¹⁶³³ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.307(3)(b) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶³⁴ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.93(1) (January 11, 1988)

¹⁶³⁵ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.307(4)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶³⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.307(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶³⁷ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.93(2) (January 11, 1988)

6.11.— Proof of service of statutory demand

(1) Where under section 268 the petition must have been preceded by a statutory demand, there must be filed in court, with the petition, [a certificate or certificates]¹⁶³⁸ proving service of the demand.

(2) [Every]¹⁶³⁹ [certificate must be verified by a statement of truth and]¹⁶⁴⁰ have [attached]¹⁶⁴¹ to it a copy of the demand as served.

(3) Subject to the next paragraph, if the demand has been served personally on the debtor, the [certificate must be authenticated]¹⁶⁴² by the person who effected that service.

(4) If service of the demand (however effected) has been acknowledged in writing either by the debtor himself, or by some person stating himself in the acknowledgement to be authorised to accept service on the debtor's behalf, the [certificate must be authenticated]¹⁶⁴³ either by the creditor or by a person acting on his behalf, and the acknowledgement of service must be [exhibited to the certificate]¹⁶⁴⁴ .

(5) If neither paragraph (3) nor paragraph (4) applies, the [certificate or certificates must be authenticated]¹⁶⁴⁵ by a person [or persons]¹⁶⁴⁶ having direct personal knowledge of the means adopted for serving the statutory demand, and must—

- (a) give particulars of the steps which have been taken with a view to serving the demand [personally]¹⁶⁴⁷ , and
- (b) state the means whereby (those steps having been ineffective) it was sought to bring the demand to the debtor's attention, and

¹⁶³⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.308(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶³⁹ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.94(2) (January 11, 1988)

¹⁶⁴⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.308(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁴¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.308(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁴² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.308(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁴³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.308(5)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁴⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.308(5)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁴⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.308(6)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁴⁶ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.94(3)(b) (January 11, 1988)

¹⁶⁴⁷ Word inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.94(3)(c) (January 11, 1988)

- (c) specify a date by which, to the best of the knowledge, information and belief of the person [authenticating the certificate]¹⁶⁴⁸, the demand will have come to the debtor's attention.
- (6) The steps of which particulars are given for the purposes of paragraph (5)(a) must be such as would have sufficed to justify an order for substituted service of a petition.
- (7) If the [certificate]¹⁶⁴⁹ specifies a date for the purposes of compliance with paragraph (5)(c), then unless the court otherwise orders, that date is deemed for the purposes of the Rules to have been the date on which the statutory demand was served on the debtor.
- (8) Where the creditor has taken advantage of Rule 6.3(3) ([...]¹⁶⁵⁰ advertisement), the [certificate must be authenticated]¹⁶⁵¹ either by the creditor himself or by a person having direct personal knowledge of the circumstances; and there must be [specified in the certificate]¹⁶⁵² —
- (a) the means of the creditor's knowledge or (as the case may be) belief required for the purposes of that Rule, and
 - [(b) the method by which, and the date or dates on which the statutory demand was advertised under that rule;]¹⁶⁵³
- and there shall be [exhibited to the certificate]¹⁶⁵⁴ [either a copy of any advertisement of the statutory demand or, where this is not reasonably practicable, the [certificate must contain or attach]¹⁶⁵⁵ a description of the contents of any such advertisement]¹⁶⁵⁶ of the statutory demand.
- (9) The court may decline to file the petition if not satisfied that the creditor has discharged the obligation imposed on him by Rule 6.3(2).

¹⁶⁴⁸ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.308(6)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁴⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.308(7) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁵⁰ Words repealed by Insolvency (Amendment) Rules 2009/642 rule 35(a)(i) (April 6, 2009: repeal has effect subject to transitional provisions specified in SI 2009/642 rule3)

¹⁶⁵¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.308(8)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁵² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.308(8)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁵³ Substituted by Insolvency (Amendment) Rules 2009/642 rule 35(a)(ii) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3)

¹⁶⁵⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.308(8)(c) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁵⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.308(8)(d) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁵⁶ Words substituted by Insolvency (Amendment) Rules 2009/642 rule 35(b) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3)

Commencement

Pt 6(2) rule 6.11(1)-(9): December 29, 1986

6.12.— Verification of petition

- (1) The petition shall be verified by [a statement of truth]¹⁶⁵⁷ .
 - (2) If the petition is in respect of debts to different creditors, the debts to each creditor must be separately verified.
 - (3) The petition shall be exhibited to the affidavit verifying it.
- [(3A) A statement of truth which is not contained in or endorsed upon the petition which it verifies must be sufficient to identify the petition and must specify—
- (a) the name of the debtor,
 - (b) the name of the petitioner, and
 - (c) the court in which the petition is to be presented.
-] ¹⁶⁵⁸
- (4) The [statement of truth must be authenticated]¹⁶⁵⁹ —
 - (a) by the petitioner (or if there are two or more petitioners, any one of them), or
 - (b) by some person such as a director, company secretary or similar company officer, or a solicitor, who has been concerned in the matters giving rise to the presentation of the petition, or
 - (c) by some responsible person who is duly authorised to [authenticate the statement of truth]¹⁶⁶⁰ and has the requisite knowledge of those matters.
 - (5) Where the [person authenticating the statement of truth]¹⁶⁶¹ is not the petitioner himself, or one of the petitioners, he must in the [statement of truth]¹⁶⁶² identify himself and state—

¹⁶⁵⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.309(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁵⁸ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.309(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁵⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.309(4)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁶⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.309(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁶¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.309(5)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁶² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.309(5)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (a) the capacity in which, and the authority by which, he [authenticates]¹⁶⁶³ it, and
- (b) the means of his knowledge of the matters [verified in the statement of truth]¹⁶⁶⁴ .

(6) [...] ¹⁶⁶⁵

(7) If the petition is based upon a statutory demand, and more than 4 months have elapsed between the service of the demand and the presentation of the petition, the [petition must include a statement explaining]¹⁶⁶⁶ the reasons for the delay.

Commencement

Pt 6(2) rule 6.12(1)-(7): December 29, 1986

6.13. Notice to Chief Land Registrar

When the petition is filed, the court shall [as soon as reasonably practicable]¹⁶⁶⁷ send to the Chief Land Registrar notice of the petition together with a request that it may be registered in the register of pending actions.

Commencement

Pt 6(2) rule 6.13: December 29, 1986

6.14.— Service of petition

(1) Subject as follows, the petition shall be served personally on the debtor by an officer of the court, or by the petitioning creditor or his solicitor, or by a person instructed by the creditor or his solicitor for that purpose; and service shall be effected by delivering to him a sealed copy of the petition.

(2) If the court is satisfied by [a witness statement]¹⁶⁶⁸ or other evidence on oath that prompt personal service cannot be effected because the debtor is keeping out of the way to avoid service

¹⁶⁶³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.309(5)(c) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁶⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.309(5)(d) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁶⁵ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.309(6) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁶⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.309(7) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁶⁷ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁶⁶⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.310(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

of the petition or other legal process, or for any other cause, it may order substituted service to be effected in such manner as it thinks [just]¹⁶⁶⁹ .

(3) Where an order for substituted service has been carried out, the petition is deemed duly served on the debtor.

[(4) If to the petitioner's knowledge there is in force for the debtor a voluntary arrangement under Part VIII of the Act, and the petitioner is not himself the supervisor of the arrangement, a copy of the petition shall be sent by him to the supervisor.]¹⁶⁷⁰

[(5) If to the petitioner's knowledge, there is a member State liquidator appointed in main proceedings in relation to the bankrupt, a copy of the petition shall be sent by him to the member State liquidator.]¹⁶⁷¹

[(6) A bankruptcy petition may, with the permission of the court, be served outside England and Wales in such manner as the court may direct.]¹⁶⁷²

Commencement

Pt 6(2) rule 6.14(1)-(3): December 29, 1986

6.15.— [...] ¹⁶⁷³

[6.15A Proof of service

(1) Service of the petition must be proved by a certificate of service.

(2) The certificate of service must be sufficient to identify the petition served and must specify—

- (a) the name of the debtor,
- (b) the name of the petitioner,
- (c) the court in which the petition was filed and the court reference number,
- (d) the date of the petition,
- (e) whether the copy served was a sealed copy,
- (f) the date on which service was effected, and
- (g) the manner in which service was effected.

(3) Where substituted service has been ordered, the certificate of service must have attached to it a sealed copy of the order.

(4) The certificate of service must be filed in court as soon as reasonably practicable after service, and in any event not less than 5 business days before the hearing of the petition.

¹⁶⁶⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁷⁰ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.95 (January 11, 1988)

¹⁶⁷¹ Added by Insolvency (Amendment) Rules 2002/1307 rule 8(2) (May 31, 2002)

¹⁶⁷² Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.310(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁷³ Rule 6.15A substituted for rule 6.15 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.311 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

] ¹⁶⁷⁴

6.16. Death of debtor before service

If the debtor dies before service of the petition, the court may order service to be effected on his personal representatives, or on such other persons as it thinks [just] ¹⁶⁷⁵ .

Commencement

Pt 6(2) rule 6.16: December 29, 1986

6.17.— Security for costs (s. 268(2) only)

(1) This Rule applies where the debt in respect of which the petition is presented is for a liquidated sum payable at some future time, it being claimed in the petition that the debtor appears to have no reasonable prospect of being able to pay it.

(2) The petitioning creditor may, on the debtor's application, be ordered to give security for the debtor's costs.

(3) The nature and amount of the security to be ordered is in the court's discretion.

(4) If an order is made under this Rule, there shall be no hearing of the petition until the whole amount of the security has been given.

Commencement

Pt 6(2) rule 6.17(1)-(4): December 29, 1986

6.18.— Hearing of petition

(1) Subject as follows, the petition shall not be heard until at least 14 days have elapsed since it was served on the debtor.

(2) The court may, on such terms as it thinks [just] ¹⁶⁷⁶ , hear the petition at an earlier date, if it appears that the debtor has absconded, or the court is satisfied that it is a proper case for an expedited hearing, or the debtor consents to a hearing within the 14 days.

(3) Any of the following may appear and be heard, that is to say; the petitioning creditor, the debtor [, the supervisor of any voluntary arrangement under Part VIII of the Act in force for the debtor] ¹⁶⁷⁷ and any creditor who has given notice under Rule 6.23 below.

¹⁶⁷⁴ Rule 6.15A substituted for rule 6.15 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.311 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁷⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁷⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁷⁷ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.96 (January 11, 1988)

Commencement

Pt 6(2) rule 6.18(1)-(3): December 29, 1986

6.19. [...]¹⁶⁷⁸

6.20. [...]¹⁶⁷⁹

6.21. Petition opposed by debtor

Where the debtor intends to oppose the petition, he shall not later than [5 business]¹⁶⁸⁰ days before the day fixed for the hearing—

- (a) file in court a notice specifying the grounds on which he will object to the making of a bankruptcy order, and
- (b) send a copy of the notice to the petitioning creditor or his solicitor.

Commencement

Pt 6(2) rule 6.21(a)-(b): December 29, 1986

6.22. Amendment of petition

With the [permission]¹⁶⁸¹ of the court (given on such terms, if any, as the court thinks [just]¹⁶⁸¹ to impose), the petition may be amended at any time after presentation [...]¹⁶⁸².

Commencement

Pt 6(2) rule 6.22: December 29, 1986

6.23.— Notice by persons intending to appear

(1) Every creditor who intends to appear on the hearing of the petition shall give to the petitioning creditor notice of his intention in accordance with this Rule.

(2) The notice shall specify—

- (a) the name and address of the person giving it, and any telephone number and reference which may be required for communication with him or with any other person (to be also specified in the notice) authorised to speak or act on his behalf;

¹⁶⁷⁸ Revoked by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.97 (January 11, 1988)

¹⁶⁷⁹ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁸⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.312(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁸¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁸² Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.313(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (b) whether his intention is to support or oppose the petition; and
- (c) the amount and nature of his debt.

(3) The notice shall be sent so as to reach the addressee not later than 16.00 hours on the business day before that which is appointed for the hearing (or, where the hearing has been adjourned, for the adjourned hearing).

(4) A person failing to comply with this Rule may appear on the hearing of the petition only with the [permission]¹⁶⁸³ of the court.

Commencement

Pt 6(2) rule 6.23(1)-(4): December 29, 1986

6.24.— List of appearances

(1) The petitioning creditor shall prepare for the court a list of the creditors (if any) who have given notice under Rule 6.23, specifying their names and addresses and (if known to him) their respective solicitors.

(2) Against the name of each creditor in the list it shall be stated whether his intention is to support the petition, or to oppose it.

(3) On the day appointed for the hearing of the petition, a copy of the list shall be handed to the court before the commencement of the hearing.

(4) If any [permission]¹⁶⁸⁴ is given under Rule 6.23(4), the petitioner shall add to the list the same particulars in respect of the person to whom [permission]¹⁶⁸⁴ has been given.

Commencement

Pt 6(2) rule 6.24(1)-(4): December 29, 1986

6.25.— Decision on the hearing

(1) On the hearing of the petition, the court may make a bankruptcy order if satisfied that the statements in the petition are true, and that the debt on which it is founded has not been paid, or secured or compounded for.

(2) If the petition is brought in respect of a judgment debt, or a sum ordered by any court to be paid, the court may stay or dismiss the petition on the ground that an appeal is pending from the judgment or order, or that execution of the judgment has been stayed.

(3) A petition preceded by a statutory demand shall not be dismissed on the ground only that the amount of the debt was over-stated in the demand, unless the debtor, within the time allowed for complying with the demand, gave notice to the creditor disputing the validity of the demand on

¹⁶⁸³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁸⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

that ground; but, in the absence of such notice, the debtor is deemed to have complied with the demand if he has, within the time allowed, paid the correct amount.

Commencement

Pt 6(2) rule 6.25(1)-(3): December 29, 1986

6.26. Non-appearance of creditor

If the petitioning creditor fails to appear on the hearing of the petition, no subsequent petition against the same debtor, either alone or jointly with any other person, shall be presented by the same creditor in respect of the same debt, without the [permission]¹⁶⁸⁵ of the court to which the previous petition was presented.

Commencement

Pt 6(2) rule 6.26: December 29, 1986

6.27. Vacating registration on dismissal of petition

If the petition is dismissed or withdrawn by [permission]¹⁶⁸⁶ of the court, an order shall be made at the same time permitting vacation of the registration of the petition as a pending action; and the court shall send to the debtor two sealed copies of the order.

Commencement

Pt 6(2) rule 6.27: December 29, 1986

6.28.— Extension of time for hearing

- (1) The petitioning creditor may, if the petition has not been served, apply to the court to appoint another venue for the hearing.
- (2) The application shall state the reasons why the petition has not been served.
- (3) No costs occasioned by the application shall be allowed in the proceedings except by order of the court.
- (4) If the court appoints another day for the hearing, the petitioning creditor shall [as soon as reasonably practicable]¹⁶⁸⁷ notify any creditor who has given notice under Rule 6.23.

Commencement

Pt 6(2) rule 6.28(1)-(4): December 29, 1986

¹⁶⁸⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁸⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁸⁷ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

6.29.— Adjournment

- (1) If the court adjourns the hearing of the petition, the following applies.
- (2) Unless the court otherwise directs, the petitioning creditor shall [as soon as reasonably practicable]¹⁶⁸⁸ send—
- (a) to the debtor, and
 - (b) where any creditor has given notice under Rule 6.23 but was not present at the hearing, to him,
- notice of the making of the order of adjournment. The notice shall state the venue for the adjourned hearing.

Commencement

Pt 6(2) rule 6.29(1)-(2)(b): December 29, 1986

6.30.— Substitution of petitioner

- (1) This Rule applies where a creditor petitions and is subsequently found not entitled to do so, or where the petitioner—
- (a) consents to withdraw his petition or to allow it to be dismissed, or 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
 - (b) appears, but does not apply for an order in the terms of the prayer of his petition.
- (2) The court may, on such terms as it thinks just, order that there be substituted as petitioner any creditor who—
- (a) has under Rule 6.23 given notice of his intention to appear at the hearing,
 - (b) is desirous of prosecuting the petition, and
 - (c) was, at the date on which the petition was presented, in such a position in relation to the debtor as would have enabled him (the creditor) on that date to present a bankruptcy petition in respect of a debt or debts owed to him by the debtor [(or in the case of the member State liquidator, owed to creditors in proceedings in relation to which he holds office)]¹⁶⁹⁰, paragraphs (a) to (d) of section 267(2) being satisfied in respect of that debt or those debts.

Commencement

Pt 6(2) rule 6.30(1)-(2)(c): December 29, 1986

6.31.— Change of carriage of petition

- (1) On the hearing of the petition, any person who claims to be a creditor of the debtor, and who has given notice under Rule 6.23 of his intention to appear at the hearing, may apply to the court

¹⁶⁸⁸ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁶⁸⁹ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(2) para.156(1) (January 11, 1988)

¹⁶⁹⁰ Words inserted by Insolvency (Amendment) Rules 2002/1307 rule 8(3) (May 31, 2002)

for an order giving him carriage of the petition in place of the petitioning creditor, but without requiring any amendment of the petition.

(2) The court may, on such terms as it thinks just, make a change of carriage order if satisfied that—

- (a) the applicant is an unpaid and unsecured creditor of the debtor, and
- (b) the petitioning creditor either—
 - (i) intends by any means to secure the postponement, adjournment or withdrawal of the petition, or
 - (ii) does not intend to prosecute the petition, either diligently or at all.

(3) The court shall not make the order if satisfied that the petitioning creditor's debt has been paid, secured or compounded for by means of—

- (a) a disposition of property made by some person other than the debtor, or
- (b) a disposition of the debtor's own property made with the approval of, or ratified by, the court.

(4) A change of carriage order may be made whether or not the petitioning creditor appears at the hearing.

(5) If the order is made, the person given the carriage of the petition is entitled to rely on all evidence previously adduced in the proceedings [...] ¹⁶⁹¹ .

Commencement

Pt 6(2) rule 6.31(1)-(5): December 29, 1986

6.32.— Petitioner seeking dismissal or [permission] ¹⁶⁹² to withdraw

[(1) Where the petitioner applies to the court for the petition to be dismissed, or for permission to withdraw it, the petitioner must, in any case where—

- (a) a creditor of the debtor has given notice under Rule 6.23 of intention to appear at the hearing of the petition, or
- (b) the court so orders,

file with the court a witness statement specifying the grounds of the application and the circumstances in which it is made.

] ¹⁶⁹³

(2) If, since the petition was filed, any payment has been made to the petitioner by way of settlement (in whole or in part) of the debt or debts in respect of which the petition was brought, or any

¹⁶⁹¹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.314(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁹² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁹³ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.315(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

arrangement has been entered into for securing or compounding it or them, the [witness statement must also]¹⁶⁹⁴ state—

- (a) what dispositions of property have been made for the purposes of the settlement or arrangement, and
- (b) whether, in the case of any disposition, it was property of the debtor himself, or of some other person, and
- (c) whether, if it was property of the debtor, the disposition was made with the approval of, or has been ratified by, the court (if so, specifying the relevant court order).

(3) No order giving [permission]¹⁶⁹² to withdraw a petition shall be given before the petition is heard.

Commencement

Pt 6(2) rule 6.32(1)-(3): December 29, 1986

6.33.— Settlement and content of bankruptcy order

(1) The bankruptcy order shall be settled by the court.

(2) The order shall—

- (a) state the date of the presentation of the petition on which the order is made, and the date and time of the making of the order, and
- [(b) contain a notice referring to the bankrupt's duties in relation to the official receiver under section 291, and in particular to the bankrupt's duty to give the official receiver such inventory of the bankrupt's estate and such other information, and to attend on the official receiver at such times, as the official receiver may reasonably require.]¹⁶⁹⁵

(3) Subject to section 346 (effect of bankruptcy on enforcement procedures), the order may include provision staying any action or proceeding against the bankrupt.

(4) Where the petitioning creditor is represented by a solicitor, the order shall be endorsed with the latter's name, address, telephone number and reference (if any).

Commencement

Pt 6(2) rule 6.33(1)-(4): December 29, 1986

¹⁶⁹⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.315(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁹⁵ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.316(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

6.34.— Action to follow making of order

(1) At least two sealed copies of the bankruptcy order shall be sent [as soon as reasonably practicable]¹⁶⁹⁶ by the court to the official receiver, who shall [as soon as reasonably practicable]¹⁶⁹⁶ send one of them to the bankrupt.

[(2) Subject to the next paragraph, on receipt of the sealed copies of the bankruptcy order, the official receiver—

(a) as soon as reasonably practicable shall—

- (i) send notice of the making of the order to the Chief Land Registrar, for registration in the register of writs and orders affecting land;
- (ii) cause notice of the order to be gazetted; and

(b) may cause notice of the order to be advertised in such other manner as the official receiver thinks fit.

] ¹⁶⁹⁷

[(2A) In addition to the standard contents, the notice to be gazetted and any notice to be advertised under paragraph (2) must state—

- (a) that a bankruptcy order has been made against the bankrupt;
- (b) the date and time of making of the bankruptcy order;
- (c) the name and address of the petitioning creditor; and
- (d) the date of presentation of the petition.

] ¹⁶⁹⁸

(3) The court may, on the application of the bankrupt or a creditor, order the official receiver to suspend action under paragraph (2) [and [Rule 6A.4(2)]¹⁶⁹⁹]¹⁷⁰⁰, pending a further order of the court.

An application under this paragraph shall be supported by [a witness statement]¹⁷⁰¹ stating the grounds on which it is made.

(4) Where an order is made under paragraph (3) the applicant for the order shall [as soon as reasonably practicable]¹⁶⁹⁶ deliver a copy of it to the official receiver.

Commencement

Pt 6(2) rule 6.34(1)-(4): December 29, 1986

¹⁶⁹⁶ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁶⁹⁷ Substituted by Insolvency (Amendment) Rules 2009/642 rule 36 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁶⁹⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.317(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁶⁹⁹ Words substituted by Insolvency (Amendment) Rules 2005/527 rule 35 (April 1, 2005)

¹⁷⁰⁰ Words inserted by Insolvency (Amendment) Rules 1999/359 Sch.1 para.4 (March 22, 1999)

¹⁷⁰¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.317(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

6.35.— Amendment of title of proceedings

(1) At any time after the making of a bankruptcy order, the official receiver or the trustee may apply to the court for an order amending the full title of the proceedings.

[(2) Where such an order is made, as soon as reasonably practicable the official receiver shall send notice of it to the Chief Land Registrar for corresponding amendment of the register.]¹⁷⁰²

[(3) If the official receiver thinks fit, notice of the order—

(a) as soon as reasonably practicable, shall be gazetted; and

(b) may be advertised in such other manner as the official receiver thinks fit.

] ¹⁷⁰³

[(4) In addition to the standard contents, the notice under paragraph (3) must—

(a) state that an amendment to the full title of the proceedings has been made; and

(b) specify the amendment.

] ¹⁷⁰⁴

Commencement

Pt 6(2) rule 6.35(1)-(2): December 29, 1986

6.36.— [...] ¹⁷⁰⁵**CHAPTER 3****BANKRUPTCY PETITION (DEBTOR'S)****6.37. Preliminary**

The Rules in this Chapter relate to a debtor's petition, and the making of a bankruptcy order thereon.

Commencement

Pt 6(3) rule 6.37: December 29, 1986

6.38.— Identification of debtor

(1) The petition shall state the following matters with respect to the debtor—

(a) his name, place of residence and occupation (if any);

¹⁷⁰² Substituted by Insolvency (Amendment) Rules 2009/642 rule 37(a) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁷⁰³ Added by Insolvency (Amendment) Rules 2009/642 rule 37(b) (April 6, 2009: insertion has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁷⁰⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.318(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁰⁵ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (b) the name or names in which he carries on business, if other than his true name, and whether, in the case of any business of a specified nature, he carries it on alone or with others;
 - (c) the nature of his business, and the address or addresses at which he carries it on;
 - (d) any name or names, other than his true name, in which he has carried on business in the period in which any of his bankruptcy debts were incurred and, in the case of any such business, whether he has carried it on alone or with others; and
 - (e) any address or addresses at which he has resided or carried on business during that period, and the nature of that business.
- (2) The particulars of the debtor given under this Rule determine the full title of the proceedings.
- (3) If the debtor has at any time used a name other than the one given under paragraph (1)(a), that fact shall be stated in the petition.

Commencement

Pt 6(3) rule 6.38(1)-(3): December 29, 1986

6.39.— Admission of insolvency

- (1) The petition shall contain the statement that the petitioner is unable to pay his debts, and a request that a bankruptcy order be made against him.
- (2) If within the period of 5 years ending with the date of the petition the petitioner has been adjudged bankrupt, or has made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs, or he has entered into any voluntary arrangement or been subject to an administration order under Part VI of the County Courts Act 1984, particulars of these matters shall be given in the petition.
- [(3) If there is at the date of the petition in force for the debtor a voluntary arrangement under Part VIII of the Act, the particulars required by paragraph (2) above shall contain a statement to that effect and the name and address of the supervisor of the arrangement.]¹⁷⁰⁶

Commencement

Pt 6(3) rule 6.39(1)-(2): December 29, 1986

6.40.— [...] ¹⁷⁰⁷

[6.40A Court in which petition to be presented]

- (1) If the debtor is resident in England and Wales, the petition—
- (a) must be presented to the High Court if, for the greater part of the 6 months immediately preceding the presentation of the petition, the debtor—

¹⁷⁰⁶ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.98 (January 11, 1988)

¹⁷⁰⁷ Rule 6.40A substituted for rule 6.40 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.319 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (i) has carried on a business in the London insolvency district; or
 - (ii) has not carried on a business in England and Wales but has resided in the London insolvency district; or
 - (b) must be presented to the debtor's own county court (unless paragraph (5) applies) if the debtor—
 - (i) has carried on a business in England and Wales other than in the London insolvency district, or
 - (ii) has not carried on a business in England and Wales and has resided outside the London insolvency district.
- (2) If the debtor is not resident in England and Wales but was resident or carried on business in England and Wales within the 6 months immediately preceding the presentation of the petition, the petition—
- (a) must be presented to the High Court if the debtor—
 - (i) carried on a business in the London insolvency district for a longer period in those 6 months than in any other insolvency district, or
 - (ii) did not carry on a business in England and Wales but resided in the London insolvency district for a longer period in those 6 months than in any other insolvency district; and
 - (b) in any other case, may be presented either to the debtor's own county court or to the High Court.
- (3) In a case not falling within either paragraph (1) or (2), the petition must be presented to the High Court.
- (4) For the purposes of this Rule, what constitutes the debtor's own county court is to be determined in accordance with Rule 6.9A(3).
- (5) Where, for whatever reason, it is not possible for the petition to be presented to the debtor's own county court, the debtor may, with a view to expediting the presentation of the petition, present the petition—
- (a) where Rule 6.9A(3)(a) applies, to—
 - (i) the court for the insolvency district in which the debtor resides, or
 - (ii) whichever court is specified by Schedule 2 to these Rules as being the nearest full time court in relation to—
 - (aa) the court in Rule 6.9A(3)(a), or
 - (bb) where the court in paragraph (i) is a county court, that court; or
 - (b) where Rule 6.9A(3)(b) applies, whichever court is specified by Schedule 2 to these Rules as being the nearest full time court in relation to the court in that paragraph.
- (6) Notwithstanding any other provision of this Rule, where there is in force for the debtor a voluntary arrangement under Part 8 of the Act, the petition must be presented to the court to which the nominee's report under section 256 was submitted.
- (7) The petition must contain sufficient information to establish that it is presented to the appropriate court.

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¹⁷⁰⁸ Rule 6.40A substituted for rule 6.40 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.319 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

6.41.— Statement of affairs

(1) The petition shall be accompanied by a statement of the debtor's affairs, verified by [a statement of truth]¹⁷⁰⁹ .

(2) Section B of Chapter 5 below applies with respect to the statement of affairs.

Commencement

Pt 6(3) rule 6.41(1)-(2): December 29, 1986

6.42.— Procedure for presentation and filing

(1) The petition and the statement of affairs shall be filed in court, together with three copies of the petition, and [one copy]¹⁷¹⁰ of the statement. No petition shall be filed unless there is produced with it the receipt for the deposit payable on presentation.

(2) [Subject to paragraph (2A), the]¹⁷¹¹ court may hear the petition [as soon as reasonably practicable]¹⁷¹² . If it does not do so, it shall fix a venue for the hearing.

[(2A) If the petition contains particulars of a voluntary arrangement under Part VIII of the Act in force for the debtor, the court shall fix a venue for the hearing and give at least 14 days' notice of it to the supervisor of the arrangement; the supervisor may appear and be heard on the petition.]¹⁷¹³

(3) Of the three copies of the petition delivered—

- (a) one shall be returned to the petitioner, endorsed with any venue fixed;
- (b) another, so endorsed, shall be [sent by the court to the official receiver; and]¹⁷¹⁴
- (c) the remaining copy shall be retained by the court, to be sent to an insolvency practitioner (if appointed under section 273(2)).

[(4) The copy of the statement of affairs shall be sent by the court to the official receiver.]¹⁷¹⁵

(5) [...] ¹⁷¹⁶

[(6) Where the court hears a petition [as soon as reasonably practicable]¹⁷¹² , or it will in the opinion of the court otherwise expedite the delivery of any document to the official receiver, the court may, instead of sending that document to the official receiver, direct the bankrupt [as soon as reasonably practicable]¹⁷¹² to deliver it to him.

¹⁷⁰⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.320(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷¹⁰ Words substituted by Insolvency (Amendment) Rules 2005/527 rule 36(a) (April 1, 2005)

¹⁷¹¹ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.100(1) (January 11, 1988)

¹⁷¹² Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁷¹³ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.100(2) (January 11, 1988)

¹⁷¹⁴ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.100(3) (January 11, 1988)

¹⁷¹⁵ Substituted by Insolvency (Amendment) Rules 2005/527 rule 36(b) (April 1, 2005)

¹⁷¹⁶ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.321(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(7) Where a petition contains a request for the appointment of a person as trustee in accordance with section 297(5) (appointment of former supervisor as trustee) the person whose appointment is sought shall, not less than 2 [business]¹⁷¹⁷ days before the day appointed for hearing the petition, file in court a report including particulars of-

- (a) a date on which he gave written notification to creditors bound by the arrangement of the intention to seek his appointment as trustee, such date to be at least [7 business]¹⁷¹⁸ days before the day on which the report under this paragraph is filed, and
- (b) details of any response from creditors to that notice, including any objections to his appointment.

]¹⁷¹⁹

Commencement

Pt 6(3) rule 6.42(1)-(5): December 29, 1986

6.43. Notice to Chief Land Registrar

When the petition is filed, the court shall [as soon as reasonably practicable]¹⁷²⁰ send to the Chief Land Registrar notice of the petition, for registration in the register of pending actions.

Commencement

Pt 6(3) rule 6.43: December 29, 1986

6.44.— Report of insolvency practitioner

(1) If the court under section 273(2) appoints an insolvency practitioner to act in the debtor's case, it shall [as soon as reasonably practicable]¹⁷²¹ —

- (a) send to the person appointed—
 - (i) a sealed copy of the order of appointment, and
 - (ii) copies of the petition and statement of affairs,
- (b) fix a venue for the insolvency practitioner's report to be considered, and
- (c) send notice of the venue to the insolvency practitioner and the debtor.

¹⁷¹⁷ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.321(3)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷¹⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.321(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷¹⁹ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.100(5) (January 11, 1988)

¹⁷²⁰ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁷²¹ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

(2) The insolvency practitioner shall file his report in court [...] ¹⁷²² and send one copy of it to the debtor, so as to be in his hands not less than 3 [business] ¹⁷²³ days before the date fixed for consideration of the report [, and a further copy to the official receiver] ¹⁷²⁴ .

(3) The debtor is entitled to attend when the report is considered, and shall attend if so directed by the court. If he attends, the court shall hear any representations which he makes with respect to any of the matters dealt with in the report.

(4) [...] ¹⁷²⁵

Commencement

Pt 6(3) rule 6.44(1)-(4): December 29, 1986

6.45.— Settlement and content of bankruptcy order

(1) The bankruptcy order shall be settled by the court.

(2) The order shall—

(a) state the date of the presentation of the petition on which the order is made, and the date and time of the making of the order, and

[(b) contain a notice referring to the bankrupt's duties in relation to the official receiver under section 291, and in particular to the bankrupt's duty to give the official receiver such inventory of the bankrupt's estate and such other information, and attend on the official receiver at such times, as the official receiver may reasonably require.] ¹⁷²⁶

(3) Subject to section 346 (effect of bankruptcy on enforcement procedures), the order may include provision staying any action or proceeding against the bankrupt.

(4) Where the bankrupt is represented by a solicitor, the order shall be endorsed with the latter's name, address, telephone number and reference.

Commencement

Pt 6(3) rule 6.45(1)-(4): December 29, 1986

6.46.— Action to follow making of order

(1) At least two sealed copies of the bankruptcy order shall be sent [as soon as reasonably practicable] ¹⁷²⁷ by the court to the official receiver, who [must (unless the official receiver is

¹⁷²² Words omitted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.101(1) (January 11, 1988)

¹⁷²³ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.322(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷²⁴ Words added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.101(1) (January 11, 1988)

¹⁷²⁵ Revoked by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.101(2) (January 11, 1988)

¹⁷²⁶ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.323(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷²⁷ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

satisfied that the bankrupt has already received a copy of the order)]¹⁷²⁸ [as soon as reasonably practicable]¹⁷²⁷ send one of them to the bankrupt.

[(2) Subject to the next paragraph, on receipt of the sealed copies of the bankruptcy order, the official receiver—

(a) as soon as reasonably practicable shall—

(i) send notice of the making of the order to the Chief Land Registrar, for registration in the register of writs and orders affecting land; and

(ii) cause notice of the order to be gazetted; and

(b) may cause notice of the order to be advertised in such other manner as the official receiver thinks fit.

] ¹⁷²⁹

[(2A) In addition to the standard contents, the notice to be gazetted under paragraph (2)(b) and any notice to be advertised under paragraph (2)(c) must state—

(a) that a bankruptcy order has been made against the bankrupt;

(b) the date and time of making of the bankruptcy order;

(c) that the bankruptcy order was made on the debtor's own petition; and

(d) the date of presentation of the petition.

] ¹⁷³⁰

(3) The court may, on the application of the bankrupt or a creditor, order the official receiver to suspend action under paragraph (2) [and [Rule 6A.4(2)]¹⁷³¹]¹⁷³², pending a further order of the court. [...] ¹⁷³³

[(3A) An application under this paragraph must be supported by a witness statement stating the grounds on which it is made.]¹⁷³⁴

(4) Where an order is made under paragraph (3), the applicant shall [as soon as reasonably practicable]¹⁷²⁷ deliver a copy of it to the official receiver.

Commencement

Pt 6(3) rule 6.46(1)-(4): December 29, 1986

¹⁷²⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.324(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷²⁹ Substituted by Insolvency (Amendment) Rules 2009/642 rule 38 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁷³⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.324(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷³¹ Words substituted by Insolvency (Amendment) Rules 2005/527 rule 37 (April 1, 2005)

¹⁷³² Words inserted by Insolvency (Amendment) Rules 1999/359 Sch.1 para.5 (March 22, 1999)

¹⁷³³ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.324(4) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷³⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.324(5) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[6.46A. Expenses of voluntary arrangement

Where a bankruptcy order is made on a debtor's petition and there is at the time of the petition in force for the debtor a voluntary arrangement under Part VIII of the Act, any expenses properly incurred as expenses of the administration of the arrangement in question shall be a first charge on the bankrupt's estate.]¹⁷³⁵

6.47.— Amendment of title of proceedings

(1) At any time after the making of the bankruptcy order, the official receiver or the trustee may apply to the court for an order amending the full title of the proceedings.

[(3) Where the official receiver thinks fit, notice of the order—

(a) as soon as reasonably practicable shall be gazetted; and

(b) may be advertised in such other manner as the official receiver thinks fit.

] ¹⁷³⁶

[(4) In addition to the standard contents, the notice under paragraph (3) must—

(a) state that an amendment to the full title of the proceedings has been made; and

(b) specify the amendment.

] ¹⁷³⁷

Commencement

Pt 6(3) rule 6.47(1)-(2)(b): December 29, 1986

6.48.— [...]¹⁷³⁸

6.49.— [...]¹⁷³⁹

6.50.— [...]¹⁷⁴⁰

CHAPTER 4**THE INTERIM RECEIVER****6.51.— Application for appointment of interim receiver**

[(1) An application to the court for the appointment of an interim receiver under section 286 may be made by—

(a) a creditor;

¹⁷³⁵ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.102 (January 11, 1988)

¹⁷³⁶ Added by Insolvency (Amendment) Rules 2009/642 rule 39(b) (April 6, 2009: insertion has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁷³⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.325(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷³⁸ Revoked by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.34 (April 1, 2004)

¹⁷³⁹ Revoked by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.34 (April 1, 2004)

¹⁷⁴⁰ Revoked by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.34 (April 1, 2004)

- (b) the debtor;
- (c) an insolvency practitioner appointed under section 273(2);
- (d) a temporary administrator, or
- (e) a member State liquidator appointed in main proceedings.

] ¹⁷⁴¹

- (2) The application must be supported by [a witness statement] ¹⁷⁴² stating—
- (a) the grounds on which it is proposed that the interim receiver should be appointed,
 - (b) whether or not the official receiver has been informed of the application and, if so, has been furnished with a copy of it,
 - (c) whether to the applicant's knowledge there has been proposed or is in force a voluntary arrangement under Part VIII of the Act, and
 - (d) the applicant's estimate of the value of the property or business in respect of which the interim receiver is to be appointed.
- (3) If an insolvency practitioner has been appointed under section 273, and it is proposed that he (and not the official receiver) should be appointed interim receiver, and it is not the insolvency practitioner himself who is the applicant under this Rule, the [witness statement] ¹⁷⁴³ under paragraph (2) must state that he has consented to act.
- (4) The applicant shall send copies of the application and the [witness statement] ¹⁷⁴³ to the person proposed to be appointed interim receiver. If that person is the official receiver and an insolvency practitioner has been appointed under section 273 (and he is not himself the applicant), copies of the application and [witness statement] ¹⁷⁴³ shall be sent by the applicant to the insolvency practitioner.
- If, in any case where a copy of the application is to be sent to a person under this paragraph, it is for any reason not practicable to send a copy, that person must be informed of the application in sufficient time to enable him to be present at the hearing.
- (5) The official receiver and (if appointed) the insolvency practitioner may attend the hearing of the application and make representations.
- (6) The court may on the application, if satisfied that sufficient grounds are shown for the appointment, make it on such terms as it thinks [just] ¹⁷⁴⁴.

Commencement

Pt 6(4) rule 6.51(1)-(6): December 29, 1986

¹⁷⁴¹ Substituted by Insolvency (Amendment) Rules 2002/1307 rule 8(4) (May 31, 2002)

¹⁷⁴² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.326(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁴³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.326(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁴⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

6.52.— Order of appointment

(1) The order appointing the interim receiver shall state the nature and a short description of the property of which the person appointed is to take possession, and the duties to be performed by him in relation to the debtor's affairs.

(2) The court shall, [as soon as reasonably practicable]¹⁷⁴⁵ after the order is made, send 2 sealed copies of it to the person appointed interim receiver (one of which shall be sent by him [as soon as reasonably practicable]¹⁷⁴⁵ to the debtor).

Commencement

Pt 6(4) rule 6.52(1)-(2): December 29, 1986

6.53.— Deposit

(1) Before an order appointing the official receiver as interim receiver is issued, the applicant for it shall deposit with him, or otherwise secure to his satisfaction, such sum as the court directs to cover his remuneration and expenses.

(2) If the sum deposited or secured subsequently proves to be insufficient, the court may, on application by the official receiver, order that an additional sum be deposited or secured. If the order is not complied with within 2 [business]¹⁷⁴⁶ days after service on the person to whom the order is directed, the court may discharge the order appointing the interim receiver.

(3) If a bankruptcy order is made after an interim receiver has been appointed, any money deposited under this Rule shall (unless it is required by reason of insufficiency of assets for payment of remuneration and expenses of the interim receiver, or the deposit was made by the debtor out of his own property) be repaid to the person depositing it (or as that person may direct) out of the bankrupt's estate, in the prescribed order of priority.

Commencement

Pt 6(4) rule 6.53(1)-(3): December 29, 1986

6.54.— Security

(1) The following applies where an insolvency practitioner is appointed to be interim receiver under section 286(2).

(2) The cost of providing the security required under the Act shall be paid in the first instance by the interim receiver; but—

- (a) if a bankruptcy order is not made, the person so appointed is entitled to be reimbursed out of the property of the debtor, and the court may make an order on the debtor accordingly, and

¹⁷⁴⁵ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁷⁴⁶ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.327(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (b) if a bankruptcy order is made, he is entitled to be reimbursed out of the estate in the prescribed order of priority.

Commencement

Pt 6(4) rule 6.54(1)-(2)(b): December 29, 1986

6.55.— Failure to give or keep up security

- (1) If the interim receiver fails to give or keep up his security, the court may remove him, and make such order as it thinks [just]¹⁷⁴⁷ as to costs.
- (2) If an order is made under this Rule removing the interim receiver, or discharging the order appointing him, the court shall give directions as to whether any, and if so what, steps should be taken for the appointment of another person in his place.

Commencement

Pt 6(4) rule 6.55(1)-(2): December 29, 1986

6.56.— Remuneration

- (1) The remuneration of the interim receiver (other than the official receiver) shall be fixed by the court from time to time on his application.
- (2) In fixing the interim receiver's remuneration, the court shall take into account—
- (a) the time properly given by him (as interim receiver) and his staff in attending to the debtor's affairs,
 - (b) the complexity (or otherwise) of the case,
 - (c) any respects in which, in connection with the debtor's affairs, there falls on the interim receiver any responsibility of an exceptional kind or degree,
 - (d) the effectiveness with which the interim receiver appears to be carrying out, or to have carried out, his duties as such, and
 - (e) the value and nature of the property with which he has to deal.
- (3) [Without prejudice to any order the court may make as to costs, the interim receiver's remuneration (whether the official receiver or another) shall be paid to him, and the amount of any expenses incurred by him (including the remuneration and expenses of any special manager appointed under section 370) reimbursed—
- (a) if a bankruptcy order is not made, out of the property of the debtor, and]¹⁷⁴⁸
 - (b) if a bankruptcy order is made, out of the estate in the prescribed order of priority,
- or, in either case (the relevant funds being insufficient), out of the deposit under Rule 6.53.
- [(4) Unless the court otherwise directs, in a case falling within paragraph (3)(a) above the interim receiver may retain out of the debtor's property such sums or property as are or may be required for meeting his remuneration and expenses.]¹⁷⁴⁹

¹⁷⁴⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁴⁸ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.103(1) (January 11, 1988)

Commencement

Pt 6(4) rule 6.56(1)-(3)(b): December 29, 1986

6.57.— Termination of appointment

(1) The appointment of the interim receiver may be terminated by the court on his application, or on that of the official receiver, the debtor or any creditor.

(2) If the interim receiver's appointment terminates, in consequence of the dismissal of the bankruptcy petition or otherwise, the court may give such directions as it thinks [just]¹⁷⁵⁰ with respect to the accounts of his administration and any other matters which it thinks appropriate.

(3) [...] ¹⁷⁵¹

Commencement

Pt 6(4) rule 6.57(1)-(3)(b): December 29, 1986

CHAPTER 5**DISCLOSURE BY BANKRUPT WITH RESPECT TO THE STATE OF HIS AFFAIRS****SECTION A: CREDITOR'S PETITION****6.58. Preliminary**

The Rules in this Section apply with respect to the statement of affairs required by section 288(1) to be submitted by the bankrupt, following a bankruptcy order made on a creditor's petition, and the further and other disclosure which is required of him in that case.

Commencement

Pt 6(5) rule 6.58: December 29, 1986

6.59. The statement of affairs

The bankrupt's statement of affairs shall be in Form 6.33, and contain all the particulars required by that form.

Commencement

Pt 6(5) rule 6.59: December 29, 1986

¹⁷⁴⁹ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.103(2) (January 11, 1988)

¹⁷⁵⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁵¹ Revoked by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.104 (January 11, 1988)

6.60.— Verification and filing

- (1) The bankrupt shall be furnished by the official receiver with instructions for the preparation of his statement of affairs, and the forms required for that purpose.
- (2) The statement of affairs shall be verified by [a statement of truth]¹⁷⁵² and delivered to the official receiver, together with one copy.
- (3) The official receiver shall file the verified statement in court.
- (4) [...] ¹⁷⁵³

Commencement

Pt 6(5) rule 6.60(1)-(4): December 29, 1986

6.61.— Limited disclosure

- (1) Where the official receiver thinks that it would prejudice the conduct of the bankruptcy [or might reasonably be expected to lead to violence against any person]¹⁷⁵⁴ for the whole or part of the statement of affairs to be disclosed, he may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it.
- (2) The court may on the application order that the statement or, as the case may be, the specified part of it be not filed in court, or that it is to be filed separately and not be open to inspection otherwise than with [permission]¹⁷⁵⁵ of the court.

Commencement

Pt 6(5) rule 6.61(1)-(2): December 29, 1986

6.62.— Release from duty to submit statement of affairs; extension of time

- (1) The power of the official receiver under section 288(3) to release the bankrupt from his duty to submit a statement of affairs, or to grant an extension of time, may be exercised at the official receiver's own discretion, or at the bankrupt's request.
- (2) The bankrupt may, if he request a release or extension of time and it is refused by the official receiver, apply to the court for it.

¹⁷⁵² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.328(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁵³ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.328(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁵⁴ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.329(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁵⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the bankrupt has had an opportunity to attend the court for [a]¹⁷⁵⁶ hearing, of which he has been given at least [5 business]¹⁷⁵⁷ days' notice [but which is without notice to any other party]¹⁷⁵⁸ .

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the bankrupt accordingly.

(4) The bankrupt shall, at least 14 days before the hearing, send to the official receiver a notice stating the venue and accompanied by a copy of the application, and of any evidence which he (the bankrupt) intends to adduce in support of it.

(5) The official receiver may appear and be heard on the application; and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the court's attention.

If such a report is filed, a copy of it shall be sent by the official receiver to the bankrupt, not later than 5 [business]¹⁷⁵⁹ days before the hearing.

(6) Sealed copies of any order made on the application shall be sent by the court to the bankrupt and the official receiver.

(7) On any application under this Rule the bankrupt's costs shall be paid in any event by him and, unless the court otherwise orders, no allowance towards them shall be made out of the estate.

Commencement

Pt 6(5) rule 6.62(1)-(7): December 29, 1986

6.63.— Expenses of statement of affairs

(1) If the bankrupt cannot himself prepare a proper statement of affairs, the official receiver may, at the expense of the estate, employ some person or persons to assist in the preparation of the statement.

(2) At the request of the bankrupt, made on the grounds that he cannot himself prepare a proper statement, the official receiver may authorise an allowance payable out of the estate (in accordance with the prescribed order of priority) towards expenses to be incurred by the bankrupt in employing some person or persons to assist him in preparing it.

¹⁷⁵⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.330(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁵⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.330(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁵⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.330(2)(c) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁵⁹ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.330(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) Any such request by the bankrupt shall be accompanied by an estimate of the expenses involved; and the official receiver shall only authorise the employment of a named person or a named firm, being in either case approved by him.

(4) An authorisation given by the official receiver under this Rule shall be subject to such conditions (if any) as he thinks fit to impose with respect to the manner in which any person may obtain access to relevant books and papers.

(5) Nothing in this Rule relieves the bankrupt from any obligation with respect to the preparation, verification and submission of his statement of affairs, or to the provision of information to the official receiver or the trustee.

Commencement

Pt 6(5) rule 6.63(1)-(5): December 29, 1986

6.64.— Requirement to submit accounts

(1) The bankrupt shall, at the request of the official receiver, furnish him with accounts relating to his affairs of such nature, as at such date and for such period as he may specify.

(2) The period specified may begin from a date up to 3 years preceding the date of the presentation of the bankruptcy petition.

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

(4) Rule 6.63 applies (with the necessary modifications) in relation to accounts to be furnished under this Rule as it applies in relation to the statement of affairs.

Commencement

Pt 6(5) rule 6.64(1)-(4): December 29, 1986

6.65.— Submission and filing of accounts

(1) The accounts to be furnished under Rule 6.64 shall, if the official receiver so requires, be verified by affidavit, and (whether or not so verified) delivered to him within 21 days of the request under Rule 6.64(1), or such longer period as he may allow.

(2) [...]¹⁷⁶⁰

Commencement

Pt 6(5) rule 6.65(1)-(2): December 29, 1986

¹⁷⁶⁰ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.331(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

6.66.— Further disclosure

(1) The official receiver may at any time require the bankrupt to submit (in writing) further information amplifying, modifying or explaining any matter contained in his statement of affairs, or in accounts submitted in pursuance of the Act or the Rules.

(2) The information shall, if the official receiver so directs, be verified by [a statement of truth]¹⁷⁶¹, and (whether or not so verified) delivered to him within 21 days of the requirement under this Rule, or such longer period as he may allow.

(3) [...] ¹⁷⁶²

Commencement

Pt 6(5) rule 6.66(1)-(3): December 29, 1986

*SECTION B: DEBTOR'S PETITION***6.67. Preliminary**

The Rules in this Section apply with respect to the statement of affairs required in the case of a person petitioning for a bankruptcy order to be made against him, and the further disclosure which is required of him in that case.

Commencement

Pt 6(5) rule 6.67: December 29, 1986

6.68. Contents of statement

The statement of affairs required by Rule 6.41 to accompany the debtor's petition shall be in Form 6.28, and contain all the particulars required by that form.

Commencement

Pt 6(5) rule 6.68: December 29, 1986

6.69.— Requirement to submit accounts

(1) The bankrupt shall, at the request of the official receiver, furnish him with accounts relating to his affairs of such nature, as at such date and for such period as he may specify.

(2) The period specified may begin from a date up to 3 years preceding the date of the presentation of the bankruptcy petition.

¹⁷⁶¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.332(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁶² Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.332(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

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

Commencement

Pt 6(5) rule 6.69(1)-(3): December 29, 1986

6.70.— Submission and filing of accounts

(1) The accounts to be furnished under Rule 6.69 shall, if the official receiver so requires, be verified by [a statement of truth]¹⁷⁶³, and (whether or not so verified) delivered to him within 21 days of the request under Rule 6.69, or such longer period as he may allow.

(2) [...]¹⁷⁶⁴

Commencement

Pt 6(5) rule 6.70(1)-(2): December 29, 1986

6.71.— Expenses of preparing accounts

(1) If the bankrupt cannot himself prepare proper accounts under Rule 6.69, the official receiver may, at the expense of the estate, employ some person or persons to assist in their preparation.

(2) At the request of the bankrupt, made on the grounds that he cannot himself prepare the accounts, the official receiver may authorise an allowance payable out of the estate (in accordance with the prescribed order of priority) towards expenses to be incurred by the bankrupt in employing some person or persons to assist him in their preparation.

(3) Any such request by the bankrupt shall be accompanied by an estimate of the expenses involved; and the official receiver shall only authorise the employment of a named person or a named firm, being in either case approved by him.

(4) An authorisation given by the official receiver under this Rule shall be subject to such conditions (if any) as he thinks fit to impose with respect to the manner in which any person may obtain access to relevant books and papers.

(5) Nothing in this Rule relieves the bankrupt from any obligation with respect to the preparation and submission of accounts, or to the provision of information to the official receiver or the trustee.

Commencement

Pt 6(5) rule 6.71(1)-(5): December 29, 1986

¹⁷⁶³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.333(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁶⁴ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.333(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

6.72.— Further disclosure

(1) The official receiver may at any time require the bankrupt to submit (in writing) further information amplifying, modifying or explaining any matter contained in his statement of affairs, or in accounts submitted in pursuance of the Act or the Rules.

(2) The information shall, if the official receiver so directs, be verified by [a statement of truth]¹⁷⁶⁵, and (whether or not so verified) delivered to him within 21 days from the date of the requirement under paragraph (1), or such longer period as he may allow.

(3) [...] ¹⁷⁶⁶

Commencement

Pt 6(5) rule 6.72(1)-(3): December 29, 1986

CHAPTER 6**INFORMATION TO CREDITORS****[6.73. General duty of official receiver**

(1) In accordance with this Chapter, the official receiver shall, at least once after the making of the bankruptcy order, send a report to creditors with respect to the bankruptcy proceedings, and the state of the bankrupt's affairs.

(2) [...] ¹⁷⁶⁷
] ¹⁷⁶⁸

Commencement

Pt 6(6) rule 6.73: December 29, 1986

6.74. Those entitled to be informed

Any reference in this Chapter to creditors is to creditors of the bankrupt who are known to the official receiver [...] ¹⁷⁶⁹ .

¹⁷⁶⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.334(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁶⁶ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.334(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁶⁷ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.335(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁶⁸ Existing rule 6.73 renumbered as rule 6.73(1) and rule 6.73(2) added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.105 (January 11, 1988)

¹⁷⁶⁹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.336(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 6(6) rule 6.74: December 29, 1986

6.75.— Report where statement of affairs lodged

(1) Where the bankrupt has submitted a statement of affairs, [...] ¹⁷⁷⁰ the official receiver shall send out to creditors a report containing a summary of the statement [(if he thinks fit, as amplified, modified or explained by virtue of Rule 6.66 or 6.72)] ¹⁷⁷¹ and such observations (if any) as he thinks fit to make with respect to it or to the bankrupt's affairs generally.

(2) The official receiver need not comply with paragraph (1) if he has previously reported to creditors with respect to the bankrupt's affairs (so far as known to him) and he is of opinion that there are no additional matters which ought to be brought to their attention.

Commencement

Pt 6(6) rule 6.75(1)-(2): December 29, 1986

6.76.— Statement of affairs dispensed with

(1) This Rule applies where the bankrupt has been released from the obligation to submit a statement of affairs.

(2) As soon as may be after the release has been granted, the official receiver shall send to creditors a report containing a summary of the bankrupt's affairs (so far as within his knowledge), and his observations (if any) with respect to it or the bankrupt's affairs generally.

(3) The official receiver need not comply with paragraph (2) if he has previously reported to creditors with respect to the bankrupt's affairs (so far as known to him) and he is of opinion that there are no additional matters which ought to be brought to their attention.

Commencement

Pt 6(6) rule 6.76(1)-(3): December 29, 1986

6.77.— General rule as to reporting

(1) The court may, on the official receiver's application, relieve him of any duty imposed on him by this Chapter of the Rules, or authorise him to carry out the duty in a way other than there required.

(2) In considering whether to act as above, the court shall have regard to the cost of carrying out the duty, to the amount of the funds available in the estate, and to the extent of the interest of creditors or any particular class of them.

¹⁷⁷⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.337(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁷¹ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.106 (January 11, 1988)

Commencement

Pt 6(6) rule 6.77(1)-(2): December 29, 1986

6.78. Bankruptcy order annulled

If the bankruptcy order is annulled, the duty of the official receiver to send reports under the preceding Rules in this Chapter ceases.

Commencement

Pt 6(6) rule 6.78: December 29, 1986

[6.78A Reports to creditors

- (1) “Progress report” means a report which includes—
- (a) details of the court where the proceedings are and the relevant court reference number;
 - (b) the bankrupt's name;
 - (c) the title of the proceedings;
 - (d) full details of the trustee's name and address and date of appointment, including any changes in office-holder;
 - (e) details of the basis fixed for the remuneration of the trustee under Rule 6.138 (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);
 - (f) if the basis of remuneration has been fixed, a statement of—
 - (i) the remuneration charged by the trustee during the period of the report (subject to paragraph (2)), and
 - (ii) where the report is the first to be made after the basis has been fixed, the remuneration charged by the trustee during the periods covered by the previous reports (subject to paragraph (2)), together with a description of the things done by the trustee during those periods in respect of which the remuneration was charged, irrespective in either case of whether payment was made in respect of that remuneration during that period;
 - (g) a statement of the expenses incurred by the trustee during the period of the report, irrespective of whether payment was made in respect of them during that period;
 - (h) details of progress during the period of the report, including a receipts and payments account in the form of an abstract showing receipts and payments during the period of the report;
 - (j) details of any assets that remain to be realised;
 - (k) a statement of the creditors' right to request information under Rule 6.78C and their right to challenge the trustee's remuneration and expenses under Rule 6.142; and
 - (l) any other relevant information for the creditors.
- (2) Where the basis for the remuneration is a set amount under Rule 6.138(2)(c), it may be shown as that amount without any apportionment to the period of the report.
- (3) The progress report must, except where paragraph (4) or (5) applies, cover the period of 1 year commencing on the date on which the trustee is appointed and every subsequent period of 1 year.

(4) The period to be covered by a progress report ends on the date when a trustee ceases to act, and the period to be covered by each subsequent progress report is each successive period of 1 year beginning immediately after that date (subject to the further application of this paragraph when another trustee ceases to act).

(5) A progress report is not required for any period which ends after the trustee has sent a draft report to creditors under Rule 6.78B (final report to creditors).

(6) The trustee must send a copy of the progress report to the creditors within 2 months of the end of the period covered by the report.

(7) The court may, on the trustee's application, extend the period of 2 months mentioned in paragraph (6), or make such other order in respect of the content of the report as it thinks just.

(8) This Rule does not apply where the trustee is the official receiver.

]¹⁷⁷²

[6.78B Final report to creditors and bankrupt

(1) The trustee must, at least 8 weeks before holding a final meeting in accordance with section 331, send to each creditor known to the trustee and to the bankrupt a draft of the report which the trustee intends to lay before the meeting under Rule 6.137.

(2) The draft report must—

(a) contain such matters and be in such terms as would comply with Rule 6.137 if the report were to be laid before a meeting as soon as reasonably practicable after the draft had been sent to creditors, and

(b) be accompanied by a statement of the creditors' right to request information under Rule 6.78C and their right to challenge the trustee's remuneration and expenses under Rule 6.142.

(3) The trustee may not send a draft report to creditors under this Rule before giving notice—

(a) under Rule 11.2 of intention to declare a final dividend, or

(b) under Rule 11.7 that no dividend or further dividend will be declared.

(4) If any creditor has applied to the court under Rule 6.142 and given a copy of the application to the trustee, the final meeting may not be held until the application (including any appeal) has been disposed of and the trustee has complied with any order of the court.

(5) This Rule does not apply where the trustee is the official receiver.

]¹⁷⁷³

[6.78C Creditors' request for further information

(1) If—

(a) within the period mentioned in paragraph (2)—

(i) a secured creditor, or

¹⁷⁷² Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.338 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁷³ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.338 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(ii) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question), or
 (b) with the permission of the court upon an application made within the period mentioned in paragraph (2), any unsecured creditor,
 makes a request in writing to the trustee for further information about remuneration or expenses set out in a progress report under Rule 6.78A(1)(f) or (g) or in a draft report under Rule 6.78B, the trustee must, within 14 days of receipt of the request, comply with paragraph (3) except to the extent that the request is in respect of matter in a draft report under Rule 6.78B or a progress report required by Rule 6.126 which (in either case) was previously included in a progress report not required by Rule 6.126.

(2) The period referred to in paragraph (1)(a) is—

- (a) 7 business days of receipt of the progress report where it is required by Rule 6.126, and
- (b) 21 days of receipt of the report or draft report in any other case.

(3) The trustee complies with this paragraph by either—

- (a) providing all of the information asked for, or
- (b) so far as the trustee considers that—
 - (i) the time or cost of preparation of the information would be excessive, or
 - (ii) disclosure of the information would be prejudicial to the conduct of the bankruptcy or might reasonably be expected to lead to violence against any person, or
 - (iii) the trustee is subject to an obligation of confidentiality in respect of the information,

giving reasons for not providing all of the information.

(4) Any creditor, who need not be the same as the creditor who asked for the information, may apply to the court within 21 days of—

- (a) the giving by the trustee of reasons for not providing all of the information asked for, or
- (b) the expiry of the 14 days provided for in paragraph (1),

and the court may make such order as it thinks just.

(5) Without prejudice to the generality of paragraph (4), the order of the court under that paragraph may extend the period of 8 weeks or, as the case may be, 4 weeks provided for in Rule 6.142(1B) by such further period as the court thinks just.

(6) This Rule does not apply where the trustee is the official receiver.

¹⁷⁷⁴

[6.78D Distribution of property in specie

(1) Where there has been a distribution of property to creditors under section 326, the trustee must comply with paragraph (2) in respect of any account or report which the trustee is required to prepare pursuant to any of the following—

- (a) section 331 (final meeting);

¹⁷⁷⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.338 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (b) Rule 6.78A (reports to creditors);
 - (c) Rule 6.78B (final report to creditors);
 - (d) Rule 6.126 (creditors' meeting to receive trustee's resignation);
 - (e) Rule 6.137 (final meeting of creditors).
- (2) The trustee must—
- (a) in any account or summary of receipts and payments which is required to be included in the account or report, state the estimated value of the property distributed amongst the creditors during the period to which the account or report relates, and
 - (b) as a note to the account or summary of receipts and payments, provide details of the basis of the valuation.
-]
- ¹⁷⁷⁵

CHAPTER 7

CREDITORS' MEETINGS

6.79.— First meeting of creditors

- (1) If under section 293(1) the official receiver decides to summon a meeting of creditors, he shall fix a venue for the meeting; not more than 4 months from the date of the bankruptcy order.
- (2) When a venue has been fixed, notice of the meeting shall be given [to every creditor of the bankrupt who is known to the official receiver.]¹⁷⁷⁶
- (a)-(b) [...]¹⁷⁷⁶
- [(3) Notice must be given at least 14 days before the date fixed for the meeting.]¹⁷⁷⁷
- [(4) The notice to creditors must state that proofs and (if applicable) proxies must be lodged at a specified place not later than 12.00 hours on the business day before the date fixed for the meeting in order for creditors to be entitled to vote at the meeting.]¹⁷⁷⁸
- [(5) As soon as reasonably practicable, notice of the meeting shall also be gazetted and may be advertised in such other manner as the official receiver thinks fit.]¹⁷⁷⁹
- [(5A) In addition to the standard contents, the notice under paragraph (5) must state—
- (a) the purpose for which the meeting is summoned;
 - (b) the venue fixed for the meeting; and
 - (c) the time and date by which, and place at which, creditors must lodge proxies and hitherto unlodged proofs in order to be entitled to vote at the meeting.

¹⁷⁷⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.338 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁷⁶ Words substituted for rule 6.79(2)(a) and (b) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.339(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁷⁷ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.339(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁷⁸ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.339(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁷⁹ Substituted by Insolvency (Amendment) Rules 2009/642 rule 40 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

]¹⁷⁸⁰

(6) Where the official receiver receives a request by a creditor under section 294 for a meeting of creditors to be summoned, and it appears to him that the request is properly made in accordance with the Act, he shall—

- (a) withdraw any notice already given by him under section 293(2) (that he has decided not to summon such a meeting), and
- (b) fix the venue of the meeting for not more than 3 months from his receipt of the creditor's request, and
- (c) act in accordance with paragraphs (2) to (5) above, as if he had decided under section 293(1) to summon the meeting.

(7) A meeting summoned by the official receiver under section 293 or 294 is known as “the first meeting of creditors”.

Commencement

Pt 6(7) rule 6.79(1)-(7): December 29, 1986

6.80.— Business at first meeting

(1) At the first meeting of creditors, no resolutions shall be taken other than the following—

- (a) a resolution to appoint a named insolvency practitioner to be trustee in bankruptcy or two or more named insolvency practitioners as joint trustees;
- (b) a resolution to establish a creditors' committee;
- (c) (unless it has been resolved to establish a creditors' committee) a resolution specifying the terms on which the trustee is to be remunerated, or to defer consideration of that matter;
- (d) (if, and only if, two or more persons are appointed to act jointly as trustee) a resolution specifying whether acts are to be done by both or all of them, or by only one;
- (e) (where the meeting has been requisitioned under section 294) a resolution authorising payment out of the estate, as an expense of the bankruptcy, of the cost of summoning and holding the meeting;
- (f) a resolution to adjourn the meeting [...] ¹⁷⁸¹ ;
- (g) any other resolution which the chairman thinks it right to allow for special reasons.

[(2A) The meeting may be adjourned, either in accordance with a resolution under paragraph (1)(f) or if the chairman thinks fit, but for not more than 14 days from the date on which it was fixed to commence, subject to any direction of the court.

(2B) If there are subsequently further adjournments, the final adjournment must not be to a day later than 14 days after the date on which the meeting was originally held, subject to any direction of the court.

(2C) Where a meeting is adjourned under this Rule, proofs and proxies may be used if lodged at any time up to 12.00 hours on the business day immediately before the adjourned meeting.] ¹⁷⁸²

¹⁷⁸⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.339(5) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁸¹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.340(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 6(7) rule 6.80(1)-(2): December 29, 1986

6.81.— General power to call meetings

(1) The official receiver or the trustee may at any time summon and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the bankruptcy.

In relation to any meeting of creditors, the person summoning it is referred to as “the convener”.

(2) When a venue for the meeting has been fixed, notice of the meeting shall be given by the convener to every creditor who is known to him [...] ¹⁷⁸³.

The notice shall be given at least [14] ¹⁷⁸⁴ days before the date fixed for the meeting.

[(3) The notice must specify the purpose for which the meeting is summoned and state that proofs and (if applicable) proxies must be lodged at a specified place not later than 12.00 hours on the business day before the date fixed for the meeting in order for creditors to be entitled to vote at the meeting.] ¹⁷⁸⁵

[(4) [As soon as reasonably practicable after sending notice of the meeting to the creditors under paragraph (2), the convener must give additional notice of the meeting.] ¹⁷⁸⁶ Such notice—

(a) shall be gazetted; and

(b) may be advertised in such other manner as the convenor thinks fit.

] ¹⁷⁸⁷

[(5) In addition to the standard contents, the notice under paragraph (4) must specify—

(a) who summoned the meeting;

(b) if the meeting was summoned at the request of a creditor, the fact that it was so summoned and the section of the Act under which it was requested;

(c) the purpose for which the meeting is summoned;

(d) the venue fixed for the meeting; and

(e) the time and date by which, and place at which, creditors must lodge proxies and hitherto unlodged proofs in order to be entitled to vote at the meeting.

] ¹⁷⁸⁸

¹⁷⁸² Rule 6.80(2A)-(2C) substituted for rule 6.80(2) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.340(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁸³ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.341(2)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁸⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.341(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁸⁵ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.341(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁸⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.341(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁸⁷ Substituted by Insolvency (Amendment) Rules 2009/642 rule 41 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

Commencement

Pt 6(7) rule 6.81(1)-(4): December 29, 1986

6.82.— The chairman at a meeting

(1) Where the convener of a meeting is the official receiver, he, or a person nominated by him, shall be chairman.

A nomination under this paragraph shall be in writing, unless the nominee is another official receiver or a deputy official receiver.

(2) Where the convener is other than the official receiver, the chairman shall be he, or a person nominated by him in writing to act.

A person nominated under this paragraph must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the bankrupt, or
- (b) an employee of the trustee or his firm who is experienced in insolvency matters.

Commencement

Pt 6(7) rule 6.82(1)-(2)(b): December 29, 1986

6.83.— Requisitioned meetings

(1) A request by creditors to the official receiver for a meeting of creditors to be summoned shall be accompanied by—

- (a) a list of the creditors concurring with the request and the amount of their respective claims in the bankruptcy,
- (b) from each creditor concurring, written confirmation of his concurrence, and
- (c) a statement of the purpose of the proposed meeting.

Sub-paragraphs (a) and (b) do not apply if the requisitioning creditor's debt is alone sufficient, without the concurrence of other creditors.

(2) The official receiver, if he considers the request to be properly made in accordance with the Act, shall—

- (a) fix a venue for the meeting, to take place not more than [28]¹⁷⁸⁹ days from the receipt of the request, and
- (b) give [14]¹⁷⁹⁰ days' notice of the meeting, and of the venue for it, to creditors.

(3) Where a request for a creditors' meeting is made to the trustee, this Rule applies to him as it does to the official receiver.

¹⁷⁸⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.341(5) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁸⁹ Figure substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.342(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁹⁰ Figure substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.342(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[(4) This Rule shall not apply to voluntary arrangements under section 263A.]¹⁷⁹¹

Commencement

Pt 6(7) rule 6.83(1)-(3): December 29, 1986

6.84.— Attendance at meeting of bankrupt, etc.

- (1) Whenever a meeting of creditors is summoned, the convener shall give at least [14]¹⁷⁹² days' notice of the meeting to the bankrupt.
- (2) If the meeting is adjourned, the chairman of the meeting shall (unless for any reason it appears to him to be unnecessary or impracticable) give notice of the fact to the bankrupt, if the latter was not himself present at the meeting.
- (3) The convener may, if he thinks fit, give notice to the bankrupt that he is required to be present, or in attendance.
- (4) In the case of any meeting, the bankrupt or any other person may, if he has given reasonable notice of his wish to be present, be admitted; but this is at the discretion of the chairman. The chairman's decision is final as to what (if any) intervention may be made by the bankrupt, or by any other person admitted to the meeting under this paragraph.
- (5) If the bankrupt is not present, and it is desired to put questions to him, the chairman may adjourn the meeting with a view to obtaining his attendance.
- (6) Where the bankrupt is present at a creditors' meeting, only such questions may be put to him as the chairman may in his discretion allow.

Commencement

Pt 6(7) rule 6.84(1)-(6): December 29, 1986

6.85.— Notice of meetings by advertisement only

- (1) In the case of any meeting to be held under the Act or the Rules, the court may order that notice of it be given by [...] ¹⁷⁹³ advertisement, and not by individual notice to the persons concerned.
- (2) In considering whether to act under this Rule, the court shall have regard to the cost of [...] ¹⁷⁹³ advertisement, to the amount of the funds available in the estate, and to the extent of the interest of creditors or any particular class of them.
- [(3) In addition to the standard contents, the advertisement must state—
 - (a) the venue fixed for the meeting;

¹⁷⁹¹ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.35 (April 1, 2004)

¹⁷⁹² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.343(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁹³ Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.344(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (b) that proofs and (if applicable) proxies must be lodged at a specified place not later than 12.00 hours on the business day before the date fixed for the meeting; and
- (c) the date of the court order.

]¹⁷⁹⁴

Commencement

Pt 6(7) rule 6.85(1)-(2): December 29, 1986

6.86.— Venue of meetings

- (1) In fixing the venue for a meeting of creditors, the person summoning the meeting shall have regard to the convenience of the creditors.
- (2) Meetings shall in all cases be summoned for commencement between the hours of 10.00 and 16.00 hours on a business day, unless the court otherwise directs.
- (3) With every notice summoning a creditors' meeting there shall be sent out forms of proxy.

Commencement

Pt 6(7) rule 6.86(1)-(3): December 29, 1986

6.87.— Expenses of summoning meetings

- (1) Subject to paragraph (3) below, the expenses of summoning and holding a meeting of creditors at the instance of any person other, than the official receiver or the trustee shall be paid by that person, who shall deposit security for their payment with the trustee or, if no trustee has been appointed, with the official receiver.
- (2) The sum to be deposited shall be such as the trustee or (as the case may be) the official receiver determines to be appropriate; and neither shall act without the deposit having been made.
- (3) Where a meeting is so summoned, it may vote that the expenses of summoning and holding it shall be payable out of the estate, as an expense of the bankruptcy.
- (4) To the extent that any deposit made under this Rule is not required for the payment of expenses of summoning and holding the meeting, it shall be repaid to the person who made it.

Commencement

Pt 6(7) rule 6.87(1)-(4): December 29, 1986

6.88.— Resolutions

- (1) [Subject as follows, at]¹⁷⁹⁵ a meeting of creditors, a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of the resolution.

¹⁷⁹⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.344(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁹⁵ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.107(1) (January 11, 1988)

- (2) In the case of a resolution for the appointment of a trustee—
- (a) if on any vote there are two nominees for appointment, the person who obtains the most support is appointed [...] ¹⁷⁹⁶ ;
 - (b) if there are three or more nominees, and one of them has a clear majority over both or all the others together, that one is appointed; and
 - (c) in any other case the chairman shall continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time), until a clear majority is obtained for any one nominee.
- (3) The chairman may at any time put to the meeting a resolution for the joint appointment of any two or more nominees.
- (4) Where a resolution is proposed which affects a person in respect of his remuneration or conduct as trustee, or as proposed or former trustee, the vote of that person, and of any partner or employee of his, shall not be reckoned in the majority required for passing the resolution.
- This paragraph applies with respect to a vote given by a person [(whether personally or on his behalf by a proxy-holder)] ¹⁷⁹⁷ either as creditor or as [proxy-holder] ¹⁷⁹⁸ for a creditor (but subject to Rule 8.6 in Part 8 of the Rules).

Commencement

Pt 6(7) rule 6.88(1)-(4): December 29, 1986

[6.88A Resolutions by correspondence

- (1) The trustee may seek to obtain the passing of a resolution by creditors without holding a meeting by giving notice of the resolution to every creditor who is entitled to be notified of a meeting at which the resolution could be passed.
- (2) In order to be counted, votes must be received by the trustee in writing by 12.00 hours on the closing date specified in the notice, and must be accompanied by a proof of debt as required by Rule 6.93(1)(a) unless it has already been lodged under that Rule.
- (3) If any vote cast by a creditor is received without a proof of debt, or the trustee decides that the creditor is not entitled to vote according to Rules 6.93 to 6.94, then that creditor's vote must be disregarded.
- (4) The closing date shall be set at the discretion of the trustee, but in any event it must not be set less than 14 days from the giving of notice provided for in paragraph (1).
- (5) For the resolution to be passed, the trustee must receive at least one valid vote by the closing date specified in the notice.
- (6) If no valid vote is received by the closing date specified, the trustee must call a meeting of creditors at which the resolution could be passed.

¹⁷⁹⁶ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.345(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁷⁹⁷ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.107(3)(a) (January 11, 1988)

¹⁷⁹⁸ Word substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.107(3)(b) (January 11, 1988)

(7) Creditors whose debts amount to at least 10% of the bankrupt's total debts may, within 5 business days from the giving of notice provided for in paragraph (1), require the trustee to summon a meeting of creditors to consider the resolution.

(8) A reference in these Rules to a resolution passed at a creditors' meeting includes a reference to a resolution passed under this Rule.

(9) This Rule does not apply in respect of any resolution which the Act requires to be passed at a meeting.

¹⁷⁹⁹

6.89. Chairman of meeting as proxy-holder

Where the chairman at a meeting holds a proxy for a creditor, which requires him to vote for a particular resolution, and no other person proposes that resolution—

- (a) he shall himself propose it, unless he considers that there is good reason for not doing so, and
- (b) if he does not propose it, he shall [as soon as reasonably practicable]¹⁸⁰⁰ after the meeting notify his principal of the reason why not.

Commencement

Pt 6(7) rule 6.89(a)-(b): December 29, 1986

6.90. Suspension of meeting

Once only in the course of any meeting, the chairman may, in his discretion and without an adjournment, declare the meeting suspended for any period up to one hour.

Commencement

Pt 6(7) rule 6.90: December 29, 1986

6.91.— Adjournment

(1) The chairman at any meeting may, in his discretion, and shall if the meeting so resolves, adjourn it to such time and place as seems to him to be appropriate in the circumstances.

This is subject to Rule 6.129(3) in a case where the trustee or his nominee is chairman and a resolution has been proposed for the trustee's removal.

(2) If within a period of 30 minutes from the time appointed for the commencement of a meeting a quorum is not present, then [the chairman may, at his discretion, adjourn the meeting to such time and place as he may appoint]¹⁸⁰¹.

¹⁷⁹⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.346 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁰⁰ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁸⁰¹ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.108 (January 11, 1988)

(3) An adjournment under this Rule shall not be for a period of more than [14]¹⁸⁰² days; and Rule 6.86(1) and (2) applies with regard to the venue of the adjourned meeting.

[(4A) If within 30 minutes from the time appointed for commencement of a meeting there is no person present to act as chairman, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(4B) Paragraph (4A) applies to further adjournments of a final meeting.

(4C) In the case of any other meeting, further adjournment must be to the same time and place in the following week or, if either—

(a) that is not a business day, or

(b) whether or not it is a business day, it is later than 14 days after the date on which the meeting in question was originally held,

to the same time and place on the business day immediately preceding which is not later than 14 days after the date on which the meeting in question was originally held.

]¹⁸⁰³

(5) Where a meeting is adjourned under this Rule, proofs and proxies may be used if lodged at any time up to midday on the business day immediately before the adjourned meeting.

Commencement

Pt 6(7) rule 6.91(1)-(5): December 29, 1986

6.92.— [...] ¹⁸⁰⁴

6.93.— Entitlement to vote

(1) Subject as follows [in this Rule and the next]¹⁸⁰⁵ , at a meeting of creditors a person is entitled to vote as a creditor only if—

[(a) there has been duly lodged, by the time and date stated in the notice of the meeting, a proof of the debt

(i) claimed to be due to him from the bankrupt, or

(ii) in relation to a member State liquidator, is claimed to be due to creditors in proceedings in relation to which he holds office,

and the claim has been admitted under Rule 6.94 for the purpose of entitlement to vote, and

]¹⁸⁰⁶

(b) there has been lodged, by that time and date, any proxy requisite for that entitlement.

¹⁸⁰² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.347(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁰³ Rule 6.91(4A)-(4C) substituted for rule 6.91(4) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.347(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁰⁴ Revoked by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.109 (January 11, 1988)

¹⁸⁰⁵ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.348(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁰⁶ Rule.6.93(1)(a)(i) and (ii) substituted for words by Insolvency (Amendment) Rules 2002/1307 rule 8(5)(a) (May 31, 2002)

(2) The court may, in exceptional circumstances, by order declare the creditors, or any class of them, entitled to vote at creditors' meetings, without being required to prove their debts.

Where a creditor is so entitled, the court may, on the application of the trustee, make such consequential orders as it thinks [just]¹⁸⁰⁷ (as for example an order treating a creditor as having proved his debt for the purpose of permitting payment of dividend).

(3) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits his proof for that purpose.

(4) A secured creditor is entitled to vote only in respect of the balance (if any) of his debt after deducting the value of his security as estimated by him.

(5) A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing—

(a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the bankrupt, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands, and

(b) to estimate the value of the security and (for the purpose of entitlement to vote, but not for dividend) to deduct it from his proof.

[(6) No vote shall be cast by virtue of a debt more than once on any resolution put to the meeting.

(7) Where—

(a) a creditor is entitled to vote under this Rule and Rule 6.94 (admission of proof),

(b) has lodged his claim in one or more sets of other proceedings, and

(c) votes (either in person or by proxy) on a resolution put to the meeting,

only the creditor's vote shall be counted.

(8) Where—

(a) a creditor has lodged his claim in more than one set of other proceedings, and

(b) more than one member State liquidator seeks to vote by virtue of that claim,

the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.

(9) For the purposes of paragraphs (7) and (8), “other proceedings” means main proceedings, secondary proceedings or territorial proceedings in another member State.]¹⁸⁰⁸

Commencement

Pt 6(7) rule 6.93(1)-(5)(b): December 29, 1986

¹⁸⁰⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁰⁸ Added by Insolvency (Amendment) Rules 2002/1307 rule 8(5)(b) (May 31, 2002)

[6.93A Chairman's discretion to allow vote

At a creditors' meeting, the chairman may allow a creditor to vote, notwithstanding that the creditor has failed to comply with Rule 6.93(1)(a), if satisfied that the failure was due to circumstances beyond the creditor's control.]¹⁸⁰⁹

6.94.— Admission and rejection of proof

(1) At any creditors' meeting the chairman has power to admit or reject a creditor's proof for the purpose of his entitlement to vote; and the power is exercisable with respect to the whole or any part of the proof.

(2) The chairman's decision under this Rule, or in respect of any matter arising under Rule 6.93, is subject to appeal to the court by any creditor, or by the bankrupt.

(3) If the chairman is in doubt whether a proof should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the proof is sustained.

(4) If on an appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks just.

[(4A) An application to the court by way of appeal under this Rule against a decision of the chairman must be made not later than 21 days after the date of the meeting.]¹⁸¹⁰

(5) Neither the official receiver nor any person nominated by him to be chairman is personally liable for costs incurred by any person in respect of an application to the court under this Rule; and the chairman (if other than the official receiver or a person so nominated) is not so liable unless the court makes an order to that effect.

Commencement

Pt 6(7) rule 6.94(1)-(5): December 29, 1986

6.95.— Record of proceedings

(1) The chairman at any creditors' meeting shall cause minutes of the proceedings at the meeting, [authenticated]¹⁸¹¹ by him, to be retained by him as part of the records of the bankruptcy.

(2) He shall also cause to be made up and kept a list of all the creditors who attended the meeting.

¹⁸⁰⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.349 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸¹⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.350(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸¹¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) The minutes of the meeting shall include a record of every resolution passed; [and if a creditors' committee has been established, the names and addresses of those elected to be members of the committee]¹⁸¹² .

Commencement

Pt 6(7) rule 6.95(1)-(3): December 29, 1986

CHAPTER 8

PROOF OF BANKRUPTCY DEBTS

SECTION A: PROCEDURE FOR PROVING

6.96.— Meaning of “prove”

(1) A person claiming to be a creditor of the bankrupt and wishing to recover his debt in whole or in part must (subject to any order of the court under Rule 6.93(2)) submit his claim in writing to the official receiver, where acting as receiver and manager, or to the trustee.

(2) The creditor is referred to as “proving” for his debt; and the document by which he seeks to establish his claim is his “proof”.

(3) Subject to the next two paragraphs, the proof must be in the form known as “proof of debt” (whether the form prescribed by the Rules, or a substantially similar form), which shall be made out by or under the directions of the creditor, and [authenticated]¹⁸¹³ by him or a person authorised in that behalf.

(4) Where a debt is due to a Minister of the Crown or a Government Department, the proof need not be in that form, provided that there are shown all such particulars of the debt as are required in the form used by other creditors, and as are relevant in the circumstances.

(5) Where an existing trustee proves in a later bankruptcy under section 335(5), the proof must be in FORM 6.38.

(6) [...] ¹⁸¹⁴

Commencement

Pt 6(8) rule 6.96(1)-(6): December 29, 1986

¹⁸¹² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.351(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸¹³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸¹⁴ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.352(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[6.97 Supply of forms

A form of proof shall be sent to any creditor of the bankrupt by the official receiver or trustee where the creditor so requests.]¹⁸¹⁵

Commencement

Pt 6(8) rule 6.97(1)-(4): December 29, 1986

6.98.— Contents of proof

[(1) Subject to Rule 6.96(4), the following matters shall be stated in a creditor's proof of debt—

- (a) the creditor's name and address, and, if a company, its company registration number;
- (b) the total amount of his claim (including any Value Added Tax) as at the date of the bankruptcy order [, less any deduction under Rule 6.110]¹⁸¹⁶ ;
- (c) whether or not that amount includes outstanding uncapitalised interest;
- (d) particulars of how and when the debt was incurred by the debtor;
- (e) particulars of any security held, the date when it was given and the value which the creditor puts upon it
- (f) details of any reservation of title in respect of goods to which the debt refers; and
- (g) the name, and address and authority of the person [authenticating]¹⁸¹⁷ the proof (if other than the creditor himself).

] ¹⁸¹⁸

(2) There shall be specified in the proof any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such documents be attached to the proof or submitted with it.

(3) The trustee, [the official receiver, acting as receiver and manager]¹⁸¹⁹ or the convener or chairman of any meeting, may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

Commencement

Pt 6(8) rule 6.98(1)-(3): December 29, 1986

6.99.— [...] ¹⁸²⁰

¹⁸¹⁵ Substituted by Insolvency (Amendment) Rules 2004/584 rule 27 (April 1, 2004)

¹⁸¹⁶ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.353(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸¹⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸¹⁸ Substituted by Insolvency (Amendment No. 2) Rules 2004/1070 rule 2 (May 3, 2004)

¹⁸¹⁹ Words inserted by Insolvency (Amendment) Rules 2004/584 rule 28(2) (April 1, 2004)

¹⁸²⁰ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

6.100.— Cost of proving

- (1) Subject as follows, every creditor bears the cost of proving his own debt, including such as may be incurred in providing documents or evidence under Rule 6.98(3).
- (2) Costs incurred by the trustee in estimating the value of a bankruptcy debt under section 322(3) (debts not bearing a certain value) fall on the estate, as an expense of the bankruptcy.
- (3) Paragraphs (1) and (2) apply unless the court otherwise orders.

Commencement

Pt 6(8) rule 6.100(1)-(3): December 29, 1986

6.101. Trustee to allow inspection of proofs

The trustee shall, so long as proofs lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

- (a) any creditor who has submitted his proof of debt (unless his proof has been wholly rejected for purposes of dividend or otherwise),
- (b) the bankrupt, and
- (c) any person acting on behalf of either of the above.

Commencement

Pt 6(8) rule 6.101(a)-(c): December 29, 1986

6.102. [...]¹⁸²¹**6.103.— Transmission of proofs to trustee**

- (1) Where a trustee is appointed, the official receiver shall [as soon as reasonably practicable]¹⁸²² transmit to him all the proofs which he has so far received, together with an itemised list of them.
- (2) The trustee shall [authenticate]¹⁸²³ the list by way of receipt for the proofs, and return it to the official receiver.
- (3) From then on, all proofs of debt shall be sent to the trustee and retained by him.

Commencement

Pt 6(8) rule 6.103(1)-(3): December 29, 1986

¹⁸²¹ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸²² Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁸²³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[6.103A New trustee appointed]

- (1) If a new trustee is appointed in place of another, the former trustee must as soon as reasonably practicable transmit to the new one all proofs which the former trustee has received, together with an itemised list of them.
- (2) The new trustee must authenticate the list by way of receipt for the proofs, and return it to the former trustee.
- (3) From then on, all proofs of debt must be sent to and retained by the new trustee.

¹⁸²⁴

6.104.— Admission and rejection of proofs for dividend

- (1) A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount.
- (2) If the trustee rejects a proof in whole or in part, he shall prepare a written statement of his reasons for doing so, and send it [as soon as reasonably practicable]¹⁸²⁵ to the creditor.

Commencement

Pt 6(8) rule 6.104(1)-(2): December 29, 1986

6.105.— Appeal against decision on proof

- (1) If a creditor is dissatisfied with the trustee's decision with respect to his proof (including any decision on the question of preference), he may apply to the court for the decision to be reversed or varied.
The application must be made within 21 days of his receiving the statement sent under Rule 6.104(2).
- (2) The bankrupt or any other creditor may, if dissatisfied with the trustee's decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the trustee's decision.
- (3) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to the creditor who lodged the proof in question (if it is not himself) and to the trustee.
- (4) The trustee shall, on receipt of the notice, file in court the relevant proof, together (if appropriate) with a copy of the statement sent under Rule 6.104(2).
- (5) After the application has been heard and determined, the proof shall, unless it has been wholly disallowed, be returned by the court to the trustee.
- (6) The official receiver is not personally liable for costs incurred by any person in respect of an application under this Rule; and the trustee (if other than the official receiver) is not so liable unless the court makes an order to that effect.

¹⁸²⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.354 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸²⁵ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

Commencement

Pt 6(8) rule 6.105(1)-(6): December 29, 1986

6.106. Withdrawal or variation of proof

A creditor's proof may at any time, by agreement between himself and the trustee, be withdrawn or varied as to the amount claimed.

Commencement

Pt 6(8) rule 6.106: December 29, 1986

6.107.— Expunging of proof by the court

- (1) The court may expunge a proof or reduce the amount claimed—
 - (a) on the trustee's application, where he thinks that the proof has been improperly admitted, or ought to be reduced; or
 - (b) on the application of a creditor, if the trustee declines to interfere in the matter.
- (2) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant—
 - (a) in the case of an application by the trustee, to the creditor who made the proof; and
 - (b) in the case of an application by a creditor, to the trustee and to the creditor who made the proof (if not himself).

Commencement

Pt 6(8) rule 6.107(1)-(2)(b): December 29, 1986

SECTION B: QUANTIFICATION OF CLAIM

6.108. Negotiable instruments, etc.

Unless the trustee allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or his authorised representative to be a true copy.

Commencement

Pt 6(8) rule 6.108: December 29, 1986

6.109.— Secured creditors

- (1) If a secured creditor realises his security, he may prove for the balance of his debt, after deducting the amount realised.

(2) If a secured creditor voluntarily surrenders his security for the general benefit of creditors, he may prove for his whole debt, as if it were unsecured.

Commencement

Pt 6(8) rule 6.109(1)-(2): December 29, 1986

6.110. Discounts

There shall in every case be deducted from the claim all trade and other discounts which would have been available to the bankrupt but for his bankruptcy, except any discount for immediate, early or cash settlement.

Commencement

Pt 6(8) rule 6.110: December 29, 1986

6.111.— Debt in foreign currency

(1) For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the date of the bankruptcy order.

(2) “The official exchange rate” is the [middle exchange rate on the London Foreign Exchange Market at the close of business]¹⁸²⁶, as published for the date in question. In the absence of any such published rate, it is such rate as the court determines.

Commencement

Pt 6(8) rule 6.111(1)-(2): December 29, 1986

6.112.— Payments of a periodical nature

(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date of the bankruptcy order.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day.

Commencement

Pt 6(8) rule 6.112(1)-(2): December 29, 1986

6.113.— Interest

(1) In the following circumstances the creditor's claim may include interest on the debt for periods before the bankruptcy order, although not previously reserved or agreed.

¹⁸²⁶ Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.37 (April 1, 2004)

(2) If the debt is due by virtue of a written instrument and payable at a certain time, interest may be claimed for the period from that time to the date of the bankruptcy order.

(3) If the debt is due otherwise, interest may only be claimed if, before the presentation of the bankruptcy petition, a demand for payment was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment [and for all the purposes of the Act and the Rules shall be chargeable at a rate not exceeding that mentioned in paragraph (5)]¹⁸²⁷ . [...] ¹⁸²⁸

[(4) Interest under paragraph (3) may only be claimed for the period from the date of the demand to that of the bankruptcy order.

(5) The rate of interest to be claimed under paragraphs (2) and (3) is the rate specified in section 17 of the Judgments Act 1838 on the date of the bankruptcy order.]¹⁸²⁸

Commencement

Pt 6(8) rule 6.113(1)-(4): December 29, 1986

6.114. Debt payable at future time

A creditor may prove for a debt of which payment was not yet due at the date of the bankruptcy order, but subject to Rule 11.13 in Part 11 of the Rules (adjustment of dividend where payment made before time).

Commencement

Pt 6(8) rule 6.114: December 29, 1986

CHAPTER 9

SECURED CREDITORS

6.115.— Value of security

(1) A secured creditor may, with the agreement of the trustee or the [permission]¹⁸²⁹ of the court, at any time alter the value which he has, in his proof of debt, put upon his security.

(2) However, if a secured creditor—

(a) being the petitioner, has in the petition put a value on his security, or

(b) has voted in respect of the unsecured balance of his debt,

he may re-value his security only with [permission]¹⁸²⁹ of the court.

Commencement

Pt 6(9) rule 6.115(1)-(2)(b): December 29, 1986

¹⁸²⁷ Words added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.112(1) (January 11, 1988)

¹⁸²⁸ Substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.112(2) (January 11, 1988)

¹⁸²⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

6.116.— Surrender for non-disclosure

(1) If a secured creditor omits to disclose his security in his proof of debt, he shall surrender his security for the general benefit of creditors, unless the court, on application by him, relieves him from the effect of this Rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof of debt to be amended, on such terms as may be just.

[(3) Nothing in this Rule or the following two Rules may affect the rights in rem of creditors or third parties protected under Article 5 of the EC Regulation (third parties' rights in rem).]¹⁸³⁰

Commencement

Pt 6(9) rule 6.116(1)-(2): December 29, 1986

6.117.— Redemption by trustee

(1) The trustee may at any time give notice to a creditor whose debt is secured that he proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the trustee may allow) in which, if he so wishes, to exercise his right to re-value his security (with the [permission]¹⁸³¹ of the court, where Rule 6.115(2) applies).

If the creditor re-values his security, the trustee may only redeem at the new value.

(3) If the trustee redeems the security, the cost of transferring it is borne by the estate.

(4) A secured creditor may at any time, by a notice in writing, call on the trustee to elect whether he will or will not exercise his power to redeem the security at the value then placed on it; and the trustee then has [3 months]¹⁸³² in which to exercise the power or determine not to exercise it.

Commencement

Pt 6(9) rule 6.117(1)-(4): December 29, 1986

6.118.— Test of security's value

(1) Subject as follows, the trustee, if he is dissatisfied with the value which a secured creditor puts on his security (whether in his proof or by way of re-valuation under Rule 6.117), may require any property comprised in the security to be offered for sale.

¹⁸³⁰ Added by Insolvency (Amendment) Rules 2002/1307 rule 8(7) (May 31, 2002)

¹⁸³¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸³² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.355(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) The terms of sale shall be such as may be agreed, or as the court may direct; and if the sale is by auction, the trustee on behalf of the estate, and the creditor on his own behalf, may appear and bid.

(3) This Rule does not apply if the security has been re-valued and the re-valuation has been approved by the court.

Commencement

Pt 6(9) rule 6.118(1)-(3): December 29, 1986

6.119. Realisation of security by creditor

If a creditor who has valued his security subsequently realises it (whether or not at the instance of the trustee)—

- (a) the net amount realised shall be substituted for the value previously put by the creditor on the security, and
- (b) that amount shall be treated in all respects as an amended valuation made by him.

Commencement

Pt 6(9) rule 6.119(a)-(b): December 29, 1986

CHAPTER 10

THE TRUSTEE IN BANKRUPTCY

SECTION A: APPOINTMENT AND ASSOCIATED FORMALITIES

6.120.— Appointment by creditors' meeting

(1) This Rule applies where a person has been appointed trustee by resolution of a creditors' meeting.

(2) The chairman of the meeting shall certify the appointment, but not unless and until the person to be appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Act to act as trustee in relation to the bankrupt, and that he consents so to act.

[(3) The trustee's appointment is effective from the date on which the appointment is certified, that date to be endorsed on the certificate.

(4) The chairman of the meeting (if not himself the official receiver) shall send the certificate to the official receiver.

(5) The official receiver shall in any case send the certificate to the trustee [...] ¹⁸³³ .] ¹⁸³⁴

¹⁸³³ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.356(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸³⁴ Rule 6.120(3)-(5) substituted for rule 6.120(3) and (4) by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.113 (January 11, 1988)

Commencement

Pt 6(10) rule 6.120(1)-(4): December 29, 1986

[6.120A Official receiver not to be appointed trustee

The official receiver may not be appointed as trustee by resolution of a creditors' meeting.]¹⁸³⁵

6.121.— Appointment by the court

- (1) This Rule applies where the court under [section 297(4) or (5)]¹⁸³⁶ appoints the trustee.
- (2) The court's order shall not issue unless and until the person appointed has filed in court a statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the trustee, and that he consents so to act.
- (3) Thereafter, the court shall send 2 copies of the order to the official receiver. One of the copies shall be sealed, and this shall be sent by him to the person appointed as trustee.
- (4) The trustee's appointment takes effect from the date of the order.

Commencement

Pt 6(10) rule 6.121(1)-(4): December 29, 1986

6.122.— Appointment by Secretary of State

- (1) This Rule applies where the official receiver—
 - (a) under section 295 or 300, refers to the Secretary of State the need for an appointment of a trustee, or
 - (b) under section 296, applies to the Secretary of State to make the appointment.
- (2) If the Secretary of State makes an appointment he shall send [a copy]¹⁸³⁷ of the certificate of appointment to the official receiver, who shall transmit [it]¹⁸³⁸ to the person appointed [...] ¹⁸³⁹

The certificate shall specify the date from which the trustee's appointment is to be effective.

¹⁸³⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.357 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸³⁶ Figure repealed by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.38 (April 1, 2004)

¹⁸³⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.358(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸³⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.358(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸³⁹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.358(2)(c) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 6(10) rule 6.122(1)-(2): December 29, 1986

6.123. Authentication of trustee's appointment

Where a trustee is appointed under any of [Rules 6.120, 6.121 and 6.122]¹⁸⁴⁰, a sealed copy of the order of appointment or (as the case may be) a copy of the certificate of his appointment may in any proceedings be adduced as proof that he is duly authorised to exercise the powers and perform the duties of trustee of the bankrupt's estate.

Commencement

Pt 6(10) rule 6.123: December 29, 1986

6.124.— Advertisement of appointment

[(1) A trustee who is appointed by a creditors' meeting, as soon as reasonably practicable after receiving the certificate of appointment, shall give notice of that appointment. Such notice—

- (a) shall be gazetted; and
- (b) may be advertised in other such manner as the trustee thinks fit.

]¹⁸⁴¹

[(1A) In addition to the standard contents, the notice under paragraph (1) must state—

- (a) that a trustee has been appointed by a creditors' meeting; and
- (b) the date of the appointment.

]¹⁸⁴²

(2) The expense of giving the notice shall be borne in the first instance by the trustee; but he is entitled to be reimbursed by the estate, as an expense of the bankruptcy.

The same applies also in the case of the notice or advertisement under section 296(4) (appointment of trustee by Secretary of State), and of the notice or advertisement under section 297(7) (appointment by the court).

Commencement

Pt 6(10) rule 6.124(1)-(2): December 29, 1986

6.125.— Hand-over of estate to trustee

(1) This Rule applies only where—

¹⁸⁴⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.359(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁴¹ Substituted by Insolvency (Amendment) Rules 2009/642 rule 42 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁸⁴² Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.360(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (a) the bankrupt's estate vests in the trustee under Chapter IV of Part IX of the Act, following a period in which the official receiver is the receiver and manager of the estate according to section 287, or
 - (b) the trustee is appointed in succession to the official receiver acting as trustee.
- (2) When the trustee's appointment takes effect, the official receiver shall [as soon as reasonably practicable]¹⁸⁴³ do all that is required for putting him into possession of the estate.
- (3) On taking possession of the estate, the trustee shall discharge any balance due to the official receiver on account of—
- (a) expenses properly incurred by him and payable under the Act or the Rules, and
 - (b) any advances made by him in respect of the estate, together with interest on such advances at the rate specified in section 17 of the Judgments Act 1838 on the date of the bankruptcy order.
- (4) Alternatively, the trustee may (before taking office) give to the official receiver a written undertaking to discharge any such balance out of the first realisation of assets.
- (5) The official receiver has a charge on the estate in respect of any sums due to him under paragraph (3). But, where the trustee has realised assets with a view to making those payments, the official receiver's charge does not extend in respect of sums deductible by the trustee from the proceeds of realisation, as being expenses properly incurred therein.
- (6) The trustee shall from time to time out of the realisation of assets discharge all guarantees properly given by the official receiver for the benefit of the estate, and shall pay all the official receiver's expenses.
- (7) The official receiver shall give to the trustee all such information, relating to the affairs of the bankrupt and the course of the bankruptcy, as he (the official receiver) considers to be reasonably required for the effective discharge by the trustee of his duties in relation to the estate.
- (8) The trustee shall also be furnished with any report of the official receiver under Chapter 6 of this Part of the Rules.

Commencement

Pt 6(10) rule 6.125(1)-(8): December 29, 1986

SECTION B: RESIGNATION AND REMOVAL; VACATION OF OFFICE

6.126.— Creditors' meeting to receive trustee's resignation

- (1) Before resigning his office, the trustee must call a meeting of creditors for the purpose of receiving his resignation. [...] ¹⁸⁴⁴

[(1A) The trustee must give at least 28 days' notice of the meeting.

¹⁸⁴³ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁸⁴⁴ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.361(2)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(1B) The notice summoning the meeting must—

- (a) indicate that the purpose or one of the purposes of the meeting is to receive the trustee's resignation; and
- (b) draw the attention of the creditors to Rule 6.142.

(1C) Notice of the meeting must be sent to the official receiver and to the bankrupt at the same time as it is sent to creditors.]¹⁸⁴⁵

[(2) The notice to creditors and the bankrupt must be accompanied by an account of the trustee's administration of the bankrupt's estate, including—

- (a) a statement that the trustee has reconciled the account with that held by the Secretary of State in respect of the bankruptcy; and
- (b) a progress report for the period—
 - (i) commencing with the later of the date of—
 - (aa) the appointment of the trustee; and
 - (bb) the day immediately following the end of the period of the last progress report; and
 - (ii) ending with the date of the meeting.

] ¹⁸⁴⁶

(3) Subject as follows, the trustee may only proceed under this Rule on grounds of ill health or because—

- (a) he intends ceasing to be in practice as an insolvency practitioner, or
- (b) there is some conflict of interest or change of personal circumstances which precludes or makes impracticable the further discharge by him of the duties of trustee.

(4) Where two or more persons are acting as trustee jointly, any one of them may proceed under this Rule (without prejudice to the continuation in office of the other or others) on the ground that, in his opinion and that of the other or others, it is no longer expedient that there should continue to be the present number of joint trustees.

[(5) [Except where Rule 6.126A applies, if] ¹⁸⁴⁷ there is no quorum present at the meeting summoned to receive the trustee's resignation, the meeting is deemed to have been held, a resolution is deemed to have been passed that the trustee's resignation be accepted and the creditors are deemed not to have resolved against the trustee having his release.

(6) Where paragraph (5) applies any reference in the Rules to a resolution that the trustee's resignation be accepted is replaced by a reference to the making of a written statement, [authenticated] ¹⁸⁴⁸ by the person who, had there been a quorum present, would have been chairman of the meeting, that no quorum was present and that the trustee may resign.] ¹⁸⁴⁹

¹⁸⁴⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.361(2)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁴⁶ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.361(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁴⁷ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.361(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁴⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁴⁹ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.114 (January 11, 1988)

Commencement

Pt 6(10) rule 6.126(1)-(4): December 29, 1986

[6.126A Resignation (application under Rule 6.142)]

- (1) This Rule applies where at the date of a meeting summoned for the purpose of receiving the trustee's resignation, an application made to the court under Rule 6.142 (including any appeal) has not been disposed of.
- (2) At the meeting no resolution may be put regarding the trustee's release.
- (3) If at the meeting the trustee's resignation is accepted the meeting must be adjourned (notwithstanding anything in Rule 6.90 (suspension of meeting)) to a day not less than 14 days after the day on which the application under Rule 6.142 (including any appeal) has been disposed of.
- (4) The trustee must give at least 14 days' notice of the meeting adjourned in accordance with paragraph (3) to the creditors.
- (5) At the meeting adjourned in accordance with paragraph (3)—
 - (a) a revised version of the account which accompanied the notice of the meeting must be laid showing any changes required as a result, or arising out of the application under Rule 6.142; and
 - (b) a resolution for the release of the trustee whose resignation has been accepted must be put.
- (6) If there is no quorum present at the adjourned meeting, the meeting is deemed to have been held and the creditors are deemed to have resolved that the trustee be released.
- (7) Where the creditors have resolved at the adjourned meeting that the trustee be released (or are deemed to have so resolved by virtue of paragraph (5))—
 - (a) the chairman of the meeting (or the person who, had there been a quorum present would have been chairman of the meeting) must send as soon as reasonably practicable a certificate to that effect to the official receiver with a copy of the revised account; and
 - (b) the official receiver must file a copy of the certificate in court.
- (8) If at the meeting the trustee's resignation is not accepted, the trustee must not summon any further meeting under Rule 6.126 until the application under Rule 6.142 (including any appeal) has been disposed of.
- (9) Paragraph (7) is subject to the powers of the court on an application being made to it by the trustee under Rule 6.128 (permission to resign granted by the court).
- (10) Rule 6.126 applies to any such further meeting with the modification that the account required to accompany the notice of the meeting must show any changes from the account which accompanied the notice of the earlier meeting called to receive the trustee's resignation, and in particular any changes required as a result of the application under Rule 6.142 and any further remuneration charged or expenses incurred.
- (11) The creditors' rights under Rules 6.78C and 6.142 do not apply in respect of any matter included in that account which—

- (a) was included in the account which accompanied the notice of the earlier meeting called to receive the trustee's resignation; or
- (b) was the subject of the order of the court on the application made to it by the trustee under Rule 6.142.

]¹⁸⁵⁰

6.127.— Action following acceptance of resignation

(1)-(2) [...]¹⁸⁵¹

(3) Where the chairman of the [creditors' meeting summoned for the purpose of receiving the trustee's resignation]¹⁸⁵² is other than the official receiver, and there is passed at the meeting any of the following resolutions—

- (a) that the trustee's resignation be accepted,
- (b) that a new trustee be appointed,
- (c) that the resigning trustee be not given his release,

the chairman shall, within 3 [business days of the date of the resolution]¹⁸⁵³, send to the official receiver a copy of the resolution.

If it has been resolved to accept the trustee's resignation, the chairman shall send to the official receiver a certificate to that effect.

(4) If the creditors have resolved to appoint a new trustee, the certificate of his appointment shall also be sent to the official receiver within that time; and Rule 6.120 above shall be complied with in respect of it.

(5) If the trustee's resignation is accepted, the notice of it required by section 298(7) shall be given by him [as soon as reasonably practicable]¹⁸⁵⁴ after the [resolution has been passed]¹⁸⁵⁵; and he shall send a copy of the notice to the official receiver.

The notice shall be accompanied by a copy of the account sent to creditors under Rule 6.126(2).

(6) The official receiver shall file a copy of the notice in court.

(7) The trustee's resignation is effective as from the date on which the official receiver files the copy notice in court, that date to be endorsed on the copy notice.

¹⁸⁵⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.362 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁵¹ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.363(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁵² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.363(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁵³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.363(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁵⁴ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁸⁵⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.363(4) (April 6, 2010)

Commencement

Pt 6(10) rule 6.127(1)-(7): December 29, 1986

6.128.— [Permission]¹⁸⁵⁶ to resign granted by the court

- (1) If at a creditors' meeting summoned to accept the trustee's resignation it is resolved that it be not accepted, the court may, on the trustee's application, make an order giving him [permission]¹⁸⁵⁶ to resign.
- (2) The court's order under this Rule may include such provision as it thinks [just]¹⁸⁵⁶ with respect to matters arising in connection with the resignation, and shall determine the date from which the trustee's release is effective.
- (3) The court shall send two sealed copies of the order to the trustee, who shall send one of the copies [as soon as reasonably practicable]¹⁸⁵⁷ to the official receiver.
- (4) On sending notice of his resignation to the court, as required by section 298(7), the trustee shall send a copy of it to the official receiver.

Commencement

Pt 6(10) rule 6.128(1)-(4): December 29, 1986

6.129.— Meeting of creditors to remove trustee

- (1) Where a meeting of creditors is summoned for the purpose of removing the trustee, the notice summoning it shall indicate that this is the purpose, or one of the purposes, of the meeting; and the notice shall draw the attention of creditors to section 299(3) with respect to the trustee's release.
- (2) A copy of the notice shall at the same time also be sent to the official receiver.
- (3) At the meeting, a person other than the trustee or his nominee may be elected to act as chairman; but if the trustee or his nominee is chairman and a resolution has been proposed for the trustee's removal, the chairman shall not adjourn the meeting without the consent of at least one-half (in value) of the creditors present (in person or by proxy) and entitled to vote.
- (4) Where the chairman of the meeting is other than the official receiver, and there is passed at the meeting any of the following resolutions—
 - (a) that the trustee be removed,
 - (b) that a new trustee be appointed,
 - (c) that the removed trustee be not given his release,
 the chairman shall, within 3 [business]¹⁸⁵⁸ days, send to the official receiver a copy of the resolution.

¹⁸⁵⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁵⁷ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁸⁵⁸ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.364(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

If it has been resolved to remove the trustee, the chairman shall send to the official receiver a certificate to that effect.

(5) If the creditors have resolved to appoint a new trustee, the certificate of his appointment shall also be sent to the official receiver within that time; and Rule 6.120 shall be complied with in respect of it.

Commencement

Pt 6(10) rule 6.129(1)-(5): December 29, 1986

6.130. Court's power to regulate meeting under Rule 6.129

Where a meeting under Rule 6.129 is to be held, or is proposed to be summoned, the court may on the application of any creditor give directions as to the mode of summoning it, the sending out and return of forms of proxy, the conduct of the meeting, and any other matter which appears to the court to require regulation or control.

Commencement

Pt 6(10) rule 6.130: December 29, 1986

6.131.— Procedure on removal

(1) Where the creditors have resolved that the trustee be removed, the official receiver shall file the certificate of removal in court.

(2) The resolution is effective as from the date on which the official receiver files the certificate of removal in court, and that date shall be endorsed on the certificate.

(3) A copy of the certificate, so endorsed, shall be sent by the official receiver to the trustee who has been removed and, if a new trustee has been appointed, to him.

(4) The official receiver shall not file the certificate in court until the Secretary of State has certified to him that the removed trustee has reconciled his account with that held by the Secretary of State in respect of the bankruptcy.

Commencement

Pt 6(10) rule 6.131(1)-(4): December 29, 1986

6.132.— Removal of trustee by the court

(1) This Rule applies where application is made to the court for the removal of the trustee, or for an order directing the trustee to summon a meeting of creditors for the purpose of removing him.

(2) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for [a]¹⁸⁵⁹ hearing, of which he has been given at least [5 business]¹⁸⁶⁰ days' notice [but which is without notice to any other party]¹⁸⁶¹ .

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard.

(3) The applicant shall, at least 14 days before the hearing, send to the trustee and the official receiver notice stating the venue so fixed; and the notice shall be accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

(4) Subject to any contrary order of the court, the costs of the application do not fall on the estate.

(5) Where the court removes the trustee—

(a) it shall send copies of the order of removal to him and to the official receiver;

(b) the order may include such provision as the court thinks [just]¹⁸⁶² with respect to matters arising in connection with the removal; and

(c) if the court appoints a new trustee, Rule 6.121 applies.

Commencement

Pt 6(10) rule 6.132(1)-(5)(c): December 29, 1986

6.133.— Removal of trustee by Secretary of State

(1) If the Secretary of State decides to remove the trustee, he shall before doing so notify the trustee and the official receiver of his decision and the grounds of it, and specify a period within which the trustee may make representations against implementation of the decision.

(2) If the Secretary of State directs the removal of the trustee, he shall [as soon as reasonably practicable]¹⁸⁶³ —

(a) file notice of his decision in court, and

(b) send notice to the trustee and the official receiver.

(3) If the trustee is removed by direction of the Secretary of State, the court may make any such order in his case as it would have power to make if he had been removed by itself.

¹⁸⁵⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.365(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁶⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.365(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁶¹ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.365(2)(c) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁶² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁶³ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

Commencement

Pt 6(10) rule 6.133(1)-(3): December 29, 1986

6.134. [Notice]¹⁸⁶⁴ of resignation or removal

Where a new trustee is appointed in place of one who has resigned or been removed, the new trustee shall, in the [notice]¹⁸⁶⁴ of his appointment, state that his predecessor has resigned or, as the case may be, been removed and (if it be the case) that he has been given his release.

Commencement

Pt 6(10) rule 6.134: December 29, 1986

6.135.— Release of resigning or removed trustee

(1) [Subject to paragraph (1A), where]¹⁸⁶⁵ the trustee's resignation is accepted by a meeting of creditors which has not resolved against his release, he has his release from when his resignation is effective under Rule 6.127.

[(1A) Where the trustee's resignation is accepted under Rule 6.126A, the trustee's release is effective as from the date on which the official receiver files the copy of the certificate under paragraph (7) of that Rule in court, that date to be endorsed on the copy certificate.]¹⁸⁶⁶

(2) Where the trustee is removed by a meeting of creditors which has not resolved against his release, the fact of his release shall be stated in the certificate of removal.

(3) Where—

- (a) the trustee resigns, and the creditors' meeting called to receive his resignation has resolved against his release, or
- (b) he is removed by a creditors' meeting which has so resolved, or is removed by the court,

he must apply to the Secretary of State for his release.

(4) When the Secretary of State gives the release, he shall certify it accordingly, and send the certificate to the official receiver, to be filed in court.

(5) A copy of the certificate shall be sent by the Secretary of State to the former trustee, whose release is effective from the date of the certificate.

Commencement

Pt 6(10) rule 6.135(1)-(5): December 29, 1986

¹⁸⁶⁴ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 43 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁸⁶⁵ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.366(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁶⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.366(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

SECTION C: RELEASE ON COMPLETION OF ADMINISTRATION

6.136.— Release of official receiver

- (1) The official receiver shall, before giving notice to the Secretary of State under section 299(2) (that the administration of the estate is for practical purposes complete), send out notice of his intention to do so to all creditors [of which he is aware]¹⁸⁶⁷, and to the bankrupt.
- (2) The notice shall in each case be accompanied by a summary of the official receiver's receipts and payments as trustee.
- (3) The Secretary of State, when he has under section 299(2) determined the date from which the official receiver is to have his release, shall give notice to the court that he has done so. The notice shall be accompanied by the summary referred to in paragraph (2).

Commencement

Pt 6(10) rule 6.136(1)-(3): December 29, 1986

6.137.— Final meeting of creditors

- (1) Where the trustee is other than the official receiver, he shall give at least 28 days' notice of the final meeting of creditors to be held under section 331. The notice shall be sent to all creditors [of which he is aware]¹⁸⁶⁸, and to the bankrupt.

[(1A) The trustee—

- (a) as soon as reasonably practicable after giving notice under paragraph (1) must have gazetted a notice of the final meeting; and
- (b) may advertise notice of the meeting in such other manner as the trustee thinks fit.

(1B) In addition to the standard contents, the notice under paragraph (1A) must state—

- (a) that the trustee has summoned the meeting;
- (b) if the meeting was summoned at the request of a creditor, the fact that it was so summoned and the section of the Act under which it was summoned;
- (c) the purpose for which the meeting was summoned;
- (d) the venue fixed for the meeting; and
- (e) the time and date by which, and place at which, creditors must lodge proxies and hitherto unlodged proofs in order to be entitled to vote at the meeting.

(1C) The final meeting must not be held unless Rule 6.78B has been complied with; and if for that reason the meeting is not held—

- (a) the trustee must give notice of that fact as soon as reasonably practicable to all to whom notice of the meeting was given, and
- (b) fresh notice of the meeting complying with this Rule must be given when Rule 6.78B has been complied with.

]¹⁸⁶⁹

¹⁸⁶⁷ Words substituted by Insolvency (Amendment) Rules 2004/584 rule 30 (April 1, 2004)

¹⁸⁶⁸ Words substituted by Insolvency (Amendment) Rules 2004/584 rule 31 (April 1, 2004)

- (2) The trustee's report laid before the meeting under that section shall include—
- [(a) a summary of his receipts and payments, including details of remuneration charged and expenses incurred by the trustee,
 - (ab) details of the basis fixed for the trustee's remuneration, and]¹⁸⁷⁰
 - (b) a statement by him that he has reconciled his account with that which is held by the Secretary of State in respect of the bankruptcy.
- [(2A) Where the trustee has sent a progress report to creditors in accordance with Rule 6.78A, the report to be laid at the final meeting of creditors must also—
- (a) contain a receipts and payments account in the form of an abstract showing the receipts and payments during the period since the last progress report, and
 - (b) include—
 - (i) details of the remuneration charged and expenses incurred by the trustee during that period, and
 - (ii) a description of the things done by the trustee during that period in respect of which that remuneration was charged and those expenses incurred.
- (2B) In any case where the basis of the trustee's remuneration had not been fixed by the date to which the last progress report was made up, the receipts and payments account required by paragraph (2A)(a) must also include details of the remuneration charged in the period of any preceding progress report in which details of remuneration were not included.
- (2C) Where the basis of remuneration has been fixed as a set amount only, it is sufficient compliance with paragraph (2A)(b) for the trustee to state the amount which has been set and to supply details of the expenses charged within the period in question.]¹⁸⁷¹
- (3) At the final meeting, the creditors may question the trustee with respect to any matter contained in his report, and may resolve against him having his release.
- (4) The trustee shall give notice to the court that the final meeting has been held; and the notice shall state whether or not he has been given his release, and be accompanied by a copy of the report laid before the final meeting. A copy of the notice shall be sent by the trustee to the [Secretary of State]¹⁸⁷² .
- (5) If there is no quorum present at the final meeting, the trustee shall report to the court that a final meeting was summoned in accordance with the Rules, but there was no quorum present; and the final meeting is then deemed to have been held, and the creditors not to have resolved against the trustee having his release.
- (6) If the creditors at the final meeting have not so resolved, the trustee is released when the notice under paragraph (4) is filed in court. If they have so resolved, the trustee must obtain his release from the Secretary of State, as provided by Rule 6.135.

¹⁸⁶⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.367(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁷⁰ Words and rule 6.137(2)(ab) substituted for word by Insolvency (Amendment) Rules 2010/686 Sch.1 para.367(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁷¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.367(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁷² Words substituted by Insolvency (Amendment) Rules 2005/527 rule 38 (April 1, 2005)

Commencement

Pt 6(10) rule 6.137(1)-(6): December 29, 1986

[6.137A.— Rule as to reporting

(1) The court may, on the trustee or official receiver's application, relieve him of any duty imposed on him by Rules 6.136 or 6.137, or authorise him to carry out the duty in a way other than there required.

(2) In considering whether to act as above, the court shall have regard to the cost of carrying out the duty, to the amount of the funds available in the estate, and to the extent of the interest of creditors or any particular class of them.

¹⁸⁷³

SECTION D: REMUNERATION

6.138.— Fixing of remuneration

(1) The trustee is entitled to receive remuneration for his services as such.

(2) [The basis of remuneration]¹⁸⁷⁴ shall be fixed [...] ¹⁸⁷⁵ —

(a) as a percentage of the value of the assets in the bankrupt's estate which are realised or distributed, or of the one value and the other in combination, or

(b) by reference to the time properly given by the insolvency practitioner (as trustee) and his staff in attending to matters arising in the bankruptcy [, or]¹⁸⁷⁶

[(c) as a set amount.]¹⁸⁷⁶

[(3A) The basis of remuneration may be fixed as any one or more of the bases set out in paragraph (2), and different bases may be fixed in respect of different things done by the trustee.

(3B) Where remuneration is fixed as set out in paragraph (2)(a), different percentages may be fixed in respect of different things done by the trustee.

(3C) Where the trustee is other than the official receiver, it is for the creditors' committee (if there is one) to determine—

(a) which of the bases set out in paragraph (2) are to be fixed and (where appropriate) in what combination under paragraph (3A), and

(b) the percentage or percentages (if any) to be fixed under paragraphs (2)(a) and (3B) and the amount (if any) to be set under paragraph (2)(c).

¹⁸⁷³ Added by Insolvency (Amendment) Rules 2004/584 rule 32 (April 1, 2004)

¹⁸⁷⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.368(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁷⁵ Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.368(2)(b) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁷⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.368(2)(c) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

]¹⁸⁷⁷

- (4) In arriving at that determination, the committee shall have regard to the following matters—
- (a) the complexity (or otherwise) of the case,
 - (b) any respects in which, in connection with the administration of the estate, there falls on the insolvency practitioner (as trustee) any responsibility of an exceptional kind or degree,
 - (c) the effectiveness with which the insolvency practitioner appears to be carrying out, or to have carried out, his duties as trustee, and
 - (d) the value and nature of the assets in the estate with which the trustee has to deal.

(5) If there is no creditors' committee, or the committee does not make the requisite determination, [the basis of]¹⁸⁷⁸ the trustee's remuneration may be fixed (in accordance with [paragraphs (2), (3A) and (3B)]¹⁸⁷⁹) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.

[(6) Where the trustee is not the official receiver and [the basis of]¹⁸⁸⁰ his remuneration is not fixed as above [within 18 months after the date of the trustee's appointment]¹⁸⁸¹ , the trustee shall be entitled to remuneration calculated in accordance with Rule 6.138A.]¹⁸⁸²

Commencement

Pt 6(10) rule 6.138(1)-(6): December 29, 1986

[6.138A.— Trustee's remuneration where it is not fixed in accordance with Rule 6.138

- (1) This Rule applies where the trustee is not the official receiver and his remuneration is not fixed in accordance with Rule 6.138.
- (2) Subject to paragraph (3), the trustee shall be entitled by way of remuneration for his services as such, to such sum as is arrived at by—
- (a) first applying the realisation scale set out in Schedule 6 to the monies received by him from the realisation of the assets of the bankrupt (including any Value Added Tax thereon but after deducting any sums paid to secured creditors in respect of their securities and any sums spent out of money received in carrying on the business of the bankrupt); and

¹⁸⁷⁷ Rule 6.138(3A)-(3C) substituted for rule 6.138(3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.368(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁷⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.368(4)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁷⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.368(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁸⁰ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.368(5)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁸¹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.368(5)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁸² Substituted by Insolvency (Amendment) Rules 2004/584 rule 33 (April 1, 2004)

(b) then by adding to the sum arrived at under sub-paragraph (a) such sum as is arrived at by applying the distribution scale set out in Schedule 6 to the value of assets distributed to creditors of the bankrupt (including sums paid in respect of preferential debts).

(3) That part of the trustee's remuneration calculated by reference to the realisation scale shall not exceed such sum as is arrived at by applying the realisation scale to such part of the bankrupt's assets as are required to pay the items referred to in paragraph (4).

(4) The items referred to in paragraph (3) are—

(a) the bankruptcy debts (including any interest payable by virtue of section 328(4)) to the extent required to be paid by these Rules (ignoring those debts paid otherwise than out of the proceeds of the realisation of the bankrupt's assets or which have been secured to the satisfaction of the court);

(b) the expenses of the bankruptcy other than—

(i) fees or the remuneration of the official receiver; and

(ii) any sums spent out of money received in carrying on the business of the bankrupt;

(c) fees payable by virtue of any order made under section 415; and

(d) the remuneration of the official receiver.

¹⁸⁸³

6.139.— Other matters affecting remuneration

[(1) Where the trustee (not being the official receiver) realises assets on behalf of a secured creditor, the trustee is entitled to such sum by way of remuneration as is arrived at by applying the realisation scale set out in Schedule 6 to the monies received by him in respect of the assets realised (including any Value Added Tax thereon).]¹⁸⁸⁴

(2) Where there are joint trustees, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred—

(a) to the court, for settlement by order, or

(b) to the creditors' committee or a meeting of creditors, for settlement by resolution.

(3) If the trustee is a solicitor and employs his own firm, or any partner in it, to act on behalf of the estate, profit costs shall not be paid unless this is authorised by the creditors' committee, the creditors or the court.

Commencement

Pt 6(10) rule 6.139(1)-(3): December 29, 1986

6.140. [...] ¹⁸⁸⁵

¹⁸⁸³ Added by Insolvency (Amendment) Rules 2004/584 rule 34 (April 1, 2004)

¹⁸⁸⁴ Substituted by Insolvency (Amendment) Rules 2004/584 rule 35 (April 1, 2004)

¹⁸⁸⁵ Rule 6.140A substituted for rule 6.140 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.369 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[6.140A Recourse of trustee to meeting of creditors]

If the basis of the trustee's remuneration has been fixed by the creditors' committee and the trustee considers the rate or amount to be insufficient or the basis to be inappropriate, the trustee may request that the rate or amount be increased or the basis changed by resolution of the creditors.]¹⁸⁸⁶

6.141.— Recourse to the court

[(1) If the trustee considers that the basis of remuneration fixed by the creditors' committee, or by resolution of the creditors, or as under Rule 6.138(6), is insufficient or inappropriate, the trustee may apply to the court for an order changing it or increasing its amount or rate.]¹⁸⁸⁷

(2) The trustee shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

(3) If there is no creditors' committee, the trustee's notice of his application shall be sent to such one or more of the bankrupt's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

(4) The court may, if it appears to be a proper case, order the costs of the trustee's application, including the costs of any member of the creditors' committee appearing [or being represented]¹⁸⁸⁸ on it, or any creditor so appearing [or being represented]¹⁸⁸⁸ , to be paid out of the estate.

Commencement

Pt 6(10) rule 6.141(1)-(4): December 29, 1986

6.142.— Creditor's claim that remuneration is [or other expenses are]¹⁸⁸⁹ excessive

[(1) Any secured creditor, or any unsecured creditor with either the concurrence of at least 10% in value of the creditors (including that creditor) or the permission of the court, or the bankrupt may apply to the court for one or more of the orders in paragraph (4).

(1A) Application by a creditor may be made on the grounds that—

- (a) the remuneration charged by the trustee,
- (b) the basis fixed for the trustee's remuneration under Rule 6.138, or
- (c) expenses incurred by the trustee,

is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph (b), inappropriate.

(1B) Application by a creditor must, subject to any order of the court under Rule 6.78C(5), be made no later than 8 weeks (or in a case falling within Rule 6.126, 4 weeks) after receipt by the

¹⁸⁸⁶ Rule 6.140A substituted for rule 6.140 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.369 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁸⁷ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.370(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁸⁸ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.115 (January 11, 1988)

¹⁸⁸⁹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.371(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

applicant of the progress report, or the draft report under Rule 6.78B, which first reports the charging of the remuneration or the incurring of the expenses in question (“the relevant report”).

(1C) Application by the bankrupt may be made only on one or both of the grounds in paragraph (1A)(a) and (c) and no later than—

- (a) 8 weeks after receipt by the bankrupt of the draft report under Rule 6.78B, or
- (b) in a case falling within Rule 6.126, 4 weeks after receipt by the bankrupt of notice under Rule 6.126(1C).

]¹⁸⁹⁰

[(2) When the application is made by a creditor, the court may dismiss it if it thinks that no sufficient cause is shown; but it must not do so unless the applicant has had an opportunity to attend the court for a hearing of which the applicant has been given at least 5 business days' notice but which is without notice to any other party.

(2A) Application may be made by the bankrupt only with the permission of the court; and without prejudice to the generality of the matters which the court may take into account, permission must not be given unless the bankrupt shows that there is (or would be but for the remuneration or expenses in question), or that it is likely that there will be (or would be but for the remuneration or expenses in question), a surplus of assets to which the bankrupt would be entitled.

(2B) If, as the case may be, the application is not dismissed under paragraph (2) or the bankrupt is given permission under paragraph (2A), the court must fix a venue for the application to be heard.

]¹⁸⁹¹

(3) The applicant shall, at least 14 days before the hearing, send to the trustee a notice stating the venue so fixed; and the notice shall be accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

[(4) If the court considers the application to be well-founded, it must make one or more of the following orders—

- (a) an order reducing the amount of remuneration which the trustee was entitled to charge;
- (b) an order fixing the basis of remuneration at a reduced rate or amount;
- (c) an order changing the basis of remuneration;
- (d) an order that some or all of the remuneration or expenses in question be treated as not being bankruptcy expenses;
- (e) an order that the trustee or the trustee's personal representative pay to such person as the court may specify as property comprised in the bankrupt's estate the amount of the excess of remuneration or expenses or such part of the excess as the court may specify;

and may make any other order that it thinks just; but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report.

]¹⁸⁹²

¹⁸⁹⁰ Rule 5.142(1)-(1C) substituted for rule 5.142(1) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.371(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁹¹ Rule 6.142(2)-(2B) substituted for rule 6.142(2) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.371(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁹² Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.371(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and do not fall on the estate.

Commencement

Pt 6(10) rule 6.142(1)-(5): December 29, 1986

[6.142A Review of remuneration]

(1) Where, after the basis of the trustee's remuneration has been fixed, there is a material and substantial change in the circumstances which were taken into account in fixing it, the trustee may request that it be changed.

(2) The request must be made—

- (a) where the creditors' committee fixed the basis, to the committee;
- (b) where the creditors fixed the basis, to the creditors;
- (c) where the court fixed the basis, by application to the court;
- (d) where the remuneration was fixed by application of the realisation scale under Rule 6.138A, to the creditors' committee if there is one or otherwise to the creditors;

and Rules 6.138 to 6.142 apply as appropriate.

(3) Any change in the basis for remuneration applies from the date of the request under paragraph (2) and not for any earlier period.

(4) This Rule does not apply where the trustee is the official receiver.

¹⁸⁹³

[6.142B Remuneration of new trustee]

(1) If a new trustee is appointed in place of another, any determination, resolution or court order in effect under the preceding provisions of this Section of this Chapter immediately before the former trustee ceased to hold office continues to apply in respect of the remuneration of the new trustee until a further determination, resolution or court order is made in accordance with those provisions.

(2) This Rule does not apply where the new trustee is the official receiver.

¹⁸⁹⁴

[6.142C Apportionment of set fee remuneration]

(1) In a case in which the basis of the trustee's remuneration is a set amount under Rule 6.138(2)(c) and the trustee ("the former trustee") ceases (for whatever reason) to hold office before the time has elapsed or the work has been completed in respect of which the amount was set, application may be made for determination of what portion of the amount should be paid to the former trustee

¹⁸⁹³ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.372 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁹⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.372 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

or the former trustee's personal representative in respect of the time which has actually elapsed or the work which has actually been done.

(2) Application may be made—

- (a) by the former trustee or the former trustee's personal representative within the period of 28 days beginning with the date upon which the former trustee ceased to hold office, or
- (b) by the trustee for the time being in office if the former trustee or the former trustee's personal representative has not applied by the end of that period.

(3) Application must be made—

- (a) where the creditors' committee fixed the basis, to the committee;
- (b) where the creditors fixed the basis, to the creditors for a resolution determining the portion;
- (c) where the court fixed the basis, to the court for an order determining the portion.

(4) The applicant must give a copy of the application to the trustee for the time being in office or to the former trustee or the former trustee's personal representative, as the case may be ("the recipient").

(5) The recipient may within 21 days of receipt of the copy of the application give notice of intent to make representations to the creditors' committee or the creditors or to appear or be represented before the court, as the case may be.

(6) No determination may be made upon the application until expiry of the 21 days referred to in paragraph (5) or, if the recipient does give notice of intent in accordance with that paragraph, until the recipient has been afforded the opportunity to make representations or to appear or be represented, as the case may be.

(7) If the former trustee or the former trustee's personal representative (whether or not the original applicant) considers that the portion determined upon application to the creditors' committee or the creditors is insufficient, that person may apply—

- (a) in the case of a determination by the creditors' committee, to the creditors for a resolution increasing the portion;
- (b) in the case of a resolution of the creditors (whether under paragraph (1) or under sub-paragraph (a)), to the court for an order increasing the portion,

and paragraphs (4) to (6) apply as appropriate.

¹⁸⁹⁵

SECTION E: SUPPLEMENTARY PROVISIONS

6.143.— Trustee deceased

(1) Subject as follows, where the trustee (other than the official receiver) has died, it is the duty of his personal representatives to give notice of the fact to the official receiver, specifying the date of the death.

This does not apply if notice has been given under any of the following paragraphs of this Rule.

¹⁸⁹⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.372 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) If the deceased trustee was a partner in a firm, notice may be given to the official receiver by a partner in [or an employee of]¹⁸⁹⁶ the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners.

(3) Notice of the death may be given by any person producing to the official receiver the relevant death certificate or a copy of it.

(4) The official receiver shall give notice to the court, for the purpose of fixing the date of the deceased trustee's release in accordance with section 299(3)(a).

Commencement

Pt 6(10) rule 6.143(1)-(4): December 29, 1986

6.144.— Loss of qualification as insolvency practitioner

(1) This Rule applies where the trustee vacates office, under section 298(6), on his ceasing to be qualified to act as an insolvency practitioner in relation to the bankrupt.

(2) The trustee vacating office shall [as soon as reasonably practicable]¹⁸⁹⁷ give notice of his doing so to the official receiver, who shall give notice to the Secretary of State. The official receiver shall file in court a copy of his notice under this paragraph.

(3) Rule 6.135 applies as regards the trustee obtaining his release, as if he had been removed by the court.

Commencement

Pt 6(10) rule 6.144(1)-(3): December 29, 1986

[6.145.— Notice to official receiver of intention to vacate office

(1) Where the trustee intends to vacate office, whether by resignation or otherwise, he shall give notice of his intention to the official receiver together with notice of any creditors' meeting to be held in respect of his vacation of office, including any meeting to receive his resignation.

(2) The notice to the official receiver must be given at least 21 days before any such creditors' meeting.

(3) Where there remains in the bankrupt's estate any property which has not been realised, applied, distributed or otherwise fully dealt with in the bankruptcy, the trustee shall include in his notice to the official receiver details of the nature of that property, its value (or the fact that it has no value), its location, any action taken by the trustee to deal with that property or any reason for his not dealing with it, and the current position in relation to it.

¹⁸⁹⁶ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.373(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁸⁹⁷ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

]¹⁸⁹⁸

Commencement

Pt 6(10) rule 6.145(1)-(2): December 29, 1986

6.146.— Trustee's duties on vacating office

(1) Where the trustee ceases to be in office as such, in consequence of removal, resignation or cesser of qualification as an insolvency practitioner, he is under obligation [as soon as reasonably practicable]¹⁸⁹⁹ to deliver up to the person succeeding him as trustee the assets of the estate (after deduction of any expenses properly incurred, and distributions made, by him) and further to deliver up to that person—

- (a) the records of the bankruptcy, including correspondence, proofs and other related papers appertaining to the bankruptcy while it was within his responsibility, and
- (b) the bankrupt's books, papers and other records.

(2) [...] ¹⁹⁰⁰

Commencement

Pt 6(10) rule 6.146(1)-(2): December 29, 1986

6.147.— Power of court to set aside certain transactions

(1) If in the administration of the estate the trustee enters into any transaction with a person who is an associate of his, the court may, on the application of any person interested, set the transaction aside and order the trustee to compensate the estate for any loss suffered in consequence of it.

(2) This does not apply if either—

- (a) the transaction was entered into with the prior consent of the court, or
- (b) it is shown to the court's satisfaction that the transaction was for value, and that it was entered into by the trustee without knowing, or having any reason to suppose, that the person concerned was an associate.

(3) Nothing in this Rule is to be taken as prejudicing the operation of any rule of law or equity with respect to a trustee's dealings with trust property, or the fiduciary obligations of any person.

Commencement

Pt 6(10) rule 6.147(1)-(3): December 29, 1986

¹⁸⁹⁸ Substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.116 (January 11, 1988)

¹⁸⁹⁹ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁹⁰⁰ Revoked by Insolvency (Amendment) Rules 2004/584 rule 36 (April 1, 2004)

6.148.— Rule against solicitation

(1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the trustee in obtaining proxies or procuring his appointment, it may order that no remuneration out of the estate be allowed to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the court under this Rule overrides any resolution of the creditors' committee or the creditors, or any other provision of the Rules relating to the trustee's remuneration.

Commencement

Pt 6(10) rule 6.148(1)-(2): December 29, 1986

6.149.— Enforcement of trustee's obligations to official receiver

(1) The court may, on the application of the official receiver, make such orders as it thinks necessary for enforcement of the duties of the trustee under section 305(3) (information and assistance to be given; production and inspection of books and records relating to the bankruptcy).

(2) An order of the court under this Rule may provide that all costs of and incidental to the official receiver's application shall be borne by the trustee.

Commencement

Pt 6(10) rule 6.149(1)-(2): December 29, 1986

CHAPTER 11**THE CREDITORS' COMMITTEE****6.150.— Membership of creditors' committee**

(1) The creditors' committee shall consist of at least 3, and not more than 5, members.

[(2) A person claiming to be a creditor is entitled to be a member of the committee provided that—

- (a) that person has lodged a proof of debt;
- (b) the proof mentioned in sub-paragraph (a) has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distribution or dividend; and
- (c) the debt mentioned in sub-paragraph (a) is not fully secured.

]¹⁹⁰¹

(3) A body corporate may be a member of the committee, but it cannot act as such otherwise than by a representative appointed under Rule 6.156.

Commencement

Pt 6(11) rule 6.150(1)-(3): December 29, 1986

¹⁹⁰¹ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.374(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

6.151.— Formalities of establishment

(1) The creditors' committee does not come into being, and accordingly cannot act, until the trustee has issued a certificate of its due constitution.

(2) If the chairman of the creditors' meeting which resolves to establish the committee is not the trustee, he shall [as soon as reasonably practicable]¹⁹⁰² give notice of the resolution to the trustee (or, as the case may be, the person appointed as trustee by that same meeting), and inform him of the names and addresses of the persons elected to be members of the committee.

[(3) No person may act as a member of the committee unless and until he has agreed to do so and, unless the relevant proxy contains a statement to the contrary, such agreement may be given by his proxy [or authorisation]¹⁹⁰³ -holder present at the meeting establishing the committee.

(3A) The trustee's certificate of the committee's due constitution shall not [be issued before the minimum number of members set out in Rule 6.150]¹⁹⁰⁴ elected to be members of the committee have agreed to act [and must be issued as soon as reasonably practicable thereafter]¹⁹⁰⁵ .]¹⁹⁰⁶

(4) As and when the others (if any) agree to act, the trustee shall issue an amended certificate.

(5) The certificate, and any amended certificate, shall be filed in court by the trustee [as soon as reasonably practicable]¹⁹⁰⁷ .

[(6) If after the first establishment of the committee there is any change in its membership, as soon as reasonably practicable the trustee must file with the court notice of the change.]¹⁹⁰⁸

Commencement

Pt 6(11) rule 6.151(1)-(6): December 29, 1986

6.152.— Obligations of trustee to committee

(1) Subject as follows, it is the duty of the trustee to report to the members of the creditors' committee all such matters as appear to him to be, or as they have indicated to him as being, of concern to them with respect to the bankruptcy.

¹⁹⁰² Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁹⁰³ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.375(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁰⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.375(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁰⁵ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.375(3)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁰⁶ Rule 6.151(3) and (3A) substituted for rule 6.151(3) by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.117 (January 11, 1988)

¹⁹⁰⁷ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.375(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁰⁸ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.375(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (2) In the case of matters so indicated to him by the committee, the trustee need not comply with any request for information where it appears to him that—
- (a) the request is frivolous or unreasonable, or
 - (b) the cost of complying would be excessive, having regard to the relative importance of the information, or
 - (c) the estate is without funds sufficient for enabling him to comply.
- (3) Where the committee has come into being more than 28 days after the appointment of the trustee, the latter shall report to them, in summary form, what actions he has taken since his appointment, and shall answer such questions as they may put to him regarding his conduct of the bankruptcy hitherto.
- (4) A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report to him by the trustee, otherwise than in summary form, of any matters previously arising.
- (5) Nothing in this Rule disentitles the committee, or any member of it, from having access to the trustee's records of the bankruptcy, or from seeking an explanation of any matter within the committee's responsibility.

Commencement

Pt 6(11) rule 6.152(1)-(5): December 29, 1986

6.153.— Meetings of the committee

- (1) Subject as follows, meetings of the creditors' committee shall be held when and where determined by the trustee.
- (2) The trustee shall call a first meeting of the committee to take place within [6 weeks]¹⁹⁰⁹ of the committee's establishment [...] ¹⁹¹⁰; and thereafter he shall call a meeting—
- (a) if so requested by a member of the committee or his representative (the meeting then to be held within 21 days of the request being received by the trustee), and
 - (b) for a specified date, if the committee has previously resolved that a meeting be held on that date.
- (3) [Subject to paragraph (4), the]¹⁹¹¹ trustee shall give [5 business]¹⁹¹² days' notice in writing of the venue of any meeting to every member of the committee (or his representative, if designated

¹⁹⁰⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.376(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹¹⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.376(2)(b) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹¹¹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.376(3)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹¹² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.376(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

for that purpose), unless in any case the requirement of the notice has been waived by or on behalf of any member.

Waiver may be signified either at or before the meeting.

[(4) Where the trustee has determined that a meeting should be conducted and held in the manner referred to in Rule 12A.26(2), the notice period mentioned in paragraph (3) is 7 business days.

(5) In addition to any functions conferred on a committee by any provision of the Act, a committee must assist the trustee in discharging the trustee's functions and act in relation to that trustee in such manner as may from time to time be agreed.]¹⁹¹³

Commencement

Pt 6(11) rule 6.153(1)-(3): December 29, 1986

6.154.— The chairman at meetings

(1) The chairman at any meeting of the creditors' committee shall be the trustee, or a person appointed by him in writing to act.

(2) A person so [appointed]¹⁹¹⁴ must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the bankrupt, or
- (b) an employee of the trustee or his firm who is experienced in insolvency matters.

Commencement

Pt 6(11) rule 6.154(1)-(2)(b): December 29, 1986

6.155. Quorum

A meeting of the committee is duly constituted if due notice of it has been given to all the members and at least 2 of the members are present or represented.

Commencement

Pt 6(11) rule 6.155: December 29, 1986

6.156.— Committee-members' representatives

(1) A member of the creditors' committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.

¹⁹¹³ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.376(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹¹⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.377(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) A person acting as a committee-member's representative must hold a letter of authority entitling him so to act (either generally or [specially) and [authenticated]¹⁹¹⁵ by or on behalf of the committee-member, and for this purpose any proxy in relation to any meeting of creditors of the bankrupt shall, unless it contains a statement to the contrary, be treated as such a letter of authority to act generally [authenticated]¹⁹¹⁵ by or on behalf of the committee-member]¹⁹¹⁶ .

(3) The chairman at any meeting of the committee may call on a person claiming to act as a committee-member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

[(4) No member may be represented by—

- (a) another member of the committee;
- (b) a person who is at the same time representing another committee member;
- (c) a body corporate;
- (d) an undischarged bankrupt;
- (e) a disqualified director; or
- (f) a person who is subject to a bankruptcy restrictions order (including an interim order), a bankruptcy restrictions undertaking, a debt relief restrictions order (including an interim order) or a debt relief restrictions undertaking.

] ¹⁹¹⁷

(5) [...] ¹⁹¹⁸

(6) Where the representative of a committee-member [authenticates]¹⁹¹⁵ any document on the latter's behalf, the fact that he so [authenticates]¹⁹¹⁵ must be stated below his [authentication]¹⁹¹⁵ .

[(7) The acts of the committee are valid notwithstanding any defect in the appointment or qualifications of any committee-member's representative.]¹⁹¹⁹

Commencement

Pt 6(11) rule 6.156(1)-(6): December 29, 1986

6.157. Resignation

A member of the creditors' committee may resign by notice in writing delivered to the trustee.

Commencement

Pt 6(11) rule 6.157: December 29, 1986

¹⁹¹⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹¹⁶ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.118(1) (January 11, 1988)

¹⁹¹⁷ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.378(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹¹⁸ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.378(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹¹⁹ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.118(2) (January 11, 1988)

6.158.— Termination of membership

- (1) A person's membership of the creditors' committee is automatically terminated if—
- (a) he becomes bankrupt [...] ¹⁹²⁰, or
 - (b) at 3 consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this Rule is not to apply in his case), or
 - [(c) ceases to be a creditor and a period of 3 months has elapsed from the date that that member ceased to be a creditor or is found never to have been a creditor.] ¹⁹²¹
- (2) However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.

Commencement

Pt 6(11) rule 6.158(1)-(2): December 29, 1986

6.159. Removal

A member of the creditors' committee may be removed by resolution at a meeting of creditors, at least 14 days' notice having been given of the intention to move that resolution.

Commencement

Pt 6(11) rule 6.159: December 29, 1986

6.160.— Vacancies

- (1) The following applies if there is a vacancy in the membership of the creditors' committee.
- (2) The vacancy need not be filled if the trustee and a majority of the remaining committee-members so agree, provided that the number of members does not fall below [3] ¹⁹²².
- (3) The trustee may appoint any creditor (being qualified under the Rules to be a member of the committee) to fill the vacancy, if a majority of the other members of the committee agree to the appointment and the creditor concerned consents to act.
- (4) Alternatively, a meeting of creditors may resolve that a creditor be appointed (with his consent) to fill the vacancy. In this case at least 14 days' notice must have been given of a resolution to make such an appointment (whether or not of a person named in the notice).
- (5) Where the vacancy is filled by an appointment made by a creditors' meeting at which the trustee is not present, the chairman of the meeting shall report to the trustee the appointment which has been made.

¹⁹²⁰ Words repealed by Insolvency (Amendment) Rules 2004/584 rule 38 (April 1, 2004)

¹⁹²¹ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.379(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹²² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.380(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 6(11) rule 6.160(1)-(5): December 29, 1986

6.161.— Voting rights and resolutions

(1) At any meeting of the committee, each member (whether present himself, or by his representative) has one vote; and a resolution is passed when a majority of the members present or represented have voted in favour of it.

(2) Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting. The record shall be [authenticated]¹⁹²³ by the chairman and kept with the records of the bankruptcy.

Commencement

Pt 6(11) rule 6.161(1)-(2): December 29, 1986

6.162.— Resolutions [otherwise than at a meeting]¹⁹²⁴

(1) In accordance with this Rule, the trustee may seek to obtain the agreement of members of the creditors' committee to a resolution by sending to every member (or his representative designated for the purpose) a copy of the proposed resolution.

(2) Where the trustee makes use of the procedure allowed by this Rule, he shall send out to members of the committee or their representatives (as the case may be) [a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent]¹⁹²⁵.

(3) Any member of the committee may, within 7 [business]¹⁹²⁶ days from the date of the trustee sending out a resolution, require the trustee to summon a meeting of the committee to consider the matters raised by the resolution.

(4) In the absence of such a request, the resolution is deemed to have been carried in the committee if and when the trustee is notified in writing by a majority of the members that they concur with it.

(5) A copy of every resolution passed under this Rule, and a note that the concurrence of the committee was obtained, shall be kept with the records of the bankruptcy.

¹⁹²³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹²⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.381(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹²⁵ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.119(1) (January 11, 1988)

¹⁹²⁶ Word inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.119(2) (January 11, 1988)

Commencement

Pt 6(11) rule 6.162(1)-(5): December 29, 1986

6.163.— Trustee's reports

(1) The trustee shall, as and when directed by the creditors' committee (but not more often than once in any period of 2 months), send a written report to every member of the committee setting out the position generally as regards the progress of the bankruptcy and matters arising in connection with it, to which he (the trustee) considers the committee's attention should be drawn.

(2) In the absence of any such directions by the committee, the trustee shall send such a report not less often than once in every period of 6 months.

(3) The obligations of the trustee under this Rule are without prejudice to those imposed by Rule 6.152.

Commencement

Pt 6(11) rule 6.163(1)-(3): December 29, 1986

6.164. Expenses of members etc.

The trustee shall defray out of the estate, in the prescribed order of priority, any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in respect of their attendance at the committee's meetings, or otherwise on the committee's business.

Commencement

Pt 6(11) rule 6.164: December 29, 1986

6.165.— Dealings by committee-members and others

(1) This Rule applies to—

- (a) any member of the creditors' committee,
- (b) any committee-member's representative,
- (c) any person who is an associate of a member of the committee or a committee-member's representative, and
- (d) any person who has been a member of the committee at any time in the last 12 months.

(2) Subject as follows, a person to whom this Rule applies shall not enter into any transaction whereby he—

- (a) receives out of the estate any payment for services given or goods supplied in connection with the estate's administration, or
- (b) obtains any profit from the administration, or
- (c) acquires any asset forming part of the estate.

(3) Such a transaction may be entered into by a person to whom this Rule applies—

- (a) with the prior [permission]¹⁹²⁷ of the court, or
 - (b) if he does so as a matter of urgency, or by way of performance of a contract in force before the commencement of the bankruptcy, and obtains the court's [permission]¹⁹²⁷ for the transaction, having applied for it without undue delay, or
 - (c) with the prior sanction of the creditors' committee, where it is satisfied (after full disclosure of the circumstances) that the person will be giving full value in the transaction.
- (4) Where in the committee a resolution is proposed that sanction be accorded for a transaction to be entered into which, without that sanction or the [permission]¹⁹²⁷ of the court, would be in contravention of this Rule, no member of the committee, and no representative of a member, shall vote if he is to participate directly or indirectly in the transaction.
- (5) The court may, on the application of any person interested—
- (a) set aside a transaction on the ground that it has been entered into in contravention of this Rule, and
 - (b) make with respect to it such other order as it thinks [just]¹⁹²⁷, including (subject to the following paragraph) an order requiring a person to whom this Rule applies to account for any profit obtained from the transaction and compensate the estate for any resultant loss.
- (6) In the case of a person to whom this Rule applies as an associate of a member of the committee or of a committee-member's representative, the court shall not make any order under paragraph (5), if satisfied that he entered into the relevant transaction without having any reason to suppose that in doing so he would contravene this Rule.
- (7) The costs of an application to the court for [permission]¹⁹²⁷ under this Rule do not fall on the estate, unless the court so orders.

Commencement

Pt 6(11) rule 6.165(1)-(7): December 29, 1986

6.166.— Committee's functions vested in Secretary of State

- (1) At any time when the functions of the creditors' committee are vested in the Secretary of State under section 302(1) or (2), requirements of the Act or the Rules about notices to be given, or reports to be made, to the committee by the trustee do not apply, otherwise than as enabling the committee to require a report as to any matter.
- (2) Where the committee's functions are so vested under section 302(2), they may be exercised by the official receiver.

Commencement

Pt 6(11) rule 6.166(1)-(2): December 29, 1986

¹⁹²⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

CHAPTER 12

SPECIAL MANAGER

6.167.— Appointment and remuneration

(1) An application made by the official receiver or trustee under section 370 for the appointment of a person to be special manager shall be supported by a report setting out the reasons for the application.

The report shall include the applicant's estimate of the value of the estate, property or business in respect of which the special manager is to be appointed.

(2) The court's order appointing the special manager shall specify the duration of his appointment, which may be for a period of time, or until the occurrence of a specified event. Alternatively, the order may specify that the duration of the appointment is to be subject to a further order of the court.

(3) The appointment of a special manager may be renewed by order of the court.

(4) The special manager's remuneration shall be fixed from time to time by the court.

Commencement

Pt 6(12) rule 6.167(1)-(4): December 29, 1986

6.168.— Security

(1) The appointment of the special manager does not take effect until the person appointed has given (or, being allowed by the court to do so, undertaken to give) security to the person who applies for him to be appointed.

(2) It is not necessary that security shall be given for each separate bankruptcy; but it may be given either specially for a particular bankruptcy, or generally for any bankruptcy in relation to which the special manager may be employed as such.

(3) The amount of the security shall be not less than the value of the estate, property or business in respect of which he is appointed, as estimated by the applicant in his report under Rule 6.167(1).

(4) When the special manager has given security to the person applying for his appointment, that person's certificate as to the adequacy of the security shall be filed in court.

(5) The cost of providing the security shall be paid in the first instance by the special manager; but—

(a) where a bankruptcy order is not made, he is entitled to be reimbursed out of the property of the debtor, and the court may make an order on the debtor accordingly, and

(b) where a bankruptcy order is made, he is entitled to be reimbursed out of the estate in the prescribed order of priority.

Commencement

Pt 6(12) rule 6.168(1)-(5)(b): December 29, 1986

6.169.— Failure to give or keep up security

(1) If the special manager fails to give the required security within the time stated for that purpose by the order appointing him, or any extension of that time that may be allowed, the official receiver or trustee (as the case may be) shall report the failure to the court, which may thereupon discharge the order appointing the special manager.

(2) If the special manager fails to keep up his security, the official receiver or trustee shall report his failure to the court, which may thereupon remove the special manager, and make such order as it thinks [just]¹⁹²⁸ as to costs.

(3) If an order is made under this Rule removing the special manager, or discharging the order appointing him, the court shall give directions as to whether any, and if so what, steps should be taken for the appointment of another special manager in his place.

Commencement

Pt 6(12) rule 6.169(1)-(3): December 29, 1986

6.170.— Accounting

(1) The special manager shall produce accounts, containing details of his receipts and payments, for the approval of the trustee.

(2) The accounts shall be in respect of 3-month periods for the duration of the special manager's appointment (or for a lesser period, if his appointment terminates less than 3 months from its date, or from the date to which the last accounts were made up).

(3) When the accounts have been approved, the special manager's receipts and payments shall be added to those of the trustee.

Commencement

Pt 6(12) rule 6.170(1)-(3): December 29, 1986

6.171.— Termination of appointment

(1) The special manager's appointment terminates if the bankruptcy petition is dismissed or if, an interim receiver having been appointed, the latter is discharged without a bankruptcy order having been made.

(2) If the official receiver or the trustee is of opinion that the employment of the special manager is no longer necessary or profitable for the estate, he shall apply to the court for directions, and the court may order the special manager's appointment to be terminated.

(3) The official receiver or the trustee shall make the same application if a resolution of the creditors is passed, requesting that the appointment be terminated.

¹⁹²⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 6(12) rule 6.171(1)-(3): December 29, 1986

CHAPTER 13

PUBLIC EXAMINATION OF BANKRUPT

6.172.— Order for public examination

(1) If the official receiver applies to the court, under section 290 , for the public examination of the bankrupt, a copy of the court's order shall, [as soon as reasonably practicable] ¹⁹²⁹ after its making, be sent by the official receiver to the bankrupt.

(2) The order shall appoint a venue for the hearing, and direct the bankrupt's attendance thereat.

(3) The official receiver shall give at least 14 days' notice of the hearing—

- (a) if a trustee has been nominated or appointed, to him;
- (b) if a special manager has been appointed, to him; and
- (c) subject to any contrary direction of the court, to every creditor of the bankrupt who is known to the official receiver [...] ¹⁹³⁰ .

[(4) Where the official receiver thinks fit, a notice of the order shall be gazetted not less than 14 days before the day fixed for the hearing.] ¹⁹³¹

[(5) The official receiver may advertise the notice under paragraph (4) of this Rule in such other manner as the official receiver thinks fit.] ¹⁹³²

[(5A) In addition to the standard contents, notices under paragraphs (4) and (5) must state—

- (a) the purpose of the hearing; and
- (b) the venue fixed for the hearing.

] ¹⁹³³

Commencement

Pt 6(13) rule 6.172(1)-(4): December 29, 1986

¹⁹²⁹ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁹³⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.382(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹³¹ Substituted by Insolvency (Amendment) Rules 2009/642 rule 44(a) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁹³² Added by Insolvency (Amendment) Rules 2009/642 rule 44(b) (April 6, 2009: insertion has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁹³³ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.382(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

6.173.— Order on request by creditors

(1) A request by a creditor to the official receiver, under section 290(2), for the bankrupt to be publicly examined shall be made in writing and be accompanied by—

- (a) a list of the creditors concurring with the request and the amount of their respective claims in the bankruptcy,
- (b) from each creditor concurring, written confirmation of his concurrence, and
- (c) a statement of the reasons why the examination is requested.

Sub-paragraphs (a) and (b) do not apply if the requisitioning creditor's debt is alone sufficient, without the concurrence of others.

(2) Before an application to the court is made on the request, the requisitionist shall deposit with the official receiver such sum as the latter may determine to be appropriate by way of security for the expenses of the hearing of a public examination, if ordered.

(3) Subject as follows, the official receiver shall, within 28 days of receiving the request, make the application to the court required by section 290(2).

(4) If the official receiver is of opinion that the request is an unreasonable one in the circumstances, he may apply to the court for an order relieving him from the obligation to make the application otherwise required by that subsection.

(5) If the court so orders, and the application for the order was made [without notice to any other party]¹⁹³⁴, notice of the order shall be given [as soon as reasonably practicable]¹⁹³⁵ by the official receiver to the requisitionist. If the application for an order is dismissed, the official receiver's application under section 290(2) shall be made [as soon as reasonably practicable]¹⁹³⁵ on conclusion of the hearing of the application first mentioned.

Commencement

Pt 6(13) rule 6.173(1)-(5): December 29, 1986

6.174.— Bankrupt unfit for examination

(1) Where the bankrupt [is a person who lacks capacity within the meaning of the Mental Capacity Act 2005 or]¹⁹³⁶ is suffering from any [...] ¹⁹³⁷ physical affliction or disability rendering him unfit to undergo or attend for public examination, the court may, on [an application being made to

¹⁹³⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.383(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹³⁵ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁹³⁶ Words inserted by Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007/1898 Sch.1 para.12(3)(a)(ii) (October 1, 2007)

¹⁹³⁷ Words repealed by Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007/1898 Sch.1 para.12(3)(a)(i) (October 1, 2007)

it under this Rule]¹⁹³⁸, either stay the order for his public examination or direct that it shall be conducted in such manner and at such place as it thinks [just]¹⁹³⁹.

(2) Application under this Rule shall be made—

- (a) by a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the bankrupt, or
- (b) by a relative or friend of the bankrupt whom the court considers to be a proper person to make the application, or
- (c) by the official receiver.

(3) Where the application is made by a person other than the official receiver, then—

- (a) it shall, unless the bankrupt is a [person who lacks capacity within the meaning of the Mental Capacity Act 2005]¹⁹⁴⁰, be supported by [a witness statement]¹⁹⁴¹ of a registered medical practitioner as to the bankrupt's mental and physical condition;
- (b) at least [5 business]¹⁹⁴² days' notice of the application shall be given to the official receiver and the trustee (if any); and
- (c) before any order is made on the application, the applicant shall deposit with the official receiver such sum as the latter certifies to be necessary for the additional expenses of any examination that may be ordered on the application.

An order made on the application may provide that the expenses of the examination are to be payable, as to a specified proportion, out of the deposit under sub-paragraph (c), instead of out of the estate.

(4) Where the application is made by the official receiver, it may be made [without notice to any other party]¹⁹⁴³, and may be supported by evidence in the form of a report by the official receiver to the court.

Commencement

Pt 6(13) rule 6.174(1)-(4): December 29, 1986

¹⁹³⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.384(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹³⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁴⁰ Words substituted by Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007/1898 Sch.1 para.12(3)(b) (October 1, 2007)

¹⁹⁴¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.384(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁴² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.384(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁴³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.384(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

6.175.— Procedure at hearing

- (1) The bankrupt shall at the hearing be examined on oath; and he shall answer all such questions as the court may put, or allow to be put, to him.
- (2) Any of the persons allowed by section 290(4) to question the bankrupt may, with the approval of the court (made known either at the hearing or in advance of it), appear by solicitor or counsel; or he may in writing authorise another person to question the bankrupt on his behalf.
- (3) The bankrupt may at his own expense employ a solicitor with or without counsel, 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 by him, and may make representations on his behalf.
- (4) There shall be made in writing such record of the examination as the court thinks proper. The record shall be read over either to or by the bankrupt, [authenticated]¹⁹⁴⁴ by him, and verified by [a statement of truth]¹⁹⁴⁵ at a venue fixed by the court.
- (5) The written record may, in any proceedings (whether under the Act or otherwise) be used as evidence against the bankrupt of any statement made by him in the course of his public examination.
- (6) If criminal proceedings have been instituted against the bankrupt, and the court is of opinion that the continuance of the hearing would be calculated to prejudice a fair trial of those proceedings, the hearing may be adjourned.

Commencement

Pt 6(13) rule 6.175(1)-(6): December 29, 1986

6.176.— Adjournment

- (1) The public examination may be adjourned by the court from time to time, either to a fixed date or generally.
- (2) Where the examination has been adjourned generally, the court may at any time on the application of the official receiver or of the bankrupt—
 - (a) fix a venue for the resumption of the examination, and
 - (b) give directions as to the manner in which, and the time within which, notice of the resumed public examination is to be given to persons entitled to take part in it.
- (3) Where application under paragraph (2) is made by the bankrupt, the court may grant it on terms that the expenses of giving the notices required by that paragraph shall be paid by him and that, before a venue for the resumed public examination is fixed, he shall deposit with the official receiver such sum as the latter considers necessary to cover those expenses.

¹⁹⁴⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁴⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.385(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(4) Where the examination is adjourned [...] ¹⁹⁴⁶, the official receiver may, there and then, make application under section 279(3) (suspension of automatic discharge).

[(5) If, on the hearing of an application pursuant to paragraph (4), the court makes an order suspending the bankrupt's discharge, copies of such order shall be sent by the court to the official receiver, the trustee and the bankrupt.] ¹⁹⁴⁷

Commencement

Pt 6(13) rule 6.176(1)-(4): December 29, 1986

6.177.— Expenses of examination

(1) Where a public examination of the bankrupt has been ordered by the court on a creditors' requisition under Rule 6.173, the court may order that the expenses of the examination are to be paid, as to a specified proportion, out of the deposit under Rule 6.173(2), instead of out of the estate.

(2) In no case do the costs and expenses of a public examination fall on the official receiver personally.

Commencement

Pt 6(13) rule 6.177(1)-(2): December 29, 1986

CHAPTER 14

DISCLAIMER

6.178.— Trustee's notice of disclaimer

(1) Where the trustee disclaims property under section 315, the notice of disclaimer shall contain such particulars of the property disclaimed as enable it to be easily identified.

[(2) The notice of disclaimer must be authenticated and dated by the trustee.] ¹⁹⁴⁸

[(3) As soon as reasonably practicable after authenticating the notice of disclaimer, the trustee must—

- (a) file a copy of the notice with the court; and
- (b) in any case where the disclaimer is of registered land as defined in section 132(1) of the Land Registration Act 2002, send a copy of the notice to the Chief Land Registrar.

] ¹⁹⁴⁹

¹⁹⁴⁶ Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.386(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁴⁷ Added by Insolvency (Amendment) Rules 1999/359 Sch.1 para.6 (March 22, 1999)

¹⁹⁴⁸ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.387(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁴⁹ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.387(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(4) For the purposes of section 315, the date of the prescribed notice is that [on which the trustee authenticates it]¹⁹⁵⁰.

Commencement

Pt 6(14) rule 6.178(1)-(4): December 29, 1986

6.179.— Communication of disclaimer to persons interested

[(1) Within 7 business days after the date of the notice of disclaimer, the trustee shall send or give copies of the notice to the persons mentioned in paragraphs (2) to (5).]¹⁹⁵¹

(2) Where the property disclaimed is of a leasehold nature, he shall send or give a copy to every person who (to his knowledge) claims under the bankrupt as underlessee or mortgagee.

(3) Where the disclaimer is of property in a dwelling-house, he shall send or give a copy to every person who (to his knowledge) is in occupation of, or claims a right to occupy, the house.

(4) He shall in any case send or give a copy of the notice to every person who (to his knowledge)—
 (a) claims an interest in the disclaimed property, or
 (b) is under any liability in respect of the property, not being a liability discharged by the disclaimer.

(5) If the disclaimer is of an unprofitable contract, he shall send or give copies of the notice to all such persons as, to his knowledge, are parties to the contract or have interests under it.

(6) If subsequently it comes to the trustee's knowledge, in the case of any person, that he has such an interest in the disclaimed property as would have entitled him to receive a copy of the notice of disclaimer in pursuance of paragraphs (2) to (5), the trustee shall then [as soon as reasonably practicable]¹⁹⁵² send or give to that person a copy of the notice.

But compliance with this paragraph is not required if—

- (a) the trustee is satisfied that the person has already been made aware of the disclaimer and its date, or
- (b) the court, on the trustee's application, orders that compliance is not required in that particular case.

[(7) A notice or copy notice to be served on any person under the age of 18 in relation to the disclaimer of property in a dwelling-house is sufficiently served if sent or given to the parent or guardian of that person.]¹⁹⁵³

Commencement

Pt 6(14) rule 6.179(1)-(6)(b): December 29, 1986

¹⁹⁵⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.387(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁵¹ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.388(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁵² Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

¹⁹⁵³ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.120 (January 11, 1988)

6.180. Additional notices

The trustee disclaiming property may, without prejudice to his obligations under sections 315 to 319 and Rules 6.178 and 6.179, at any time [send or give copies of the]¹⁹⁵⁴ notice of the disclaimer to any persons who in his opinion ought, in the public interest or otherwise, to be informed of [the disclaimer]¹⁹⁵⁵.

Commencement

Pt 6(14) rule 6.180: December 29, 1986

6.181. [...]¹⁹⁵⁶**[6.181A Records**

The trustee must include in that trustee's records of the insolvency a record of—

- (a) the persons to whom that trustee has sent or given copies of the notice of disclaimer under the two preceding Rules, showing their names and addresses, and the nature of their respective interests;
- (b) the dates on which the copies of the notice of disclaimer were sent or given to those persons;
- (c) the date on which, as required by Rule 6.178(3)(a), a copy of the notice of disclaimer was filed with the court; and
- (d) (where applicable) the date on which, as required by Rule 6.178(3)(b), a copy of the notice was sent to the Chief Land Registrar.

]

¹⁹⁵⁷
6.182.— Application for [permission]¹⁹⁵⁸ to disclaim

(1) Where under section 315(4) the trustee requires the [permission]¹⁹⁵⁸ of the court to disclaim property claimed for the bankrupt's estate under section 307 or 308, he may apply for that [permission]¹⁹⁵⁸ [without notice to any other party]¹⁹⁵⁹.

¹⁹⁵⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.389(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁵⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.389(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁵⁶ Rule 6.181A substituted for rule 6.181 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.390 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁵⁷ Rule 6.181A substituted for rule 6.181 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.390 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁵⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁵⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.391(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (2) The application must be accompanied by a report—
- (a) giving such particulars of the property proposed to be disclaimed as enable it to be easily identified,
 - (b) setting out the reasons why, the property having been claimed for the estate, the court's [permission]¹⁹⁵⁸ to disclaim is now applied for, and
 - (c) specifying the persons (if any) who have been informed of the trustee's intention to make the application.
- (3) If it is stated in the report that any [person has consented]¹⁹⁶⁰ to the disclaimer [...]¹⁹⁶¹, a copy of that consent must be annexed to the report.
- (4) The court may, on consideration of the application, grant the [permission]¹⁹⁵⁸ applied for; and it may, before granting [permission]¹⁹⁵⁸—
- (a) order that notice of the application be given to all such persons who, if the property is disclaimed, will be entitled to apply for a vesting or other order under section 320, and
 - (b) fix a venue for the hearing of the application under section 315(4).

Commencement

Pt 6(14) rule 6.182(1)-(4)(b): December 29, 1986

6.183.— Application by interested party under s. 316

[(1) The following applies where, in the case of any property, application is made to the trustee by an interested party under section 316.]¹⁹⁶²

- [(2) The application must be delivered to the trustee—
- (a) personally;
 - (b) by electronic means in accordance with Part 12A; or
 - (c) by any other means of delivery which enables proof of receipt of the application by the trustee to be provided, if requested.

] ¹⁹⁶³

(3) This paragraph applies in a case where the property concerned cannot be disclaimed by the trustee without the [permission]¹⁹⁶⁴ of the court.

If within the period of 28 days mentioned in section 316(1) the trustee applies to the court for [permission]¹⁹⁶⁴ to disclaim, the court shall extend the time allowed by that section for giving notice of disclaimer to a date not earlier than the date fixed for the hearing of the application.

¹⁹⁶⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.391(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁶¹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.391(3)(b) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁶² Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.392(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁶³ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.392(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁶⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 6(14) rule 6.183(1)-(3): December 29, 1986

6.184.— Interest in property to be declared on request

(1) If, in the case of property which the trustee has the right to disclaim, it appears to him that there is some person who claims, or may claim, to have an interest in the property, he may give notice to that person calling on him to declare within 14 days whether he claims any such interest and, if so, the nature and extent of it.

(2) Failing compliance with the notice, the trustee is entitled to assume that the person concerned has no such interest in the property as will prevent or impede its disclaimer.

Commencement

Pt 6(14) rule 6.184(1)-(2): December 29, 1986

6.185. Disclaimer presumed valid and effective.

Any disclaimer of property by the trustee is presumed valid and effective, unless it is proved that he has been in breach of his duty with respect to the giving of notice of disclaimer, or otherwise under sections 315 to 319, or under this Chapter of the Rules.

Commencement

Pt 6(14) rule 6.185: December 29, 1986

6.186.— Application for exercise of court's powers under s.320

(1) This Rule applies with respect to an application by any person under section 320 for an order of the court to vest or deliver disclaimed property.

(2) The application must be made within 3 months of the applicant becoming aware of the disclaimer, or of his receiving a copy of the trustee's notice of disclaimer sent under Rule 6.179, whichever is the earlier.

(3) The applicant shall with his application file [a witness statement]¹⁹⁶⁵ —

- (a) stating whether he applies under paragraph (a) of section 320(2) (claim of interest in the property), under paragraph (b) (liability not discharged) or under paragraph (c) (occupation of dwelling-house);
- (b) specifying the date on which he received a copy of the trustee's notice of disclaimer, or otherwise became aware of the disclaimer; and
- (c) specifying the grounds of his application and the order which he desires the court to make under section 320.

¹⁹⁶⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.393(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(4) The court shall fix a venue for the hearing of the application; and the applicant shall, not later than [5 business]¹⁹⁶⁶ days before the date fixed, give to the trustee notice of the venue, accompanied by copies of the application and the [witness statement required by]¹⁹⁶⁷ paragraph (3).

(5) On the hearing of the application, the court may give directions as to other persons (if any) who should be sent or given notice of the application and the grounds on which it is made.

(6) Sealed copies of any order made on the application shall be sent by the court to the applicant and the trustee.

(7) In a case where the property disclaimed is of a leasehold nature, or is property in a dwelling-house, and section 317 or (as the case may be) section 318 applies to suspend the effect of the disclaimer, there shall be included in the court's order a direction giving effect to the disclaimer.

This paragraph does not apply if, at the time when the order is issued, other applications under section 320 are pending in respect of the same property.

Commencement

Pt 6(14) rule 6.186(1)-(7): December 29, 1986

CHAPTER 15

REPLACEMENT OF EXEMPT PROPERTY

6.187.— Purchase of replacement property

(1) A purchase of replacement property under section 308(3) may be made either before or after the realisation by the trustee of the value of the property vesting in him under the section.

(2) The trustee is under no obligation, by virtue of the section, to apply funds to the purchase of a replacement for property vested in him, unless and until he has sufficient funds in the estate for that purpose.

Commencement

Pt 6(15) rule 6.187(1)-(2): December 29, 1986

6.188.— Money provided in lieu of sale

(1) The following applies where a third party proposes to the trustee that he (the former) should provide the estate with a sum of money enabling the bankrupt to be left in possession of property which would otherwise be made to vest in the trustee under section 308.

¹⁹⁶⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.393(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁶⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.393(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) The trustee may accept that proposal, if satisfied that it is a reasonable one, and that the estate will benefit to the extent of the value of the property in question less the cost of a reasonable replacement.

Commencement

Pt 6(15) rule 6.188(1)-(2): December 29, 1986

CHAPTER 16

INCOME PAYMENTS ORDERS

6.189.— Application for order

(1) Where the trustee applies for an income payments order under section 310, the court shall fix a venue for the hearing of the application.

(2) Notice of the application, and of the venue, shall be sent by the trustee to the bankrupt at least 28 days before the day fixed for the hearing, together with a copy of the trustee's application and a short statement of the grounds on which it is made.

(3) The notice shall inform the bankrupt that—

(a) unless at least [5 business]¹⁹⁶⁸ days before the date fixed for the hearing he sends to the court and to the trustee written consent to an order being made in the terms of the application, he is required to attend the hearing, and

(b) if he attends, he will be given an opportunity to show cause why the order should not be made, or an order should be made otherwise than as applied for by the trustee.

Commencement

Pt 6(16) rule 6.189(1)-(3)(b): December 29, 1986

6.190.— Action to follow making of order

(1) Where the court makes an income payments order, a sealed copy of the order shall, [as soon as reasonably practicable]¹⁹⁶⁹ after it is made, be sent by the trustee to the bankrupt.

(2) If the order is made under section 310(3)(b), a sealed copy of the order shall also be sent by the trustee to the person to whom the order is directed.

Commencement

Pt 6(16) rule 6.190(1)-(2): December 29, 1986

¹⁹⁶⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.394(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁶⁹ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

6.191.— Variation of order

(1) If an income payments order is made under section 310(3)(a), and the bankrupt does not comply with it, the trustee may apply to the court for the order to be varied, so as to take effect under section 310(3)(b) as an order to the payor of the relevant income.

(2) The trustee's application under this Rule may be made [without notice to any other party]¹⁹⁷⁰.

(3) Sealed copies of any order made on the application shall, [as soon as reasonably practicable]¹⁹⁷¹ after it is made, be sent by the court to the trustee and the bankrupt.

(4) In the case of an order varying or discharging an income payments order made under section 310(3)(b), an additional sealed copy shall be sent to the trustee, for transmission [as soon as reasonably practicable]¹⁹⁷¹ to the payor of the relevant income.

Commencement

Pt 6(16) rule 6.191(1)-(4): December 29, 1986

6.192.— Order to payor of income: administration

(1) Where a person receives notice of an income payments order under section 310(3)(b), with reference to income otherwise payable by him to the bankrupt, he shall make the arrangements requisite for [compliance with the order as soon as reasonably practicable]¹⁹⁷².

(2) When making any payment to the trustee, he may deduct the appropriate fee towards the clerical and administrative costs of compliance with the income payments order.

He shall give to the bankrupt a written statement of any amount deducted by him under this paragraph.

(3) Where a person receives notice of an income payments order imposing on him a requirement under section 310(3)(b), and either—

(a) he is then no longer liable to make to the bankrupt any payment of income, or

(b) having made payments in compliance with the order, he ceases to be so liable, he shall [as soon as reasonably practicable]¹⁹⁷³ give notice of that fact to the trustee.

Commencement

Pt 6(16) rule 6.192(1)-(3)(b): December 29, 1986

¹⁹⁷⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.395(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁷¹ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

¹⁹⁷² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.396(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁷³ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

6.193.— Review of order

(1) Where an income payments order is in force, either the trustee or the bankrupt may apply to the court for the order to be varied or discharged.

(2) If the application is made by the trustee, Rule 6.189 applies (with any necessary modification) as in the case of an application for an income payments order.

(3) If the application is made by the bankrupt, it shall be accompanied by a short statement of the grounds on which it is made.

(4) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for [a]¹⁹⁷⁴ hearing, of which he has been given at least [5 business]¹⁹⁷⁵ days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard [but which is without notice to any other party]¹⁹⁷⁶ .

(5) At least 28 days before the date fixed for the hearing, the applicant shall send to the trustee or the bankrupt (whichever of them is not himself the applicant) notice of the venue, accompanied by a copy of the application.

Where the applicant is the bankrupt, the notice shall be accompanied by a copy of the statement of grounds under paragraph (3).

(6) The trustee may, if he thinks fit, appear and be heard on the application; and, whether or not he intends to appear, he may, not less than [5 business]¹⁹⁷⁷ days before the date fixed for the hearing, file a written report of any matters which he considers ought to be drawn to the court's attention.

If such a report is filed, a copy of it shall be sent by the trustee to the bankrupt.

(7) Sealed copies of any order made on the application shall, [as soon as reasonably practicable]¹⁹⁷⁸ after the order is made, be sent by the court to the trustee, the bankrupt and the payor (if other than the bankrupt).

Commencement

Pt 6(16) rule 6.193(1)-(7): December 29, 1986

¹⁹⁷⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.397(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁷⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.397(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁷⁶ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.397(2)(c) (April 6, 2010: addition has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁷⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.397(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁷⁸ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

[CHAPTER 16A

INCOME PAYMENTS AGREEMENTS]¹⁹⁷⁹**[6.193A.— Approval of income payments agreements**

- (1) An income payments agreement can only be entered into prior to the discharge of the bankrupt.
- (2) Where an income payments agreement is to be entered into between the official receiver or trustee and the bankrupt under section 310A(1), the official receiver or trustee shall provide an income payments agreement to the bankrupt for his approval.
- (3) Within 14 days or such longer period as may be specified by the official receiver or trustee (whichever is appropriate) from the date on which the income payments agreement was sent, the bankrupt shall—
 - (a) if he decides to approve the draft income payments agreement, [authenticate]¹⁹⁸⁰ the agreement and return it to the official receiver or trustee (whichever is appropriate); or
 - (b) if he decides not to approve the agreement, notify the official receiver or trustee (whichever is appropriate) in writing of his decision.

] ¹⁹⁸¹**[6.193B.— Acceptance of income payments agreements**

- (1) On receipt by the official receiver or trustee of the [authenticated]¹⁹⁸² income payments agreement, the official receiver or trustee shall [authenticate]¹⁹⁸² and date it.
- (2) When the official receiver or the trustee [authenticates]¹⁹⁸² and dates the income payments agreement, it shall come into force. A copy shall be sent to the bankrupt.
- (3) Where the agreement provides for payments by a third person to the official receiver or trustee who is not the official receiver in accordance with section 310A(1)(b), a notice of the agreement shall be sent by the official receiver or trustee to that person.
- (4) The notice shall contain—
 - (a) the full name and address of the bankrupt;
 - (b) a statement that an income payments agreement has been made, the date of it, and that it provides for the payment by the third person of sums owed to the bankrupt (or a part thereof) to be paid to the official receiver or trustee;
 - (c) the full name and address of the third person;
 - (d) a statement of the amount of money to be paid to the official receiver or trustee from the bankrupt's income, the period over which the payments are to be made, and the intervals at which the sums are to be paid; and

¹⁹⁷⁹ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.39 (April 1, 2004)

¹⁹⁸⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁸¹ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.39 (April 1, 2004)

¹⁹⁸² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(e) the full name and address of the official receiver or trustee and the address or details of where the sums are to be paid.

(5) When making any payment to the official receiver or the trustee a person who has received notice of an income payments agreement with reference to income otherwise payable by him to the bankrupt may deduct the appropriate fee towards the clerical and administrative costs of compliance with the income payments agreement. He shall give to the bankrupt a written statement of any amount deducted by him under this paragraph.

¹⁹⁸³

[6.193C.— Variation of income payments agreements]

(1) Where an application is made to court for variation of an income payments agreement, the application shall be accompanied by a copy of the agreement.

(2) Where the bankrupt applies to the court for variation of an income payments agreement under section 310A(6)(b), he shall send a copy of the application and notice of the venue to the official receiver or trustee (whichever is appropriate) at least 28 days before the date fixed for the hearing.

(3) When the official receiver or trustee applies to the court for variation of an income payments agreement under section 310A(6)(b), he shall send a copy of the application and notice of the venue to the bankrupt at least 28 days before the date fixed for the hearing.

(4) The court may order in Form 6.81 the variation of an income payments agreement under section 310A.

(5) Where the court orders an income payments agreement under section 310A(1)(a) to be varied, so as to take the form of an agreement under section 310A(1)(b) as an agreement providing that a third person is to make payments to the trustee or the official receiver, the official receiver or trustee shall send a notice in accordance with Rule 6.193B(3).

(6) When making any payment to the official receiver or the trustee a person who has received notice of an income payments agreement with reference to income otherwise payable by him to the bankrupt may deduct the appropriate fee towards the clerical and administrative costs of compliance with the income payments agreement. He shall give to the bankrupt a written statement of any amount deducted by him under this paragraph.

¹⁹⁸⁴

¹⁹⁸³ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.39 (April 1, 2004)

¹⁹⁸⁴ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.39 (April 1, 2004)

CHAPTER 17

ACTION BY COURT UNDER SECTION 369 ORDER TO INLAND REVENUE OFFICIAL

6.194.— Application for order

(1) An application by the official receiver or the trustee for an order under section 369 (order to [HM Revenue and Customs]¹⁹⁸⁵ official to produce documents) shall specify (with such particularity as will enable the order, if made, to be most easily complied with) the documents whose production to the court is desired, naming the official to whom the order is to be addressed.

(2) The court shall fix a venue for the hearing of the application.

(3) Notice of the venue, accompanied by a copy of the application, shall be sent by the applicant to the Commissioners [for HM Revenue and Customs]¹⁹⁸⁶ (“the Commissioners”) at least 28 days before the hearing.

(4) The notice shall require the Commissioners, not later than [5 business]¹⁹⁸⁷ days before the date fixed for the hearing of the application, to inform the court whether they consent or object to the making of an order under the section.

(5) If the Commissioners consent to the making of an order, they shall inform the court of the name of the official to whom it should be addressed, if other than the one named in the application.

(6) If the Commissioners object to the making of an order, they shall secure that an officer of theirs attends the hearing of the application and, not less than [5 business]¹⁹⁸⁷ days before it, deliver to the court a statement in writing of their grounds of objection.

A copy of the statement shall be sent [as soon as reasonably practicable]¹⁹⁸⁸ to the applicant.

Commencement

Pt 6(17) rule 6.194(1)-(6): December 29, 1986

6.195.— Making and service of the order

(1) If on the hearing of the application it appears to the court to be a proper case, the court may make the order applied for, with such modifications (if any) as appear appropriate having regard to any representations made on behalf of the Commissioners.

(2) The order—

¹⁹⁸⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.398(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁸⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.398(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁸⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.398(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁸⁸ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

- (a) may be addressed to an [HM Revenue and Customs]¹⁹⁸⁹ official other than the one named in the application,
- (b) shall specify a time, not less than 28 days after service on the official to whom the order is addressed, within which compliance is required, and
- (c) may include requirements as to the manner in which documents to which the order relates are to be produced.

(3) A sealed copy of the order shall be served by the applicant on the official to whom it is addressed.

(4) If the official is unable to comply with the order because he has not the relevant documents in his possession, and has been unable to obtain possession of them, he shall deliver to the court a statement in writing as to the reasons for his non-compliance.

A copy of the statement shall be sent [as soon as reasonably practicable]¹⁹⁹⁰ by the official to the applicant.

Commencement

Pt 6(17) rule 6.195(1)-(4): December 29, 1986

6.196. Custody of documents

Where in compliance with an order under section 369 original documents are produced, and not copies, any person who, by order of the court under section 369(2) (authorised disclosure to persons with right of inspection), has them in his possession or custody is responsible to the court for their safe keeping and return as and when directed.

Commencement

Pt 6(17) rule 6.196: December 29, 1986

CHAPTER 18

MORTGAGED PROPERTY

6.197.— Claim by mortgagee of land

(1) Any person claiming to be the legal or equitable mortgagee of land belonging to the bankrupt may apply to the court for an order directing that the land be sold.

“Land” includes any interest in, or right over, land.

(2) The court, if satisfied as to the applicant's title, may direct accounts to be taken and enquiries made to ascertain—

- (a) the principal, interest and costs due under the mortgage, and

¹⁹⁸⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.399(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁹⁰ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

- (b) where the mortgagee has been in possession of the land or any part of it, the rents and profits, dividends, interest, or other proceeds received by him or on his behalf.

Directions may be given by the court under this paragraph with respect to any mortgage (whether prior or subsequent) on the same property, other than that of the applicant.

- (3) For the purpose of those accounts and enquiries, and of making title to the purchaser, any of the parties may be examined by the court, and shall produce on oath before the court all such documents in their custody or under their control relating to the estate of the bankrupt as the court may direct.

[The court may under this paragraph order any of the parties to clarify any matter which is in dispute in the proceedings or give additional information in relation to any such matter and CPR Part 18 (further information) shall apply to any such order.]¹⁹⁹¹

- (4) In any proceedings between a mortgagor and mortgagee, or the trustee of either of them, the court may order accounts to be taken and enquiries made in like manner as in the Chancery Division of the High Court.

Commencement

Pt 6(18) rule 6.197(1)-(4): December 29, 1986

6.198.— Power of court to order sale

- (1) The court may order that the land, or any specified part of it, be sold; and any party bound by the order and in possession of the land or part, or in receipt of the rents and profits from it, may be ordered to deliver up possession or receipt to the purchaser or to such other person as the court may direct.

- (2) The court may permit the person having the conduct of the sale to sell the land in such manner as he thinks fit. Alternatively, the court may direct that the land be sold as directed by the order.

- (3) The court's order may contain directions—

- (a) appointing the persons to have the conduct of the sale;
- (b) fixing the manner of sale (whether by contract conditional on the court's approval, private treaty, public auction, or otherwise);
- (c) settling the particulars and conditions of sale;
- (d) obtaining evidence of the value of the property, and fixing a reserve or minimum price;
- (e) requiring particular persons to join in the sale and conveyance;
- (f) requiring the payment of the purchase money into court, or to trustees or others;
- (g) if the sale is to be by public auction, fixing the security (if any) to be given by the auctioneer, and his remuneration.

- (4) The court may direct that, if the sale is to be by public auction, the mortgagee may appear and bid on his own behalf.

[(5) Nothing in this Rule or the following Rule may affect the rights in rem of creditors or third parties protected under Article 5 of the EC Regulation (third parties' rights in rem).]¹⁹⁹²

¹⁹⁹¹ Words substituted by Insolvency (Amendment) (No. 2) Rules 1999/1022 Sch.1 para.2 (April 26, 1999)

¹⁹⁹² Added by Insolvency (Amendment) Rules 2002/1307 rule 8(8) (May 31, 2002)

Commencement

Pt 6(18) rule 6.198(1)-(4): December 29, 1986

6.199.— Proceeds of sale

(1) The proceeds of sale shall be applied—

(a) first, in payment of the expenses of the trustee, of and occasioned by the application to the court, of the sale and attendance threat, and of any costs arising from the taking of accounts, and making of enquiries, as directed by the court under Rule 6.197; and

(b) secondly, in payment of the amount found due to any mortgagee, for principal, interest and costs;

and the balance (if any) shall be retained by or paid to the trustee.

(2) Where the proceeds of the sale are insufficient to pay in full the amount found due to any mortgagee, he is entitled to prove as a creditor for any deficiency, and to receive dividends rateably with other creditors, but not so as to disturb any dividend already declared.

Commencement

Pt 6(18) rule 6.199(1)-(2): December 29, 1986

CHAPTER 19**AFTER-ACQUIRED PROPERTY****6.200.— Duties of bankrupt in respect of after-acquired property**

(1) The notice to be given by the bankrupt to the trustee, under section 333(2), of property acquired by, or devolving upon, him, or of any increase of his income, shall be given within 21 days of his becoming aware of the relevant facts.

(2) Having served notice in respect of property acquired by or devolving upon him, the bankrupt shall not, without the trustee's consent in writing, dispose of it within the period of 42 days beginning with the date of the notice.

(3) If the bankrupt disposes of property before giving the notice required by this Rule or in contravention of paragraph (2), it is his duty [as soon as reasonably practicable]¹⁹⁹³ to disclose to the trustee the name and address of the donee, and to provide any other information which may be necessary to enable the trustee to trace the property and recover it for the estate.

(4) Subject as follows, paragraphs (1) to (3) do not apply to property acquired by the bankrupt in the ordinary course of a business carried on by him.

¹⁹⁹³ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

(5) If the bankrupt carries on a business, he shall, [when required by the trustee]¹⁹⁹⁴, furnish to the trustee information with respect to it, showing the total of goods bought and sold (or, as the case may be, services supplied) and the profit or loss arising from the business. The trustee may require the bankrupt to furnish fuller details (including accounts) of the business carried on by him.

Commencement

Pt 6(19) rule 6.200(1)-(5): December 29, 1986

6.201.— Trustee's recourse to disponent of property

(1) Where property has been disposed of by the bankrupt, before giving the notice required by Rule 6.200 or otherwise in contravention of that Rule, the trustee may serve notice on the disponent, claiming the property as part of the estate by virtue of section 307(3).

(2) The trustee's notice under this Rule must be served within 28 days of his becoming aware of the disponent's identity and an address at which he can be served.

Commencement

Pt 6(19) rule 6.201(1)-(2): December 29, 1986

6.202. Expenses of getting in property for the estate

Any expenses incurred by the trustee in acquiring title to after-acquired property shall be paid out of the estate, in the prescribed order of priority.

Commencement

Pt 6(19) rule 6.202: December 29, 1986

CHAPTER 20

[PERMISSION]¹⁹⁹⁵ TO ACT AS DIRECTOR, ETC.

[6.202A.

In this Chapter a reference to a bankrupt includes a reference to a person in respect of whom a bankruptcy restrictions order is in force.]¹⁹⁹⁶

¹⁹⁹⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.400(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁹⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁹⁶ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.40 (April 1, 2004)

6.203.— Application for [permission]¹⁹⁹⁷

(1) An application by the bankrupt for [permission]¹⁹⁹⁷, under section 11 of the Company Directors Disqualification Act 1986, to act as director of, or to take part or be concerned in the promotion, formation or management of a company, shall be supported by [a witness statement]¹⁹⁹⁸ complying with this Rule.

(2) The [witness statement]¹⁹⁹⁹ must identify the company and specify—

- (a) the nature of its business or intended business, and the place or places where that business is, or is to be, carried on,
- (b) [in the case of a company which has not yet been incorporated,]²⁰⁰⁰ whether it is, or is to be, a private or a public company,
- (c) the persons who are, or are to be, principally responsible for the conduct of its affairs (whether as directors, shadow directors, managers or otherwise),
- (d) the manner and capacity in which the applicant proposes to take part or be concerned in the promotion or formation of the company or, as the case may be, its management, and
- (e) the emoluments and other benefits to be obtained from the directorship.

(3)-(4) [...]²⁰⁰¹

(5) The court shall fix a venue for the hearing of the bankrupt's application, and give notice to him accordingly.

Commencement

Pt 6(20) rule 6.203(1)-(5): December 29, 1986

6.204.— Report of official receiver

(1) The bankrupt shall, not less than 28 days before the date fixed for the hearing, give to the official receiver and the trustee notice of the venue, accompanied by copies of the application and the [witness statement]²⁰⁰² under Rule 6.203.

(2) The official receiver may, not less than 14 days before the date fixed for the hearing, file in court a report of any matters which he considers ought to be drawn to the court's attention. A copy

¹⁹⁹⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁹⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.401(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

¹⁹⁹⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.401(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁰⁰ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.401(3)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁰¹ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.401(4) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁰² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.402(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

of the report shall be sent by him, [as soon as reasonably practicable]²⁰⁰³ after it is filed, to the bankrupt and to the trustee.

(3) The bankrupt may, not later than [5 business]²⁰⁰⁴ days before the date of the hearing, file in court a notice specifying any statements in the official receiver's report which he intends to deny or dispute.

If he gives notice under this paragraph, he shall send copies of it, not less than 4 days before the date of the hearing, to the official receiver and the trustee.

(4) The official receiver and the trustee may appear on the hearing of the application, and may make representations and put to the bankrupt such questions as the court may allow.

Commencement

Pt 6(20) rule 6.204(1)-(4): December 29, 1986

6.205.— Court's order on application

(1) If the court grants the bankrupt's application for [permission]²⁰⁰⁵ under section 11 of the Company Directors Disqualification Act 1986, its order shall specify that which by virtue of the order the bankrupt has [permission]²⁰⁰⁵ to do.

(2) The court may at the same time, having regard to any representations made by the trustee on the hearing of the application—

- (a) include in the order provision varying an income payments order [or an income payments agreement]²⁰⁰⁶ already in force in respect of the bankrupt, or
- (b) if no income payments order is in force, make one.

(3) Whether or not the application is granted, copies of the order shall be sent by the court to the bankrupt, the trustee and the official receiver.

Commencement

Pt 6(20) rule 6.205(1)-(3): December 29, 1986

²⁰⁰³ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

²⁰⁰⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.402(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁰⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁰⁶ Words inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.41 (April 1, 2004)

CHAPTER 21

ANNULMENT OF BANKRUPTCY ORDER

6.206.— Application for annulment

(1) An application to the court under section 282(1) for the annulment of a bankruptcy order shall specify whether it is made—

(a) under subsection (1)(a) of the section (claim that the order ought not to have been made), or

(b) under subsection (1)(b) (debts and expenses of the bankruptcy all paid or secured).

(2) The application shall, in either case, be supported by [a witness statement]²⁰⁰⁷ stating the grounds on which it is made; and, where it is made under section 282(1)(b), there shall be set out in [the witness statement]²⁰⁰⁸ all the facts by reference to which the court is, under the Act and the Rules, required to be satisfied before annulling the bankruptcy order.

(3) A copy of the application and [the witness statement in support must be filed with the court]²⁰⁰⁹; and the court shall give to the applicant notice of the venue fixed for the hearing.

(4) The applicant shall [...] ²⁰¹⁰ give to the official receiver and (if other) the trustee notice of the venue, accompanied by copies of the application and the [witness statement]²⁰¹¹ under paragraph (2) [...] ²⁰¹²

[(a) where the application is made under section 282(1)(a), in sufficient time to enable them to be present at the hearing, and

(b) where the application is made under section 282(1)(b), not less than 28 days before the hearing.]²⁰¹²

[(5) Where the application is made under section 282(1)(a), paragraph (4) shall additionally be complied with in relation to the person on whose petition the bankruptcy order was made.]²⁰¹³

²⁰⁰⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.403(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁰⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.403(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁰⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.403(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰¹⁰ Words repealed by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.121(1) (January 11, 1988)

²⁰¹¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.403(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰¹² Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.121(1) (January 11, 1988)

²⁰¹³ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.121(2) (January 11, 1988)

[(6) In this Chapter, where the applicant is not the bankrupt all notices, documents and [evidence]²⁰¹⁴ required to be given, sent or delivered to another party by the applicant shall also be given, sent or delivered to the bankrupt.]²⁰¹⁵

Commencement

Pt 6(21) rule 6.206(1)-(4): December 29, 1986

6.207.— Report by trustee

(1) The following applies where the application is made under section 282(1)(b) (debts and expenses of the bankruptcy all paid or secured).

(2) Not less than 21 days before the date fixed for the hearing, the trustee or, if no trustee has been appointed, the official receiver shall file in court a report with respect to the following matters—

- (a) the circumstances leading to the bankruptcy;
- (b) (in summarised form) the extent of the bankrupt's assets and liabilities at the date of the bankruptcy order and at the date of the present application;
- (c) details of creditors (if any) who are known to him to have claims, but have not proved; and
- (d) such other matters as the person making the report considers to be, in the circumstances, necessary for the information of the court.

[(2A) Where the trustee is other than the official receiver, the report under paragraph (2) must also include a statement of—

- (a) the trustee's remuneration;
- (b) the basis fixed for the trustee's remuneration under Rule 6.138;
- (c) the expenses incurred by the trustee.

] ²⁰¹⁶

(3) The report shall include particulars of the extent (if any) to which, and the manner in which, the debts and expenses of the bankruptcy have been paid or secured.

In so far as debts and expenses are unpaid but secured, the person making the report shall state in it whether and to what extent he considers the security to be satisfactory.

(4) A copy of the report shall be sent to the applicant [at the same time that it is filed in court]²⁰¹⁷; and he may, if he wishes, file further [witness statements]²⁰¹⁸ in answer to statements made in the report.

²⁰¹⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.403(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰¹⁵ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.42 (April 1, 2004)

²⁰¹⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.404(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰¹⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.404(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰¹⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.404(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Copies of any such affidavits shall be sent by the applicant to the official receiver and (if other) the trustee.

(5) If the trustee is other than the official receiver, a copy of his report shall be sent to the official receiver at least 21 days before the hearing. The official receiver may then file an additional report, a copy of which shall be sent to the applicant at least [5 business]²⁰¹⁹ days before the hearing.

Commencement

Pt 6(21) rule 6.207(1)-(5): December 29, 1986

[6.207A Applicant's claim that remuneration is or expenses are excessive]

(1) Where the trustee is other than the official receiver and application for annulment is made under section 282(1)(b), the applicant may also apply to the court for one or more of the orders in paragraph (4) on the ground that the remuneration charged or expenses incurred by the trustee is or are, in all the circumstances, excessive.

(2) Application under paragraph (1) must be made no later than 5 business days before the date fixed for the hearing of the application for annulment and be accompanied by a copy of any evidence which the applicant intends to adduce in support.

(3) The applicant under paragraph (1) must send a copy of the application and of any evidence accompanying it to the trustee at the same time that the application is made.

(4) If the court annuls the bankruptcy order under section 282(1)(b) and considers the application under paragraph (1) to be well-founded, it must also make one or more of the following orders—

- (a) an order reducing the amount of remuneration which the trustee was entitled to charge;
- (b) an order that some or all of the remuneration or expenses in question be treated as not being bankruptcy expenses;
- (c) an order that the trustee or the trustee's personal representative pay to the applicant the amount of the excess of remuneration or expenses or such part of the excess as the court may specify;

and may make any other order that it thinks just.

]²⁰²⁰

6.208.— Power of court to stay proceedings

(1) The court may, in advance of the hearing, make an interim order staying any proceedings which it thinks ought, in the circumstances of the application, to be stayed.

²⁰¹⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.404(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰²⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.405 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[(2) Except in relation to an application for an order staying all or any part of the proceedings in the bankruptcy, application for an order under this Rule may be made [without notice to any other party]²⁰²¹ .

(3) Where application is made under this Rule for an order staying all or any part of the proceedings in the bankruptcy, the applicant shall send copies of the application to the official receiver and (if other) the trustee in sufficient time to enable them to be present at the hearing and (if they wish to do so) make representations.

(4) Where the court makes an order under this Rule staying all or any part of the proceedings in the bankruptcy, the rules in this Chapter nevertheless continue to apply to any application for, or other matters in connection with, the annulment of the bankruptcy order.

(5) If the court makes an order under this Rule, it shall send copies of the order to the applicant, the official receiver and (if other) the trustee.]²⁰²²

Commencement

Pt 6(21) rule 6.208(1)-(2): December 29, 1986

6.209. Notice to creditors who have not proved

Where the application for annulment is made under section 282(1)(b) and it has been reported to the court under Rule 6.207 that there are known creditors of the bankrupt who have not proved, the court may—

- (a) direct the trustee [or, if no trustee has been appointed, the official receiver]²⁰²³ to send notice of the application to such of those creditors as the court thinks ought to be informed of it, with a view to their proving their debts (if they so wish) within 21 days, and
- (b) direct the trustee [or, if no trustee has been appointed, the official receiver]²⁰²⁴ to advertise the fact that the application has been made, so that creditors who have not proved may do so within a specified time, and
- (c) adjourn the application meanwhile, for any period not less than 35 days.

Commencement

Pt 6(21) rule 6.209(a)-(c): December 29, 1986

6.210.— The hearing

(1) The trustee shall attend the hearing of the application.

(2) The official receiver, if he is not the trustee, may attend, but is not required to do so unless he has filed a report under Rule 6.207.

²⁰²¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.406(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰²² Rule 6.208(2) to (5) substituted for rule 6.208(2) by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.122 (January 11, 1988)

²⁰²³ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.123(1) (January 11, 1988)

²⁰²⁴ Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.123(2) (January 11, 1988)

(3) If the court makes an order on the application [or on an application under Rule 6.207A]²⁰²⁵, it shall send copies of the order to the applicant, the official receiver and (if other) the trustee.

Commencement

Pt 6(21) rule 6.210(1)-(3): December 29, 1986

6.211.— Matters to be proved under s.282(1)(b)

(1) This rule applies with regard to the matters which [(a)]²⁰²⁶ must, in an application under section 282(1)(b) , be proved to the satisfaction of the court [; and (b) may be taken into account by the court on hearing such an application]²⁰²⁶ .

(2) Subject to the following paragraph, all bankruptcy debts which have been [(a)]²⁰²⁷ proved must have been paid in full [, or (b) secured in full to the satisfaction of the court]²⁰²⁷ .

(3) If a debt is disputed, or a creditor who has proved can no longer be traced, the bankrupt must have given such security (in the form of money paid into court, or a bond entered into with approved sureties) as the court considers adequate to satisfy any sum that may subsequently be proved to be due to the creditor concerned and (if the court thinks [just]²⁰²⁸) costs.

(4) Where under paragraph (3) security has been given in the case of an untraced creditor, the court may direct that particulars of the alleged debt, and the security, be advertised in such manner as it thinks [just]²⁰²⁸ .

If advertisement is ordered under this paragraph, and no claim on the security is made within 12 months from the date of the advertisement (or the first advertisement, if more than one), the court shall, on application in that behalf, order the security to be released.

[(5) In determining whether to annul a bankruptcy order under section 282(1)(b), the court may, if it thinks just and without prejudice to the generality of its discretion under section 282(1), take into account whether any sums have been paid or payment of any sums has been secured in respect of post-commencement interest on the bankruptcy debts which have been proved.

(6) For the purposes of paragraphs (2) and (5), security includes an undertaking given by a solicitor and accepted by the court.

(7) For the purposes of paragraph (5), “post-commencement interest” means interest on the bankruptcy debts at the rate specified in section 328(5) in respect of periods during which those debts have been outstanding since the commencement of the bankruptcy.]²⁰²⁹

²⁰²⁵ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.407(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰²⁶ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.408(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰²⁷ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.408(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰²⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰²⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.408(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 6(21) rule 6.211(1)-(4): December 29, 1986

6.212.— Notice to creditors

- (1) Where the official receiver has notified creditors of the debtor's bankruptcy, and the bankruptcy order is annulled, he shall [as soon as reasonably practicable]²⁰³⁰ notify them of the annulment.
- (2) Expenses incurred by the official receiver in giving notice under this Rule are a charge in his favour on the property of the former bankrupt, whether or not actually in his hands.
- (3) Where any property is in the hands of a trustee or any person other than the former bankrupt himself, the official receiver's charge is valid subject only to any costs that may be incurred by the trustee or that other person in effecting realisation of the property for the purpose of satisfying the charge.

Commencement

Pt 6(21) rule 6.212(1)-(3): December 29, 1986

6.212A. [...]²⁰³¹
6.213.— Other matters arising on annulment

- (1) In an order under [section 282]²⁰³² the court shall include provision permitting vacation of the registration of the bankruptcy petition as a pending action, and of the bankruptcy order, in the register of writs and orders affecting land.
 - (2) The court shall [as soon as reasonably practicable]²⁰³³ give notice of the making of the order to the Secretary of State.
 - [(3) Within 28 days of the making of the order, the former bankrupt may require the Secretary of State to give notice of the making of the order. As soon as reasonably practicable such notice shall be—
 - (a) gazetted; and
 - (b) advertised in the same manner as the bankruptcy order to which it relates was advertised.
-]²⁰³⁴
- [(3A) In addition to the standard contents, the notice under paragraph (3) must state—
- (a) the name of the former bankrupt;

²⁰³⁰ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

²⁰³¹ Revoked by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.43 (April 1, 2004)

²⁰³² Words repealed by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.44 (April 1, 2004)

²⁰³³ Word inserted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

²⁰³⁴ Substituted by Insolvency (Amendment) Rules 2009/642 rule 45 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

- (b) the date on which the bankruptcy order was made;
- (c) that the bankruptcy order against the former bankrupt has been annulled under section 282(1); and
- (d) the date of the annulment.

²⁰³⁵

(4) Any requirement by the former bankrupt under paragraph (3) shall be addressed to the Secretary of State in writing. [...] ²⁰³⁶

(5) Where the former bankrupt has died, or is a person incapable of managing his affairs (within the meaning of Chapter 7 in Part 7 of the Rules), the references to him in paragraphs (3) and (4) are to be read as referring to his personal representative or, as the case may be, a person appointed by the court to represent or act for him.

Commencement

Pt 6(21) rule 6.213(1)-(5): December 29, 1986

6.214.— Trustee's final account

- (1) Where a bankruptcy order is annulled under [section 282] ²⁰³⁷, this does not of itself release the trustee from any duty or obligation, imposed on him by or under the Act or the Rules, to account for all his transactions in connection with the former bankrupt's estate.
- (2) The trustee shall submit a copy of his final account to the Secretary of State, as soon as practicable after the court's order annulling the bankruptcy order; and he shall file a copy of the final account in court.
- (3) The final account must include a summary of the trustee's receipts and payments in the administration, and contain a statement to the effect that he has reconciled his account with that which is held by the Secretary of State in respect of the bankruptcy.
- (4) The trustee is released from such time as the court may determine, having regard to whether—
 - (a) paragraph (2) of this Rule has been complied with, and
 - (b) any security given under Rule 6.211(3) has been, or will be, released.

Commencement

Pt 6(21) rule 6.214(1)-(4)(b): December 29, 1986

²⁰³⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.409(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰³⁶ Words repealed by Insolvency (Amendment) Rules 2004/584 rule 39(b) (April 1, 2004)

²⁰³⁷ Words repealed by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.45 (April 1, 2004)

[CHAPTER 21A

NOTICE UNDER SECTION 279(2)]²⁰³⁸**[6.214A.— Notice under section 279(2) that an investigation of the conduct and affairs of a bankrupt is unnecessary or concluded**

(1) Where the official receiver intends to file a notice that an investigation of the conduct and affairs of a bankrupt is unnecessary or concluded under section 279(2), he shall give notice in writing to all creditors of which he is aware and any trustee of his intention to file such a notice.

(2) Where a creditor or a trustee receives written notice of the official receiver's intention to file a notice under section 279(2) and he has any objection to the official receiver filing such a notice, he may, within 28 days of the date of such written notice, inform the official receiver in writing of his objection and give reasons for that objection.

(3) The official receiver shall not file a notice under section 279(2) until the period allowed for creditors or a trustee to object under paragraph (2) has expired.

[(4) Where the official receiver receives no objection from either a creditor or a trustee he may file a notice under section 279(2) by sending to the court two copies of Form 6.82. The court shall endorse each copy with the date of filing and shall return one copy to the official receiver. The official receiver shall send a copy of the endorsed form to the bankrupt.]²⁰³⁹

(5) Where the official receiver receives an objection under this Rule and he rejects that objection, he shall not file the notice under section 279(2) until he has—

(a) given notice of the rejection (and his reasons) to the complainant; and

(b) the period of time for an appeal by the complainant under Rule 7.50(2) has expired,

or an appeal under that Rule has been determined by the court.

] ²⁰⁴⁰

CHAPTER 22

DISCHARGE

[6.215.— Application for suspension of discharge

(1) The following applies where the official receiver or any trustee who is not the official receiver applies to the court for an order under section 279(3) (suspension of automatic discharge), but not where the official receiver makes that application, pursuant to Rule 6.176(4), on the adjournment of the bankrupt's public examination.

(2) The official receiver or any trustee who is not the official receiver shall, with his application, file evidence in support setting out the reasons why it appears to him that such an order should be made.

²⁰³⁸ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.46 (April 1, 2004)

²⁰³⁹ Substituted by Insolvency (Amendment) Rules 2004/584 rule 40 (April 1, 2004)

²⁰⁴⁰ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.46 (April 1, 2004)

- (3) The court shall fix a venue for the hearing of the application, and give notice of it to the official receiver, the trustee who is not the official receiver, and the bankrupt.
- (4) Copies of the official receiver's report under this Rule shall be sent by him to the bankrupt and any trustee who is not the official receiver, so as to reach them at least 21 days before the date fixed for the hearing.
- (5) Copies of the trustee's evidence in support under this Rule shall be sent by him to the official receiver and the bankrupt, so as to reach them at least 21 days before the date fixed for the hearing.
- (6) The bankrupt may, not later than [5 business]²⁰⁴¹ days before the date of the hearing, file in court a notice specifying any statements in the official receiver's or trustee's evidence in support which he intends to deny or dispute.
- (7) If the bankrupt files a notice under paragraph (6), he shall send copies of it, not less than 4 [business]²⁰⁴² days before the date of the hearing, to the official receiver and any trustee who is not the official receiver.
- (8) If the court makes an order suspending the bankrupt's discharge, copies of the order shall be sent by the court to the official receiver, any trustee who is not the official receiver and the bankrupt.
²⁰⁴³

Commencement

Pt 6(22) rule 6.215(1)-(6): December 29, 1986

[6.216.— Lifting of suspension of discharge

- (1) Where the court has made an order under section 279(3) that the period specified in section 279(1) shall cease to run, the bankrupt may apply to it for the order to be discharged.
- (2) The court shall fix a venue for the hearing of the application; and the bankrupt shall, not less than 28 days before the date fixed for the hearing, give notice of the venue to the official receiver and any trustee who is not the official receiver, accompanied in each case by a copy of the application.
- (3) The official receiver and the trustee may appear and be heard on the bankrupt's application; and, whether or not they appear, the official receiver and trustee may file in court evidence in support of any matters which either of them considers ought to be drawn to the court's attention.
- (4) If the court made an order under section 279(3)(b), the court may request a report from the official receiver or the trustee as to whether the conditions specified in the order have or have not been fulfilled.
- (5) If a report is filed under paragraph (3) or (4), copies of it shall be sent by the official receiver or trustee to the bankrupt and to either the official receiver or trustee (depending on which has filed the report), not later than 14 days before the hearing.

²⁰⁴¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.410(2) (April 6, 2010)

²⁰⁴² Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.410(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁴³ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.47 (April 1, 2004)

(6) The bankrupt may, not later than [5 business]²⁰⁴⁴ days before the date of the hearing, file in court a notice specifying any statements in the official receiver's or trustee's report which he intends to deny or dispute.

If he files a notice under this paragraph, he shall send copies of it, not less than 4 [business]²⁰⁴⁵ days before the date of the hearing, to the official receiver and the trustee.

(7) If on the bankrupt's application the court discharges the order under section 279(3) (being satisfied that the period specified in section 279(1) should begin to run again), it shall issue to the bankrupt a certificate that it has done so, with effect from a specified date and shall send copies of the certificate to the official receiver and the trustee.

]²⁰⁴⁶

Commencement

Pt 6(22) rule 6.216(1)-(7): December 29, 1986

6.217.— Application by bankrupt for discharge

(1) If the bankrupt applies under section 280 for an order discharging him from bankruptcy, he shall give to the official receiver notice of the application, and deposit with him such sum as the latter may require to cover his costs of the application.

(2) The court, if satisfied that paragraph (1) has been complied with, shall fix a venue for the hearing of the application, and give at least 42 days' notice of it to the official receiver and the bankrupt.

(3) The official receiver shall give notice accordingly—

(a) to the trustee, and

(b) to every creditor who, to the official receiver's knowledge, has a claim outstanding against the estate which has not been satisfied.

(4) Notices under paragraph (3) shall be given not later than 14 days before the date fixed for the hearing of the bankrupt's application.

Commencement

Pt 6(22) rule 6.217(1)-(4): December 29, 1986

²⁰⁴⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.411(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁴⁵ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.411(2)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁴⁶ Substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.48 (April 1, 2004)

6.218.— Report of official receiver

(1) Where the bankrupt makes an application under section 280, the official receiver shall, at least 21 days before the date fixed for the hearing of the application, file in court a report containing the following information with respect to the bankrupt—

- (a) any failure by him to comply with his obligations under Parts VIII to XI of the Act;
- (b) the circumstances surrounding the present bankruptcy, and those surrounding any previous bankruptcy of his;
- (c) the extent to which, in the present and in any previous bankruptcy, his liabilities have exceeded his assets; and
- (d) particulars of any distribution which has been, or is expected to be, made to creditors in the present bankruptcy or, if such is the case, that there has been and is to be no distribution;

and the official receiver shall include in his report any other matters which in his opinion ought to be brought to the court's attention.

(2) The official receiver shall send a copy of the report to the bankrupt and the trustee, so as to reach them at least 14 days before the date of the hearing of the application under section 280.

(3) The bankrupt may, not later than [5 business]²⁰⁴⁷ days before the date of the hearing, file in court a notice specifying any statements in the official receiver's report which he intends to deny or dispute.

If he gives notice under this paragraph, he shall send copies of it, not less than 4 days before the date of the hearing, to the official receiver and the trustee.

(4) The official receiver, the trustee and any creditor may appear on the hearing of the bankrupt's application, and may make representations and put to the bankrupt such questions as the court may allow.

Commencement

Pt 6(22) rule 6.218(1)-(4): December 29, 1986

6.219.— Order of discharge on application

(1) An order of the court under section 280(2)(b)(discharge absolutely) or (c) (discharge subject to conditions with respect to income or property) shall bear the date on which it is made, but does not take effect until such time as it is drawn up by the court.

(2) The order then has effect retrospectively to the date on which it was made.

(3) Copies of any order made by the court on an application by the bankrupt for discharge under section 280 shall be sent by the court to the bankrupt, the trustee and the official receiver.

Commencement

Pt 6(22) rule 6.219(1)-(3): December 29, 1986

²⁰⁴⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.412(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

6.220.— Certificate of discharge

(1) Where it appears to the court that a bankrupt is discharged, whether by expiration of time or otherwise, the court shall, on his application, issue to him a certificate of his discharge, and the date from which it is effective.

[(2) The discharged bankrupt may require [within 28 days of the order]²⁰⁴⁸ the Secretary of State to give notice of the discharge. As soon as reasonably practicable such notice shall be—

- (a) gazetted; and
- (b) advertised in such manner as the bankruptcy order to which it relates was advertised.

] ²⁰⁴⁹

[(2A) In addition to the standard contents, a notice under paragraph (2) must state—

- (a) the name of the former bankrupt;
- (b) the date of the bankruptcy order;
- (c) that a certificate of discharge has been issued;
- (d) the date of the certificate; and
- (e) the date from which the discharge is effective.

] ²⁰⁵⁰

(3) Any requirement by the former bankrupt under paragraph (2) shall be addressed to the Secretary of State in writing. [...] ²⁰⁵¹

(4) Where the former bankrupt has died, or is a person incapable of managing his affairs (within the meaning of Chapter 7 in Part 7 of the Rules), the references to him in paragraphs (2) and (3) are to be read as referring to his personal representative or, as the case may be, a person appointed by the court to represent or act for him.

Commencement

Pt 6(22) rule 6.220(1)-(4): December 29, 1986

6.221. Deferment of issue of order pending appeal

An order made by the court on an application by the bankrupt for discharge under section 280 shall not be issued or gazetted until the time allowed for appealing has expired or, if an appeal is entered, until the appeal has been determined.

Commencement

Pt 6(22) rule 6.221: December 29, 1986

²⁰⁴⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.413(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁴⁹ Substituted by Insolvency (Amendment) Rules 2009/642 rule 46 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

²⁰⁵⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.413(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁵¹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.413(4) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

6.222. Costs under this Chapter

In no case do any costs or expenses arising under this Chapter fall on the official receiver personally.

Commencement

Pt 6(22) rule 6.222: December 29, 1986

6.223. Bankrupt's debts surviving discharge

Discharge does not release the bankrupt from any obligation arising under a confiscation order made under section 1 of the Drug Trafficking Offences Act 1986 [or section 1 of the Criminal Justice (Scotland) Act 1987 [or section 71 of the Criminal Justice Act 1988]²⁰⁵² [or under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002]²⁰⁵³ .]²⁰⁵⁴

Commencement

Pt 6(22) rule 6.223: December 29, 1986

[CHAPTER 22(A)—**REGISTER OF BANKRUPTCY ORDERS]²⁰⁵⁵**

6.223(A)— [...]²⁰⁵⁶

6.223(B)— [...]²⁰⁵⁷

6.223(C)— [...]²⁰⁵⁸

CHAPTER 23**ORDER OF PAYMENT OF COSTS, ETC., OUT OF ESTATE****6.224.— General rule as to priority**

(1) The expenses of the bankruptcy are payable out of the estate in the following order of priority—

[(a) expenses or costs which—

(i) are properly chargeable or incurred by the official receiver or the trustee in preserving, realising or getting in any of the assets of the bankrupt or otherwise relating to the conduct of any legal proceedings which he has power to bring (whether the claim on which the proceedings are based forms part of the estate or otherwise) or defend;

²⁰⁵² Words inserted by Insolvency (Amendment) Rules 1989/397 Sch.1 para.1 (April 3, 1989)

²⁰⁵³ Words inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.49 (April 1, 2004)

²⁰⁵⁴ Words added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.127 (January 11, 1988)

²⁰⁵⁵ Added by Insolvency (Amendment) Rules 1999/359 Sch.1 para.8 (March 22, 1999)

²⁰⁵⁶ Revoked by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.50 (April 1, 2004)

²⁰⁵⁷ Revoked by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.50 (April 1, 2004)

²⁰⁵⁸ Revoked by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.50 (April 1, 2004)

- (ii) relate to the employment of a shorthand writer, if appointed by an order of the court made at the instance of the official receiver in connection with an examination; or
- (iii) are incurred in holding an examination under Rule 6.174 (examinee unfit) where the application was made by the official receiver;

]²⁰⁵⁹

(b) any other expenses incurred or disbursements made by the official receiver or under his authority, including those incurred or made in carrying on the business of a debtor or bankrupt;

[(c) the fees payable under any order made under [section 415 or 415A]²⁰⁶⁰, including those payable to the official receiver (other than the fee referred to in sub-paragraph (d)(i) below), and any remuneration payable to him under general regulations;]²⁰⁶¹

[(d)

(i) the fee payable under any order made under section 415 for the performance by the official receiver of his general duties as official receiver;

(ii) any repayable deposit lodged under any such order as security for the fee mentioned in sub-paragraph (i) (except where the deposit is applied to the payment of the remuneration of an insolvency practitioner appointed under section 273 (debtor's petition));

]²⁰⁶¹

(e) the cost of any security provided by an interim receiver, trustee or special manager in accordance with the Act or the Rules;

(f) the remuneration of the interim receiver (if any);

(g) any deposit lodged on an application for the appointment of an interim receiver;

(h) the costs of the petitioner, and of any person appearing on the petition whose costs are allowed by the court;

(j) the remuneration of the special manager (if any);

(k) any amount payable to a person employed or authorised, under Chapter 5 of this Part of the Rules, to assist in the preparation of a statement of affairs or of accounts;

(l) any allowance made, by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs, or for an extension of time for submitting such a statement;

[(la) the costs of employing a shorthand writer in any case other than one appointed by an order of the court at the instance of the official receiver in connection with an examination;

]²⁰⁶²

(m) any necessary disbursements by the trustee in the course of his administration (including any expenses incurred by members of the creditors' committee or their representatives and allowed by the trustee under Rule 6.164, but not including any payment of capital gains tax in circumstances referred to in sub-paragraph (p) below);

²⁰⁵⁹ Substituted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(4) para.25(a) (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 6(2))

²⁰⁶⁰ Words inserted by Insolvency (Amendment) Rules 2004/584 rule 41 (April 1, 2004)

²⁰⁶¹ Substituted by Insolvency (Amendment) Rules 1995/586 Sch.1 para.2 (April 1, 1995)

²⁰⁶² Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(4) para.25(b) (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 6(2))

- (n) the remuneration or emoluments of any person (including the bankrupt) who has been employed by the trustee to perform any services for the estate, as required or authorised by or under the Act or the Rules;
- (o) the remuneration of the trustee, up to any amount not exceeding that which is payable [under Schedule 6]²⁰⁶³ ;
- (p) the amount of any capital gains tax on chargeable gains accruing on the realisation of any asset of the bankrupt (without regard to whether the realisation is effected by the trustee, a secured creditor, or a receiver or manager appointed to deal with a security);
- (q) the balance, after payment of any sums due under sub-paragraph (o) above, of any remuneration due to the trustee [;]²⁰⁶⁴
- [(r) any other expenses properly chargeable by the trustee in carrying out his functions in the bankruptcy]²⁰⁶⁴

(2)-(3) [...] ²⁰⁶⁵

Commencement

Pt 6(23) rule 6.224(1)-(3): December 29, 1986

CHAPTER 24

SECOND BANKRUPTCY

6.225.— Scope of this Chapter

- (1) The Rules in this Chapter relate to the manner in which, in the case of a second bankruptcy, the trustee in the earlier bankruptcy is to deal with property and money to which section 334(3) applies, until there is a trustee of the estate in the later bankruptcy.
- (2) “The earlier bankruptcy”, “the later bankruptcy” and “the existing trustee” have the meanings given by section 334(1).

Commencement

Pt 6(24) rule 6.225(1)-(2): December 29, 1986

6.226.— General duty of existing trustee

- (1) Subject as follows, the existing trustee shall take into his custody or under his control all such property and money, in so far as he has not already done so as part of his duties as trustee in the earlier bankruptcy.

²⁰⁶³ Words substituted subject to transitional provisions specified in SI 2005/527 rule 3(2) by Insolvency (Amendment) Rules 2005/527 rule 39 (April 1, 2005: substitution has effect subject to transitional provisions specified in SI 2005/527 rule 3(2))

²⁰⁶⁴ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(4) para.25(c) (January 1, 2003: insertion has effect subject to the conditions specified in SI 2002/2712 rule 6(2))

²⁰⁶⁵ Revoked by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(4) para.25(d) (January 1, 2003: revocation has effect subject to the conditions specified in SI 2002/2712 rule 6(2))

(2) Where any of that property consists of perishable goods, or goods the value of which is likely to diminish if they are not disposed of, the existing trustee has power to sell or otherwise dispose of those goods.

(3) The proceeds of any such sale or disposal shall be held, under the existing trustee's control, with the other property and money comprised in the bankrupt's estate.

Commencement

Pt 6(24) rule 6.226(1)-(3): December 29, 1986

6.227. Delivery up to later trustee

The existing trustee shall, as and when requested by the trustee for the purposes of the later bankruptcy, deliver up to the latter all such property and money as is in his custody or under his control in pursuance of Rule 6.226.

Commencement

Pt 6(24) rule 6.227: December 29, 1986

6.228. Existing trustee's expenses

Any expenses incurred by the existing trustee in compliance with section 335(1) and this Chapter of the Rules shall be defrayed out of, and are a charge on, all such property and money as is referred to in section 334(3), whether in the hands of the existing trustee or of the trustee for the purposes of the later bankruptcy.

Commencement

Pt 6(24) rule 6.228: December 29, 1986

CHAPTER 25

CRIMINAL BANKRUPTCY

6.229.— Presentation of petition

(1) In criminal bankruptcy, the petition under section 264(1)(d) shall be presented to the High Court, and accordingly [Rule 6.9A in Chapter 2]²⁰⁶⁶ (court in which other petitions to be presented) does not apply.

(2) This does not affect the High Court's power to order that the proceedings be transferred.

Commencement

Pt 6(25) rule 6.229(1)-(2): December 29, 1986

²⁰⁶⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.414(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

6.230.— Status and functions of Official Petitioner

(1) Subject as follows, the Official Petitioner is to be regarded for all purposes of the Act and the Rules as a creditor of the bankrupt.

(2) He may attend or be represented at any meeting of creditors, and is to be given any notice under the Act or the Rules which is required or authorised to be given to creditors; and the requirements of the Rules as to the lodging or use of proxies do not apply.

Commencement

Pt 6(25) rule 6.230(1)-(2): December 29, 1986

6.231. Interim receivership

Chapter 4 of this Part of the Rules applies in criminal bankruptcy only in so far as it provides for the appointment of the official receiver as interim receiver.

Commencement

Pt 6(25) rule 6.231: December 29, 1986

6.232.— Proof of bankruptcy debts and notice of order

(1) The making of a bankruptcy order on a criminal bankruptcy petition does not affect the right of creditors to prove for their debts arising otherwise than in consequence of the criminal proceedings.

(2) A person specified in a criminal bankruptcy order as having suffered loss or damage shall be treated as a creditor of the bankrupt; and a copy of the order is sufficient evidence of his claim, subject to its being shown by any party to the bankruptcy proceedings that the loss or damage actually suffered was more or (as the case may be) less than the amount specified in the order.

(3) The requirements of the Rules with respect to the proof of debts do not apply to the Official Petitioner.

[(4) In criminal bankruptcy, forms of proof shall be sent out by the official receiver within 12 weeks from the making of the bankruptcy order, to every creditor who is known to him [...] ²⁰⁶⁷
.] ²⁰⁶⁸

(5) The official receiver shall, within those 12 weeks, send to every such creditor notice of the making of the bankruptcy order.

Commencement

Pt 6(25) rule 6.232(1)-(5): December 29, 1986

²⁰⁶⁷ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.415(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁶⁸ Substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.128 (January 11, 1988)

6.233.— Meetings under the Rules

- (1) The following Rules in Chapter 6 of this Part do not apply in criminal bankruptcy—
Rules 6.79 and 6.80 (first meeting of creditors, and business thereat);
Rule 6.82(2) (the chairman, if other than the official receiver);
Rule 6.88(2) and (3) (resolution for appointment of trustee).
- (2) Rule 6.97 (supply of forms for proof of debts) does not apply.

Commencement

Pt 6(25) rule 6.233(1)-(2): December 29, 1986

6.234.— Trustee in bankruptcy; creditors' committee; annulment of bankruptcy order

- (1) [Chapter 10]²⁰⁶⁹ of this Part of the Rules does not apply in criminal bankruptcy, except Rules 6.136 (release of official receiver) and 6.147 (power of court to set aside transactions).
- (2) [Chapter 11]²⁰⁷⁰ (creditors' committee) does not apply.
- (3) Chapter 21 (annulment of bankruptcy order) applies to an application to the court under section 282(2) as it applies to an application under section 282(1), with any necessary modifications.

Commencement

Pt 6(25) rule 6.234(1)-(3): December 29, 1986

CHAPTER 26**MISCELLANEOUS RULES IN BANKRUPTCY****6.235. [...] ²⁰⁷¹****[6.235A— Application for redirection order**

- (1) This Rule applies where the official receiver or trustee in bankruptcy applies to the court under section 371(1) (re-direction of bankrupt's letters etc).
- (2) The application shall be made without notice to the bankrupt or any other person, unless the court directs otherwise.
- (3) The applicant shall with his application, where he is the official receiver, file a report, and where he is the trustee in bankruptcy, [a witness statement]²⁰⁷², setting out the reasons why such an order is sought.

²⁰⁶⁹ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.129(1) (January 11, 1988)

²⁰⁷⁰ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(7) para.129(2) (January 11, 1988)

²⁰⁷¹ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁷² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.416(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(4) The court shall fix a venue for the hearing of the application if the court thinks [just]²⁰⁷³ and give notice to the applicant.

(5) The court may make an order on such conditions as it thinks [just]²⁰⁷³.

(6) The order shall identify the person on whom it is to be served, and need not be served on the bankrupt unless the court directs otherwise.

]²⁰⁷⁴

[6.235B Persons at risk of violence]

(1) The provisions of this Rule apply in any case where disclosure or continuing disclosure to other persons (whether to the public generally or to specific persons) of the current address or whereabouts of a debtor might reasonably be expected to lead to violence against the debtor or against a person who normally resides with the debtor as a member of the debtor's family.

(2) For the purposes of this Rule—

“current address” means, in relation to any debtor, the address of the debtor's current place of residence and any address at which the debtor currently carries on business; and

“debtor” means a person who is subject to a bankruptcy order, a bankruptcy restrictions order or a bankruptcy restrictions undertaking.

(3) The court may, on the application of the debtor, the official receiver, the trustee or the Secretary of State, order that—

(a) details of the debtor's current address be removed from any part of the court file of the proceedings in relation to the debtor which is open to inspection and be kept on a separate file not open to inspection;

(b) the details in respect of the debtor to be entered in the bankruptcy order must not include details of the debtor's current address;

(c) the full title of the proceedings must be amended by the removal of the details of the debtor's current address from the description of the debtor;

(d) the details of the debtor to be included in any notice gazetted or otherwise advertised must not include details of the debtor's current address;

(e) the details in respect of the debtor to be entered onto the individual insolvency register under Rule 6A.4 or the bankruptcy restrictions register under Rule 6A.6 must not include details of the debtor's current address; or

(f) the details of the debtor's current address kept on the individual insolvency register or the bankruptcy restrictions register must be removed from such register.

(4) Where the court makes an order under paragraph (3)(b) to (f), it may further order that—

(a) the description of the debtor to be inserted in the bankruptcy order,

(b) the full title of the proceedings,

(c) the details of the debtor required to be included in any notice to be gazetted or otherwise advertised, or

(d) the details in respect of the debtor kept or to be entered on to the registers referred to in paragraph (3)(d) and (e),

²⁰⁷³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁷⁴ Added by Insolvency (Amendment) Rules 2005/527 rule 40 (April 1, 2005)

as the case may be, must instead include such other details of the debtor's addresses or whereabouts as the court thinks just, including details of any address at which the debtor has previously resided or carried on business.

(5) Where the court makes an order under paragraph (3)(c)—

- (a) the official receiver must as soon as reasonably practicable send notice of it to the Chief Land Registrar, for corresponding amendment of the register; and
- (b) if official receiver thinks fit, the official receiver may cause notice of the order to be—
 - (i) gazetted, or
 - (ii) both gazetted and given in such other manner as the official receiver thinks fit.

(6) Any notice of the amendment of the title of the proceedings to be published in accordance with paragraph (5) must contain—

- (a) the standard contents with the exception of the current address of the debtor,
- (b) the amended title of the proceedings, and
- (c) the date of the bankruptcy order,

but must not include the description under which the proceedings were previously published.

(7) In any case where an application is made in respect of a debtor under or by virtue of this Rule, the application must be accompanied by a witness statement referring to this Rule and containing sufficient evidence to satisfy the court that paragraph (1) of this Rule applies to or in respect of that debtor.

²⁰⁷⁵

6.236. Consolidation of petitions

Where two or more bankruptcy petitions are presented against the same debtor, the court may order the consolidation of the proceedings, on such terms as it thinks [just]²⁰⁷⁶.

Commencement

Pt 6(26) rule 6.236: December 29, 1986

[6.237.— Bankrupt's Home — Notification of property falling within section 283A

(1) Where it appears to a trustee that section 283A(1) applies, the trustee shall give notice in Form 6.83 as soon as reasonably practicable to—

- (a) the bankrupt;
 - (b) the bankrupt's spouse [or civil partner]²⁰⁷⁷ (in a case falling within section 283A(1)(b));
- and

²⁰⁷⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.417 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁷⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁷⁷ Words inserted by Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005/2114 Sch.18(1) para.1(2)(a) (December 5, 2005)

- (c) a former spouse [or former civil partner]²⁰⁷⁸ of the bankrupt (in a case falling within section 283A(1)(c)).
- (2) A notice under paragraph (1) shall contain—
- (a) the name of the bankrupt;
 - (b) the address of the dwelling-house; and
 - (c) if the dwelling-house is registered land, the title number.
- (3) A trustee shall not give notice under paragraph (1) any later than 14 days before the expiry of the three year period under section 283A(2) or 283A(5).
-]²⁰⁷⁹

Commencement

Pt 6(26) rule 6.237(1)-(8): December 29, 1986

[6.237A.— Application in respect of the vesting of an interest in a dwelling-house (registered land)]

- (1) Paragraph (2) applies where—
- (a) property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of bankruptcy was the sole or principal residence of—
 - (i) the bankrupt;
 - (ii) the bankrupt's spouse [or civil partner]²⁰⁸⁰ ; or
 - (iii) a former spouse [or former civil partner]²⁰⁸¹ of the bankrupt; and
 - (b) the dwelling-house is registered land; and
 - (c) an entry has been made, or entries have been made, in the individual register or registers of the dwelling-house relating to the bankrupt's bankruptcy or the individual register or registers has or have been altered to reflect the vesting of the bankrupt's interest in a trustee in bankruptcy.
- (2) Where an interest of a kind mentioned in paragraph (1) ceases to be comprised in the bankrupt's estate and vests in the bankrupt under either section 283A(2) or 283A(4) of the Act, or under section 261(8) of the Enterprise Act 2002 , the trustee shall, within [5 business]²⁰⁸² days of the vesting, make such application or applications to the Chief Land Registrar as shall be necessary to show in the individual register or registers of the dwelling-house that the interest has vested in the bankrupt.

²⁰⁷⁸ Words inserted by Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005/2114 Sch.18(1) para.1(2)(b) (December 5, 2005)

²⁰⁷⁹ Rules 6.237-6.237E substituted for rule 6.237 by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.51 (April 1, 2004)

²⁰⁸⁰ Words inserted by Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005/2114 Sch.18(1) para.1(3)(a) (December 5, 2005)

²⁰⁸¹ Words inserted by Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005/2114 Sch.18(1) para.1(3)(b) (December 5, 2005)

²⁰⁸² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.418(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) An application under paragraph (2) shall be made in accordance with the Land Registration Act 2002 and shall be accompanied by—

- (a) evidence of the trustee's appointment (where not previously provided to the Chief Land Registrar); and
- (b) a certificate from the trustee stating that the interest has vested in the bankrupt under section 283A(2) or 283A(4) of the Act or section 261(8) of the Enterprise Act 2002 (whichever is appropriate).

(4) As soon as reasonably practicable after making an application under paragraph (2), the trustee shall notify the bankrupt and if the dwelling-house was the sole or principal residence of his spouse or former spouse [or civil partner or former civil partner]²⁰⁸³, such person, that the application has been made.

(5) The trustee shall notify every person who (to his knowledge) either claims an interest in the dwelling-house, or is under any liability in respect of the dwelling-house that an application has been made.

]²⁰⁸⁴

[6.237B.— Vesting of bankrupt's interest (unregistered land)

(1) Where an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

- (a) the bankrupt;
- (b) the bankrupt's spouse [or civil partner]²⁰⁸⁵; or
- (c) a former spouse [or former civil partner]²⁰⁸⁶ of the bankrupt,

ceases to be comprised in the bankrupt's estate and vests in the bankrupt under either section 283A(2) or 283A(4) of the Act or section 261(8) of the Enterprise Act 2002 and the dwelling-house is unregistered land, the trustee shall issue the bankrupt with a certificate as to the vesting in Form 6.84 as soon as reasonably practicable.

(2) A certificate issued under paragraph (1) shall be conclusive proof that the interest mentioned in paragraph (1) has vested in the bankrupt.

(3) As soon as reasonably practicable after issuing the certificate under paragraph (1) the trustee shall, if the dwelling-house was the sole or principal residence of the bankrupt's spouse or former spouse [or civil partner or former civil partner]²⁰⁸⁷, notify such person, that the application has been made.

²⁰⁸³ Words inserted by Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005/2114 Sch.18(1) para.1(3)(c) (December 5, 2005)

²⁰⁸⁴ Rules 6.237-6.237E substituted for rule 6.237 by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.51 (April 1, 2004)

²⁰⁸⁵ Words inserted by Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005/2114 Sch.18(1) para.1(4)(a) (December 5, 2005)

²⁰⁸⁶ Words inserted by Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005/2114 Sch.18(1) para.1(4)(b) (December 5, 2005)

²⁰⁸⁷ Words inserted by Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005/2114 Sch.18(1) para.1(4)(c) (December 5, 2005)

(4) The trustee shall notify every person who (to his knowledge) either claims an interest in the dwelling-house, or is under any liability in respect of the dwelling-house that an application has been made.

]²⁰⁸⁸

[6.237C.

The court may substitute for the period of three years mentioned in section 283A(2) such longer period as the court thinks just and reasonable in all the circumstances of the case.]²⁰⁸⁹

[6.237CA. Vesting of bankrupt's estate — substituted period.

For the purposes of section 283A(2) for the period of three years set out therein there shall be substituted, where the trustee in bankruptcy has sent notice to the bankrupt that he considers—

- (a) the continued vesting of the property in the bankrupt's estate to be of no benefit to creditors; or
- (b) the re-vesting to the bankrupt will facilitate a more efficient administration of the bankrupt's estate,

the period of one month from the date of that notice.

]²⁰⁹⁰

[6.237D.— Charging Order

(1) This Rule applies where the trustee applies to the court under section 313 for an order imposing a charge on property consisting of an interest in a dwelling-house.

(2) The respondents to the application shall be—

- (a) any spouse or former spouse [or civil partner or former civil partner]²⁰⁹¹ of the bankrupt having or claiming to have an interest in the property;
- (b) any other person appearing to have an interest in the property; and
- (c) such other persons as the court may direct.

(3) The trustee shall make a report to the court, containing the following particulars—

- (a) the extent of the bankrupt's interest in the property which is the subject of the application;
- (b) the amount which, at the date of the application, remains owing to unsecured creditors of the bankrupt; and
- (c) an estimate of the cost of realising the interest.

(4) The terms of the charge to be imposed shall be agreed between the trustee and the bankrupt or, failing agreement, shall be settled by the court.

²⁰⁸⁸ Rules 6.237-6.237E substituted for rule 6.237 by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.51 (April 1, 2004)

²⁰⁸⁹ Rules 6.237-6.237E substituted for rule 6.237 by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.51 (April 1, 2004)

²⁰⁹⁰ Added by Insolvency (Amendment) Rules 2004/584 rule 42 (April 1, 2004)

²⁰⁹¹ Words inserted by Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005/2114 Sch.18(1) para.1(5) (December 5, 2005)

(5) The rate of interest applicable under section 313(2) is the rate specified in section 17 of the Judgments Act 1838 on the day on which the charge is imposed, and the rate so applicable shall be stated in the court's order imposing the charge.

(6) The court's order shall also—

- (a) describe the property to be charged;
- (b) state whether the title to the property is registered and, if it is, specify the title number;
- (c) set out the extent of the bankrupt's interest in the property which has vested in the trustee;
- (d) indicate, by reference to any, or the total, amount which is payable otherwise than to the bankrupt out of the estate and of interest on that amount, how the amount of the charge to be imposed is to be ascertained;
- (e) set out the conditions (if any) imposed by the court under section 3(1) of the Charging Orders Act 1979; and
- (f) identify the date any property charged under section 313 shall cease to be comprised in the bankrupt's estate and shall, subject to the charge (and any prior charge), vest in the bankrupt.

(7) Unless the court is of the opinion that a different date is appropriate, the date referred to in paragraph (6)(f) shall be that of the registration of the charge in accordance with section 3(2) of the Charging Orders Act 1979.

(8) Where the court order is capable of giving rise to an application or applications under the Land Charges Act 1972 or the Land Registration Act 2002, the trustee shall, as soon as reasonably practicable after the making of the court order or at the appropriate time, make the appropriate application or applications to the Chief Land Registrar.

(9) In paragraph (8) an “appropriate application” is—

- (a) an application under section 6(1)(a) of the Land Charges Act 1972 (application for registration in the register of writs and orders affecting land); or
- (b) an application under the Land Registration Act 2002 for an entry in the register in respect of the charge imposed by the order; and such application under that Act as shall be necessary to show in the individual register or registers of the dwelling-house that the interest has vested in the bankrupt.

[(10) In determining the value of the bankrupt's interest for the purposes of paragraph (6)(c), the court shall disregard that part of the value of the property in which the bankrupt's interest subsists which is equal to the value of—

- (a) any loans secured by mortgage or other charge against the property;
- (b) any other third party interest; and
- (c) the reasonable costs of sale.

]²⁰⁹²
]²⁰⁹³

²⁰⁹² Added by Insolvency (Amendment) Rules 2004/584 rule 43 (April 1, 2004)

²⁰⁹³ Rules 6.237-6.237E substituted for rule 6.237 by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.51 (April 1, 2004)

[6.237E.— Interpretation

(1) In Rules 6.237 and 6.237A, “registered land” has the same meaning as in section 132(1) of the Land Registration Act 2002.

(2) In Rules 6.237A and 6.237D, “individual register” has the same meaning as in the Land Registration Rules 2003.

]²⁰⁹⁴

[CHAPTER 27**EC REGULATION—MEMBER STATE LIQUIDATOR]²⁰⁹⁵****[6.238.— Interpretation of creditor and notice to member State liquidator**

(1) This Rule applies where a member State liquidator has been appointed in relation to the bankrupt.

(2) For the purposes of the Rules referred to in paragraph (3) a member State liquidator is deemed to be a creditor.

(3) The Rules referred to in paragraph (2) are Rules 6.73(1) (duty of official receiver), 6.75(1) (report of official receiver), 6.76(2) (report of official receiver), 6.79(2) (creditors' meeting), 6.81 (power to call creditors' meeting), 6.83 (requisitioned meetings), 6.93 (entitlement to vote), 6.94 (admission and rejection of proof), 6.96 (meaning of “prove”), 6.97 (supply of forms), 6.98 (contents of proof) [...]²⁰⁹⁶, 6.100 (cost of proving), 6.101 (inspection of proofs), 6.104 (admission and rejection of proofs for dividend), 6.105(1) (appeal against decision on proof), 6.105(2), 6.106 (withdrawal or variation of proofs), 6.107(1) (expunging of proof), 6.108 (negotiable instruments, etc.), 6.109 (secured creditors), 6.110 (discounts), 6.111 (debts in foreign currency), 6.112 (payments of a periodical nature), 6.113 (interest), 6.114 (debt payable at future time), 6.126(1) (resignation of trustee), 6.136(1) (release of official receiver), 6.137(1) (final meeting), 6.142(1) (challenge to remuneration), 6.150(2) (creditors' committee), 6.160(3) (vacancy on creditors' committee), 6.172(3) (request for public examination), 6.212(1) (notice of annulment) and 6.217(3) (application by bankrupt for discharge).

(4) Paragraphs (2) and (3) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditor's rights).

(5) Where the trustee is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the official receiver, the trustee shall give notice or provide copies, as the case may be, to the member State liquidator.

(6) Paragraph (5) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to cooperate and communicate information).

]²⁰⁹⁷

²⁰⁹⁴ Rules 6.237-6.237E substituted for rule 6.237 by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.51 (April 1, 2004)

²⁰⁹⁵ Added by Insolvency (Amendment) Rules 2002/1307 rule 8(9) (May 31, 2002)

²⁰⁹⁶ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.419(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁰⁹⁷ Added by Insolvency (Amendment) Rules 2002/1307 rule 8(9) (May 31, 2002)

[6.239.— Interpretation of creditor and notice to member State liquidator appointed in main proceedings]

(1) This Rule applies, in addition to Rule 6.238, where a member State liquidator has been appointed in main proceedings in relation to the bankrupt.

(2) For the purposes of the Rules referred to in paragraph (3) the member State liquidator is deemed to be a creditor.

(3) The Rules referred to in paragraph (2) are Rules 6.18(3) (hearing of petition), 6.23(1) (notice of intention to appear), 6.28(4) (extension of time), 6.30(2) (substitution of petitioner), 6.31(1) (change of carriage of petition) and 6.218(4) (report of official receiver).

(4) Paragraphs (2) and (3) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditor's rights).

²⁰⁹⁸

[CHAPTER 28

BANKRUPTCY RESTRICTIONS ORDER]²⁰⁹⁹

[6.240.

In this and the following two Chapters, “Secretary of State” includes the official receiver acting in accordance with paragraph 1(2)(b) of Schedule 4A to the Act.]²¹⁰⁰

[6.241.— Application for bankruptcy restrictions order

(1) Where the Secretary of State applies to the court for a bankruptcy restrictions order under paragraph 1 of Schedule 4A to the Act, the application shall be supported by a report by the Secretary of State.

(2) The report shall include—

- (a) a statement of the conduct by reference to which it is alleged that it is appropriate for a bankruptcy restrictions order to be made; and
- (b) the evidence on which the Secretary of State relies in support of the application.

(3) Any evidence in support of an application for a bankruptcy restrictions order provided by persons other than the Secretary of State shall be by way of [a witness statement]²¹⁰¹ .

(4) The date for the hearing shall be no earlier than 8 weeks from the date when the court fixes the venue for the hearing.

(5) [...] ²¹⁰²

²⁰⁹⁸ Added by Insolvency (Amendment) Rules 2002/1307 rule 8(9) (May 31, 2002)

²⁰⁹⁹ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.52 (April 1, 2004)

²¹⁰⁰ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.52 (April 1, 2004)

²¹⁰¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.420(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

]²¹⁰³

[6.242.— Service on the defendant

- (1) The Secretary of State shall serve notice of the application and the venue fixed by the court on the bankrupt not more than 14 days after the application is made at court.
- (2) Service shall be accompanied by a copy of the application, together with copies of the report by the Secretary of State, any other evidence filed with the court in support of the application, and an acknowledgement of service.
- (3) The defendant shall file in court an acknowledgement of service of the application indicating whether or not he contests the application not more than 14 days after service on him of the application.
- (4) Where the defendant has failed to file an acknowledgement of service and the time period for doing so has expired, the defendant may attend the hearing of the application but may not take part in the hearing unless the court gives permission.

]²¹⁰⁴

[6.243.— The bankrupt's evidence

- (1) If the bankrupt wishes to oppose the application, he shall within 28 days of the service of the application and evidence of the Secretary of State, file in court any evidence which he wishes the court to take into consideration, and shall serve a copy of such evidence upon the Secretary of State within 3 [business]²¹⁰⁵ days of filing it at court.
- (2) The Secretary of State shall, within 14 days from receiving the copy of the bankrupt's evidence, file in court any further evidence in reply he wishes the court to take into consideration and shall as soon as reasonably practicable serve a copy of that evidence upon the bankrupt.

]²¹⁰⁶

[6.244.— Making a bankruptcy restrictions order

- (1) The court may make a bankruptcy restrictions order against the bankrupt, whether or not the latter appears, and whether or not he has filed evidence in accordance with Rule 6.243.
- (2) Where the court makes a bankruptcy restrictions order, it shall send two sealed copies to the Secretary of State.
- (3) As soon as reasonably practicable after receipt of the sealed copy of the order, the Secretary of State shall send a sealed copy of the order to the bankrupt.

²¹⁰² Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.420(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁰³ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.52 (April 1, 2004)

²¹⁰⁴ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.52 (April 1, 2004)

²¹⁰⁵ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.421(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁰⁶ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.52 (April 1, 2004)

J²¹⁰⁷

[CHAPTER 29

INTERIM BANKRUPTCY RESTRICTIONS ORDER J²¹⁰⁸**[6.245.— Application for interim bankruptcy restrictions order**

(1) Where the Secretary of State applies for an interim bankruptcy restrictions order under paragraph 5 of Schedule 4A to the Act, the court shall fix a venue for the hearing.

(2) Notice of an application for an interim bankruptcy restrictions order shall be given to the bankrupt at least 2 business days before the date set for the hearing unless the court directs otherwise.

(3) [...] ²¹⁰⁹

J²¹¹⁰**[6.246.— The case against the defendant**

(1) The Secretary of State shall file a report in court as evidence in support of any application for an interim bankruptcy restrictions order.

(2) The report shall include evidence of the bankrupt's conduct which is alleged to constitute the grounds for the making of an interim bankruptcy restrictions order and evidence of matters which relate to the public interest in making the order.

(3) Any evidence by persons other than the Secretary of State in support of an application for an interim bankruptcy restrictions order shall be by way of [a witness statement] ²¹¹¹ .

J²¹¹²**[6.247.— Making an interim bankruptcy restrictions order**

(1) The bankrupt may file in court any evidence which he wishes the court to take into consideration and may appear at the hearing for an interim bankruptcy restrictions order.

(2) The court may make an interim bankruptcy restrictions order against the bankrupt, whether or not the latter appears, and whether or not he has filed evidence.

(3) Where the court makes an interim bankruptcy restrictions order, it shall send two sealed copies of the order shall be sent, as soon as reasonably practicable, to the Secretary of State.

²¹⁰⁷ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.52 (April 1, 2004)

²¹⁰⁸ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.52 (April 1, 2004)

²¹⁰⁹ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.422(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹¹⁰ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.52 (April 1, 2004)

²¹¹¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.423(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹¹² Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.52 (April 1, 2004)

(4) As soon as reasonably practicable after receipt of the sealed copies of the order, the Secretary of State shall send a copy of the order to the bankrupt.

]²¹¹³

[6.248.— Application to set aside an interim bankruptcy restrictions order

(1) A bankrupt may apply to the court to set aside an interim bankruptcy restrictions order.

(2) An application by the bankrupt to set aside an interim bankruptcy restrictions order shall be supported by [a witness statement]²¹¹⁴ stating the grounds on which the application is made.

(3) Where a bankrupt applies to set aside an interim bankruptcy restrictions order under paragraph (1), he shall send to the Secretary of State, not less than [5 business]²¹¹⁵ days before the hearing—

- (a) notice of his application;
- (b) notice of the venue;
- (c) a copy of his application; and
- (d) a copy of the supporting [witness statement]²¹¹⁶ .

(4) The Secretary of State may attend the hearing and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(5) Where the court sets aside an interim bankruptcy restrictions order two sealed copies of the order shall be sent, as soon as reasonably practicable, to the Secretary of State by the court.

(6) As soon as reasonably practicable after receipt of the sealed copies of the order, the Secretary of State shall send a sealed copy of the order to the bankrupt.

]²¹¹⁷

²¹¹³ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.52 (April 1, 2004)

²¹¹⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.424(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹¹⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.424(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹¹⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.424(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹¹⁷ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.52 (April 1, 2004)

[CHAPTER 30

BANKRUPTCY RESTRICTIONS UNDERTAKING]²¹¹⁸**[6.249. Acceptance of the bankruptcy restrictions undertaking**

A bankruptcy restrictions undertaking [authenticated]²¹¹⁹ by the bankrupt shall be deemed to have been accepted by the Secretary of State for the purposes of paragraph 9 of Schedule 4A of the Act when the undertaking is [authenticated]²¹¹⁹ by the Secretary of State.]²¹²⁰

[6.250. Notification to the court

As soon as reasonably practicable after a bankruptcy restrictions undertaking has been accepted by the Secretary of State, a copy shall be sent to the bankrupt and filed in court and sent to the official receiver if he is not the applicant.]²¹²¹

[6.251.— Application under paragraph 9(3) of Schedule 4A to the Act to annul a bankruptcy restrictions undertaking

(1) An application under paragraphs 9(3)(a) or (b) of Schedule 4A to the Act shall be supported by [a witness statement]²¹²² stating the grounds on which it is made.

(2) The bankrupt shall give notice of the application and the venue, together with a copy of the [witness statement]²¹²³ supporting his application to the Secretary of State at least 28 days before the date fixed for the hearing.

(3) The Secretary of State may attend the hearing and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(4) The court shall send a sealed copy of any order annulling or varying the bankruptcy restrictions undertaking to the Secretary of State and the bankrupt.

] ²¹²⁴

²¹¹⁸ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.52 (April 1, 2004)

²¹¹⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹²⁰ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.52 (April 1, 2004)

²¹²¹ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.52 (April 1, 2004)

²¹²² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.425(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹²³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.425(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹²⁴ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(6) para.52 (April 1, 2004)

[CHAPTER 31

DEBT RELIEF RESTRICTIONS ORDER]²¹²⁵**[6.252. Interpretation**

In this Chapter and in Chapter 32, “Secretary of State” includes the official receiver acting in accordance with paragraph 1(2)(b) of Schedule 4ZB to the Act.]²¹²⁶

[6.253.— Application for debt relief restrictions order

(1) Where the Secretary of State applies to the court for a debt relief restrictions order to be made in relation to a person in respect of whom a debt relief order has been made under paragraph 1 of Schedule 4ZB to the Act, the application shall be supported by a report by the Secretary of State.

(2) The report shall include—

(a) a statement of the conduct by reference to which it is alleged that it is appropriate for a debt relief restrictions order to be made; and

(b) the evidence on which the Secretary of State relies in support of the application.

(3) Any evidence in support of an application for a debt relief restrictions order provided by persons other than the Secretary of State shall be by way of [a witness statement]²¹²⁷.

(4) The date for the hearing shall be no earlier than 8 weeks from the date when the court fixes the venue for the hearing.

(5) [...] ²¹²⁸
] ²¹²⁹

[6.254.— Service on the defendant

(1) The Secretary of State shall serve notice of the application and the venue fixed by the court on the debtor not more than 14 days after the application is made at court.

(2) Service shall be accompanied by a copy of the application, together with copies of the report by the Secretary of State, any other evidence filed with the court in support of the application, and an acknowledgement of service.

(3) The defendant shall file in court an acknowledgement of service of the application indicating whether or not he contests the application not more than 14 days after service on him of the application.

²¹²⁵ Added by Insolvency (Amendment) Rules 2009/642 rule 47 (April 6, 2009)

²¹²⁶ Added by Insolvency (Amendment) Rules 2009/642 rule 47 (April 6, 2009)

²¹²⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.426(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹²⁸ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.426(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹²⁹ Added by Insolvency (Amendment) Rules 2009/642 rule 47 (April 6, 2009)

(4) Where the defendant has failed to file an acknowledgement of service and the time period for doing so has expired, the defendant may attend the hearing of the application but may not take part in the hearing unless the court gives permission.

]²¹³⁰

[6.255.— The debtor's evidence

(1) If the debtor wishes to oppose the application, he shall within 28 days of the service of the application and evidence of the Secretary of State, file in court any evidence which he wishes the court to take into consideration, and shall serve a copy of such evidence upon the Secretary of State within 3 [business]²¹³¹ days of filing it at court.

(2) The Secretary of State shall, within 14 days from receiving the copy of the debtor's evidence, file in court any further evidence in reply he wishes the court to take into consideration and shall as soon as reasonably practicable serve a copy of that evidence upon the debtor.

]²¹³²

[6.256.— Making a debt relief restrictions order

(1) The court may make a debt relief restrictions order against the debtor, whether or not the latter appears and whether or not he has filed evidence in accordance with Rule 6.255.

(2) Where the court makes a debt relief restrictions order, it shall send two sealed copies to the Secretary of State.

(3) As soon as reasonably practicable after receipt of the sealed copy of the order, the Secretary of State shall send a sealed copy of the order to the debtor.

]²¹³³

[CHAPTER 32

INTERIM DEBT RELIEF RESTRICTIONS ORDER]²¹³⁴

[6.257.— Application for interim debt relief restrictions order

(1) Where the Secretary of State applies for an interim debt relief restrictions order under paragraph 5 of Schedule 4ZB to the Act, the court shall fix a venue for the hearing.

(2) Notice of an application for an interim debt relief restrictions order shall be given to the debtor at least 2 business days before the date set for the hearing unless the court directs otherwise.

(3) [...]²¹³⁵

²¹³⁰ Added by Insolvency (Amendment) Rules 2009/642 rule 47 (April 6, 2009)

²¹³¹ Word inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.427(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹³² Added by Insolvency (Amendment) Rules 2009/642 rule 47 (April 6, 2009)

²¹³³ Added by Insolvency (Amendment) Rules 2009/642 rule 47 (April 6, 2009)

²¹³⁴ Added by Insolvency (Amendment) Rules 2009/642 rule 47 (April 6, 2009)

]²¹³⁶

[6.258.— The case against the debtor

- (1) The Secretary of State shall file a report in court as evidence in support of any application for an interim debt relief restrictions order.
- (2) The report shall include evidence of the debtor's conduct which is alleged to constitute the grounds for the making of an interim debt relief restrictions order and evidence of matters which relate to the public interest in making the order.
- (3) Any evidence by persons other than the Secretary of State in support of an application for an interim debt relief restrictions order shall be by way of [a witness statement]²¹³⁷.

]²¹³⁸

[6.259.— Making an interim debt relief restrictions order

- (1) The debtor may file in court any evidence which he wishes the court to take into consideration and may appear at the hearing for an interim debt relief restrictions order.
- (2) The court may make an interim debt relief restrictions order against the debtor, whether or not the latter appears, and whether or not he has filed evidence.
- (3) Where the court makes an interim debt relief restrictions order, as soon as reasonably practicable, it shall send two sealed copies of the order to the Secretary of State.
- (4) As soon as reasonably practicable after receipt of the sealed copies of the order, the Secretary of State shall send a copy of the order to the debtor.

]²¹³⁹

[6.260.— Application to set aside an interim debt relief restrictions order

- (1) A person subject to an interim debt relief restrictions order may apply to the court to set the order aside.
- (2) An application to set aside an interim debt relief restrictions order shall be supported by [a witness statement]²¹⁴⁰ stating the grounds on which the application is made.

²¹³⁵ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.428(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹³⁶ Added by Insolvency (Amendment) Rules 2009/642 rule 47 (April 6, 2009)

²¹³⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.429(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹³⁸ Added by Insolvency (Amendment) Rules 2009/642 rule 47 (April 6, 2009)

²¹³⁹ Added by Insolvency (Amendment) Rules 2009/642 rule 47 (April 6, 2009)

²¹⁴⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.430(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) Where an application is made to set aside an interim debt relief restrictions order under paragraph (1), the person making the application shall send to the Secretary of State, not less than [5 business]²¹⁴¹ days before the hearing—

- (a) notice of his application;
- (b) notice of the venue;
- (c) a copy of his application; and
- (d) a copy of the supporting [witness statement]²¹⁴² .

(4) The Secretary of State may attend the hearing and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(5) Where the court sets aside an interim debt relief restrictions order two sealed copies of the order shall be sent, as soon as reasonably practicable, to the Secretary of State by the court.

(6) As soon as reasonably practicable after receipt of the sealed copies of the order, the Secretary of State shall send a sealed copy of the order to the applicant.
²¹⁴³

[CHAPTER 33

DEBT RELIEF RESTRICTIONS UNDERTAKING]²¹⁴⁴

[6.261. Acceptance of debt relief restrictions undertaking

A debt relief restrictions undertaking [authenticated]²¹⁴⁵ by a person in relation to whom a debt relief order has been made shall be deemed to have been accepted by the Secretary of State for the purposes of paragraph 9 of Schedule 4ZB to the Act when the undertaking is [authenticated]²¹⁴⁵ by the Secretary of State.]²¹⁴⁶

[6.262. Notification

As soon as reasonably practicable after a debt relief restrictions undertaking has been accepted by the Secretary of State, a copy shall be sent to the person who offered the undertaking and to the official receiver.]²¹⁴⁷

²¹⁴¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.430(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁴² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.430(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁴³ Added by Insolvency (Amendment) Rules 2009/642 rule 47 (April 6, 2009)

²¹⁴⁴ Added by Insolvency (Amendment) Rules 2009/642 rule 47 (April 6, 2009)

²¹⁴⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁴⁶ Added by Insolvency (Amendment) Rules 2009/642 rule 47 (April 6, 2009)

²¹⁴⁷ Added by Insolvency (Amendment) Rules 2009/642 rule 47 (April 6, 2009)

[6.263.— Application under paragraph 9(3) of Schedule 4ZB to the Act to annul a debt relief restrictions undertaking.

(1) An application under paragraph 9(3)(a) or (b) of Schedule 4ZB to the Act shall be supported by [a witness statement]²¹⁴⁸ stating the grounds on which it is made.

(2) The applicant shall give notice of the application and the venue, together with a copy of the [witness statement]²¹⁴⁹ supporting his application to the Secretary of State at least 28 days before the date fixed for the hearing.

(3) The Secretary of State may attend the hearing and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(4) The court shall send a sealed copy of any order annulling or varying the debt relief restrictions undertaking to the Secretary of State and the applicant.

]²¹⁵⁰

[PART 6A

]²¹⁵¹

CHAPTER 1

[GENERAL]²¹⁵²

[6A.1.— The individual insolvency register; the bankruptcy restrictions register

(1) The Secretary of State shall create and maintain a register of matters relating to bankruptcies [, debt relief orders]²¹⁵³ and individual voluntary arrangements in accordance with the provisions of this Part (referred to in this Part as “the individual insolvency register”).

[(2) The register—

(a) referred to in paragraph 12 of Schedule 4A to the Act (referred to in this Part as “the bankruptcy restrictions register”), and

(b) of the matters specified in paragraphs (b) and (c) of section 251W (referred to in this Part as “the debt relief restrictions register”),

shall be maintained in accordance with the provisions of this Part.

]²¹⁵⁴

²¹⁴⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.431(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁴⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.431(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁵⁰ Added by Insolvency (Amendment) Rules 2009/642 rule 47 (April 6, 2009)

²¹⁵¹ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(7) para.53 (April 1, 2004)

²¹⁵² Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(7) para.53 (April 1, 2004)

²¹⁵³ Words inserted by Insolvency (Amendment) Rules 2009/642 rule 48(a) (April 6, 2009)

- (3) In this Part the “registers” means the registers referred to in paragraphs (1) and (2).
- (4) The registers shall be open to public inspection on any business day between the hours of 9.00 am and 5.00 pm.
- (5) Where an obligation to enter information onto, or delete information from, the registers arises under this Part, that obligation shall be performed as soon as is reasonably practicable after it arises.
²¹⁵⁵

CHAPTER 2

*[INDIVIDUAL INSOLVENCY REGISTER]*²¹⁵⁶

6A.2.— [...]²¹⁵⁷

[6A.2A Entry of information onto the individual insolvency register — individual voluntary arrangements]

- (1) This Rule applies where—
- (a) a voluntary arrangement has been accepted by the debtor's creditors; and
 - (b) the Secretary of State has received—
 - (i) information under Rule 5.29(1) sent pursuant to paragraph (3) of that Rule; and
 - (ii) notice under Rule 5.34, Rule 5.45 or Rule 5.50.
- (2) Subject to paragraph (3), the Secretary of State must enter onto the individual insolvency register—
- (a) the name and address of the debtor;
 - (b) the date on which the arrangement was approved by the creditors;
 - (c) the debtor's gender;
 - (d) the debtor's date of birth;
 - (e) any name by which the debtor was or is known, not being the name in which the debtor has entered into the voluntary arrangement;
 - (f) as regards an arrangement other than under section 263A²¹⁵⁸, the name and address of the supervisor;
 - (g) as regards an arrangement under section 263A—
 - (i) that the official receiver is the supervisor; and
 - (ii) the address of the official receiver; and
 - (h) a statement whether the arrangement—
 - (i) was completed in accordance with its terms; or
 - (ii) failed.

²¹⁵⁴ Substituted by Insolvency (Amendment) Rules 2009/642 rule 48(b) (April 6, 2009)

²¹⁵⁵ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(7) para.53 (April 1, 2004)

²¹⁵⁶ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(7) para.53 (April 1, 2004)

²¹⁵⁷ Rule 6A.2A substituted for rule 6A.2 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.432 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁵⁸ Section 263A was inserted by 2002 c. 40, s. 264(1) and Schedule 22, paragraph 2.

(3) Paragraph (4) applies where there is entered on the register information in respect of a voluntary arrangement—

- (a) of which the Secretary of State had been notified prior to this Rule coming into force; and
- (b) which has not been completed or terminated when this Rule comes into force.

(4) The Secretary of State must maintain on the register the information that the Secretary of State was required to enter on to the individual insolvency register immediately prior to the coming into force of this Rule.

(5) Paragraphs (2) and (4) are subject to Rules 5.67, 6A.3 and 6A.8.

²¹⁵⁹

[6A.3. Deletion of information from the individual insolvency register — individual voluntary arrangements]

The Secretary of State shall delete from the individual insolvency register all information concerning an individual voluntary arrangement where—

- (a) he receives notice under Rule 5.30(5) or Rule 5.46(4) of the making of a revocation order in respect of the arrangement; or
- (b) he receives notice under Rule 5.34(3) or Rule 5.50(3) of the full implementation or termination of the arrangement [;]²¹⁶⁰

[and in either case a period of 3 months has elapsed from the receipt of the notice.]²¹⁶⁰]²¹⁶¹

[6A.4.— Entry of information onto the individual insolvency register — bankruptcy orders]

(1) The Secretary of State shall enter onto the individual insolvency register any information that was required to be held on the register of bankruptcy orders maintained by the Secretary of State immediately prior to the coming into force of this Rule and which relates to a bankrupt who—

- (a) has not received his discharge on or before the date that this Rule comes into force; or
- (b) was discharged in the period of 3 months immediately preceding the coming into force of this Rule.

(2) Where the official receiver receives pursuant to Rule 6.34 or Rule 6.46 a copy of a bankruptcy order from the court, he shall cause to be entered onto the individual insolvency register—

- (a) the matters listed in Rules 6.7 and 6.38 with respect to the debtor as they are stated in the bankruptcy petition;
- (b) the date of the making of the bankruptcy order;
- (c) the name of the court that made the order; and
- (d) the court reference number as stated on the order.

(3) The official receiver shall cause to be entered onto the individual insolvency register as soon as reasonably practicable after receipt by him, the following information—

²¹⁵⁹ Rule 6A.2A substituted for rule 6A.2 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.432 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁶⁰ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.433(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁶¹ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(7) para.53 (April 1, 2004)

- (a) the name, gender, occupation (if any) and date of birth of the bankrupt;
- (b) the bankrupt's last known address;
- [(c) where a bankruptcy order or debt relief order has been made in the period of six years immediately prior to the day of the latest bankruptcy order made against the bankrupt (excluding for these purposes any bankruptcy order that was annulled or any debt relief order that was revoked), the date of whichever is the latest of them;]²¹⁶²
- (d) any name by which the bankrupt was known, not being the name in which he was adjudged bankrupt;
- (e) the address of any business carried on by the bankrupt and the name in which that business was carried on if carried on in a name other than the name in which the bankrupt was adjudged bankrupt;
- (f) the name and address of any insolvency practitioner appointed to act as trustee in bankruptcy;
- (g) the address at which the official receiver may be contacted; [...] ²¹⁶³
- (h) the automatic discharge date under section 279 [; and] ²¹⁶⁴
- [(i) where a bankruptcy order is rescinded by the court, the fact that such an order has been made, the date on which it is made and (if different) the date on which it has effect.]²¹⁶⁴

(4) Where pursuant to Rule 6.176(5) or Rule 6.215(8) the official receiver receives a copy of an order suspending the bankrupt's discharge he shall cause to be entered onto the individual insolvency register—

- (a) the fact that such an order has been made; and
- (b) the period for which the discharge has been suspended or that the relevant period has ceased to run until the fulfilment of conditions specified in the order.

(5) Where pursuant to Rule 6.216(7) a copy of a certificate certifying the discharge of an order under section 279(3) is received by the official receiver, he shall cause to be entered onto the individual insolvency register—

- (a) that the court has discharged the order made under section 279(3); and
- (b) the new date of discharge of the bankrupt,

but where the order discharging the order under section 279(3) is subsequently rescinded by the court, the official receiver shall cause the register to be amended accordingly.

(6) Where a bankrupt is discharged from bankruptcy under section 279(1) or section 279(2), the official receiver shall cause the fact and date of such discharge to be entered in the individual insolvency register.

(7) This Rule is subject to [Rules 6.235B, 6A.5 and 6A.8.]²¹⁶⁵
]²¹⁶⁶

²¹⁶² Substituted by Insolvency (Amendment) Rules 2009/642 rule 49 (April 6, 2009)

²¹⁶³ Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.434(2)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁶⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.434(2)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁶⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.434(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁶⁶ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(7) para.53 (April 1, 2004)

[6A.5. Deletion of information from the individual insolvency register — bankruptcy orders
[The]²¹⁶⁷ Secretary of State shall delete from the individual insolvency register all information concerning a bankruptcy where—

- (a) the bankruptcy order has been annulled pursuant to section 261(2)(a), 261(2)(b), 263D(3) or section 282(1)(b) [and a period of 3 months has elapsed since notice of the annulment was given to the Secretary of State]²¹⁶⁸ ;
- (b) the bankrupt has been discharged from the bankruptcy and a period of 3 months has elapsed from the date of discharge;
- (c) the bankruptcy order is annulled pursuant to section 282(1)(a) and [28 days have elapsed since notice of the annulment was given to the Secretary of State]²¹⁶⁹ under Rule 6.213(2); or
- (d) the bankruptcy order is rescinded by the court under section 375 [...] ²¹⁷⁰ the Secretary of State has received a copy of the order made by the court [and 28 days have elapsed since receipt of the copy of the order]²¹⁷¹ .

] ²¹⁷²

[6A.5A.— Entry of information onto the individual insolvency register — debt relief orders

- (1) This Rule is subject to [Rules 5A.18, 6A.5B and 6A.8]²¹⁷³ .
- (2) The official receiver shall cause to be entered onto the individual insolvency register as soon as reasonably practicable after the making of a debt relief order the following information relating to the order or to the debtor in respect of whom it has been made—
 - (a) as they are stated in the debtor's application—
 - (i) the name, gender, occupation (if any) and date of birth of the debtor;
 - (ii) the debtor's last known address;
 - (iii) the name or names in which he carries or has carried on business, if other than his true name; and
 - (iv) the nature of his business and the address or addresses at which he carries or has carried it on and whether alone or with others;
 - (b) the date of the making of the debt relief order;
 - (c) the reference number of the order;
 - (d) the date of the end of the moratorium period; and

²¹⁶⁷ Words repealed by Insolvency (Amendment) Rules 2004/584 rule 44 (April 1, 2004)

²¹⁶⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.435(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁶⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.435(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁷⁰ Word repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.435(4)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁷¹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.435(4)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁷² Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(7) para.53 (April 1, 2004)

²¹⁷³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.436(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(e) where a bankruptcy order or a debt relief order has been made in the period of six years immediately prior to the date of the latest debt relief order made against the debtor (excluding for these purposes any bankruptcy order that was annulled or any debt relief order that was revoked), the date of whichever is the latest of them.

(3) Provided that information concerning a debt relief order has not been validly deleted under Rule 6A.5B, the official receiver shall also cause to be entered on the register in relation to the order—

(a) where the moratorium period is terminated early, the fact that such has happened, the date of early termination and whether the early termination is on revocation of the debt relief order or by virtue of any other enactment;

(b) where the moratorium period is extended, the fact that such has happened, the date on which the extension was made, its duration and the date of the new anticipated end of the moratorium period; or

(c) where the debtor is discharged from all qualifying debts, the date of such discharge.

]²¹⁷⁴

[6A.5B. Deletion of information from the individual insolvency register — debt relief orders

The Secretary of State shall delete from the individual insolvency register all information concerning a debt relief order where—

(a) the debt relief order has been revoked, or

(b) the debtor has been discharged from his qualifying debts,

and a period of 3 months has elapsed from the date of revocation or discharge.

]²¹⁷⁵

CHAPTER 3

*[BANKRUPTCY RESTRICTIONS REGISTER]*²¹⁷⁶

[6A.6.— Bankruptcy restrictions orders and undertakings — entry of information onto the bankruptcy restrictions register

(1) Where an interim bankruptcy restrictions order or a bankruptcy restrictions order is made against a bankrupt, the Secretary of State shall enter onto the bankruptcy restrictions register—

[(a) the name, gender, occupation (if any) and date of birth of the bankrupt;

(aa) the bankrupt's last known address;]²¹⁷⁷

(b) a statement that an interim bankruptcy restrictions order or, as the case may be, a bankruptcy restrictions order has been made against him;

(c) the date of the making of the order, the court and the court reference number; and

(d) the duration of the order.

²¹⁷⁴ Added by Insolvency (Amendment) Rules 2009/642 rule 50 (April 6, 2009)

²¹⁷⁵ Added by Insolvency (Amendment) Rules 2009/642 rule 50 (April 6, 2009)

²¹⁷⁶ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(7) para.53 (April 1, 2004)

²¹⁷⁷ Rule 6A.6(1)(a)-(aa) substituted for rule 6A.6(1)(a) by Insolvency (Amendment) Rules 2004/584 rule 45(a) (April 1, 2004)

(2) Where a bankruptcy restrictions undertaking is given by a bankrupt, the Secretary of State shall enter onto the bankruptcy restrictions register—

- [(a) the name, gender, occupation (if any) and date of birth of the bankrupt;
- (aa) the bankrupt's last known address;]²¹⁷⁸
- (b) a statement that a bankruptcy restrictions undertaking has been given;
- (c) the date of the acceptance of the bankruptcy restrictions undertaking by the Secretary of State; and
- (d) the duration of the bankruptcy restrictions undertaking.

(3) This Rule is subject to [Rules 6.235B, 6A.7 and 6A.8]²¹⁷⁹ .

] ²¹⁸⁰

[6A.7. Deletion of information from the bankruptcy restrictions register — bankruptcy restrictions orders and undertakings

In any case where an interim bankruptcy restrictions order or a bankruptcy restrictions order is made or a bankruptcy restrictions undertaking has been accepted, the Secretary of State shall remove from the bankruptcy restrictions register all information regarding that order or, as the case may be, undertaking after—

- (a) receipt of notification that the order or, as the case may be, the undertaking has ceased to have effect; or
- (b) the expiry of the order or, as the case may be, undertaking.

] ²¹⁸¹

CHAPTER 3A

[DEBT RELIEF RESTRICTIONS REGISTER]²¹⁸²

[6A.7A.— Debt relief restrictions orders and undertakings — entries of information onto the debt relief restrictions register

(1) This Rule is subject to [Rules 5A.18, 6A.7B and 6A.8]²¹⁸³ .

(2) Where an interim debt relief restrictions order or a debt relief restrictions order is made against a debtor, the Secretary of State shall enter onto the debt relief restrictions register—

- (a) the name, gender, occupation (if any) and date of birth of the debtor;

²¹⁷⁸ Rule 6A.6(2)(a)-(aa) substituted for rule 6A.6(2)(a) by Insolvency (Amendment) Rules 2004/584 rule 45(b) (April 1, 2004)

²¹⁷⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.437(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁸⁰ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(7) para.53 (April 1, 2004)

²¹⁸¹ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(7) para.53 (April 1, 2004)

²¹⁸² Added by Insolvency (Amendment) Rules 2009/642 rule 51 (April 6, 2009)

²¹⁸³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.438(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (b) the debtor's last known address;
- (c) a statement that an interim debt relief restrictions order or, as the case may be, a debt relief restrictions order has been made against him;
- (d) the date of the making of the order and the order reference number; and
- (e) the duration of the order.

(3) Where a debt relief restrictions undertaking is given by a debtor, the Secretary of State shall enter onto the debt relief restrictions register—

- (a) the name, gender, occupation (if any) and date of birth of the debtor;
- (b) the debtor's last known address;
- (c) a statement that a debt relief restrictions undertaking has been given;
- (d) the date of the acceptance of the debt relief restrictions undertaking by the Secretary of State and reference number of the undertaking; and
- (e) the duration of the debt relief restrictions undertaking.

]²¹⁸⁴

[6A.7B. Deletion of information from the debt relief restrictions register — debt relief restrictions order and undertakings

In any case where an interim debt relief restrictions order or a debt relief restrictions order is made or a debt relief restrictions undertaking has been accepted, the Secretary of State shall remove from the debt relief restrictions register all information regarding that order or, as the case may be, undertaking after—

- (a) receipt of notification that the order or, as the case may be, undertaking has ceased to have effect; or
- (b) the expiry of the order or, as the case may be, undertaking.

]²¹⁸⁵

CHAPTER 4

*[RECTIFICATION OF REGISTERS]*²¹⁸⁶

[6A.8.— Rectification of the registers

(1) Where the Secretary of State becomes aware that there is any inaccuracy in any information maintained on the registers he shall rectify the inaccuracy as soon as reasonably practicable.

[(2) Where the Secretary of State receives notice of the date of the death of a person in respect of whom information is held on any of the registers, he shall cause the fact and date of the person's death to be entered onto the individual insolvency register and, as the case may be, the bankruptcy restrictions register or the debt relief restrictions register.]²¹⁸⁷

²¹⁸⁴ Added by Insolvency (Amendment) Rules 2009/642 rule 51 (April 6, 2009)

²¹⁸⁵ Added by Insolvency (Amendment) Rules 2009/642 rule 51 (April 6, 2009)

²¹⁸⁶ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(7) para.53 (April 1, 2004)

] ²¹⁸⁸

THE THIRD GROUP OF PARTS

PART 7

COURT PROCEDURE AND PRACTICE

CHAPTER 1

APPLICATIONS

7.1. Preliminary

This Chapter applies to any application made to the court under the Act or Rules except [...] ²¹⁸⁹

-
- (a) [an application for] ²¹⁹⁰ an administration order under Part II,
 - (b) [a petition for] ²¹⁹⁰ a winding-up order under Part IV, or
 - (c) [a petition for] ²¹⁹¹ a bankruptcy order under Part IX
- of the Act.

Commencement

Pt 7(1) rule 7.1(a)-(c): December 29, 1986

7.2.— [...] ²¹⁹²**7.3.— Form and contents of application**

(1) Each application shall be in writing and shall state—

- [(a) that the application is made under the Act;
 - (aa) the names of the parties;
 - (ab) the name of the bankrupt, or the debtor who or company which is the subject of the insolvency proceedings to which the application relates;
 - (ac) the court (and where applicable, the division or district registry of that court) in which the application is made;
 - (ad) where the court has previously allocated a number to the insolvency proceedings within which the application is made, that number;

] ²¹⁹³

²¹⁸⁷ Substituted by Insolvency (Amendment) Rules 2009/642 rule 52 (April 6, 2009)

²¹⁸⁸ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(7) para.53 (April 1, 2004)

²¹⁸⁹ Words repealed by Insolvency (Amendment) Rules 2003/1730 Sch.1(8) para.54 (September 15, 2003)

²¹⁹⁰ Words inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(8) para.54 (September 15, 2003)

²¹⁹¹ Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(8) para.54 (September 15, 2003)

²¹⁹² Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (b) the nature of the [remedy]²¹⁹⁴ or order applied for or the directions sought from the court;
- (c) the names and addresses of the persons (if any) on whom it is intended to serve the application or that no person is intended to be served;
- (d) where the Act or Rules 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); and
- (e) the applicant's address for service.

(2) [...] ²¹⁹⁵

(3) The application must be [authenticated]²¹⁹⁶ by the applicant if he is acting in person or, when he is not so acting, by or on behalf of his solicitor.

Commencement

Pt 7(1) rule 7.3(1)-(3): December 29, 1986

[7.3A.— Application under section 176A(5) to disapply section 176A

(1) An application under section 176A(5) shall be accompanied by [a witness statement]²¹⁹⁷ by the liquidator, administrator or receiver.

(2) The [witness statement]²¹⁹⁸ shall state—

- (a) the type of insolvency proceedings in which the application arises;
- (b) a summary of the financial position of the company;
- (c) the information substantiating the applicant's view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits; and
- (d) whether any other [office-holder]²¹⁹⁹ is acting in relation to the company and if so his address.

²¹⁹³ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.439(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁹⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.439(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁹⁵ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.439(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁹⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁹⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.440(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁹⁸ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.440(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²¹⁹⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.440(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

]²²⁰⁰

7.4.— Filing and service of application

(1) [An application must be filed with the court]²²⁰¹, accompanied by one copy and a number of additional copies equal to the number of persons who are to be served with the application.

[(2) Where an application is filed with the court in accordance with paragraph (1), the court must fix a venue for the application to be heard unless—

- (a) it considers it is not appropriate to do so;
- (b) the Rule under which the application is brought provides otherwise; or
- (c) the case is one to which Rule 7.5A applies.

]²²⁰²

(3) Unless the court otherwise directs, the applicant shall serve a sealed copy of the application, endorsed with the venue for the hearing, on the respondent named in the application (or on each respondent if more than one).

(4) 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 Act or Rules;
- (b) that the giving of notice to any person may be dispensed with;
- (c) that notice be given in some way other than that specified in paragraph (3).

[(5) An application must be served at least 14 days before the date fixed for its hearing unless—

- (a) the provision of the Act or the Rules under which the application is made makes different provision; or
- (b) the case is one of urgency, to which paragraph (6) applies.

]²²⁰³

(6) Where the case is one of 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 (5);

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 [just]²²⁰⁴.

²²⁰⁰ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(8) para.55 (September 15, 2003)

²²⁰¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.441(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁰² Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.441(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁰³ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.441(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁰⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 7(1) rule 7.4(1)-(6)(b): December 29, 1986

[7.4A. Notice of application under section 176A(5)]

An application under section 176A(5) may be made without the application being served upon or notice being given to any other party, save that notice of the application shall be given to any other [office-holder who is acting]²²⁰⁵ in relation to the company including any member State liquidator.
]²²⁰⁶

7.5.— [...]²²⁰⁷

[7.5A Hearings without notice]

Where the relevant provisions of the Act or the Rules 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 venue as required by Rule 7.4(2); or
- (b) it may fix a venue for the application to be heard in which case Rule 7.4 must apply to the extent that it is 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.

] ²²⁰⁸

7.6.— [...]²²⁰⁹

[7.6A Hearing of application]

- (1) Unless the court otherwise directs, the hearing of an application must be in open court.
- (2) In the county court, the jurisdiction of the court to hear and determine an application may be exercised by the district judge (to whom any application must be made in the first instance) unless—
 - (a) a direction to the contrary has been given, or
 - (b) it is not within the district judge's power to make the order required.

²²⁰⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.442(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁰⁶ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(8) para.56 (September 15, 2003)

²²⁰⁷ Rules 7.5A-7.7A substituted for rules 7.5-7.7 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.443 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁰⁸ Rules 7.5A-7.7A substituted for rules 7.5-7.7 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.443 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁰⁹ Rules 7.5A-7.7A substituted for rules 7.5-7.7 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.443 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) In the High Court, the jurisdiction of the court to hear and determine an application may be exercised by the registrar (to whom the application must be made in the first instance) unless—

- (a) a direction to the contrary has been given, or
- (b) it is not within the registrar's power to make the order required.

(4) Where the application is made to the district judge in the county court or to the registrar in the High Court, the district judge or the registrar may refer to the judge any matter which the district judge or registrar thinks should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the district judge or the registrar with such directions as that judge thinks just.

(5) Nothing in this Rule precludes an application being made directly to the judge in a proper case.
]²²¹⁰

7.7.— [...] ²²¹¹

[7.7A Witness statements — general

(1) Subject to Rule 7.9, where evidence is required by the Act or the Rules as to any matter, such evidence may be provided in the form of a witness statement unless—

- (a) in any specific case a Rule or the Act makes different provision; or
- (b) the court otherwise directs.

(2) 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.

(3) 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 leave of the court.

] ²²¹²

7.8.— Filing and service of [witness statements] ²²¹³

(1) Unless the provision of the Act or Rules under which the application is made provides otherwise, or the court otherwise allows—

²²¹⁰ Rules 7.5A-7.7A substituted for rules 7.5-7.7 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.443 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²¹¹ Rules 7.5A-7.7A substituted for rules 7.5-7.7 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.443 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²¹² Rules 7.5A-7.7A substituted for rules 7.5-7.7 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.443 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²¹³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.444(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (a) if the applicant intends to rely at the first hearing on [evidence in a witness statement]²²¹⁴, he shall file [the witness statement with the]²²¹⁵ in court and serve a copy [...] ²²¹⁶ on the respondent, not less than 14 days before the date fixed for the hearing, and
- (b) where a respondent to an application intends to oppose it and to rely for that purpose on [evidence in a witness statement]²²¹⁴, he shall file [the witness statement with the]²²¹⁵ in court and serve a copy [...] ²²¹⁶ on the applicant, not less than [5 business]²²¹⁷ days before the date fixed for the hearing.

(2) [...] ²²¹⁸

Commencement

Pt 7(1) rule 7.8(1)-(2): December 29, 1986

7.9.— Use of reports

- (1) A report may be filed in court instead of [a witness statement]²²¹⁹ —
 - (a) in any case, by the official receiver (whether or not he is acting in any capacity mentioned in sub-paragraph (b)), or a deputy official receiver, or
 - (b) unless the application involves other parties or the court otherwise orders, by—
 - (i) an administrator, a liquidator or a trustee in bankruptcy,
 - (ii) a provisional liquidator or an interim receiver,
 - (iii) a special manager, or
 - (iv) an insolvency practitioner appointed under section 273(2).
- (2) In any case where a report is filed instead of [a witness statement]²²¹⁹, the report shall be treated for the purposes of Rule 7.8(1) and any hearing before the court as if it were [a witness statement]²²¹⁹.
- [(3A) 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.

²²¹⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.444(3)(a)(i) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²¹⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.444(3)(a)(ii) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²¹⁶ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.444(3)(a)(iii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²¹⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.444(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²¹⁸ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.444(4) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²¹⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.445(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

]²²²⁰

Commencement

Pt 7(1) rule 7.9(1)-(3): December 29, 1986

7.10.— Adjournment of hearing; directions

(1) The court may adjourn the hearing of an application on such terms [...] ²²²¹ as it thinks [just] ²²²² .

(2) The court may at any time give such directions as it thinks [just] ²²²² as to—

- (a) service or notice of the application on or to any person [...] ²²²³ ;
- (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] ²²²⁴ ;
- (c) [...] ²²²⁵
- (d) the matters to be dealt with in evidence.

[(3) 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; or
- (c) any report to be made by an office-holder.

]²²²⁶

Commencement

Pt 7(1) rule 7.10(1)-(2)(d): December 29, 1986

²²²⁰ Rule 7.9(3A) substituted for rule 7.9(3) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.445(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²²¹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.446(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²²² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²²³ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.446(3)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²²⁴ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.446(3)(b) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²²⁵ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.446(3)(c) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²²⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.446(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[CHAPTER 1A

BLOCK TRANSFER OF CASES WHERE INSOLVENCY PRACTITIONER HAS DIED ETC.

] ²²²⁷**[7.10A Preliminary and interpretation**

- (1) The Rules in this Chapter relate to applications for a block transfer order.
- (2) In this Chapter—
- “outgoing office-holder” has the meaning in Rule 7.10B(1),
 - “replacement office-holder” has the meaning in Rule 7.10B(1),
 - “block transfer order” has the meaning in Rule 7.10B(2),
 - “substantive application” is that part of the application in Rule 7.10C(1)(c) and (d).

] ²²²⁸**[7.10B Power to make a block transfer order**

- (1) This Rule 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.
- (2) In a case to which this Rule 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 in any winding up (including a case where the official receiver is the liquidator by virtue of section 136 of the Act),
 - (b) administrator in any administration,
 - (c) trustee in a bankruptcy (including a case where the official receiver is the trustee by virtue of section 300 of the Act), or
 - (d) supervisor of a voluntary arrangement under Part 1 or 8 of the Act.
- (3) The replacement office-holder must be—
- (a) qualified to act as an insolvency practitioner, or
 - (b) where the replacement office-holder is to be appointed supervisor of a voluntary arrangement under Part 1 or 8 of the Act—
 - (i) qualified to act as an insolvency practitioner, or
 - (ii) a person authorised so to act.

] ²²²⁹

²²²⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.447 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²²⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.447 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²²⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.447 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[7.10C Application for a block transfer order]

- (1) An application for a block transfer order may be made to the registrar or district judge for—
 - (a) the transfer to the High Court of the cases specified in the schedule under paragraph (8);
 - (b) the transfer of the cases back to the court from which they were transferred when a replacement office-holder has been appointed;
 - (c) the removal of the outgoing office-holder by the exercise of any of the powers in paragraph (2);
 - (d) the appointment of a replacement office-holder by the exercise of any of the powers in paragraph (3);
 - (e) such other order or direction as may be necessary or expedient in connection with any of the matters referred to above.
- (2) The powers referred to in paragraph (1)(c) are—
 - (a) section 172(2) and Rule 7.10B(2) (winding up by the court);
 - (b) section 108 (voluntary liquidation);
 - (c) section 19, paragraph 88 of Schedule B1 to the Act and Rule 7.10B(2) (administration);
 - (d) section 298 and Rule 7.10B(2) (bankruptcy);
 - (e) section 7(5) and paragraph 39(6) of Schedule A1 to the Act (voluntary arrangement under Part 1 of the Act); and
 - (f) section 263(5) (voluntary arrangement under Part 8 of the Act).
- (3) The powers referred to in paragraph (1)(d) are—
 - (a) section 168(3) and (5) and Rule 7.10B(2) (winding up by the court);
 - (b) section 108 (voluntary liquidation);
 - (c) section 13, paragraphs 63, 91 and 95 of Schedule B1 to the Act and Rule 7.10B(2) (administration);
 - (d) sections 298 and 303(2) and Rule 7.10B(2) (bankruptcy);
 - (e) section 7(5) and paragraph 39(6) of Schedule A1 to the Act (voluntary arrangement under Part 1 of the Act); and
 - (f) section 263(5) (voluntary arrangement under Part 8 of the Act).
- (4) Subject to paragraph (5), 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 recognised professional body or recognised body by which the outgoing officeholder is or was authorised; or
 - (f) the Secretary of State.
- (5) Where one or more outgoing office-holder in the schedule under paragraph (8) is an administrator, an application may not be made unless a person permitted to apply to replace that office-holder under section 13 or paragraph 63, 91 or 95 of Schedule B1 to the Act is the applicant or is joined as applicant in respect of the replacement of that office-holder.
- (6) An applicant (other than the Secretary of State) must give notice of the application to the Secretary of State at least 5 business days before the hearing of the application.
- (7) The following must be made a respondent to the application and served 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; and
 - (c) such person as the registrar or district judge directs.
- (8) 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.
- (9) The application must be supported by evidence—
- (a) setting out the circumstances which gave rise to it being 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.
- (10) Where all the cases in the schedule under paragraph (8) are in a county court or more than one county court—
- (a) the application may be made to a district judge of a convenient county court having insolvency jurisdiction; and
 - (b) this Rule applies with appropriate modifications.

]²²³⁰

[7.10D Action following application for a block transfer order

- (1) The registrar or district judge may in the first instance consider the application without a hearing and make such order as the registrar or district judge thinks just.
- (2) In the first instance, the registrar or district judge may do any of the following—
- (a) make an order directing the transfer to the High Court of those cases not already within its jurisdiction for the purpose only of the substantive application;
 - (b) if the documents are considered to be in order and that the matter is straightforward, make an order on the substantive application;
 - (c) 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
 - (d) if an order is not made on the substantive application, give directions for the further consideration of the substantive application by the registrar or district judge or a judge of the Chancery Division.
- (3) The applicant must ensure that a sealed copy of every order transferring any case to the High Court and of every order which is made on a substantive application is lodged with the court having jurisdiction over each case affected by such order for filing on the court file relating to that case.
- (4) In any case other than an application relating to the appointment of an administrator, in deciding to what extent (if any) the costs of making an application under this Rule 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—

²²³⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.447 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (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.
- (5) Where an application relates to the appointment of an administrator and is made by a person under section 13 or paragraph 63, 91 or 95 of Schedule B1 to the Act, the costs of making that application are to be paid as an expense of the administration to which the application relates unless the court directs otherwise.
- (6) Any appointment made under this Rule must be notified—
- (a) to the Secretary of State as soon as reasonably practicable; and
 - (b) to—
 - (i) the creditors, and
 - (ii) such other persons as the court may direct,
 in such manner as the court may direct.
- (7) Where the application was made to the district judge under Rule 7.10C(10) this Rule applies with appropriate modifications.

]²²³¹

CHAPTER 2

TRANSFER OF PROCEEDINGS BETWEEN COURTS

7.11.— General power of transfer

- (1) Where winding-up or bankruptcy proceedings [or proceedings relating to a debt relief order]²²³² are pending in the High Court, the court may order them to be transferred to a specified county court.
- (2) Where winding-up or bankruptcy proceedings [or proceedings relating to a debt relief order]²²³² are pending in a county court, the court may order them to be transferred either to the High Court or to another county court.
- (3) In any case where [winding-up]²²³³ proceedings are transferred to a county court, the transfer must be to a court which has jurisdiction to wind up companies [...]²²³⁴ .
- [(3A) In any case where bankruptcy proceedings or proceedings relating to a debt relief order are transferred to a county court, the transfer must be to a court which has jurisdiction in bankruptcy.]²²³⁵

²²³¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.447 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²³² Words inserted by Insolvency (Amendment) Rules 2009/642 rule 54(a) (April 6, 2009)

²²³³ Word inserted by Insolvency (Amendment) Rules 2009/642 rule 54(b)(i) (April 6, 2009)

²²³⁴ Words repealed by Insolvency (Amendment) Rules 2009/642 rule 54(b)(ii) (April 6, 2009)

²²³⁵ Added by Insolvency (Amendment) Rules 2009/642 rule 54(c) (April 6, 2009)

(4) Where winding-up or bankruptcy proceedings [or proceedings relating to a debt relief order]²²³² are pending in a county court, a judge of the High Court may order them to be transferred to that Court.

[(4A) Solely for the purposes of Rule 7.10D (action following application for a block transfer order)—

- (a) the registrar may transfer to or from the High Court; and
- (b) the district judge of the county court to which the application is made may transfer to or from that county court,

any case in the schedule under Rule 7.10C(8).

²²³⁶

(5) A transfer of proceedings under this Rule may be ordered—

- (a) by the court of its own motion, or
- (b) on the application of the official receiver, or
- (c) on the application of a person appearing to the court to have an interest in the proceedings.

(6) A transfer of proceedings under this Rule may be ordered notwithstanding that the proceedings commenced before the coming into force of the Rules.

Commencement

Pt 7(2) rule 7.11(1)-(6): December 29, 1986

7.12. Proceedings commenced in wrong court

Where winding-up or bankruptcy proceedings [or proceedings relating to a debt relief order]²²³⁷ are commenced in a court which is, in relation to those proceedings, the wrong court, that court may—

- (a) order the transfer of the proceedings to the court in which they ought to have been commenced;
- (b) order that the proceedings be continued in the court in which they have been commenced; or
- (c) order the proceedings to be struck out.

Commencement

Pt 7(2) rule 7.12(a)-(c): December 29, 1986

7.13.— Applications for transfer

(1) An application by the official receiver for proceedings to be transferred shall be made with a report by him—

- (a) setting out the reasons for the transfer, and
- [(b) including a statement either that—

²²³⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.448(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²³⁷ Words inserted by Insolvency (Amendment) Rules 2009/642 rule 55 (April 6, 2009)

- (i) the petitioner, or
 - (ii) the debtor in proceedings relating to a debt relief order,
- consents to the transfer, or that he has been given at least 14 days' notice of the official receiver's application.
- ²²³⁸

(2) If the court is satisfied from the official receiver's report that the proceedings can be conducted more conveniently in another court, the proceedings shall be transferred to that court.

(3) Where an application for the transfer of proceedings is made otherwise than by the official receiver, at least 14 days' notice of the application shall be given by the applicant—

- (a) to the official receiver attached to the court in which the proceedings are pending, and
- (b) to the official receiver attached to the court to which it is proposed that they should be transferred.

Commencement

Pt 7(2) rule 7.13(1)-(3)(b): December 29, 1986

7.14.— Procedure following order for transfer

(1) Subject as follows, the court making an order under Rule 7.11 shall [as soon as reasonably practicable]²²³⁹ send to the transferee court a sealed copy of the order, and the file of the proceedings.

(2) On receipt of these, the transferee court shall [as soon as reasonably practicable]²²³⁹ send notice of the transfer to the official receivers attached to that court and the transferor court respectively.

(3) Paragraph (1) does not apply where the order is made by the High Court under Rule 7.11(4). In that case—

- (a) the High Court shall send sealed copies of the order to the county court from which the proceedings are to be transferred, and to the official receivers attached to that court and the High Court respectively, and
- (b) that county court shall send the file of the proceedings to the High Court.

(4) [...]²²⁴⁰

Commencement

Pt 7(2) rule 7.14(1)-(4): December 29, 1986

7.15.— Consequential transfer of other proceedings

(1) This Rule applies where—

- [(a) the High Court has—

²²³⁸ Substituted by Insolvency (Amendment) Rules 2009/642 rule 56 (April 6, 2009)

²²³⁹ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

²²⁴⁰ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.449(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (i) made a bankruptcy order;
- (ii) made a winding-up order;
- (iii) appointed a provisional liquidator; or
- (iv) appointed an interim receiver; or

] ²²⁴¹

(b) [...] ²²⁴²

(c) winding-up or bankruptcy proceedings have been transferred to that Court from a county court.

(2) A judge of any Division of the High Court may, of his own motion, order the transfer to that Division of any such proceedings as are mentioned below and are pending against the company or individual concerned (“the insolvent”) either in another Division of the High Court or in a court in England and Wales other than the High Court.

(3) Proceedings which may be so transferred are those brought by or against the insolvent for the purpose of enforcing a claim against the insolvent estate, or brought by a person other than the insolvent for the purpose of enforcing any such claim (including in either case proceedings of any description by a debenture-holder or mortgagee).

(4) Where proceedings are transferred under this Rule, the registrar may (subject to [the] ²²⁴³ directions of the judge) dispose of any matter arising in the proceedings which would, but for the transfer, have been disposed of in chambers or, in the case of proceedings transferred from a county court, by the [district judge] ²²⁴⁴ .

Commencement

Pt 7(2) rule 7.15(1)-(4): December 29, 1986

²²⁴¹ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.450(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁴² Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.450(2)(b) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁴³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.450(3)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁴⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.450(3)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

CHAPTER 3

SHORTHAND WRITERS

7.16.— Nomination and appointment of shorthand writers

(1) [...] ²²⁴⁵ In the High Court the judge [or registrar] ²²⁴⁶ and, in a county court, [a district judge] ²²⁴⁷ may in writing nominate one or more persons to be official shorthand writers to the court.

(2) [...] ²²⁴⁵ The court may, at any time in the course of insolvency proceedings, appoint a shorthand writer to take down the evidence of a person examined under [section 133, 236, 251N, 290 or 366] ²²⁴⁸ .

(3) Where the official receiver applies to the court for an order appointing a shorthand writer, he shall name the person he proposes for appointment [...] ²²⁴⁹ .

Commencement

Pt 7(3) rule 7.16(1)-(3): December 29, 1986

7.17.— Remuneration

(1) The remuneration of a shorthand writer appointed in insolvency proceedings shall be paid by the party at whose instance the appointment was made, or out of the insolvent estate, or otherwise, as the court may direct.

[(2) Any question arising as to the rates of remuneration payable under this Rule shall be determined by the court in its discretion.] ²²⁵⁰

Commencement

Pt 7(3) rule 7.17(1)-(2): December 29, 1986

7.18. [...] ²²⁵¹

²²⁴⁵ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁴⁶ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.451(2)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁴⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.451(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁴⁸ Word inserted by Insolvency (Amendment) Rules 2009/642 rule 57 (April 6, 2009)

²²⁴⁹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.451(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁵⁰ Substituted by Insolvency (Amendment) Rules 1993/602 Sch.1 para.1 (April 5, 1993)

²²⁵¹ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

CHAPTER 4

ENFORCEMENT PROCEDURES

7.19.— Enforcement of court orders

(1) In any insolvency proceedings, orders of the court may be enforced in the same manner as a judgment to the same effect.

(2) Where an order in insolvency proceedings is made, or any process is issued, by a county court (“the primary court”), the order or process may be enforced, executed and dealt with by any other county court (“the secondary court”), as if it had been made or issued for the enforcement of a judgment or order to the same effect made by the secondary court.

This applies whether or not the secondary court has jurisdiction to take insolvency proceedings.

[(3) Where a warrant for the arrest of a person is issued by the High Court, the warrant may be discharged by the county court where the person who is the subject of the warrant—

- (a) has been brought before a county court exercising insolvency jurisdiction; and
- (b) has given to the county court an undertaking which is satisfactory to the county court to comply with the obligations that apply to that person under the Act or the Rules.

]²²⁵²

Commencement

Pt 7(4) rule 7.19(1)-(2): December 29, 1986

7.20.— Orders enforcing compliance with the Rules

(1) The court may, on application by the competent person, make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with—

- (a) [paragraph 47 of Schedule B1 to the Act or section]²²⁵³ [47 or 131]²²⁵³ (duty to submit statement of affairs in administration, administrative receivership or winding up),
- (b) section 143(2) (liquidator to furnish information, books, papers, etc.), or
- (c) section 235 (duty of various persons to co-operate with office-holder).

(2) The competent person for this purpose is—

- (a) under [paragraph 47 of Schedule B1 to the Act]²²⁵⁴, the administrator,
- (b) under section 47, the administrative receiver,
- (c) under section 131 or 143(2), the official receiver, and
- (d) under section 235, the official receiver, the administrator, the administrative receiver, the liquidator or the provisional liquidator, as the case may be.

(3) An order of the court under this Rule may provide that all costs of and incidental to the application for it shall be borne by the person against whom the order is made.

²²⁵² Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.452(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁵³ Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(8) para.57(a) (September 15, 2003)

²²⁵⁴ Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(8) para.57(b) (September 15, 2003)

Commencement

Pt 7(4) rule 7.20(1)-(3): December 29, 1986

7.21.— Warrants (general provisions)

(1) A warrant issued by the court under any provision of the Act shall be addressed to such officer of the High Court or of a county court (whether or not having jurisdiction in insolvency proceedings) as the warrant specifies, or to any constable.

(2) The persons referred to in [sections 134(2), 236(5), 251N(5), 364(1), 365(3) and 366(3)]²²⁵⁵ (court's powers of enforcement) as the prescribed officer of the court are—

- (a) in the case of the High Court, the tipstaff and his assistants of the court, and
- (b) in the case of a county court, the [district judge]²²⁵⁶ and the bailiffs.

(3) In this Chapter references to property include books, papers and records.

Commencement

Pt 7(4) rule 7.21(1)-(3): December 29, 1986

7.22. Warrants under ss.134, 364

[...] ²²⁵⁷ When a person [(“the arrested person”)]²²⁵⁸ is arrested under a warrant issued by the court under section 134 (officer of company failing to attend for public examination), or section 364 (arrest of debtor or bankrupt)—

[(a) the officer apprehending the arrested person must give that person into the custody of—

- (i) the court in a case where the court is ready and able to deal with the arrested person, or
- (ii) where the court is not ready and able, the governor of the prison named in the warrant (or where that prison is not able to accommodate the arrested person, the governor of such other prison with appropriate facilities which is able to accommodate the arrested person), who must keep the arrested person in custody until such time as the court otherwise orders and must produce that person before the court at its next sitting; and

] ²²⁵⁹

²²⁵⁵ Word inserted by Insolvency (Amendment) Rules 2009/642 rule 58 (April 6, 2009)

²²⁵⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.453(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁵⁷ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁵⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.454(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁵⁹ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.454(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (b) any property in the arrested person's possession which may be seized shall be—
 - (i) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or
 - (ii) kept by the officer seizing it pending the receipt of written orders from the court as to its disposal,
 as may be directed by the court in the warrant.

Commencement

Pt 7(4) rule 7.22(a)-(b)(ii): December 29, 1986

7.23.— Warrants under ss.236, [251N and]²²⁶⁰ 366

- (1) [...] ²²⁶¹ When a person is arrested under a warrant issued under section 236 (inquiry into insolvent company's dealings) [251N (the equivalent in relation to debt relief orders)]²²⁶² or 366 (the equivalent in bankruptcy) [(“the arrested person”)]²²⁶³ , the officer arresting him shall [as soon as reasonably practicable]²²⁶⁴ bring him before the court issuing the warrant in order that he may be examined.
- (2) [...] ²²⁶¹ If he cannot immediately be brought up for examination, the officer shall deliver him into the custody of the governor of the prison named in the warrant [(or where that prison is not able to accommodate the arrested person, the governor of such other prison with appropriate facilities which is able to accommodate the arrested person)]²²⁶⁵ , who shall keep him in custody and produce him before the court as it may from time to time direct.
- (3) After arresting the person named in the warrant, the officer shall [as soon as reasonably practicable]²²⁶⁴ report to the court the arrest or delivery into custody (as the case may be) and apply to the court to fix a venue for the person's examination.
- (4) The court shall appoint the earliest practicable time for the examination, and shall—
 - (a) [...] ²²⁶¹ direct the governor of the prison to produce the person for examination at the time and place appointed, and
 - (b) [as soon as reasonably practicable]²²⁶⁴ give notice of the venue to the person who applied for the warrant.
- (5) Any property in the arrested person's possession which may be seized shall be—
 - (a) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or

²²⁶⁰ Word inserted by Insolvency (Amendment) Rules 2009/642 rule 59(a) (April 6, 2009)

²²⁶¹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁶² Words inserted by Insolvency (Amendment) Rules 2009/642 rule 59(b) (April 6, 2009)

²²⁶³ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.455(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁶⁴ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

²²⁶⁵ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.455(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(b) kept by the officer seizing it pending the receipt of written orders from the court as to its disposal,
as may be directed by the court.

Commencement

Pt 7(4) rule 7.23(1)-(5)(b): December 29, 1986

7.24.— Execution of warrants outside court's district

(1) [...] ²²⁶⁶ This Rule applies where a warrant for a person's arrest has been issued in insolvency proceedings by a county court (“the primary court”) and is addressed to another county court (“the secondary court”) for execution in its district.

(2) The secondary court may send the warrant to the [district judge of another] ²²⁶⁷ county court (whether or not having jurisdiction to take insolvency proceedings) in whose district the person to be arrested is or is believed to be, with a notice to the effect that the warrant is transmitted to that court under this Rule for execution in its district at the request of the primary court.

(3) The court receiving a warrant transmitted by the secondary court under this Rule shall apply its seal to the warrant, and secure that all such steps are taken for its execution as would be appropriate in the case of a warrant issued by itself.

Commencement

Pt 7(4) rule 7.24(1)-(3): December 29, 1986

7.25.— Warrants under s.365

(1) A warrant issued under section 365(3) (search of premises not belonging to the bankrupt) shall authorise any person executing it to seize any property of the bankrupt found as a result of the execution of the warrant.

(2) [...] ²²⁶⁸ Any property seized under a warrant issued under section 365(2) or (3) shall be—
 (a) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or
 (b) kept by the officer seizing it pending the receipt of written orders from the court as to its disposal,
 as may be directed by the warrant.

²²⁶⁶ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁶⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.456(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁶⁸ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 7(4) rule 7.25(1)-(2)(b): December 29, 1986

CHAPTER 5

COURT RECORDS AND RETURNS

7.26.— [...] ²²⁶⁹

7.27. [...] ²²⁷⁰

7.28.— [...] ²²⁷¹

7.29.— [...] ²²⁷²

7.30.— [...] ²²⁷³

7.31.— [...] ²²⁷⁴

[7.31A Court file

- (1) The court must open and maintain a file in any case where documents are filed with it under the Act or the Rules.
- (2) Any documents which are filed with the court under the Act or the Rules must be placed on the file opened in accordance with paragraph (1).
- (3) The following persons may inspect or obtain from the court a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1)—
 - (a) the office-holder in the proceedings;
 - (b) the Secretary of State; and

²²⁶⁹ Rule 7.31A substituted for rules 7.26-7.31 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.457 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁷⁰ Rule 7.31A substituted for rules 7.26-7.31 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.457 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁷¹ Rule 7.31A substituted for rules 7.26-7.31 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.457 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁷² Rule 7.31A substituted for rules 7.26-7.31 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.457 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁷³ Rule 7.31A substituted for rules 7.26-7.31 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.457 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁷⁴ Rule 7.31A substituted for rules 7.26-7.31 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.457 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (c) any person who is a creditor of the company to which, or the individual to whom, the proceedings relate if that person provides the court with a statement in writing by confirming that that person is a creditor.
- (4) The same right to inspect or obtain a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1) is exercisable—
- (a) in proceedings under Parts 1 to 7 of the Act, by—
 - (i) an officer or former officer of the company to which the proceedings relate; or
 - (ii) a member of the company or a contributory in its winding up;
 - (b) in proceedings with respect to a voluntary arrangement under Part 8 of the Act, by the debtor;
 - (c) in bankruptcy proceedings, by—
 - (i) the bankrupt;
 - (ii) any person against whom a bankruptcy petition has been presented;
 - (iii) any person who has, in accordance with Chapter 1 of Part 6, been served with a statutory demand;
 - (d) in proceedings relating to a debt relief order, by the debtor.
- (5) The right to inspect or obtain a copy of, or a copy of any document or documents contained in, the file opened in accordance with paragraph (1) may be exercised on that person's behalf by a person authorised to do so by that person.
- (6) 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 (1) may do so if that person has the permission of the court.
- (7) The court may 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 paragraph (3), (4) or (5) without the permission of the court.
- (8) An application for a direction under paragraph (7) may be made by—
- (a) the official receiver;
 - (b) the officer-holder in the proceedings; or
 - (c) any person appearing to the court to have an interest.
- (9) Where any person wishes to exercise the right to inspect the file under paragraph (3), (4), (5) or (6), that person—
- (a) if the permission of the court is required, must file with the court an application notice in accordance with these Rules; or
 - (b) if the permission of the court is not required, may inspect the file at any reasonable time.
- (10) Where any person wishes to exercise the right to obtain a copy of a document under paragraph (3), (4), (5) or (6), that person must pay any prescribed fee and—
- (a) if the permission of the court is required, file with the court an application notice in accordance with these Rules; or
 - (b) if the permission of the court is not required, file with the court a written request for the document.
- (11) An application for—
- (a) permission to inspect the file or obtain a copy of a document under paragraph (6); or
 - (b) a direction under paragraph (7),

may be made without notice to any other party, but the court may direct that notice must be given to any person who would be affected by its decision.

(12) If for the purposes of powers conferred by the Act or the Rules, the Secretary of State or the official receiver requests the transmission of the file of any insolvency proceedings, the court must comply with the request (unless the file is for the time being in use for the court's own purposes).

]²²⁷⁵

7.32.— [...]²²⁷⁶

CHAPTER 6

[Costs and Detailed Assessment]²²⁷⁷

7.33. [...]²²⁷⁸

[7.33A Application of Chapter 6

(1) This chapter applies in relation to costs in connection with insolvency proceedings.

(2) In this chapter a reference to costs includes charges and expenses.

]²²⁷⁹

7.34.— [...]²²⁸⁰

[7.34A Requirement to assess costs by the detailed procedure

(1) Where the costs of any person are payable as an expense out of the insolvent estate, the amount payable must be decided by detailed assessment unless agreed between the office-holder and the person entitled to payment.

(2) In the absence of such agreement as is mentioned in paragraph (1), the office-holder—

- (a) may serve notice requiring that person to commence detailed assessment proceedings in accordance with CPR Part 47; and

²²⁷⁵ Rule 7.31A substituted for rules 7.26-7.31 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.457 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁷⁶ Revoked by Insolvency (Amendment) Rules 2009/642 rule 62 (April 6, 2009: repeal has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

²²⁷⁷ Substituted by Insolvency (Amendment) (No. 2) Rules 1999/1022 Sch.1 para.3 (April 26, 1999)

²²⁷⁸ Rules 7.33A and 7.34A substituted for rules 7.33 and 7.34 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.458 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁷⁹ Rules 7.33A and 7.34A substituted for rules 7.33 and 7.34 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.458 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁸⁰ Rules 7.33A and 7.34A substituted for rules 7.33 and 7.34 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.458 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (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.
- (3) Detailed assessment proceedings must be commenced in the court to which the insolvency proceedings are allocated or, where in relation to a company there is no such court, any court having jurisdiction to wind up the company.
- (4) Where the costs of any person employed by an office-holder in insolvency proceedings are required to be decided by detailed assessment or fixed by order of the court, the office-holder may make payments on account to such person in respect of those costs provided that person undertakes in writing—
 - (a) to repay as soon as reasonably practicable any money which may, when detailed assessment is made, prove to have been overpaid; and
 - (b) to pay interest on any such sum as is mentioned in sub-paragraph (a) at the rate specified in section 17 of the Judgments Act 1838 on the date payment was made and for the period beginning with the date of payment and ending with the date of repayment.
- (5) In any proceedings before the court (including proceedings on a petition), the court may order costs to be decided by detailed assessment.
- (6) Unless otherwise directed or authorised, the costs of a trustee in bankruptcy or a liquidator are to be allowed on the standard basis for which provision is made in—
 - (a) CPR rule 44.4 (basis of assessment); and
 - (b) CPR rule 44.5 (factors to be taken into account when deciding the amount of costs).

]²²⁸¹

[7.35.— Procedure where detailed assessment required

- (1) Before making a detailed assessment of the costs of any person employed in insolvency proceedings by [the office-holder]²²⁸², the costs officer shall require a certificate of employment, which shall be endorsed on the bill and [authenticated]²²⁸³ by [the office-holder]²²⁸⁴.
- (2) The certificate shall include—
 - (a) the name and address of the person employed,
 - (b) details of the functions to be carried out under the employment, and
 - (c) a note of any special terms of remuneration which have been agreed.

²²⁸¹ Rules 7.33A and 7.34A substituted for rules 7.33 and 7.34 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.458 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁸² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.459(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁸³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁸⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.459(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) Every person whose costs in insolvency proceedings are required to be decided by detailed assessment shall, on being required in writing to do so by the [office-holder]²²⁸⁵, commence detailed assessment proceedings in accordance with CPR Part 47 (procedure for detailed assessment of costs and default provisions).

(4) If that person does not commence detailed assessment proceedings within 3 months of the requirement under paragraph (3), or within such further time as the court, on application, may permit, the [office-holder]²²⁸⁵ may deal with the insolvent estate without regard to any claim by that person, whose claim is forfeited by such failure to commence proceedings.

(5) Where in any such case such a claim lies additionally against an [office-holder]²²⁸⁵ in his personal capacity, that claim is also forfeited by such failure to commence proceedings.

(6) Where costs have been incurred in insolvency proceedings in the High Court and those proceedings are subsequently transferred to a county court, all costs of those proceedings directed by the court or otherwise required to be assessed may nevertheless, on the application of the person who incurred the costs, be ordered to be decided by detailed assessment in the High Court.

²²⁸⁶

Commencement

Pt 7(6) rule 7.35(1)-(5): December 29, 1986

[7.36.— Costs of [officers charged with execution of writs or other process]²²⁸⁷

(1) Where [an enforcement officer, or other officer, charged with execution of the writ or other process;]²²⁸⁸ —

(a) is required under section 184(2) or 346(2) to deliver up goods or money, or

(b) has under section 184(3) or 346(3) deducted costs from the proceeds of an execution or money paid to him,

the [office-holder]²²⁸⁹ may require in writing that the amount of [the enforcement officer's or other officer's]²²⁸⁸ bill of costs be decided by detailed assessment.

(2) Where such a requirement is made, Rule 7.35(4) applies.

(3) Where, in the case of a deduction under paragraph (1)(b), any amount deducted is disallowed at the conclusion of the detailed assessment proceedings, the [enforcement officer]²²⁹⁰ shall [as

²²⁸⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.459(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁸⁶ Substituted by Insolvency (Amendment) (No. 2) Rules 1999/1022 Sch.1 para.3 (April 26, 1999)

²²⁸⁷ Word substituted by Insolvency (Amendment) Rules 2005/527 rule 42(a) (April 1, 2005)

²²⁸⁸ Words substituted by Insolvency (Amendment) Rules 2005/527 rule 42(b) (April 1, 2005)

²²⁸⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.460(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁹⁰ Word substituted by Insolvency (Amendment) Rules 2005/527 rule 42(c) (April 1, 2005)

soon as reasonably practicable]²²⁹¹ pay a sum equal to that disallowed to the [office-holder]²²⁹² for the benefit of the insolvent estate.
]²²⁹³

Commencement

Pt 7(6) rule 7.36(1)-(3): December 29, 1986

7.37.— [...] ²²⁹⁴

[7.37A Petitions presented by insolvents

(1) This Rule applies where—

(a) a winding-up petition is presented by a company against itself;

(b) a bankruptcy petition is presented by a debtor against that debtor,

and references in this Rule to “the insolvent” are to be read as a reference to the company or the debtor.

(2) A solicitor acting in either of the cases mentioned in paragraph (1) must in the solicitor's bill of costs give credit for any sum or security received by the solicitor as a deposit from the insolvent on account of the costs and expenses to be incurred in respect of the filing and prosecution of the petition and the deposit must be noted by the costs officer on the final costs certificate.

(3) Where an order is made on a petition of a kind mentioned in paragraph (1) and prior to the presentation of that petition a petition had been presented by a creditor, no costs are allowed to the insolvent or that insolvent's solicitor out of that insolvent's estate unless the court considers that—

(a) the insolvent estate has benefited by the insolvent's conduct; or

(b) there are otherwise special circumstances justifying the allowance of costs.

] ²²⁹⁵

[7.38. Costs paid otherwise than out of the insolvent estate

Where the amount of costs is 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 costs officer shall note on the final costs certificate by whom, or the manner in which, the costs are to be paid.] ²²⁹⁶

²²⁹¹ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

²²⁹² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.460(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁹³ Substituted by Insolvency (Amendment) (No. 2) Rules 1999/1022 Sch.1 para.3 (April 26, 1999)

²²⁹⁴ Rule 7.37A substituted for rule 7.37 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.461 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁹⁵ Rule 7.37A substituted for rule 7.37 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.461 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁹⁶ Substituted by Insolvency (Amendment) (No. 2) Rules 1999/1022 Sch.1 para.3 (April 26, 1999)

Commencement

Pt 7(6) rule 7.38: December 29, 1986

[7.39. Award of costs against official receiver or responsible insolvency practitioner]

Without prejudice to any provision of the Act or Rules by virtue of which the official receiver is not in any event to be liable for costs and expenses, where [an officeholder or the official receiver where that official receiver is not acting as an office-holder]²²⁹⁷ is made a party to any proceedings on the application of another party to the proceedings, he shall not be personally liable for costs unless the court otherwise directs.]²²⁹⁸

Commencement

Pt 7(6) rule 7.39: December 29, 1986

[7.40.— Applications for costs]

- [(1) This Rule 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.
- (2) The person concerned shall serve a sealed copy of his or her application—
- (a) in proceedings other than proceedings relating to a debt relief order—
 - (i) on the [office-holder]²²⁹⁹, and,
 - (ii) in a winding up by the court or a bankruptcy, on the official receiver;
 - (b) in proceedings relating to a debt relief order, on the official receiver.
- (3) The [office-holder]²³⁰⁰ and, where appropriate, the official receiver may appear on an application to which paragraph (2)(a) applies.
- (3A) The official receiver may appear on an application to which paragraph (2)(b) applies.]²³⁰¹
- (4) 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.

²²⁹⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.462(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²²⁹⁸ Substituted by Insolvency (Amendment) (No. 2) Rules 1999/1022 Sch.1 para.3 (April 26, 1999)

²²⁹⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.463(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁰⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.463(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁰¹ Rule 7.40(1)-(3A) substituted for rule 7.40(1)-(3) by Insolvency (Amendment) Rules 2009/642 rule 63 (April 6, 2009)

]²³⁰²

Commencement

Pt 7(6) rule 7.40(1)-(4): December 29, 1986

[7.41.— Costs and expenses of witnesses

(1) Except as directed by the court, no allowance as a witness in any examination or other proceedings before the court shall be made to the bankrupt [or the debtor]²³⁰³ or an officer of the insolvent company to which the proceedings relate.

(2) A person presenting any petition in [a company insolvency or bankruptcy proceedings]²³⁰⁴ shall not be regarded as a witness on the hearing of the petition, but the costs officer may allow his expenses of travelling and subsistence.

]²³⁰⁵

Commencement

Pt 7(6) rule 7.41(1)-(2): December 29, 1986

[7.42.— Final costs certificate

(1) A final costs certificate of the costs officer is final and conclusive as to all matters which have not been objected to in the manner provided for under the rules of the court.

(2) Where it is proved to the satisfaction of a costs officer that a final costs certificate has been lost or destroyed, he may issue a duplicate.

]²³⁰⁶

Commencement

Pt 7(6) rule 7.42(1)-(3): December 29, 1986

²³⁰² Substituted by Insolvency (Amendment) (No. 2) Rules 1999/1022 Sch.1 para.3 (April 26, 1999)

²³⁰³ Words inserted by Insolvency (Amendment) Rules 2009/642 rule 64(a) (April 6, 2009)

²³⁰⁴ Words substituted by Insolvency (Amendment) Rules 2009/642 rule 64(b) (April 6, 2009)

²³⁰⁵ Substituted by Insolvency (Amendment) (No. 2) Rules 1999/1022 Sch.1 para.3 (April 26, 1999)

²³⁰⁶ Substituted by Insolvency (Amendment) (No. 2) Rules 1999/1022 Sch.1 para.3 (April 26, 1999)

CHAPTER 7

[PERSONS WHO LACK CAPACITY TO MANAGE THEIR AFFAIRS]²³⁰⁷

7.43.— Introductory

(1) The Rules in this Chapter apply where in insolvency proceedings it appears to the court that a person affected by the proceedings is one who [lacks capacity within the meaning of the Mental Capacity Act 2005 to manage and administer his property and affairs]²³⁰⁸ either—

- (a) by reason of [lacking capacity within the meaning of the Mental Capacity Act 2005]²³⁰⁹, or
- (b) due to physical affliction or disability.

(2) The person concerned is referred to as “the incapacitated person”.

Commencement

Pt 7(7) rule 7.43(1)-(2): December 29, 1986

7.44.— Appointment of another person to act

(1) [...] ²³¹⁰ The court may appoint such person as it thinks [just]²³¹¹ to appear for, represent or act for the incapacitated person.

(2) The appointment may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the incapacitated person might have exercised but for his incapacity.

(3) The court may make the appointment either of its own motion or on application by—

- (a) a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the incapacitated person, or
- (b) any relative or friend of the incapacitated person who appears to the court to be a proper person to make the application, or
- (c) the official receiver, or
- (d) the person who, in relation to the proceedings, is the [office-holder]²³¹².

²³⁰⁷ Words substituted by Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007/1898 Sch.1 para.12(4) (October 1, 2007)

²³⁰⁸ Words substituted by Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007/1898 Sch.1 para.12(5)(a) (October 1, 2007)

²³⁰⁹ Words substituted by Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007/1898 Sch.1 para.12(5)(b) (October 1, 2007)

²³¹⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³¹¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³¹² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.464(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(4) Application under paragraph (3) may be made [without notice to any other party]²³¹³ ; but the court may require such notice of the application as it thinks necessary to be given to the person alleged to be incapacitated, or any other person, and may adjourn the hearing of the application to enable the notice to be given.

Commencement

Pt 7(7) rule 7.44(1)-(4): December 29, 1986

7.45.— [...] ²³¹⁴

[7.45A Witness statement in support of application

An application under Rule 7.44(3) must be supported by a witness statement made by a registered medical practitioner as to the mental or physical condition of the incapacitated person.]²³¹⁵

7.46. Service of notices following appointment

Any notice served on, or sent to, a person appointed under Rule 7.44 has the same effect as if it had been served on, or given to, the incapacitated person.

Commencement

Pt 7(7) rule 7.46: December 29, 1986

CHAPTER 8

APPEALS IN INSOLVENCY PROCEEDINGS

7.47.— Appeals and reviews of court orders [in corporate insolvency] ²³¹⁶

(1) Every court having jurisdiction [for the purposes of Parts 1 to 4 of the Act and Parts 1 to 4 of the Rules,]²³¹⁷ may review, rescind or vary any order made by it in the exercise of that jurisdiction.

²³¹³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.464(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³¹⁴ Rule 7.45A substituted for rule 7.45 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.465 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³¹⁵ Rule 7.45A substituted for rule 7.45 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.465 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³¹⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.466(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³¹⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.466(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[(2) Appeals in civil matters in proceedings under Parts 1 to 4 of the Act and Parts 1 to 4 of the Rules lie as follows—

- (a) to a single judge of the High Court where the decision appealed against is made by the county court or the registrar;
- (b) to the Civil Division of the Court of Appeal from a decision of a single judge of the High Court.

] ²³¹⁸

(3) A county court is not, in the exercise of its jurisdiction [for the purposes of Parts 1 to 4 of the Act and Parts 1 to 4 of the Rules] ²³¹⁹, subject to be restrained by the order of any other court, and no appeal lies from its decision in the exercise of that jurisdiction except as provided by this Rule.

(4) Any application for the rescission of a winding-up order shall be made within [5 business] ²³²⁰ days after the date on which the order was made.

Commencement

Pt 7(8) rule 7.47(1)-(4): December 29, 1986

7.48.— Appeals in bankruptcy[by the Secretary of State] ²³²¹

(1) In bankruptcy proceedings, an appeal lies at the instance of the Secretary of State from any order of the court made on an application for the rescission or annulment of a bankruptcy order, or for a bankrupt's discharge.

(2) [...] ²³²²

Commencement

Pt 7(8) rule 7.48(1)-(2): December 29, 1986

7.49.— [...] ²³²³

²³¹⁸ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.466(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³¹⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.466(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³²⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.466(6) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³²¹ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.467(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³²² Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.467(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³²³ Rule 7.49A substituted for rule 7.49 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.468 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[7.49A Procedure on appeal]

(1) An appeal against a decision at first instance may only be brought with either the permission of the court which made the decision or the permission of the court which has jurisdiction to hear the appeal.

(2) An appellant must file an appellant's notice (within the meaning of CPR Part 52) within 21 days after the date of the decision of the court that the appellant wishes to appeal.

(3) The procedure set out in CPR Part 52 applies to any appeal to which this Chapter applies.

²³²⁴

7.50. Appeal against decision of Secretary of State or official receiver

[(1) An appeal under the Act or the Rules against a decision of the Secretary of State or the official receiver shall be brought within 28 days of the notification of the decision.

(2) In respect of a decision under Rule 6.214A(5)(b), an appeal shall be brought within 14 days of the notification of the decision.]²³²⁵

Commencement

Pt 7(8) rule 7.50: December 29, 1986

CHAPTER 9**GENERAL**

7.51.— [...]²³²⁶

[7.51A Principal court rules and practice to apply]

(1) The provisions of the CPR in the first column of the table in this Rule (including any related practice direction) apply to insolvency proceedings by virtue of the provisions of these Rules set out in the second column with any necessary modifications, except so far as inconsistent with these Rules.

<i>Provisions of CPR</i>	<i>Provisions of these Rules</i>
CPR Part 6 (except 6.30 to 6.51) (service of documents)	Chapter 3 of Part 12A
CPR Part 18 (further information)	Rules 7.60 and 9.2(3)(b)
CPR Part 31 (disclosure and inspection of documents)	Rules 7.60 and 9.2

²³²⁴ Rule 7.49A substituted for rule 7.49 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.468 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³²⁵ Existing rule 7.50 is renumbered as rule 7.50(1) and rule 7.50(2) is inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(8) para.58 (April 1, 2004)

²³²⁶ Rule 7.51A substituted for rule 7.51 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.469 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Provisions of CPR**Provisions of these Rules**

CPR Part 37 (miscellaneous provisions about payments into court)

Rule 7.59

CPR Parts 44 and 47 (costs)

Chapter 6 of Part 7

CPR Part 52 (appeals)

Rule 7.49

(2) Subject to paragraph (3), the provisions of the CPR (including any related practice direction) not referred to in the table apply to proceedings under the Act and Rules with any necessary modifications, except so far as inconsistent with these Rules.

(3) All insolvency proceedings must be allocated to the multi-track for which CPR Part 29 makes provision, and accordingly those provisions of the CPR which provide for allocation questionnaires and track allocation do not apply.

(4) CPR Part 32 applies to a false statement in a document verified by a statement of truth made under these Rules as it applies to a false statement in a document verified by a statement of truth made under CPR Part 22.

]²³²⁷

7.52.— Right of audience

(1) Official receivers and deputy official receivers have right of audience in insolvency proceedings, whether in the High Court or a county court.

(2) [...] ²³²⁸

Commencement

Pt 7(9) rule 7.52(1)-(2): December 29, 1986

7.53.— [...] ²³²⁹

7.54. [...] ²³³⁰

7.55. Formal defects

No insolvency proceedings shall be invalidated by any formal defect or by any irregularity, unless the court before which 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.

²³²⁷ Rule 7.51A substituted for rule 7.51 by Insolvency (Amendment) Rules 2010/686 Sch.1 para.469 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³²⁸ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.470(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³²⁹ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³³⁰ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 7(9) rule 7.55: December 29, 1986

7.56. [Service of orders staying proceedings]²³³¹

Where in insolvency proceedings the court makes an order staying any action, execution or other legal process against the property of a company, or against the property or person of an individual debtor or bankrupt, service of the order may be effected by sending a sealed copy of the order to whatever is the address for service of the [claimant]²³³² or other party having the carriage of the proceedings to be stayed.

Commencement

Pt 7(9) rule 7.56: December 29, 1986

7.57.— [...] ²³³³
7.58.— [...] ²³³⁴
[7.59. Payment into court

[CPR Part 37 (miscellaneous provisions about payments into court)]²³³⁵ apply to money lodged in court under the Rules.]²³³⁶

Commencement

Pt 7(9) rule 7.59: December 29, 1986

[7.60.— Further Information and Disclosure

- (1) 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

²³³¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.471(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³³² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.471(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³³³ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³³⁴ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³³⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.472(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³³⁶ Substituted by Insolvency (Amendment) (No. 2) Rules 1999/1022 Sch.1 para.7 (April 26, 1999)

- (ii) give additional information in relation to any such matter; in accordance with CPR Part 18 (further information); or
- (b) to obtain disclosure from any other party in accordance with CPR Part 31 (disclosure and inspection of documents).

(2) An application under this Rule may be made without notice being served on any other party.

²³³⁷

Commencement

Pt 7(9) rule 7.60(1)-(2): December 29, 1986

7.61.— Office copies of documents

- (1) Any person who has under the Rules the right to inspect the court file of insolvency proceedings may require the court to provide him with an office copy of any document from the file.
- (2) A person's rights under this Rule may be exercised on his behalf by his solicitor.
- (3) An office copy provided by the court under this Rule shall be in such form as the registrar thinks appropriate, and shall bear the court's seal.

Commencement

Pt 7(9) rule 7.61(1)-(3): December 29, 1986

[CHAPTER 10

EC REGULATION—CREDITORS' VOLUNTARY WINDING UP—CONFIRMATION BY THE COURT]²³³⁸

[7.62.— Application for confirmation

- (1) Where a company has passed a resolution for voluntary winding up, and no declaration under section 89 has been made [(or is deemed not to have been made in accordance with section 96)]²³³⁹, the liquidator may apply to court for an order confirming the creditors' voluntary winding up for the purposes of the EC Regulation.
- (2) The application shall be in writing [supported by a witness statement]²³⁴⁰ by the liquidator (using [FORM 7.20] the same form) and shall state—
 - (a) the name of the applicant,
 - (b) the name of the company and its registered number,

²³³⁷ Substituted by Insolvency (Amendment) (No. 2) Rules 1999/1022 Sch.1 para.8 (April 26, 1999)

²³³⁸ Added by Insolvency (Amendment) Rules 2002/1307 rule 9(1) (May 31, 2002)

²³³⁹ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.473(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁴⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.473(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (c) the date on which the resolution for voluntary winding up was passed,
 - (d) that the application is accompanied by all of the documents required under paragraph (3) which are true copies of the documents required, and
 - (e) that the EC Regulation will apply to the company and whether the proceedings will be main proceedings, territorial proceedings or secondary proceedings.
- (3) The liquidator shall file in court two copies of the application, together with one copy of the following—
- (a) a copy of the resolution for voluntary winding up referred to by section 84(3),
 - (b) evidence of his appointment as liquidator of the company, and
 - (c) a copy of the statement of affairs required under section 99.
- (4) It shall not be necessary to serve the application on, or give notice of it to, any person.
- (5) On an application under this Rule the court may confirm the creditors' voluntary winding up.
- (6) If the court confirms the creditor's voluntary winding up—
- (a) it may do so without a hearing,
 - (b) it shall affix its seal to the application.
- (7) A member of the court staff may deal with an application under this Rule.

[(8) This Rule shall also apply where a company has moved to a voluntary liquidation in accordance with paragraph 83 of Schedule B1 to the Act [except that the material to be filed with the court under paragraph (3) must be a copy of the notice of moving from administration to creditors' voluntary liquidation sent by the administrator for the purposes of paragraph 83(3) that has been registered by the registrar of companies, together with the statement of affairs required under paragraph 47 of Schedule B1 to the Act.]²³⁴¹ .]²³⁴²
]²³⁴³

[7.63. Notice to member State liquidator and creditors in member States

Where the court has confirmed the creditors' voluntary winding up, the liquidator shall [as soon as reasonably practicable]²³⁴⁴ give notice—

- (a) if there is a member State liquidator in relation to the company, to the member State liquidator;
 - (b) in accordance with Article 40 of the EC Regulation (duty to inform creditors).
-] ²³⁴⁵

²³⁴¹ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.473(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁴² Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(8) para.60 (September 15, 2003)

²³⁴³ Added by Insolvency (Amendment) Rules 2002/1307 rule 9(1) (May 31, 2002)

²³⁴⁴ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

²³⁴⁵ Added by Insolvency (Amendment) Rules 2002/1307 rule 9(1) (May 31, 2002)

[CHAPTER 11

EC REGULATION—MEMBER STATE LIQUIDATOR]²³⁴⁶**[7.64.— Interpretation of creditor**

(1) This Rule applies where a member State liquidator has been appointed in relation to a person subject to insolvency proceedings [other than proceedings relating to a debt relief order]²³⁴⁷ .

[(2) The member State liquidator has the same right to inspect or obtain from the court a copy of, or a copy of any document or documents contained in, the court file relating to the insolvency proceedings that is opened and maintained by the court under Rule 7.31A(1) as a creditor has under Rule 7.31A(3) and may appear at any hearing relating to those proceedings.]²³⁴⁸

(3) [...] ²³⁴⁹

(4) [Paragraph (2) is] ²³⁵⁰ without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditor's rights).
] ²³⁵¹

PART 8**PROXIES AND COMPANY REPRESENTATION****8.1.— Definition of “proxy”**

(1) For the purposes of the Rules, a proxy is an authority given by a person (“the principal”) to another person (“the proxy-holder”) to attend a meeting and speak and vote as his representative.

(2) Proxies are for use at creditors', company or contributories' meetings [summoned or called]²³⁵² under the Act or the Rules.

(3) Only one proxy may be given by a person for any one meeting at which he desires to be represented; and it may only be given to one person, being an individual aged 18 or over. But the principal may specify one or more other such individuals to be proxy-holder in the alternative, in the order in which they are named in the proxy.

²³⁴⁶ Added by Insolvency (Amendment) Rules 2002/1307 rule 9(1) (May 31, 2002)

²³⁴⁷ Words added by Insolvency (Amendment) Rules 2009/642 rule 65 (April 6, 2009)

²³⁴⁸ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.474(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁴⁹ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.474(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁵⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.474(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁵¹ Added by Insolvency (Amendment) Rules 2002/1307 rule 9(1) (May 31, 2002)

²³⁵² Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(9) para.134(1) (January 11, 1988)

(4) Without prejudice to the generality of paragraph (3), a proxy for a particular meeting may be given to whoever is to be the chairman of the meeting; and for a meeting held as part of the proceedings in a winding up by the court, or in a bankruptcy, it may be given to the official receiver.

[(5) A person given a proxy under paragraph (4) cannot decline to be the proxy-holder in relation to that proxy.

(6) A proxy requires the holder to give the principal's vote on matters arising for determination at the meeting, or to abstain, or to propose, in the principal's name, a resolution to be voted on by the meeting, either as directed or in accordance with the holder's own discretion.]²³⁵³

Commencement

Pt 8 rule 8.1(1)-(5): December 29, 1986

8.2.— Issue and use of forms

(1) When notice is given of a meeting to be held in insolvency proceedings, and forms of proxy are sent out with the notice, no form so sent out shall have inserted in it the name or description of any person.

(2) No form of proxy shall be used at any meeting except that which is sent out with the notice summoning the meeting, or a substantially similar form.

(3) A form of proxy shall be [authenticated]²³⁵⁴ by the principal, or by some person authorised by him (either generally or with reference to a particular meeting). If the form is [authenticated]²³⁵⁴ by a person other than the principal, the nature of the person's authority shall be stated.

Commencement

Pt 8 rule 8.2(1)-(3): December 29, 1986

8.3.— Use of proxies at meetings

(1) A proxy given for a particular meeting may be used at any adjournment of that meeting.

(2) Where the official receiver holds proxies for use at any meeting, his deputy, or any other official receiver, may act as proxy-holder in his place.

Alternatively, the official receiver may in writing authorise another officer of the Department to act for him at the meeting and use the proxies as if that other officer were himself proxy-holder.

(3) Where the responsible insolvency practitioner holds proxies to be used by him as chairman of a meeting, and some other person acts as chairman, the other person may use the insolvency practitioner's proxies as if he were himself proxy-holder.

[(4) Where a proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person as the responsible insolvency practitioner, the proxy-holder may, unless

²³⁵³ Rule 8.1(5) and (6) substituted for rule 8.1(5) by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(9) para.134(2) (January 11, 1988)

²³⁵⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

the proxy states otherwise, vote for or against (as he thinks fit) any resolution for the nomination or appointment of that person jointly with another or others.

(5) A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which by virtue of the proxy he would be entitled to vote.

(6) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy-holder from voting at his discretion on resolutions put to the meeting which are not dealt with in the proxy.]²³⁵⁵

Commencement

Pt 8 rule 8.3(1)-(3): December 29, 1986

8.4.— Retention of proxies

(1) Subject as follows, proxies used for voting at any meeting shall be retained by the chairman of the meeting.

(2) The chairman shall deliver the proxies, [as soon as reasonably practicable]²³⁵⁶ after the meeting, to the responsible insolvency practitioner (where that is someone other than himself).

Commencement

Pt 8 rule 8.4(1)-(2): December 29, 1986

8.5.— Right of inspection

(1) The [office-holder]²³⁵⁷ shall, so long as proxies lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day, by—

- (a) the creditors, in the case of proxies used at a meeting of creditors, and
- (b) a company's members or contributories, in the case of proxies used at a meeting of the company or of its contributories.

(2) The reference in paragraph (1) to creditors is—

- (a) in the case of a company in liquidation or of an individual's bankruptcy, those creditors who have proved their debts, and
- (b) in any other case, persons who have submitted in writing a claim to be creditors of the company or individual concerned;

but in neither case does it include a person whose proof or claim has been wholly rejected for purposes of voting, dividend or otherwise.

(3) The right of inspection given by this Rule is also exercisable—

- (a) in the case of an insolvent company, by its directors, and

²³⁵⁵ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(9) para.135 (January 11, 1988)

²³⁵⁶ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

²³⁵⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.475(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(b) in the case of an insolvent individual, by him.

(4) Any person attending a meeting in insolvency proceedings is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents [(including proofs) sent or given, in accordance with directions contained in any notice convening the meeting, to the chairman of that meeting or to any other person by a creditor, member or contributory for the purpose of that meeting.]²³⁵⁸

[(5) This Rule is subject to Rule 12A.51 (confidentiality of documents — grounds for refusing inspection).]²³⁵⁹

Commencement

Pt 8 rule 8.5(1)-(4): December 29, 1986

8.6.— Proxy-holder with financial interest

(1) A proxy-holder shall not vote in favour of any resolution which would directly or indirectly place him, or any associate of his, in a position to receive any remuneration out of the insolvent estate, unless the proxy specifically directs him to vote in that way.

[(1A) Where a proxy-holder has [authenticated]²³⁶⁰ the proxy as being authorised to do so by his principal and the proxy specifically directs him to vote in the way mentioned in paragraph (1), he shall nevertheless not vote in that way unless he produces to the chairman of the meeting written authorisation from his principal sufficient to show that the proxy-holder was entitled so to [authenticate]²³⁶⁰ the proxy.]²³⁶¹

(2) This Rule applies also to any person acting as chairman of a meeting and using proxies in that capacity [under Rule 8.3]²³⁶² ; and in its application to him, the proxy-holder is deemed an associate of his.

Commencement

Pt 8 rule 8.6(1)-(2): December 29, 1986

8.7.— Company representation

(1) Where a person is authorised [...] ²³⁶³ to represent a corporation at a meeting of creditors or of the company or its contributories, he shall produce to the chairman of the meeting a copy of the resolution from which he derives his authority.

²³⁵⁸ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(9) para.136 (January 11, 1988)

²³⁵⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.475(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁶⁰ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁶¹ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(9) para.137(1) (January 11, 1988)

²³⁶² Words inserted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(9) para.137(2) (January 11, 1988)

²³⁶³ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.476(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) The copy resolution must be under the seal of the corporation, or certified by the secretary or a director of the corporation to be a true copy.

[(3) Nothing in this Rule requires the authority of a person to [authenticate]²³⁶⁴ a proxy on behalf of a principal which is a corporation to be in the form of a resolution of that corporation.]²³⁶⁵

Commencement

Pt 8 rule 8.7(1)-(2): December 29, 1986

[8.8.— Interpretation of creditor

(1) This Rule applies where a member State liquidator has been appointed in relation to a person subject to insolvency proceedings.

(2) For the purposes of rule 8.5(1) (right of inspection of proxies) a member State liquidator appointed in main proceedings is deemed to be a creditor.

(3) Paragraph (2) is without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditor's rights).

] ²³⁶⁶

PART 9

EXAMINATION OF PERSONS CONCERNED IN COMPANY AND INDIVIDUAL INSOLVENCY

9.1.— Preliminary

[(1) The Rules in this Part apply to applications to the court for an order under—

(a) section 236 (inquiry into company's dealings),

(b) section 251N²³⁶⁷ (debt relief orders — inquiry into dealings and property of debtor),
or

(c) section 366 (inquiry into bankruptcy, with respect to the bankrupt's dealings — including section 366 as it applies by virtue of section 368).

] ²³⁶⁸

(2) The following definitions apply—

(a) the person in respect of whom an order is applied for is “the respondent”;

[(b) “the applicable section” is section 236, 251N or 366, according to whether the affairs of a company or those of a debtor in relation to a debt relief order or an application for a

²³⁶⁴ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁶⁵ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(9) para.138 (January 11, 1988)

²³⁶⁶ Added by Insolvency (Amendment) Rules 2002/1307 rule 9(2) (May 31, 2002)

²³⁶⁷ Section 251N was inserted by 2007 c. 15, s. 108(1) and Schedule 17.

²³⁶⁸ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.477(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

debt relief order or a bankrupt or (where the application under section 366 is made by virtue of section 368) a debtor in bankruptcy proceedings are in question;

(c) the company or, as the case may be, the debtor in relation to a debt relief order or an application for a debt relief order, the bankrupt or debtor in bankruptcy proceedings concerned is “the insolvent”;

(d) “the applicant”, in any application made under section 251N, means the official receiver.]²³⁶⁹

Commencement

Pt 9 rule 9.1(1)-(2)(c): December 29, 1986

9.2.— Form and contents of application

(1) The application shall be in writing, [and specify]²³⁷⁰ the grounds on which it is made.

[(2) The application must specify the name of the respondent.]²³⁷¹

(3) It shall be stated whether the application is for the respondent—

(a) to be ordered to appear before the court, or

[(b) to be ordered to clarify any matter which is in dispute in the proceedings or to give additional information in relation to any such matter and if so CPR Part 18 (further information) shall apply to any such order, or]²³⁷²

(c) to submit [witness statements]²³⁷³ (if so, particulars to be given of the matters to [be included]²³⁷⁴), or

(d) to produce books, papers or other records (if so, the items in question to be specified), or for any two or more of those purposes.

(4) The application may be made [without notice to any other party]²³⁷⁵ .

Commencement

Pt 9 rule 9.2(1)-(4): December 29, 1986

²³⁶⁹ Rule 9.1(2)(b) to (d) substituted for rule 9.1(2)(b) and (c) by Insolvency (Amendment) Rules 2009/642 rule 66(b) (April 6, 2009)

²³⁷⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.478(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁷¹ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.478(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁷² Substituted by Insolvency (Amendment) (No. 2) Rules 1999/1022 Sch.1 para.9 (April 26, 1999)

²³⁷³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.478(4)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁷⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.478(4)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁷⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.478(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

9.3.— Order for examination, etc.

- (1) The court may, whatever the purpose of the application, make any order which it has power to make under the applicable section.
- (2) The court, if it orders the respondent to appear before it, shall specify a venue for his appearance, which shall be not less than 14 days from the date of the order.
- (3) If he is ordered to submit [witness statements]²³⁷⁶, the order shall specify—
 - (a) the matters which are to be dealt with in his [witness statements]²³⁷⁶, and
 - (b) the time within which they are to be submitted to the court.
- (4) If the order is to produce books, papers or other records, the time and manner of compliance shall be specified.
- (5) The order must be served [as soon as reasonably practicable]²³⁷⁷ on the respondent; and it must be served personally, unless the court otherwise orders.

Commencement

Pt 9 rule 9.3(1)-(5): December 29, 1986

9.4.— Procedure for examination

- (1) At any examination of the respondent, the applicant may attend in person, or be represented by a solicitor with or without counsel, and may put such questions to the respondent as the court may allow.
- [(2) Unless the applicant objects, 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 the applicable section; and
 - (b) any creditor who has provided information on which the application was made under section 236 or 366.
]²³⁷⁸
- [(3) 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]²³⁷⁹.]²³⁸⁰
- (4) [...] ²³⁸¹

²³⁷⁶ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.479(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁷⁷ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

²³⁷⁸ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.480(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁷⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.480(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁸⁰ Substituted by Insolvency (Amendment) (No. 2) Rules 1999/1022 Sch.1 para.10 (April 26, 1999)

(5) The respondent may at his own expense employ a solicitor with or without counsel, 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 by him, and may make representations on his behalf.

(6) There shall be made in writing such record of the examination as the court thinks proper. The record shall be read over either to or by the respondent and [authenticated]²³⁸² by him at a venue fixed by the court.

(7) The written record may, in any proceedings (whether under the Act or otherwise) be used as evidence against the respondent of any statement made by him in the course of his examination.

Commencement

Pt 9 rule 9.4(1)-(7): December 29, 1986

9.5.— Record of examination

[(1) Unless the court otherwise directs, 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 under the applicable section, are not to be filed with the court.

(2) The documents set out in paragraph (3) are not open to inspection without an order of the court, by any person other than—

- (a) the applicant for an order under the applicable section, or
- (b) any person who could have applied for such an order in respect of the affairs of the same insolvent.

(3) The documents to which paragraph (2) applies are—

- (a) the written record of the respondent's examination;
- (b) copies of 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 file as shows the grounds for the application for an order.

] ²³⁸³

Commencement

Pt 9 rule 9.5(1)-(4): December 29, 1986

²³⁸¹ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.480(4) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁸² Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁸³ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.481(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

9.6.— Costs of proceedings under ss.236, [251N and]²³⁸⁴ 366

(1) Where the court has ordered an examination of any person under the applicable section, and it appears to it that the examination was made necessary because information had been unjustifiably refused by the respondent, it may order that the costs of the examination be paid by him.

(2) Where the court makes an order against a person under—

(a) section 237(1) or 367(1) (to deliver up property in his possession which belongs to the insolvent), or

(b) section 237(2) or 367(2) (to pay any amount in discharge of a debt due to the insolvent), the costs of the application for the order may be ordered by the court to be paid by the respondent.

(3) Subject to paragraphs (1) and (2) above, the applicant's costs shall, unless the court otherwise orders, [be paid—]²³⁸⁵

[(a) in relation to a company insolvency, as an expense of the liquidation,

(b) in relation to an individual insolvency [, but not in proceedings relating to debt relief orders or applications for debt relief orders]²³⁸⁶, out of the bankrupt's estate or (as the case may be) the debtor's property.]²³⁸⁵

(4) A person summoned to attend for examination under this Chapter shall be tendered a reasonable sum in respect of travelling expenses incurred in connection with his attendance. Other costs falling on him are at the court's discretion.

(5) Where the examination is on the application of the official receiver otherwise than in the capacity of liquidator or trustee, no order shall be made for the payment of costs by him.

Commencement

Pt 9 rule 9.6(1)-(5): December 29, 1986

PART 10

OFFICIAL RECEIVERS

10.1. Appointment of official receivers

Judicial notice shall be taken of the appointment under sections 399 to 401 of official receivers and deputy official receivers.

Commencement

Pt 10 rule 10.1: December 29, 1986

²³⁸⁴ Words inserted by Insolvency (Amendment) Rules 2009/642 rule 68(a) (April 6, 2009)

²³⁸⁵ Rule 9.6(3)(a) and (b) and words substituted for words by Insolvency (Amendment) Rules 2008/737 rule 7(13) (April 6, 2008)

²³⁸⁶ Words inserted by Insolvency (Amendment) Rules 2009/642 rule 68(b) (April 6, 2009)

10.2.— Persons entitled to act on official receiver's behalf

(1) In the absence of the official receiver authorised to act in a particular case, an officer authorised in writing for the purpose by the Secretary of State, or by the official receiver himself, may, with the [permission]²³⁸⁷ of the court, act on the official receiver's behalf and in his place—

- (a) in any examination under [section 133, 236, 251N, 290 or 366]²³⁸⁸, and
- (b) in respect of any application to the court.

(2) In case of emergency, where there is no official receiver capable of acting, anything to be done by, to or before the official receiver may be done by, to or before the registrar [or district judge]²³⁸⁹.

Commencement

Pt 10 rule 10.2(1)-(2): December 29, 1986

10.3. Application for directions

The official receiver may apply to the court for directions in relation to any matter arising in insolvency proceedings.

Commencement

Pt 10 rule 10.3: December 29, 1986

10.4.— Official receiver's expenses

(1) Any expenses incurred by the official receiver (in whatever capacity he may be acting) in connection with proceedings taken against him in insolvency proceedings are to be treated as expenses of the insolvency proceedings.

“Expenses” includes damages.

(2) In respect of any sums due to him under paragraph (1) [in connection with insolvency proceedings other than proceedings relating to debt relief orders or applications for debt relief orders]²³⁹⁰, the official receiver has a charge on the insolvent estate.

Commencement

Pt 10 rule 10.4(1)-(2): December 29, 1986

²³⁸⁷ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁸⁸ Word inserted by Insolvency (Amendment) Rules 2009/642 rule 69 (April 6, 2009)

²³⁸⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.482(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁹⁰ Words inserted by Insolvency (Amendment) Rules 2009/642 rule 70 (April 6, 2009)

PART 11

DECLARATION AND PAYMENT OF DIVIDEND (WINDING UP AND BANKRUPTCY)

11.1.— Preliminary

(1) The Rules in this Part relate to the declaration and payment of dividends in companies winding up and in bankruptcy.

(2) The following definitions apply—

(a) “the insolvent” means the company in liquidation or, as the case may be, the bankrupt; and

(b) “creditors” means those creditors of the insolvent of whom the [office-holder]²³⁹¹ is aware [...]²³⁹².

[(3) For the purposes of this Part, a member State liquidator appointed in relation to an insolvent is deemed to be a creditor.]²³⁹³

Commencement

Pt 11 rule 11.1(1)-(2)(b): December 29, 1986

11.2.— Notice of intended dividend

[(1) Before declaring a dividend, the [office-holder]²³⁹⁴ shall give notice of his intention to do so

(a) to all creditors whose addresses are known to him and who have not proved their debts, and

(b) where a member State liquidator has been appointed in relation to the insolvent, to that person.

] ²³⁹⁵

[(1A) Before declaring a first dividend the [office-holder]²³⁹⁴ shall give notice of the intended dividend. As soon as reasonably practicable such notice—

(a) shall be gazetted; and

(b) may be advertised in such other manner as the [office-holder]²³⁹⁴ thinks fit.

] ²³⁹⁶

²³⁹¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.483(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁹² Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.484(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁹³ Added by Insolvency (Amendment) Rules 2002/1307 rule 10(1) (May 31, 2002)

²³⁹⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.483(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁹⁵ Rule.11.2(1)(a) and (b) substituted for words by Insolvency (Amendment) Rules 2002/1307 rule 10(2) (May 31, 2002)

[(1B) Paragraph (1A) shall not apply where the [office-holder]²³⁹⁴ has previously, by notice [which has been gazetted]²³⁹⁷, invited creditors to prove their debts.]²³⁹⁸

[(1C) In addition to the standard contents, a notice under paragraph (1A) must—

- (a) state that the office-holder intends to declare a first dividend; and
- (b) specify the date by which and place at which proofs must be lodged.

] ²³⁹⁹

(2) [Any notice under paragraph (1) and any notice of a first dividend under paragraph (1A)]²⁴⁰⁰ shall specify a date (“the last date for proving”) up to which proofs may be lodged. The date shall be the same for all creditors, and not less than 21 days from that of the notice.

(3) The [office-holder]²³⁹⁴ shall in the notice state his intention to declare a dividend (specified as interim or final, as the case may be) within the period of [2]²⁴⁰¹ months from the last date for proving.

Commencement

Pt 11 rule 11.2(1)-(3): December 29, 1986

11.3.— Final admission/rejection of proofs

(1) The [office-holder]²⁴⁰² shall, within [5 business]²⁴⁰³ days from the last date for proving, deal with every creditor's proof (in so far as not already dealt with) by admitting or rejecting it in whole or in part, or by making such provision as he thinks fit in respect of it.

(2) The [office-holder]²⁴⁰² is not obliged to deal with proofs lodged after the last date for proving; but he may do so, if he thinks fit.

[(3) In the declaration of a dividend no payment shall be made more than once by virtue of the same debt.

(4) Subject to Rule 11.11, where—

²³⁹⁶ Substituted by Insolvency (Amendment) Rules 2009/642 rule 71(a) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

²³⁹⁷ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.485(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²³⁹⁸ Added by Insolvency (Amendment) Rules 2009/642 rule 71(b) (April 6, 2009: insertion has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

²³⁹⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.485(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁰⁰ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(10) para.139(3) (January 11, 1988)

²⁴⁰¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.485(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁰² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.483(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁰³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.486(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (a) a creditor has proved, and
- (b) a member State liquidator has proved in relation to the same debt, payment shall only be made to the creditor.

] ²⁴⁰⁴

Commencement

Pt 11 rule 11.3(1)-(2): December 29, 1986

11.4. Postponement or cancellation of dividend

If in the period of [2]²⁴⁰⁵ months referred to in Rule 11.2(3)—

- (a) the [office-holder]²⁴⁰⁶ has rejected a proof in whole or in part and application is made to the court for his decision to be reversed or varied, or
- (b) application is made to the court for the [office-holder's]²⁴⁰⁶ decision on a proof to be reversed or varied, or for a proof to be expunged, or for a reduction of the amount claimed, the [office-holder]²⁴⁰⁶ may postpone or cancel the dividend.

Commencement

Pt 11 rule 11.4(a)-(b): December 29, 1986

11.5.— Decision to declare dividend

(1) If the [office-holder]²⁴⁰⁷ has not, in the [2-month]²⁴⁰⁸ period referred to in Rule 11.2(3), had cause to postpone or cancel the dividend, he shall within that period proceed to declare the dividend of which he gave notice under that Rule.

(2) Except with the [permission]²⁴⁰⁹ of the court, the [office-holder]²⁴⁰⁷ shall not declare the dividend so long as there is pending any application to the court to reverse or vary a decision of his on a proof, or to expunge a proof or to reduce the amount claimed.

If the court gives [permission]²⁴⁰⁹ under this paragraph, the [office-holder]²⁴⁰⁷ shall make such provision in respect of the proof in question as the court directs.

²⁴⁰⁴ Added by Insolvency (Amendment) Rules 2002/1307 rule 10(3) (May 31, 2002)

²⁴⁰⁵ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.487(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁰⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.483(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁰⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.483(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁰⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.488(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁰⁹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 11 rule 11.5(1)-(2): December 29, 1986

11.6.— Notice of declaration

[(1) The [office-holder]²⁴¹⁰ shall give notice of the dividend to

- (a) all creditors who have proved their debts, and
- (b) where a member State liquidator has been appointed in relation to the insolvent, to that person.

]²⁴¹¹

(2) The notice shall include the following particulars relating to the insolvency and the administration of the insolvent estate—

- (a) amounts realised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;
- (b) payments made by the insolvency practitioner in the administration of the insolvent estate;
- (c) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;
- (d) the total amount to be distributed, and the rate of dividend;
- (e) whether, and if so when, any further dividend is expected to be declared.

[(2A) Where, in a winding up other than a members' voluntary winding up, the liquidator proposes to declare a dividend to unsecured creditors, the notice must also state the value of the prescribed part, except where the court has made an order under section 176A(5).]²⁴¹²

(3) The dividend may be distributed simultaneously with the notice declaring it.

(4) Payment of dividend may be made by post, or arrangements may be made with any creditor for it to be paid to him in another way, or held for his collection.

(5) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend shall be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.

Commencement

Pt 11 rule 11.6(1)-(5): December 29, 1986

²⁴¹⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.483(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴¹¹ Rule.11.6(1)(a) and (b) substituted for words by Insolvency (Amendment) Rules 2002/1307 rule 10(4) (May 31, 2002)

²⁴¹² Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.489(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

11.7. Notice of no, or no further, dividend

If the [office-holder]²⁴¹³ gives notice to creditors that he is unable to declare any dividend or (as the case may be) any further dividend, the notice shall contain a statement to the effect either—

- (a) that no funds have been realised, or
- (b) that the funds realised have already been distributed or used or allocated for defraying the expenses of administration.

Commencement

Pt 11 rule 11.7(a)-(b): December 29, 1986

11.8.— Proof altered after payment of dividend

(1) If after payment of dividend the amount claimed by a creditor in his proof is increased, the creditor is not entitled to disturb the distribution of the dividend; but he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive.

(2) Any dividend or dividends payable under paragraph (1) shall be paid before the money there referred to is applied to the payment of any such further dividend.

(3) If, after a creditor's proof has been admitted, the proof is withdrawn or expunged, or the amount of it is reduced, the creditor is liable to repay to the [office-holder]²⁴¹⁴, for the credit of the insolvent estate, any amount over paid by way of dividend.

Commencement

Pt 11 rule 11.8(1)-(3): December 29, 1986

11.9.— Secured creditors

(1) The following applies where a creditor re-values his security at a time when a dividend has been declared.

(2) If the revaluation results in a reduction of his unsecured claim ranking for dividend, the creditor shall [as soon as reasonably practicable]²⁴¹⁵ repay to the [office-holder]²⁴¹⁶, for the credit of the insolvent estate, any amount received by him as dividend in excess of that to which he would be entitled having regard to the revaluation of the security.

²⁴¹³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.483(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴¹⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.483(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴¹⁵ Word substituted by Insolvency (Amendment) Rules 2009/642 rule 5 (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

²⁴¹⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.483(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) If the revaluation results in an increase of his unsecured claim, the creditor is entitled to receive from the [office-holder]²⁴¹⁶, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which he has failed to receive, having regard to the revaluation of the security.

However, the creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the revaluation.

Commencement

Pt 11 rule 11.9(1)-(3): December 29, 1986

11.10. Disqualification from dividend

If a creditor contravenes any provision of the Act or the Rules relating to the valuation of securities, the court may, on the application of the [office-holder]²⁴¹⁷, order that the creditor be wholly or partly disqualified from participation in any dividend.

Commencement

Pt 11 rule 11.10: December 29, 1986

11.11.— Assignment of right to dividend

(1) If a person entitled to a dividend gives notice to the [office-holder]²⁴¹⁸ that he wishes the dividend to be paid to another person, or that he has assigned his entitlement to another person, the [office-holder]²⁴¹⁸ shall pay the dividend to that other accordingly.

(2) A notice given under this Rule must specify the name and address of the person to whom payment is to be made.

Commencement

Pt 11 rule 11.11(1)-(2): December 29, 1986

11.12.— Preferential creditors

(1) Subject as follows, the Rules in this Part apply with respect to any distribution made in the insolvency to preferential creditors, with such adaptations as are appropriate considering that such creditors are of a limited class.

²⁴¹⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.483(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴¹⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.483(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) The notice by the [office-holder]²⁴¹⁹ under Rule 11.2, where a dividend is to be declared for preferential creditors, need only be given to those creditors in whose case he has reason to believe that their debts are preferential [and [notice]²⁴²⁰ of the intended dividend need only be [gazetted]²⁴²¹ if the [office-holder]²⁴¹⁹ thinks fit]²⁴²² .

Commencement

Pt 11 rule 11.12(1)-(2): December 29, 1986

11.13.— Debt payable at future time

(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, he is entitled to dividend equally with other creditors, but subject as follows.

[(2) For the purpose of dividend (and no other purpose) the amount of the creditor's admitted proof (or, if a distribution has previously been made to him, the amount remaining outstanding in respect of his admitted proof) shall be reduced by applying the following formula—

$$\frac{X}{1.05}$$

where—

- (a) “X” is the value of the admitted proof; and
- (b) “n” is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would otherwise be due expressed in years and months in a decimalised form.

(3) In paragraph (2) “relevant date” means—

- (a) in the case of a winding up which was not immediately preceded by an administration, the date that the company went into liquidation;
- (b) in the case of a winding up which was immediately preceded by an administration, the date that the company entered administration; and
- (c) in the case of a bankruptcy, the date of the bankruptcy order.

] ²⁴²³

(3) [...] ²⁴²⁴

²⁴¹⁹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.483(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴²⁰ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.490(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴²¹ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.490(2)(b) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴²² Words added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(10) para.140 (January 11, 1988)

²⁴²³ Rule 11.13(2) and (3) substituted for rule 11.13(2) subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 43(1) (April 1, 2005: substitution has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

²⁴²⁴ Subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 43(2) (April 1, 2005: repeal has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

Commencement

Pt 11 rule 11.13(1)-(3): December 29, 1986

PART 12

MISCELLANEOUS AND GENERAL

12.1.— Power of Secretary of State to regulate certain matters

(1) Pursuant to paragraph 27 of Schedule 8 to the Act, and paragraph 30 of Schedule 9 to the Act, the Secretary of State may [, subject to the Act and the Rules, make regulations with respect to any matter provided for in the Rules as relates to the carrying out of the functions of a liquidator, provisional liquidator, administrator or administrative receiver of a company, an interim receiver appointed under section 286, of the official receiver while acting as receiver or manager under section 287 or of a trustee of a bankrupt's estate, including, without prejudice to the generality of the foregoing, provision]²⁴²⁵ with respect to the following matters arising in companies winding up and individual bankruptcy—

- (a) the preparation and keeping by liquidators, trustees, provisional liquidators, interim receivers and the official receiver, of books, accounts and other records, and their production to such persons as may be authorised or required to inspect them;
- (b) the auditing of liquidators' and trustees' accounts;
- (c) the manner in which liquidators and trustees are to act in relation to the insolvent company's or bankrupt's books, papers and other records, and the manner of their disposal by the [office-holder]²⁴²⁶ or others;
- (d) the supply—
 - (i) in company insolvency, by the liquidator to creditors and members of the company, contributories in its winding up and the liquidation committee, and
 - (ii) in [bankruptcy]²⁴²⁷, by the trustee to creditors and the creditors' committee, of copies of documents relating to the insolvency and the affairs of the insolvent company or individual (on payment, in such cases as may be specified by the regulations, of the specified fee);
- (e) the manner in which insolvent estates are to be distributed by liquidators and trustees, including provision with respect to unclaimed funds and dividends;
- (f) the manner in which moneys coming into the hands of a liquidator or trustee in the course of his administration are to be handled and [...] ²⁴²⁸ invested, and the payment of interest on sums which, in pursuance of regulations made by virtue of this sub-paragraph, have been paid into the Insolvency Service Account;

²⁴²⁵ Words substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(11) para.142(1) (January 11, 1988)

²⁴²⁶ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.491(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴²⁷ Words substituted by Insolvency (Amendment) Rules 2009/642 rule 72 (April 6, 2009)

²⁴²⁸ Words repealed by Insolvency (Amendment) Rules 2001/763 rule 2 (April 2, 2001)

- (g) the amount (or the manner of determining the amount) to be paid to the official receiver by way of remuneration when acting as provisional liquidator, liquidator, interim receiver or trustee.
- (2) Any reference in paragraph (1) to a trustee includes a reference to the official receiver when acting as receiver and manager under section 287.
- (3) Regulations made pursuant to paragraph (1) may—
- (a) confer a discretion on the court;
 - (b) make non-compliance with any of the regulations a criminal offence;
 - (c) make different provision for different cases, including different provision for different areas [; and]²⁴²⁹
 - [(d) contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State necessary or expedient.]²⁴²⁹

Commencement

Pt 12 rule 12.1(1)-(3)(c): December 29, 1986

[12.2. Costs, expenses, etc.

- (1) All fees, costs, charges and other expenses incurred in the course of winding up [, administration]²⁴³⁰ or bankruptcy proceedings are to be regarded as expenses of the winding up [or the administration]²⁴³⁰ or, as the case may be, of the bankruptcy.
- (2) The costs associated with the prescribed part shall be paid out of the prescribed part.
]²⁴³¹

Commencement

Pt 12 rule 12.2: December 29, 1986

12.3.— Provable debts

- (1) Subject as follows, [in administration, winding up and bankruptcy]²⁴³², all claims by creditors are provable as debts against the company or, as the case may be, the bankrupt, whether they are present or future, certain or contingent, ascertained or sounding only in damages.
- (2) The following are not provable—
- (a) in bankruptcy, any fine imposed for an offence, and any obligation [(other than an obligation to pay a lump sum or to pay costs)]²⁴³³ arising under an order made in family

²⁴²⁹ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(11) para.142(2) (January 11, 1988)

²⁴³⁰ Words inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(9) para.61(a) (September 15, 2003)

²⁴³¹ Existing rule 12.2 is renumbered as rule 12.2(1) and rule 12.2(2) is inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(9) para.61(b) (September 15, 2003)

²⁴³² Words substituted by Insolvency (Amendment) Rules 2003/1730 Sch.1(9) para.62(a) (September 15, 2003)

²⁴³³ Words inserted subject to transitional provisions specified in SI 2005/527 rule 3(1) by Insolvency (Amendment) Rules 2005/527 rule 44 (April 1, 2005: insertion has effect subject to transitional provisions specified in SI 2005/527 rule 3(1))

[...] ²⁴³⁴ proceedings [or [any obligation arising] ²⁴³³ under a maintenance assessment made under the Child Support Act 1991] ²⁴³⁵ ;

(b) in [administration,] ²⁴³⁶ winding up or bankruptcy, any obligation arising under a confiscation order made under section 1 of the Drug Trafficking Offences Act 1986 [or section 1 of the Criminal Justice (Scotland) Act 1987] ²⁴³⁷ [or section 71 of the Criminal Justice Act 1988] ²⁴³⁸ [or under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002] ²⁴³⁶ “Fine” [...] ²⁴³⁹ and “family proceedings” have the meanings given by section 281(8) of the Act (which applies the Magistrates' Courts Act 1980 and the Matrimonial and Family Proceedings Act 1984).

[(2A) The following are not provable except at a time when all other claims of creditors in the insolvency proceedings (other than any of a kind mentioned in this paragraph) have been paid in full with interest under section 189(2) [, Rule 2.88] ²⁴⁴⁰ or, as the case may be, section 328(4)-

[(a) in [an administration,] ²⁴⁴¹ a winding up or a bankruptcy, any claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000, not being a claim also arising by virtue of section 382(1)(b) of that Act;] ²⁴⁴²

(c) in [an administration or] ²⁴⁴³ a winding up, any claim which by virtue of the Act or any other enactment is a claim the payment of which in a bankruptcy [, an administration] ²⁴⁴³ or a winding up is to be postponed.

] ²⁴⁴⁴

(3) Nothing in this Rule prejudices any enactment or rule of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

Commencement

Pt 12 rule 12.3(1)-(3): December 29, 1986

12.4.— [...] ²⁴⁴⁵

12.4A.— [...] ²⁴⁴⁶

²⁴³⁴ Words repealed by Insolvency (Amendment) Rules 1993/602 Sch.1 para.2 (April 5, 1993)

²⁴³⁵ Words added by Insolvency (Amendment) Rules 1993/602 Sch.1 para.2 (April 5, 1993)

²⁴³⁶ Words inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(9) para.62(b) (September 15, 2003)

²⁴³⁷ Words added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(11) para.143(1) (January 11, 1988)

²⁴³⁸ Words inserted by Insolvency (Amendment) Rules 1989/397 Sch.1 para.2 (April 3, 1989)

²⁴³⁹ Words repealed by Insolvency (Amendment) Rules 1993/602 Sch.1 para.3 (April 5, 1993)

²⁴⁴⁰ Words inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(9) para.62(c) (September 15, 2003)

²⁴⁴¹ Words inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(9) para.62(d) (September 15, 2003)

²⁴⁴² Substituted by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.380 (December 1, 2001)

²⁴⁴³ Words inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(9) para.62(e) (September 15, 2003)

²⁴⁴⁴ Added by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(11) para.143(2) (January 11, 1988)

²⁴⁴⁵ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁴⁶ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

12.5.— [...] ²⁴⁴⁷

12.6.— [...] ²⁴⁴⁸

12.7.— [...] ²⁴⁴⁹

12.8.— [...] ²⁴⁵⁰

12.9.— [...] ²⁴⁵¹

12.10.— [...] ²⁴⁵²

12.11. [...] ²⁴⁵³

12.12.— [...] ²⁴⁵⁴

12.13.— [...] ²⁴⁵⁵

12.14. [...] ²⁴⁵⁶

12.15. [...] ²⁴⁵⁷

12.15A. [...] ²⁴⁵⁸

12.16. [...] ²⁴⁵⁹

²⁴⁴⁷ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁴⁸ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁴⁹ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁵⁰ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁵¹ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁵² Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁵³ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁵⁴ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁵⁵ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁵⁶ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁵⁷ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁵⁸ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

12.17.— [...] ²⁴⁶⁰**12.18.— False claim of status as creditor, etc.**

(1) Where the Rules provide for creditors, members of a company or contributories in a company's winding up a right to inspect any documents, whether on the court's file or in the hands of a [an office-holder] ²⁴⁶¹ or other person, it is an offence for a person, with the intention of obtaining a sight of documents which he has not under the Rules any right to inspect, falsely to claim a status which would entitle him to inspect them.

(2) A person guilty of an offence under this Rule is liable to imprisonment or a fine, or both.

Commencement

Pt 12 rule 12.18(1)-(2): December 29, 1986

12.19.— [...] ²⁴⁶²**12.20.— [...] ²⁴⁶³****12.21.— Punishment of offences**

(1) Schedule 5 to the Rules has effect with respect to the way in which contraventions of the Rules are punishable on conviction.

(2) In relation to an offence under a provision of the Rules specified in the first column of the Schedule (the general nature of the offence being described in the second column), the third column shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other.

(3) The fourth column shows, in relation to an offence, the maximum punishment by way of fine or imprisonment which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column (that is to say, on indictment or summarily), a reference to a period of years or months being to a term of imprisonment of that duration.

(4) The fifth column shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say, he is liable on a second or subsequent conviction of the offence to the fine specified

²⁴⁵⁹ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁶⁰ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁶¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.492(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁶² Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁶³ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of the Schedule).

(5) Section 431 (summary proceedings), as it applies to England and Wales, has effect in relation to offences under the Rules as to offences under the Act.

Commencement

Pt 12 rule 12.21(1)-(5): December 29, 1986

12.22.— [...]²⁴⁶⁴

[PART 12A

PROVISIONS OF GENERAL EFFECT

]

²⁴⁶⁵

[CHAPTER 1

THE GIVING OF NOTICE AND THE SUPPLY OF DOCUMENTS — GENERAL]

²⁴⁶⁶

[12A.1 Application

(1) Subject to paragraphs (2) and (3), this Chapter applies where a notice or other document is required to be given, delivered or sent under the Act or the Rules by any person, including an office-holder.

(2) This Chapter does not apply to the service of—

- (a) any petition or application to the court;
- (b) any evidence in support of that petition or application; or
- (b) any order of the court.

(3) This Chapter does not apply to the submission of documents to the registrar of companies.

]

²⁴⁶⁷

[12A.2 Personal delivery of documents

Personal delivery of a notice or other document is permissible in any case.]

²⁴⁶⁸

²⁴⁶⁴ Revoked by Insolvency (Amendment) Rules 2010/686 rule 5 (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁶⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁶⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁶⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁶⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[12A.3 Postal delivery of documents]

Unless in any particular case some other form of delivery is required by the Act, the Rules or an order of the court, a notice or other document may be sent by post in accordance with the rules for postal service in CPR Part 6 and sending by such means has effect as specified in those rules.]²⁴⁶⁹

[12A.4 Non-receipt of notice of meeting]

Where in accordance with the Act or the Rules, a meeting of creditors or other persons is summoned by notice, the meeting is presumed to have been duly summoned and held, notwithstanding that not all those to whom the notice is to be given have received it.]²⁴⁷⁰

[12A.5 Notice etc. to solicitors]

Where under the Act or the Rules a notice or other document is required or authorised to be given, delivered or sent to a person, it may be given, delivered or sent instead to a solicitor authorised to accept delivery on that person's behalf.]²⁴⁷¹

[CHAPTER 2

**THE GIVING OF NOTICE AND THE SUPPLY OF DOCUMENTS BY OR TO
OFFICEHOLDERS ETC.]²⁴⁷²**

[12A.6 Application]

- (1) Subject to paragraphs (2) to (4), this Chapter applies where a notice or other document is required to be given, delivered or sent under the Act or the Rules.
- (2) This Chapter does not apply to the submission of documents to the registrar of companies.
- (3) Rules 12A.10 to 12A.13 do not apply to—
 - (a) the filing of any notice or other document with the court; or
 - (b) the service of a statutory demand.

] ²⁴⁷³

[12A.7 The form of notices and other documents]

Subject to any order of the court, any notice or other document required to be given, delivered or sent must be in writing and where electronic delivery is permitted a notice or other document in

²⁴⁶⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁷⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁷¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁷² Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁷³ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

electronic form is treated as being in writing if a copy of it is capable of being produced in a legible form.]²⁴⁷⁴

[12A.8 Proof of sending etc.

- (1) Where in any insolvency proceedings a notice or other document is required to be given, delivered or sent by the office-holder, the giving, delivering or sending of it may be proved by means of a certificate that the notice or other document was duly given, delivered or sent.
- (2) In the case of the official receiver the certificate may be given by—
 - (a) the official receiver; or
 - (b) a member of the official receiver's staff.
- (3) In the case of a responsible insolvency practitioner the certificate may be given by—
 - (a) the practitioner;
 - (b) the practitioner's solicitor;
 - (c) a partner or an employee of either of them.
- (4) In the case of a notice or other document to be given, delivered or sent by a person other than the official receiver or a responsible insolvency practitioner, the giving, delivering or sending of it may be proved by means of a certificate by that person—
 - (a) that the notice or document was given, delivered or sent by that person, or
 - (b) that another person (named in the certificate) was instructed to give, deliver or send it.
- (5) A certificate under this Rule may be endorsed on a copy or specimen of the notice or document to which it relates.

] ²⁴⁷⁵

[12A.9 Authentication

- (1) A document or information given, delivered or sent in hard copy form is sufficiently authenticated if it is signed by the person sending or supplying it.
- (2) A document or information given, delivered or sent in electronic form is sufficiently authenticated—
 - (a) if the identity of the sender is confirmed in a manner specified by the recipient, or
 - (b) where no such manner has been specified by the recipient, if the communication contains or is accompanied by a statement of the identity of the sender and the recipient has no reason to doubt the truth of that statement.

] ²⁴⁷⁶

²⁴⁷⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁷⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁷⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[12A.10 Electronic delivery in insolvency proceedings — general]

(1) Unless in any particular case some other form of delivery is required by the Act or the Rules or an order of the court and subject to paragraph (3), a notice or other document may be given, delivered or sent by electronic means provided that the intended recipient of the notice or other document has—

- (a) consented (whether in the specific case or generally) to electronic delivery (and has not revoked that consent); and
- (b) provided an electronic address for delivery.

(2) In the absence of evidence to the contrary, a notice or other document is presumed to have been delivered where—

- (a) the sender can produce a copy of the electronic message which—
 - (i) contained the notice or other document, or to which the notice or other document was attached, and
 - (ii) shows the time and date the message was sent; and
- (b) that electronic message contains the address supplied under paragraph (1)(b).

(3) A message sent electronically is deemed to have been delivered to the recipient no later than 9.00am on the next business day after it was sent.

²⁴⁷⁷

[12A.11 Electronic delivery by office-holders]

(1) Where an office-holder gives, sends or delivers a notice or other document to any person by electronic means, the notice or document must contain or be accompanied by a statement that the recipient may request a hard copy of the notice or document and specifying a telephone number, e-mail address and postal address which may be used to request a hard copy.

(2) Where a hard copy of the notice or other document is requested, it must be sent within 5 business days of receipt of the request by the office-holder.

(3) An office-holder must not require a person making a request under paragraph (2) to pay a fee for the supply of the document.

²⁴⁷⁸

[12A.12 Use of websites by office-holder]

(1) This Rule applies for the purposes of sections 246B and 379B²⁴⁷⁹.

(2) An office-holder required to give, deliver or send a document to any person may (other than in a case where personal service is required) satisfy that requirement by sending that person a notice—

- (a) stating that the document is available for viewing and downloading on a website;

²⁴⁷⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁷⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁷⁹ Sections 246B and 379B were inserted by S.I. 2010/18.

- (b) specifying the address of that website together with any password necessary to view and download the document from that site; and
 - (c) containing a statement that the person to whom the notice is given, delivered or sent may request a hard copy of the document and specifying a telephone number, e-mail address and postal address which may be used to request a hard copy.
- (3) Where a notice to which this Rule applies is sent, the document to which it relates must—
- (a) be available on the website for a period of not less than 3 months after the date on which the notice is sent; and
 - (b) must be in such a format as to enable it to be downloaded from the website within a reasonable time of an electronic request being made for it to be downloaded.
- (4) Where a hard copy of the document is requested it must be sent within 5 business days of the receipt of the request by the office-holder.
- (5) An office-holder must not require a person making a request under paragraph (4) to pay a fee for the supply of the document.
- (6) Where a document is given, delivered or sent to a person by means of a website in accordance with this Rule, it is deemed to have been delivered—
- (a) when the document was first made available on the website, or
 - (b) if later, when the notice under paragraph (2) was delivered to that person.

]²⁴⁸⁰

[12A.13 Special provision on account of expense as to website use

- (1) Where the court is satisfied that the expense of sending notices in accordance with Rule 12A.12 would, on account of the number of persons entitled to receive them, be disproportionate to the benefit of sending notices in accordance with that Rule, it may order that the requirement to give, deliver or send a relevant document to any person may (other than in a case where personal service is required) be satisfied by the office-holder sending each of those persons a notice—
- (a) stating that all relevant documents will be made available for viewing and downloading on a website;
 - (b) specifying the address of that website together with any password necessary to view and download a relevant document from that site; and
 - (c) containing a statement that the person to whom the notice is given, delivered or sent may at any time request that hard copies of all, or specific, relevant documents are sent to that person, and specifying a telephone number, e-mail address and postal address which may be used to make that request.
- (2) A document to which this Rule relates must—
- (a) be available on the website for a period of not less than 12 months from the date when it was first made available on the website or, if later, from the date upon which the notice was sent, and
 - (b) must be in such a format as to enable it to be downloaded from the website within a reasonable time of an electronic request being made for it to be downloaded.

²⁴⁸⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) Where hard copies of relevant documents have been requested, they must be sent by the office-holder—

- (a) within 5 business days of the receipt by the office-holder of the request to be sent hard copies, in the case of relevant documents first appearing on the website before the request was received, or
- (b) within 5 business days from the date a relevant document first appears on the website, in all other cases.

(4) An office-holder must not require a person making a request under paragraph (3) to pay a fee for the supply of the document.

(5) Where a relevant document is given, delivered or sent to a person by means of a website in accordance with this Rule, it is deemed to have been delivered—

- (a) when the relevant document was first made available on the website, or
- (b) if later, when the notice under paragraph (1) was delivered to that person.

(6) In this Rule a relevant document means any document which the office-holder is first required to give, deliver or send to any person after the court has made an order under paragraph (1).

]²⁴⁸¹

[12A.14 Electronic delivery of insolvency proceedings to courts

(1) Except where paragraph (2) applies or the requirements of paragraph (3) are met, no petition, application, notice or other document may be delivered or made to a court by electronic means.

(2) This paragraph applies where electronic delivery of documents to a court is permitted by another Rule.

(3) The requirements of this paragraph are—

- (a) the court provides an electronic working scheme for the proceedings to which the document relates; and
- (b) the electronic communication is—
 - (i) delivered and authenticated in a form which complies with the requirements of the scheme;
 - (ii) sent to the electronic address provided by the court for electronic delivery of those proceedings; and
 - (iii) accompanied by any payment due to the court in respect of those proceedings made in a manner which complies with the requirements of the scheme.

(4) In this Rule “an electronic working scheme” means a scheme permitting insolvency proceedings to be delivered electronically to the court set out in a practice direction.

(5) Under paragraph (3) an electronic communication is to be treated as delivered to the court at the time it is recorded by the court as having been received.

]²⁴⁸²

²⁴⁸¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁸² Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[12A.15 Notice etc. to joint office-holders

Where there are joint office-holders in insolvency proceedings, delivery of a document to one of them is to be treated as delivery to all of them.]²⁴⁸³

[CHAPTER 3**SERVICE OF COURT DOCUMENTS]²⁴⁸⁴****[12A.16 Application**

(1) Subject to paragraph (2), this Chapter applies in relation to the service of—

- (a) petitions,
- (b) applications,
- (c) documents relating to petitions or applications, and
- (d) court orders,

which are required to be served by any provision of the Act or the Rules (“court documents”).

(2) Rules 12A.17 to 12A.19 do not apply to the service of—

- (a) a winding-up petition,
- (b) a bankruptcy petition,
- (c) any document relating to such a petition, or
- (d) an administration, winding-up or bankruptcy order.

(3) For the purpose of the application by this Chapter of CPR Part 6 to the service of documents in insolvency proceedings—

- (a) an application commencing insolvency proceedings (including a winding-up petition, a bankruptcy petition or an administration application), or
- (b) an application within insolvency proceedings against a respondent,

is to be treated as a claim form.

] ²⁴⁸⁵

[12A.17 Application of CPR Part 6 to service of court documents within the jurisdiction

Except where different provision is made in these Rules, CPR Part 6 applies in relation to the service of court documents within the jurisdiction with such modifications as the court may direct.]²⁴⁸⁶

[12A.18 Service of orders staying proceedings

(1) This Rule applies where the court makes an order staying any action, execution or other legal process against—

²⁴⁸³ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁸⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁸⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁸⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (a) the property of a company; or
- (b) the property or person of an individual debtor or bankrupt.

(2) Service within the jurisdiction of such an order as is mentioned in paragraph (1) may be effected by sending a sealed copy of the order to the address for service of the claimant or other party having the carriage of the proceedings to be stayed.

]²⁴⁸⁷

[12A.19 Service on joint office-holders

Where there are joint office-holders in insolvency proceedings, service on one of them is to be treated as service on all of them.]²⁴⁸⁸

[12A.20 Application of CPR Part 6 to service of court documents outside the jurisdiction

CPR Part 6 applies to the service of court documents outside the jurisdiction with such modifications as the court may direct.]²⁴⁸⁹

[CHAPTER 4

MEETINGS]²⁴⁹⁰

[12A.21 Quorum at meeting of creditors or contributories

(1) Any meeting of creditors or contributories in insolvency proceedings is competent to act if a quorum is present.

(2) Subject to the next paragraph, a quorum is—

- (a) in the case of a creditors' meeting, at least one creditor entitled to vote;
- (b) in the case of a meeting of contributories, at least two contributories so entitled, or all the contributories, if their number does not exceed two.

(3) For the purposes of this Rule, the reference to the creditor or contributories necessary to constitute a quorum is to those persons present or represented by proxy by any person (including the chairman) and in the case of any proceedings under Parts 1 to 7 of the Act includes corporations duly represented.

(4) Where at any meeting of creditors or contributories—

- (a) the provisions of this Rule as to a quorum being present are satisfied by the attendance of—
 - (i) the chairman alone, or
 - (ii) one other person in addition to the chairman, and

²⁴⁸⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁸⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁸⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁹⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(b) the chairman is aware, by virtue of proofs and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote, the meeting must not commence until at least the expiry of 15 minutes after the time appointed for its commencement.

]²⁴⁹¹

[12A.22 Remote attendance at meetings of creditors

(1) This Rule applies to a request to the convener of a meeting under section 246A(9) or 379A(8) to specify a place for the meeting.

(2) The request must be accompanied by—

- (a) in the case of a request by creditors, a list of the creditors making or concurring with the request and the amounts of their respective debts in the insolvency proceedings in question,
- (b) in the case of a request by contributories, a list of the contributories making or concurring with the request and their respective values (being the amounts for which they may vote at the meeting),
- (c) in the case of a request by members, a list of the members making or concurring with the request and their voting rights, and
- (d) from each person concurring, written confirmation of that person's concurrence.

(3) The request must be made within 7 business days of the date on which the convener sent the notice of the meeting in question.

(4) Where the convener considers that the request has been properly made in accordance with the Act and this Rule, the convener must—

- (a) give notice to all those previously given notice of the meeting—
 - (i) that it is to be held at a specified place, and
 - (ii) as to whether the date and time are to remain the same or not;
- (b) set a venue (including specification of a place) for the meeting, the date of which must be not later than 28 days after the original date for the meeting; and
- (c) give at least 14 days' notice of that venue to all those previously given notice of the meeting;

and the notices required by sub-paragraphs (a) and (c) may be given at the same or different times.

(5) Where—

- (a) a request to which this Rule relates is made in respect of a final meeting under section 106, 146 or 331;
- (b) an application is made under Rule 4.131 or 6.142 in respect of remuneration or expenses reported in the draft report for that meeting; and
- (c) the meeting cannot be held until the application (including any appeal) has been disposed of and any order of the court complied with,

paragraph (4)(a) does not apply and the duty to set a venue (including specification of a place) for the meeting applies in relation to the meeting when it is finally held.

²⁴⁹¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(6) Where the convener has specified a place for the meeting in response to a request to which this Rule applies, the chairman of the meeting must attend the meeting by being present in person at that place.

(7) Rules 2.37(3), (4), (5) and (6), 4.61 and 6.87 (expenses of summoning meetings) do not apply to the summoning and holding of a meeting at a place specified in accordance with section 246A(9) or 379A(8).

]²⁴⁹²

[12A.23 Action where person excluded

- (1) In this Rule and Rules 12A.24 and 12A.25 an “excluded person” means a person who—
 - (a) has taken all steps necessary to attend a meeting under the arrangements put in place to do so by the convener of the meeting under section 246A(6) or 379A(5); and
 - (b) those arrangements do not permit that person to attend the whole or part of that meeting.
- (2) Where the chairman becomes aware during the course of the meeting that there is an excluded person, the chairman may—
 - (a) continue the meeting;
 - (b) declare the meeting void and convene the meeting again;
 - (c) declare the meeting valid up to the point where the person was excluded and adjourn the meeting.
- (3) Where the chairman continues the meeting, the meeting is valid unless—
 - (a) the chairman decides in consequence of a complaint under Rule 12A.25 to declare the meeting void and hold the meeting again; or
 - (b) the court directs otherwise.
- (4) Without prejudice to paragraph (2), where the chairman becomes aware during the course of the meeting that there is an excluded person, the chairman may, in the chairman's discretion and without an adjournment, declare the meeting suspended for any period up to 1 hour.

]²⁴⁹³

[12A.24 Indication to excluded person

- (1) A person who claims to be an excluded person may request an indication of what occurred during the period of that person's claimed exclusion (an “indication”).
- (2) A request under paragraph (1) must be made as soon as reasonably practicable and, in any event, no later than 4.00 p.m. on the business day following the day on which the exclusion is claimed to have occurred.
- (3) A request under paragraph (1) must be made to—
 - (a) the chairman, where it is made during the course of the business of the meeting; or
 - (b) the office-holder where it is made after the conclusion of the business of the meeting.

²⁴⁹² Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁹³ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(4) Where satisfied that the person making the request is an excluded person, the person to whom the request is made under paragraph (3) must give the indication as soon as reasonably practicable and, in any event, no later than 4.00 p.m. on the business day following the day on which the request was made under paragraph (1).

(5) In this Rule and Rule 12A.25, “office-holder” has the meaning in Rule 13.9A.

]²⁴⁹⁴

[12A.25 Complaint

- (1) Any person who—
 - (a) is, or claims to be, an excluded person; or
 - (b) attends the meeting (in person or by proxy) and considers that they have been adversely affected by a person's actual, apparent or claimed exclusion,
 (“the complainant”) may make a complaint.
- (2) The person to whom the complaint must be made (“the relevant person”) is—
 - (a) the chairman, where it is made during the course of the meeting; or
 - (b) the office-holder, where it is made after the meeting.
- (3) The relevant person must—
 - (a) consider whether there is an excluded person; and
 - (b) where satisfied that there is an excluded person, consider the complaint; and
 - (c) where satisfied that there has been prejudice, take such action as the relevant person considers fit to remedy the prejudice.
- (4) Paragraph (5) applies where—
 - (a) the relevant person is satisfied that the complainant is an excluded person;
 - (b) during the period of the person's exclusion—
 - (i) a resolution was put to the meeting; and
 - (ii) voted on; and
 - (c) the excluded person asserts how the excluded person intended to vote on the resolution.
- (5) Subject to paragraph (6), where satisfied that the effect of the intended vote in paragraph (4), if cast, would have changed the result of the resolution, the relevant person must—
 - (a) count the intended vote as being cast in accordance with the complainant's stated intention;
 - (b) amend the record of the result of the resolution; and
 - (c) where those entitled to attend the meeting have been notified of the result of the resolution, notify them of the change.
- (6) Where satisfied that more than one complainant in paragraph (4) is an excluded person, the relevant person must have regard to the combined effect of the intended votes.
- (7) The relevant person must notify the complainant in writing of any decision.
- (8) A complaint must be made as soon as reasonably practicable and, in any event, no later than 4 p.m. on the business day following—
 - (a) the day on which the person was, appeared or claimed to be excluded; or

²⁴⁹⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(b) where an indication is sought under Rule 12A.24, the day on which the complainant received the indication.

(9) A complainant who is not satisfied by the action of the relevant person may apply to the court for directions and any application must be made no more than 2 business days from the date of receiving the decision of the relevant person.

]²⁴⁹⁵

[12A.26 Remote attendance at meetings of creditors' committees and liquidation committees

(1) This Rule applies to any meeting of a creditors' committee or a liquidation committee held under these Rules.

(2) Where the office-holder considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner referred to in paragraph (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this Rule—

(a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and

(b) a person is able to exercise the right to vote at a meeting when—

(i) that person is able to vote, during the meeting, on resolutions or determinations put to the vote at the meeting, and

(ii) that person's vote can be taken into account in determining whether or not such resolutions or determinations are passed at the same time as the votes of all the other persons attending the meeting.

(5) Where a meeting is to be conducted and held in the manner referred to in paragraph (2), the office-holder must make whatever arrangements the office-holder considers appropriate to—

(a) enable those attending the meeting to exercise their rights to speak or vote, and

(b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(6) Where in the reasonable opinion of the office-holder—

(a) a meeting will be attended by persons who will not be present together at the same place, and

(b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under these Rules to specify a place for the meeting may be satisfied by specifying the arrangements the office-holder proposes to enable persons to exercise their rights to speak or vote.

(7) In making the arrangements referred to in paragraph (5) and in forming the opinion referred to in paragraph (6)(b), the office-holder must have regard to the legitimate interests of the committee

²⁴⁹⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

members or their representatives attending the meeting in the efficient despatch of the business of the meeting.

(8) If—

- (a) the notice of a meeting does not specify a place for the meeting,
- (b) the office-holder is requested in accordance with Rule 12A.27 to specify a place for the meeting, and
- (c) that request is made by at least one member of the committee,

the office-holder must specify a place for the meeting.

(9) In this Rule, “the committee” means the creditors' committee or the liquidation committee.

²⁴⁹⁶

[12A.27 Procedure for requests that a place for a meeting should be specified under Rule 12A.26

(1) This Rule applies to a request to the office-holder of a meeting under Rule 12A.26 to specify a place for the meeting.

(2) The request must be made within 5 business days of the date on which the officeholder sent the notice of the meeting in question.

(3) Where the office-holder considers that the request has been properly made in accordance with this Rule, the office-holder must—

- (a) give notice to all those previously given notice of the meeting—
 - (i) that it is to be held at a specified place, and
 - (ii) as to whether the date and time are to remain the same or not;
- (b) set a venue (including specification of a place) for the meeting, the date of which must be not later than 7 business days after the original date for the meeting; and
- (c) give 5 business days' notice of the venue to all those previously given notice of the meeting;

and the notices required by sub-paragraphs (a) and (c) may be given at the same or different times.

(4) Where the office-holder has specified a place for the meeting in response to a request to which this Rule applies, the chairman of the meeting must attend the meeting by being present in person at that place.

²⁴⁹⁷

²⁴⁹⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁹⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[CHAPTER 5

EFFECT OF INSOLVENCY ON EXECUTION — SPECIFIC PROVISIONS FOR NOTICES TO
ENFORCEMENT OFFICERS ETC]²⁴⁹⁸**[12A.28 Execution overtaken by judgment debtor's insolvency**

(1) This Rule applies where execution has been taken out against property of a judgment debtor, and notice is given to the enforcement officer or other officer charged with the execution—

- (a) under section 184(1) (that a winding-up order has been made against the debtor, or that a provisional liquidator has been appointed, or that a resolution for voluntary winding up has been passed); or
- (b) under section 184(4) (that a winding-up petition has been presented, or a winding-up order made, or that a meeting has been called at which there is to be proposed a resolution for voluntary winding up, or that such a resolution has been passed); or
- (c) under section 346(2) (that a judgment debtor has been adjudged bankrupt); or
- (d) under section 346(3)(b) (that a bankruptcy petition has been presented in respect of the debtor).

(2) Subject to paragraph (3) and Rule 12A.29, the notice must be delivered to the office of the enforcement officer or of the officer charged with the execution—

- (a) by hand, or
- (b) by any other means of delivery which enables proof of receipt of the document at the relevant address.

(3) Where the execution is in a county court and the officer in charge of it is a district judge in that court, then if—

- (a) there is filed in that court in respect of the judgment debtor a winding-up or bankruptcy petition, or
- (b) there is made by that court in respect of the judgment debtor a winding-up order or an order appointing a provisional liquidator, or a bankruptcy order or an order appointing an interim receiver,

section 184 or 346 is deemed satisfied as regards the requirement of a notice to be served on, or given to, the officer in charge of the execution.

] ²⁴⁹⁹

[12A.29 Notice to enforcement officers

(1) This Rule applies in relation to any provision of the Act or the Rules which makes provision for the giving of notice to an enforcement officer.

(2) Any such notice as is mentioned in paragraph (1) may be given by electronic means to any person who has been authorised to receive such notice on behalf of a specified enforcement officer or on behalf of enforcement officers generally.

²⁴⁹⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁴⁹⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

] ²⁵⁰⁰

[CHAPTER 6

FORMS] ²⁵⁰¹**[12A.30 Forms for use in insolvency proceedings**

- (1) Subject to the next Rule, the forms contained in Schedule 4 to these Rules must continue to be used in insolvency proceedings as provided for in specific Rules.
- (2) The forms must be used with such variations, if any, as the circumstances may require.
- (3) The Secretary of State, the official receiver or an insolvency practitioner may incorporate a barcode or other reference or recognition mark into any form in Schedule 4 to these Rules a copy of which is received by any of them or is sent to any person by any of them.

] ²⁵⁰²**[12A.31 Electronic submission of information instead of submission of forms to the Secretary of State, the Chief Land Registrar, office-holders, and of copies to the registrar of companies**

- (1) This Rule applies in any case where information in a prescribed form is required by the Rules to be sent by any person to the Secretary of State, the Chief Land Registrar, or an office-holder, or a copy of a prescribed form is to be sent to the registrar of companies.
- (2) A requirement of the kind mentioned in paragraph (1) is treated as having been satisfied where—
 - (a) the information is submitted electronically with the agreement of the person to whom the information is sent;
 - (b) the form in which the electronic submission is made satisfies the requirements of the person to whom the information is sent (which may include a requirement that the information supplied can be reproduced in the format of the prescribed form);
 - (c) that all the information required to be given in the prescribed form is provided in the electronic submission; and
 - (d) the person to whom the information is sent can provide in legible form the information so submitted.
- (3) Where information in a prescribed form is permitted to be sent electronically under paragraph (2), any requirement in the prescribed form that the prescribed form be accompanied by a signature is taken to be satisfied—
 - (a) if the identity of the person who is supplying the information in the prescribed form and whose signature is required is confirmed in a manner specified by the recipient, or
 - (b) where no such manner has been specified by the recipient, if the communication contains or is accompanied by a statement of the identity of the person who is providing the

²⁵⁰⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁰¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁰² Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

information in the prescribed form, and the recipient has no reason to doubt the truth of that statement.

(4) Where information required in prescribed form has been supplied to a person, whether or not it has been supplied electronically in accordance with paragraph (2), and a copy of that information is required to be supplied to another person falling within paragraph (1), the requirements contained in paragraph (2) apply in respect of the supply of the copy to that other person, as they apply in respect of the original.

²⁵⁰³

[12A.32 Electronic submission of information instead of submission of forms in all other cases

(1) Subject to paragraph (5), this Rule applies in any case where Rule 12A.31 does not apply, where information in a prescribed form is required by the Rules to be sent by any person.

(2) A requirement of the kind mentioned in paragraph (1) is treated as having been satisfied where—

(a) the person to whom the information is sent has agreed—

(i) to receiving the information electronically and to the form in which it is to be sent; and

(ii) to the specified manner in which paragraph (3) is to be satisfied.

(b) all the information required to be given in the prescribed form is provided in the electronic submission; and

(c) the person to whom the information is sent can provide in legible form the information so submitted.

(3) Any requirement in a prescribed form that it be accompanied by a signature is taken to be satisfied if the identity of the person who is supplying the information and whose signature is required, is confirmed in the specified manner.

(4) Where information required in prescribed form has been supplied to a person, whether or not it has been supplied electronically in accordance with paragraph (2), and a copy of that information is required to be supplied to another person falling within paragraph (1), the requirements contained in paragraph (2) apply in respect of the supply of the copy to that other person, as they apply in respect of the original.

(5) This Rule does not apply in respect of a statutory demand.

²⁵⁰⁴

²⁵⁰³ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁰⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[CHAPTER 7

GAZETTE NOTICES]²⁵⁰⁵**[12A.33 Contents of notices to be gazetted under the Act or Rules**

(1) Except when paragraph (3) applies, where under the Act or the Rules a notice is gazetted, in addition to any content specifically required by the Act or any other provision of the Rules, the content of such a notice must be as set out in this Chapter.

(2) All notices published must specify insofar as it is applicable in relation to the particular notice—

- (a) the name and postal address of the office-holder acting in the proceedings;
- (b) the capacity in which the office-holder is acting and the date of appointment;
- (c) either an e-mail address, or a telephone number, through which the office-holder may be contacted;
- (d) the name of any person other than the office-holder (if any) who may be contacted regarding the proceedings;
- (e) the number assigned to the office-holder by the Secretary of State; and
- (f) the court name and any number assigned to the proceedings by the court.

(3) This paragraph applies to notices under Rule 4.228(2) (first excepted case).

] ²⁵⁰⁶

[12A.34 Gazette notices relating to companies

In addition to the information required by Rule 12A.33 a notice relating to a company must specify—

- (a) the registered name of the company;
- (b) its registered number;
- (c) its registered office, or if an unregistered company, the postal address of its principal place of business;
- (d) any principal trading address if this is different from its registered office;
- (e) any name under which it was registered in the 12 months prior to the date of the commencement of the proceedings which are the subject of the Gazette notice; and
- (f) any name or style (other than its registered name) under which—
 - (i) the company carried on business; and
 - (ii) any debt owed to a creditor was incurred.

] ²⁵⁰⁷

[12A.35 Gazette notices relating to bankrupts

In addition to the information required by Rule 12A.33 a notice relating to a bankruptcy must state,—

²⁵⁰⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁰⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁰⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (a) the bankrupt's full name and residential address;
- (b) any other address at which the bankrupt has resided in the period of 12 months preceding the making of the bankruptcy order;
- (c) the bankrupt's date of birth;
- (d) the bankrupt's occupation;
- (e) any other name by which the bankrupt has been known;
- (f) any name or style (other than the bankrupt's own name) under which—
 - (i) the bankrupt carried on business; and
 - (ii) any debt owed to a creditor was incurred.

]²⁵⁰⁸

[12A.36 Omission of unobtainable information

Information required under this Chapter to be included in a notice to be gazetted may be omitted if it is not reasonably practicable to obtain it.]²⁵⁰⁹

[12A.37 The Gazette — general

- (1) A copy of the Gazette containing any notice required by the Act or the Rules to be gazetted is evidence of any facts stated in the notice.
- (2) In the case of an order of the court notice of which is required by the Act or the Rules to be gazetted, a copy of the Gazette containing the notice may in any proceedings be produced as conclusive evidence that the order was made on the date specified in the notice.
- (3) Where an order of the court which is gazetted has been varied, and where any matter has been erroneously or inaccurately gazetted, the person whose responsibility it was to procure the requisite entry in the Gazette must as soon as is reasonably practicable cause the variation of the order to be gazetted or a further entry to be made in the Gazette for the purpose of correcting the error or inaccuracy.

]²⁵¹⁰

²⁵⁰⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁰⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵¹⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[CHAPTER 8

NOTICES ADVERTISED OTHERWISE THAN IN THE GAZETTE]²⁵¹¹**[12A.38 Notices otherwise advertised under the Act or Rules**

(1) Where under the Act or the Rules a notice may be advertised otherwise than in the Gazette, in addition to any content specifically required by the Act or any other provision of the Rules, the content of such a notice must be as set out in this Chapter.

- (2) All notices published must specify insofar as it is applicable in relation to the particular notice—
- (a) the name and postal address of the office-holder acting in the proceedings to which the notice relates;
 - (b) the capacity in which the office-holder is acting; and
 - (c) either an e-mail address, or a telephone number, through which the office-holder may be contacted.

] ²⁵¹²**[12A.39 Non-Gazette notices relating to companies**

In addition to the information required by Rule 12A.38, a notice relating to a company must state—

- (a) the registered name of the company;
- (b) its registered number;
- (c) any name under which it was registered in the 12 months prior to the date of the commencement of the proceedings which are the subject of the notice; and
- (d) any name or style (other than its registered name) under which—
 - (i) the company carried on business; and
 - (ii) any debt owed to a creditor was incurred.

] ²⁵¹³**[12A.40 Non-Gazette notices relating to bankrupts**

In addition to the information required by Rule 12A.38, a notice relating to bankruptcy must state—

- (a) the bankrupt's full name and address;
- (b) any other address at which the bankrupt has resided in the period of 12 months preceding the making of the bankruptcy order;
- (c) the bankrupt's date of birth;
- (d) the bankrupt's occupation;
- (e) any other name by which the bankrupt has been known;
- (f) any name or style (other than the bankrupt's own name) under which—
 - (i) the bankrupt carried on business; and
 - (ii) any debt owed to a creditor was incurred.

²⁵¹¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵¹² Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵¹³ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

]²⁵¹⁴

[12A.41 Non-Gazette notices — other provisions

(1) The information required to be contained in a notice to which this Chapter applies must be included in the advertisement of that notice in a manner that is reasonably likely to ensure, in relation to the form of the advertising used, that a person reading, hearing or seeing the advertisement, will be able to read, hear or see that information.

(2) Information required under this Chapter to be included in a notice may be omitted if it is not reasonably practicable to obtain it.

]²⁵¹⁵

[CHAPTER 9

NOTIFICATIONS TO THE REGISTRAR OF COMPANIES]²⁵¹⁶

[12A.42 Application of this Chapter

This Chapter applies where under the Act or the Rules information is to be sent or delivered to the registrar of companies.]²⁵¹⁷

[12A.43 Information to be contained in all notifications to the registrar

Where under the Act or the Rules a return, notice, or any other document or information is to be sent to the registrar of companies, that notification must specify—

- (a) the registered name of the company;
- (b) its registered number;
- (c) the nature of the notification;
- (d) the section of the Act or the Rule under which the notification is made;
- (e) the date of the notification;
- (f) the name and postal address of person making the notification;
- (g) the capacity in which that person is acting in respect of the company; and

the notification must be authenticated by the person making the notification.

]²⁵¹⁸

²⁵¹⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵¹⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵¹⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵¹⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵¹⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

[12A.44 Notifications relating to the office of office-holders]

In addition to the information required by Rule 12A.43, a notification relating to the office of the office-holder must also specify—

- (a) the name of the office-holder;
- (b) the nature of the appointment held by the office holder
- (c) the date of the event notified;
- (e) where the notification relates to an appointment, the person, body or court making the appointment;
- (f) where the notification relates to the termination of an appointment, the reason for that termination (for example, resignation); and
- (e) the postal address of office-holder.

]²⁵¹⁹

[12A.45 Notifications relating to documents]

In addition to the information required by Rule 12A.43, a notification relating to a document (for example, a statement of affairs) must also specify—

- (a) the nature of the document; and
- (b) the date of the document; or
- (c) where the document relates to a period of time (for example a report) the period of time to which the document relates.

]²⁵²⁰

[12A.46 Notifications relating to court orders]

In addition to the information required by Rule 12A.43, a notification relating to a court order must also specify—

- (a) the nature of the court order; and
- (b) the date of the order.

]²⁵²¹

[12A.47 Returns or reports of meetings]

(1) In addition to the information required by Rule 12A.43, the notification of a return or a report of a meeting must specify—

- (a) the purpose of the meeting including the section of the Act or Rule under which it was convened;
- (b) the venue fixed for the meeting;
- (c) whether a required quorum was present for the meeting to take place; and
- (d) if the meeting took place, the outcome of the meeting (including any resolutions passed at the meeting).

²⁵¹⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵²⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵²¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(2) Where the return relates to the meeting required by section 94 or 106 (final meetings prior to dissolution), it must also specify the dates of the opening and close of the winding up.

]²⁵²²

[12A.48 Notifications relating to other events

In addition to the information required by Rule 12A.43, a notification relating to any other event (for example the coming in to force of a moratorium) must specify—

- (a) the nature of the event including the section of the Act or Rule under which it took place; and
- (b) the date the event occurred.

]²⁵²³

[12A.49 Notifications of more than one nature

A notification which includes a notification of more than one nature must satisfy the requirements applying in respect of each of those notifications.]²⁵²⁴

[12A.50 Notifications made to other persons at the same time

(1) Where under the Act or the Rules a notice or other document is to be sent to another person at the same time that it is to be sent to the registrar of companies, that requirement may be satisfied by sending to that other person a copy of the notification sent to the registrar.

(2) Paragraph (1) does not apply—

- (a) where a Form is prescribed for the notification to the other person; or
- (b) where the notification to the registrar of companies is incomplete.

]²⁵²⁵

[CHAPTER 10

INSPECTION OF DOCUMENTS AND THE PROVISION OF INFORMATION]²⁵²⁶

[12A.51 Confidentiality of documents — grounds for refusing inspection

(1) Where in insolvency proceedings the office-holder considers that a document forming part of the records of those proceedings—

- (a) should be treated as confidential, or

²⁵²² Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵²³ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵²⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵²⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵²⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(b) is of such a nature that its disclosure would be prejudicial to the conduct of the proceedings or might reasonably be expected to lead to violence against any person, the office-holder may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) The persons to whom the office-holder may under this Rule refuse inspection include members of a liquidation committee or a creditors' committee.

(3) Where under this rule the office-holder determines to refuse inspection of a document, the person wishing to inspect it may apply to the court for that determination to be overruled and the court may either overrule it altogether or sustain it subject to such conditions (if any) as it thinks just.

]²⁵²⁷

[12A.52 Right to copy documents

Where the Act or the Rules confer a right for any person to inspect documents, the right includes that of taking copies of those documents, on payment—

- (a) in the case of documents on the court's file of proceedings, of the fee chargeable under any order made under section 92 of the Courts Act 2003, and
- (b) in any other case, of the appropriate fee.

]²⁵²⁸

[12A.53 Charges for copy documents

Except where prohibited by the Rules, a responsible insolvency practitioner or the official receiver is entitled to require the payment of the appropriate fee for the supply of documents requested by a creditor, member, contributory or member of a liquidation or creditors' committee.]²⁵²⁹

[12A.54 Right to have list of creditors

(1) This Rule applies in the following proceedings—

- (a) administration;
- (b) winding up (other than a members' voluntary winding up); and
- (c) bankruptcy.

(2) A creditor or a member State liquidator has the right to require an office-holder to provide a list of the creditors and the amounts of their respective debts unless paragraph (5) applies.

(3) The office-holder on being required to furnish the list under paragraph (2)—

- (a) as soon as reasonably practicable must send it to the person requiring the list to be furnished; and
- (b) may charge the appropriate fee for doing so.

²⁵²⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵²⁸ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵²⁹ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(4) The name and address of any creditor may be omitted from the list furnished under paragraph (3) where the office-holder is of the view that its disclosure would be prejudicial to the conduct of the proceedings or might reasonably be expected to lead to violence against any person provided that—

- (a) the amount of the debt in question is shown in the list; and
- (b) a statement is included in the list that the name and address of the creditor has been omitted in respect of that debt.

(5) Paragraph (2) does not apply where a statement of affairs has been—

- (a) delivered to the registrar of companies, in a winding up or an administration; or
- (b) filed with the court, in bankruptcy proceedings.

]²⁵³⁰

[CHAPTER 11

COMPUTATION OF TIME AND TIME LIMITS]²⁵³¹

[12A.55 Time limits

(1) The provisions of CPR rule 2.8 (time) apply, as regards computation of time, to anything required or authorised to be done by the Rules.

(2) The provisions of CPR rule 3.1(2)(a) (the court's general powers of management) apply so as to enable the court to extend or shorten the time for compliance with anything required or authorised to be done by the Rules.

]²⁵³²

[CHAPTER 12

SECURITY]²⁵³³

[12A.56 Insolvency practitioners' security

(1) Wherever under the Rules any person has to appoint, or certify the appointment of, an insolvency practitioner to any office that person must, before making or certifying the appointment, be satisfied that the person appointed or to be appointed has security for the proper performance of that office.

(2) It is the duty—

- (a) of the creditors' committee in—
 - (i) an administration,
 - (ii) an administrative receivership,

²⁵³⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵³¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵³² Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵³³ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

- (iii) a bankruptcy, and
 - (b) of the liquidation committee in a winding up, to review from time to time the adequacy of the responsible insolvency practitioner's security.
- (3) In any insolvency proceedings the cost of the responsible insolvency practitioner's security shall be defrayed as an expense of the proceedings.

]²⁵³⁴

[CHAPTER 13

NOTICE OF ORDER UNDER SECTION 176A(5)]²⁵³⁵

[12A.57 Notice of order under section 176A(5)

- (1) Where the court makes an order under section 176A(5), it must as soon as reasonably practicable send two sealed copies of the order to the applicant and a sealed copy to any other office-holder.
- (2) Where the court has made an order under section 176A(5), the liquidator, administrator or receiver must as soon as reasonably practicable, give notice to each creditor of whose address and claim the office-holder in question is aware.
- (3) Paragraph (2) does not apply where the court directs otherwise.
- (4) The court may direct that the requirement in paragraph (2) is complied with if a notice has been published by the liquidator, administrator or receiver which, in addition to containing the standard contents, states that the court has made an order disapplying the requirement to set aside the prescribed part. As soon as reasonably practicable the notice—
 - (a) must be gazetted; and
 - (b) may be advertised in such other manner as the liquidator, administrator, or receiver thinks fit.
- (5) The liquidator, administrator or receiver must send a copy of the order to the registrar of companies as soon as reasonably practicable after the making of the order.

]²⁵³⁶

PART 13

INTERPRETATION AND APPLICATION

13.1. Introductory

This Part of the Rules has effect for their interpretation and application; and any definition given in this Part applies except, and in so far as, the context otherwise requires.

²⁵³⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵³⁵ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵³⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.3 para.1 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 13 rule 13.1: December 29, 1986

13.2.— “The court”; “the registrar”

(1) Anything to be done under or by virtue of the Act or the Rules by, to or before the court may be done by, to or before a judge [, district judge]²⁵³⁷ or the registrar.

(2) The registrar [or district judge]²⁵³⁸ may authorise any act of a formal or administrative character which is not by statute his responsibility to be carried out by the chief clerk or any other officer of the court acting on his behalf, in accordance with directions given by the Lord Chancellor.

[(3A) “The registrar” means—

- (a) a Registrar in Bankruptcy of the High Court, or
- (b) where the proceedings are in the District Registry of Birmingham, Bristol, Caernarfon, Cardiff, Leeds, Liverpool, Manchester, Mold, Newcastle-upon-Tyne or Preston, a district judge attached to the District Registry in question.

]²⁵³⁹

Commencement

Pt 13 rule 13.2(1)-(5): December 29, 1986

13.3.— “Give notice”, etc.

(1)-(3) [...] ²⁵⁴⁰

(4) Notice of the venue fixed for an application [made to the court]²⁵⁴¹ may be given by service of the sealed copy of the application under Rule 7.4(3).

Commencement

Pt 13 rule 13.3(1)-(4): December 29, 1986

²⁵³⁷ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.493(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵³⁸ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.493(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵³⁹ Rule 13.2(3A) substituted for rule 13.2(3)-(5) by Insolvency (Amendment) Rules 2010/686 Sch.1 para.493(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁴⁰ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.494(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁴¹ Words inserted by Insolvency (Amendment) Rules 2009/642 rule 74(c) (April 6, 2009)

13.4. Notice, etc. to solicitors

Where under the Act or the Rules a notice or other document is required or authorised to be given to a person, it may, if he has indicated that his solicitor is authorised to accept service on his behalf, be given instead to the solicitor.

Commencement

Pt 13 rule 13.4: December 29, 1986

13.5. Notice to joint liquidators, joint trustees, etc.

Where two or more persons are acting jointly as the responsible insolvency practitioner in any proceedings, delivery of a document to one of them is to be treated as delivery to them all.

Commencement

Pt 13 rule 13.5: December 29, 1986

13.6. “Venue”

References to the “venue” for any proceeding or attendance before the court, or for a meeting, are to the time, date and place for the proceeding, attendance or meeting [or to the time and date for a meeting which is held in accordance with section 246A or 379A²⁵⁴² without any place being specified for it]²⁵⁴³ .

Commencement

Pt 13 rule 13.6: December 29, 1986

13.7. “Insolvency proceedings”

“Insolvency proceedings” means any proceedings under the Act or the Rules.

Commencement

Pt 13 rule 13.7: December 29, 1986

13.8. “Insolvent estate”

References to “the insolvent estate” are—

- (a) in relation to a company insolvency, the company's assets, and
- (b) in relation to [a bankruptcy or a petition for bankruptcy]²⁵⁴⁴ , the bankrupt's estate or (as the case may be) the debtor's property.

²⁵⁴² Sections 246A and 379A were inserted by S.I. 2010/18.

²⁵⁴³ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.495(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁴⁴ Words substituted by Insolvency (Amendment) Rules 2009/642 rule 75 (April 6, 2009)

Commencement

Pt 13 rule 13.8(a)-(b): December 29, 1986

13.9.— “Responsible insolvency practitioner”, etc.

- (1) In relation to any insolvency proceedings, “the responsible insolvency practitioner” means —
- (a) the person [(other than the official receiver)]²⁵⁴⁵ acting in a company insolvency, as supervisor of a voluntary arrangement under Part I of the Act, or as administrator, administrative receiver, liquidator or provisional liquidator;
 - (b) the person [(other than the official receiver)]²⁵⁴⁵ acting in an individual insolvency, as the supervisor of a voluntary arrangement under Part VIII of the Act, or as trustee or interim receiver [.]²⁵⁴⁶
 - (c) [...] ²⁵⁴⁶

(2) [...] ²⁵⁴⁷

[(3) A reference to an “authorised person” is a reference to a person who is authorised pursuant to section 389A²⁵⁴⁸ of the Act to act as nominee or supervisor of a voluntary arrangement proposed or approved under Part I or Part VIII of the Act.]²⁵⁴⁹

Commencement

Pt 13 rule 13.9(1)-(2): December 29, 1986

[13.9A Office-holder

“Office-holder” means in relation to insolvency proceedings any person who by virtue of any provision of the Act or the Rules holds an office in relation to those proceedings.]²⁵⁵⁰

13.10. “Petitioner”

In winding up and bankruptcy, references to “the petitioner” or “the petitioning creditor” include any person who has been substituted as such, or been given carriage of the petition.

²⁵⁴⁵ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.496(2)(a) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁴⁶ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.496(2)(b) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁴⁷ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.496(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁴⁸ Section 389A was inserted into the Insolvency Act 1986 (c. 45) by section 4(4) of the Insolvency Act 2000 (c. 39).

²⁵⁴⁹ Added by Insolvency (Amendment) (No. 2) Rules 2002/2712 rule 7 (January 1, 2003)

²⁵⁵⁰ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.497 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Commencement

Pt 13 rule 13.10: December 29, 1986

13.11. “The appropriate fee”

“The appropriate fee” means—

- (a) in Rule 6.192(2) (payor under income payments order entitled to clerical etc. costs) [or Rule 6.193C(4) (payor under income payments agreement entitled to clerical etc costs)]²⁵⁵¹, 50 pence; and
- (b) in other cases, 15 pence per A4 or A5 page, and 30 pence per A3 page.

Commencement

Pt 13 rule 13.11(a)-(b): December 29, 1986

[13.12.— “Debt”, “liability” (winding up)]

(1) “Debt”, in relation to the winding up of a company, means (subject to the next paragraph) any of the following—

- [(a) any debt or liability to which the company is subject—
 - (i) in the case of a winding up which was not immediately preceded by an administration, at the date on which the company went into liquidation;
 - (ii) in the case of a winding up which was immediately preceded by an administration, at the date on which the company entered administration;
-] ²⁵⁵²
- (b) any debt or liability to which the company may become subject after that date by reason of any obligation incurred before that date; and
- (c) any interest provable as mentioned in Rule 4.93(1).

(2) For the purposes of any provision of the Act or the Rules about winding up, any liability in tort is a debt provable in the winding up, if either—

- [(a) the cause of action has accrued—
 - (i) in the case of a winding up which was not immediately preceded by an administration, at the date on which the company went into liquidation;
 - (ii) in the case of a winding up which was immediately preceded by an administration, at the date on which the company entered administration;
-] ²⁵⁵³
- (b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.

²⁵⁵¹ Words inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(10) para.64 (April 1, 2004)

²⁵⁵² Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.498(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁵³ Substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.498(3) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

(3) For the purposes of references in any provision of the Act or the Rules about winding up to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in any such provision to owing a debt are to be read accordingly.

(4) In any provision of the Act or the Rules about winding up, except in so far as the context otherwise requires, “liability” means (subject to paragraph (3) above) a liability to pay money or money's worth, including any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution.

(5) This Rule shall apply where a company is in administration and shall be read as if [—]²⁵⁵⁴

[(a) references to winding up were references to administration,

(b) references to administration were references to winding up,

(c) references to going into liquidation were references to entering administration, and

(d) references to entering administration were references to going into liquidation.]²⁵⁵⁴

] ²⁵⁵⁵

Commencement

Pt 13 rule 13.12(1)-(4): December 29, 1986

[13.12A “Authorised deposit-taker and former authorised deposit-taker”

(1) “Authorised deposit-taker” means a person with permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits.

(2) “Former authorised deposit-taker” means a person who—

(a) is not an authorised deposit-taker,

(b) was formerly an authorised institution under the Banking Act 1987, or a recognised bank or a licensed institution under the Banking Act 1979²⁵⁵⁶, and

(c) continues to have liability in respect of any deposit for which it had a liability at a time when it was an authorised institution, recognised bank or licensed institution.

(3) Paragraphs (1) and (2) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.

] ²⁵⁵⁷

²⁵⁵⁴ Rule 13.12(5)(a)-(d) substituted for words by Insolvency (Amendment) Rules 2010/686 Sch.1 para.498(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁵⁵ Substituted subject to transitional provisions specified in SI 2006/1272 rule 3 by Insolvency (Amendment) Rules 2006/1272 rule 4 (June 1, 2006: substitution has effect subject to transitional provisions specified in SI 2006/1272 rule 3)

²⁵⁵⁶ 1979, c. 37, repealed by the Banking Act 1987, section 108, Schedule 7.

²⁵⁵⁷ Added by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.381 (December 1, 2001)

13.13.— Expressions used generally

[(1) “Business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of [England and Wales]²⁵⁵⁸ under or by virtue of the Banking and Financial Dealings Act 1971²⁵⁵⁹ [...] ²⁵⁶⁰ . [...] ²⁵⁶⁰]²⁵⁶¹

(2) “The Department” means [the Department for Business, Innovation and Skills]²⁵⁶² .

[(2A) “Duly authorised representative” means, in relation to a corporation, a person who is authorised by or under the constitution of the corporation to act on behalf of the corporation; and like expressions are to be construed accordingly.]²⁵⁶³

(3) “File in court” [and file with the court]²⁵⁶⁴ means deliver to the court for filing.

(4) “The Gazette” means the London Gazette.

[(4A) “gazetted” means [advertised]²⁵⁶⁵ once in the Gazette .]²⁵⁶⁶

[(4B) “Standard contents” means—

(a) in relation to a notice to be gazetted, the contents specified in Rules 12A.33 to 12A.35; and

(b) in relation to a notice to be advertised in any other way, the contents specified in Rules 12A.38 to 12A.40.

] ²⁵⁶⁷

(5) “General regulations” means regulations made by the Secretary of State under Rule 12.1.

[(6) “Practice direction” means a direction as to the practice and procedure of any court within the scope of the CPR.

(7) “Prescribed order of priority” means the order of priority of payments laid down by Chapter 20 of Part 4 of the Rules, or Chapter 23 of Part 6.]²⁵⁶⁸

²⁵⁵⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.499(2)(a) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁵⁹ 1971 c. 80.

²⁵⁶⁰ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.499(2)(b) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁶¹ Substituted by Insolvency (Amendment) (No. 2) Rules 1999/1022 Sch.1 para.14(a) (April 26, 1999)

²⁵⁶² Words substituted by Secretary of State for Business, Innovation and Skills Order 2009/2748 Sch.1(2) para.12 (November 13, 2009)

²⁵⁶³ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.499(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁶⁴ Words inserted by Insolvency (Amendment) Rules 2003/1730 Sch.1(10) para.66(a) (September 15, 2003)

²⁵⁶⁵ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.499(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁶⁶ Added by Insolvency (Amendment) Rules 2009/642 rule 76 (April 6, 2009: insertion has effect subject to transitional provisions specified in SI 2009/642 rule 3(1))

²⁵⁶⁷ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.499(5) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁶⁸ Substituted by Insolvency (Amendment) (No. 2) Rules 1999/1022 Sch.1 para.14(b) (April 26, 1999)

- [(8) “Centre of main interests” has the same meaning as in the EC Regulation.
- (9) “Establishment” has the meaning given by Article 2(h) of the EC Regulation.
- (10) “Main proceedings” means proceedings opened in accordance with Article 3(1) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation and
- (a) in relation to England and Wales [...] ²⁵⁶⁹ set out in Annex A to the EC Regulation under the heading “United Kingdom”, and
 - (b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State.
- (11) “Member State liquidator” means a person falling within the definition of liquidator in Article 2(b) of the EC Regulation appointed in proceedings to which it applies in a member State other than the United Kingdom.
- (12) “Secondary proceedings” means proceedings opened in accordance with Articles 3(2) and 3(3) of the EC Regulation and falling within the definition of winding-up proceedings in Article 2(c) of the EC Regulation, and
- (a) in relation to England and Wales [...] ²⁵⁶⁹, set out in Annex B to the EC Regulation under the heading “United Kingdom”, and
 - (b) in relation to another member State, set out in Annex B to the EC Regulation under the heading relating to that member State.
- (13) “Temporary administrator” means a temporary administrator referred to by Article 38 of the EC Regulation.
- (14) “Territorial proceedings” means proceedings opened in accordance with Articles 3(2) and 3(4) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation, and
- (a) in relation to England and Wales [...] ²⁵⁶⁹, set out in Annex A to the EC Regulation under the heading “United Kingdom”, and
 - (b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State.
-] ²⁵⁷⁰
- [(14A) “Winding-up proceedings” means winding-up proceedings within the meaning of Article 2(c) of the EC Regulation as listed under the United Kingdom entry in Annex B of that Regulation, except for bankruptcy and sequestration proceedings.] ²⁵⁷¹
- [(15) “Prescribed part” has the same meaning as it does in section 176A(2)(a) [and the Insolvency Act 1986 (Prescribed Part) Order 2003] ²⁵⁷².] ²⁵⁷³
- [(16) A “certificate of service” means a certificate of service verified by a statement of truth.

²⁵⁶⁹ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.499(6) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁷⁰ Added by Insolvency (Amendment) Rules 2002/1307 rule 10(7) (May 31, 2002)

²⁵⁷¹ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.499(7) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁷² Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.499(8) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁷³ Added by Insolvency (Amendment) Rules 2003/1730 Sch.1(10) para.66(b) (September 15, 2003)

(17) A “statement of truth” means a statement of truth in accordance with CPR Part 22.

(18) A “witness statement” means a witness statement verified by a statement of truth in accordance with CPR Part 22.

(19) A fee or remuneration is charged when the work to which it relates is done.]²⁵⁷⁴

Commencement

Pt 13 rule 13.13(1)-(6): December 29, 1986

13.14.— Application

(1) Subject to paragraph (2) of this Rule, and save where otherwise expressly provided, the Rules apply—

- (a) to [...] ²⁵⁷⁵ receivers appointed on or after the day on which the Rules come into force,
- (b) to bankruptcy proceedings where the bankruptcy petition is presented on or after the day on which the Rules come into force, and
- (c) to all other insolvency proceedings commenced on or after that day.

(2) The Rules also apply to winding-up and bankruptcy proceedings commenced before that day to which provisions of the Act are applied by Schedule 11 to the Act, to the extent necessary to give effect to those provisions.

Commencement

Pt 13 rule 13.14(1)-(2): December 29, 1986

[13.15 Application of Insolvency Act 1986 and Company Directors Disqualification Act 1986

For the purposes of these Rules, any reference in the Act or the Company Directors Disqualification Act 1986 to “leave” of the court is to be construed as meaning “permission” of the court.]²⁵⁷⁶

Hailsham of Marylebone, C.

Dated 6th November 1986

I concur,

M. Howard,
Parliamentary Under Secretary of State,
Department of Trade and Industry

Dated 10th November 1986

²⁵⁷⁴ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.499(9) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁷⁵ Word omitted by Insolvency (Amendment) Rules 1987/1919 Sch.1(1)(12) para.152 (January 11, 1988)

²⁵⁷⁶ Added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.500 (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

SCHEDULE 1**[SCHEME MANAGER'S]²⁵⁷⁷ VOTING RIGHTS****Rule 4.72(7)****1.**

This Schedule applies as does Rule 4.72.

Commencement

Sch. 1 para. 1: December 29, 1986

2.

In relation to any meeting at which the [scheme manager]²⁵⁷⁸ is under Rule 4.72 entitled to be represented, the [scheme manager]²⁵⁷⁸ may submit in the liquidation, instead of a proof, a written statement of voting rights (“the statement”).

Commencement

Sch. 1 para. 2: December 29, 1986

3.

The statement shall contain details of—

- (a) the names of creditors of the company in respect of whom an obligation of the [scheme manager]²⁵⁷⁹ has arisen or may reasonably be expected to arise as a result of the liquidation or proposed liquidation;
- (b) the amount of the obligation so arising; and
- (c) the total amount of all such obligations specified in the statement.

Commencement

Sch. 1 para. 3(a)-(c): December 29, 1986

4.

The [scheme manager's]²⁵⁸⁰ statement shall, for the purpose of voting at a meeting (but for no other purpose), be treated in all respects as if it were a proof.

Commencement

Sch. 1 para. 4: December 29, 1986

²⁵⁷⁷ Words substituted by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.378(3) (December 1, 2001)

²⁵⁷⁸ Words substituted by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.378(3) (December 1, 2001)

²⁵⁷⁹ Words substituted by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.378(3) (December 1, 2001)

²⁵⁸⁰ Words substituted by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.378(3) (December 1, 2001)

5.

Any voting rights which a creditor might otherwise exercise at a meeting in respect of a claim against the company are reduced by a sum equal to the amount of that claim in relation to which the [scheme manager]²⁵⁸¹, by virtue of its having submitted a statement, is entitled to exercise voting rights at that meeting.

Commencement

Sch. 1 para. 5: December 29, 1986

6.

The [scheme manager]²⁵⁸² may from time to time submit a further statement, and, if it does so, that statement supersedes any statement previously submitted.

Commencement

Sch. 1 para. 6: December 29, 1986

SCHEDULE 2**[ALTERNATIVE COURTS]²⁵⁸³**

[Rules 5A.21(2) and 6.40(3)]²⁵⁸³

[

<i>Debtor's own county court</i>	<i>Nearest full-time court</i>
ABERDARE	CARDIFF
ABERYSTWYTH	CARDIFF
AYLESBURY	LUTON
BANBURY	LUTON or GLOUCESTER or READING
[...]	...] ²⁵⁸⁴
BARNSLEY	SHEFFIELD
BARNSTAPLE	EXETER
BARROW IN FURNESS	BLACKPOOL or PRESTON
BATH	BRISTOL
BEDFORD	LUTON
BLACKBURN	PRESTON
BLACKWOOD	CARDIFF

²⁵⁸¹ Words substituted by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.378(3) (December 1, 2001)

²⁵⁸² Words substituted by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 9 art.378(3) (December 1, 2001)

²⁵⁸³ Words substituted by Insolvency (Amendment) Rules 2009/642 rule 77 (April 6, 2009)

²⁵⁸⁴ Entry repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.501(2) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

<i>Debtor's own county court</i>	<i>Nearest full-time court</i>
BOSTON	NOTTINGHAM
BRIDGEND	CARDIFF
[BURY	BOLTON] ²⁵⁸⁵
[...	...] ²⁵⁸⁶
BURNLEY	BOLTON or PRESTON
BURTON ON TRENT	LEICESTER or DERBY or NOTTINGHAM
BURY ST. EDMUNDS	CAMBRIDGE
CANTERBURY	CROYDON or THE HIGH COURT (LONDON)
CARLISLE	PRESTON or BLACKPOOL
CARMARTHEN	CARDIFF
CHELMSFORD	SOUTHEND or THE HIGH COURT (LONDON)
CHELTENHAM	GLOUCESTER
CHESTERFIELD	SHEFFIELD
COLCHESTER	SOUTHEND or THE HIGH COURT (LONDON)
COVENTRY	BIRMINGHAM
CREWE	STOKE or CHESTER
DARLINGTON	MIDDLESBROUGH
DEWSBURY	LEEDS
DONCASTER	SHEFFIELD
DUDLEY	BIRMINGHAM
DURHAM	NEWCASTLE
EASTBOURNE	BRIGHTON
GREAT GRIMSBY	HULL
[...	...] ²⁵⁸⁷
GUILDFORD	CROYDON
HALIFAX	LEEDS
HARROGATE	LEEDS
HASTINGS	BRIGHTON
HAVERFORDWEST	CARDIFF
HEREFORD	GLOUCESTER
HERTFORD	LUTON
HUDDERSFIELD	LEEDS
IPSWICH	NORWICH or SOUTHEND
KENDAL	BLACKPOOL or PRESTON
KIDDERMINSTER	BIRMINGHAM

²⁵⁸⁵ Entry inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.501(4) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁸⁶ Entry repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.501(3) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁸⁷ Entry repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.501(5) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

<i>Debtor's own county court</i>	<i>Nearest full-time court</i>
KING'S LYNN	NORWICH or CAMBRIDGE
LANCASTER	BLACKPOOL or PRESTON
LINCOLN	NOTTINGHAM
MACCLESFIELD	STOKE or MANCHESTER
MAIDSTONE	CROYDON or THE HIGH COURT (LONDON)
MEDWAY	CROYDON or THE HIGH COURT (LONDON)
MERTHYR TYDFIL	CARDIFF
MILTON KEYNES	LUTON
[MOLD	WREXHAM] ²⁵⁸⁸
NEATH	CARDIFF
NEWBURY	READING
NEWPORT (GWENT)	CARDIFF
NEWPORT (I.O.W.)	SOUTHAMPTON or PORTSMOUTH
NORTHAMPTON	LUTON
OXFORD	READING
PETERBOROUGH	CAMBRIDGE
PONTYPRIDD	CARDIFF
[...	...] ²⁵⁸⁹
RHYL	BIRKENHEAD or CHESTER
[...	...] ²⁵⁹⁰
SALISBURY	BOURNEMOUTH or SOUTHAMPTON
SCARBOROUGH	YORK or HULL or MIDDLESBROUGH
SCUNTHORPE	HULL or SHEFFIELD
SHREWSBURY	STOKE
ST. ALBANS	LUTON
STAFFORD	STOKE
STOCKTON ON TEES	MIDDLESBROUGH
STOCKPORT	MANCHESTER
STOURBRIDGE	BIRMINGHAM
SUNDERLAND	NEWCASTLE
SWANSEA	CARDIFF
SWINDON	GLOUCESTER or READING
TAMESIDE	MANCHESTER
TAUNTON	EXETER or BRISTOL
TORQUAY	EXETER

²⁵⁸⁸ Entry inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.501(6) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁸⁹ Entry repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.501(7) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁹⁰ Entry repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.501(8) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

<i>Debtor's own county court</i>	<i>Nearest full-time court</i>
TRURO	PLYMOUTH
TUNBRIDGE WELLS	CROYDON
WAKEFIELD	LEEDS
WARRINGTON	CHESTER or LIVERPOOL or MANCHESTER
WARWICK	BIRMINGHAM
WELSHPOOL	STOKE or CHESTER
[...]	...] ²⁵⁹¹
WEYMOUTH	BOURNEMOUTH
WIGAN	BOLTON or MANCHESTER or PRESTON
WINCHESTER	SOUTHAMPTON
WORCESTER	GLOUCESTER
[...]	...] ²⁵⁹²
WREXHAM	BIRKENHEAD or STOKE or CHESTER
YEOVIL	EXETER or BRISTOL
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Commencement

Sch. 2 para. 1: December 29, 1986

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²⁵⁹¹ Entry repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.501(9) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁹² Entry repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.501(10) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁹³ Substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(3) para.1 (January 11, 1988)

²⁵⁹⁴ Revoked by Insolvency (Amendment) Rules 1993/602 Sch.1 para.4 (April 5, 1993)

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²⁵⁹⁵ Words repealed by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(b)(i) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁵⁹⁷ Substituted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(5) para.1 (January 1, 2003)

²⁵⁹⁶ Words substituted by Insolvency (Amendment) Rules 2009/642 Sch.2 para.1(a) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

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²⁵⁹⁸ Words substituted by Insolvency (Amendment) Rules 2009/642 Sch.2 para.1(b) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

²⁶⁰⁰ Words substituted by Insolvency (Amendment) Rules 2009/642 Sch.2 para.1(c) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

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²⁶⁰¹ Entry repealed by Insolvency (Amendment) Rules 2005/527 rule 49(1)(a) (April 1, 2005)

²⁶⁰² Entry substituted by Insolvency (Amendment) Rules 2003/1730 rule 14(1)(b) (September 15, 2003)

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²⁶⁰³ Form 4.53A substituted for form 4.53 by Insolvency (Amendment) Rules 2010/686 Sch.2 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶⁰⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.525(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

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²⁶⁰⁵ Words inserted by Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007/1898 Sch.1 para.12(6)(a) (October 1, 2007)

²⁶⁰⁶ Words substituted by Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007/1898 Sch.1 para.12(6)(b) (October 1, 2007)

²⁶⁰⁷ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.526(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶⁰⁸ Entry inserted by Insolvency (Amendment) Rules 2007/1974 rule 3(3) (August 6, 2007)

²⁶⁰⁹ Entry inserted by Insolvency (Amendment) Rules 2008/737 rule 6(a) (April 6, 2008)

²⁶¹⁰ Entries inserted by Insolvency (Amendment) Rules 2003/1730 rule 14(1)(c) (April 1, 2004)

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²⁶¹¹ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.537(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶¹² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.540(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶¹³ Word substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.541(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶¹⁴ Form 6.13A substituted for form 6.13 by Insolvency (Amendment) Rules 2010/686 Sch.2 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶¹⁵ Form 6.15A substituted for form 6.15 by Insolvency (Amendment) Rules 2010/686 Sch.2 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶¹⁶ Form 6.17A substituted for form 6.17 by Insolvency (Amendment) Rules 2010/686 Sch.2 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶¹⁷ Form 6.18A substituted for form 6.18 by Insolvency (Amendment) Rules 2010/686 Sch.2 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

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[...]	...] ²⁵⁹⁵
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²⁶¹⁸ Form 6.31 repealed by Insolvency (Amendment) Rules 2003/1730 rule 14(2)(d) (April 1, 2004)

²⁶¹⁹ Form 6.33A substituted for form 6.33 by Insolvency (Amendment) Rules 2010/686 Sch.2 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

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²⁶²⁰ Words inserted by Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007/1898 Sch.1 para.12(7)(a) (October 1, 2007)

²⁶²¹ Words substituted by Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007/1898 Sch.1 para.12(7)(b) (October 1, 2007)

²⁶²² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.552(2) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶²³ Form 6.61A substituted for form 6.61 by Insolvency (Amendment) Rules 2010/686 Sch.2 para.1 (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶²⁴ Entries inserted by Insolvency (Amendment) Rules 2003/1730 rule 14(1)(d) (April 1, 2004)

] ²⁶²⁷ [

Form 1.1 [...] ²⁶²⁸

Form 1.5 *Nominee's statement of opinion pursuant to paragraph 6(2) of Schedule A1 to the Insolvency Act 1986*

Rule 1.38 and 1.39

Form 1.6 *Statement of Affairs*

Rules 1.37 and 1.39

Form 1.7 *Statement of eligibility for a moratorium pursuant to paragraph 7(1)(c) of Schedule A1 to the Insolvency Act 1986*

Rule 1.39

Form 1.8 *Statement of consent to act by nominee*

Rules 1.8, 1.38, 1.39 and 1.45

Form 1.9 *Documents to be submitted to court to obtain moratorium*

Rule 1.39

Form 1.10 *[Advertisement of coming into force or ending of moratorium (for Gazette and other advertising)]* ²⁶²⁹

Rules 1.40 and 1.42

Form 1.11 [...] ²⁶²⁸

Form 1.13 *Notice to court of extension or further extension of moratorium*

Rule 1.41

Form 1.14 [...] ²⁶²⁸

Form 1.15 *Nominee's notice to court of end of moratorium*

Rule 1.42

Form 1.16 [...] ²⁶²⁸

Form 1.17 *Notice to court by nominee of withdrawal of consent to act*

Rule 1.44

Form 1.18 [...] ²⁶²⁸

Form 1.19 *Notice to court of appointment of replacement nominee*

Rule 1.46

[Forms not available in online format. Please see original printed copy.]

²⁶²⁷ Entries added by Insolvency (Amendment) Rules 2003/1730 rule 14(1)(e) (September 15, 2003)

²⁶²⁸ Revoked by Insolvency (Amendment) Rules 2010/686 Sch.1 para.502(2)(a) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶²⁹ Words substituted by Insolvency (Amendment) Rules 2009/642 Sch.2 para.2(a) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

] ²⁶³⁰ [

Form 2.1B *Administration application*

Form 2.2B *Statement of proposed administrator*

Form 2.3B [...] ²⁶²⁸

Form 2.4B *Administration order*

Form 2.5B *Notice of intention to appoint an administrator by holder of qualifying floating charge*

Form 2.6B *Notice of appointment of an administrator by holder of qualifying floating charge*

Form 2.7B *Notice of appointment of an administrator by holder of qualifying floating charge (For use in pursuance of Rule 2.19 of the Insolvency Rules 1986)*

[[

Form 2.8B *Notice of intention to appoint an administrator by company or director(s)*

[Form not available in online format. Please see original printed copy.]

] ²⁶³¹

Form 2.9B *Notice of appointment of an administrator by company or director(s) (where a notice of intention to appoint has been issued)*

[Form not available in online format. Please see original printed copy.]

] ²⁶³²

Form 2.10B *Notice of appointment of an administrator by company or director(s) (where a notice of intention to appoint has not been issued)*

Form 2.11B [...] ²⁶²⁸

Form 2.12B *Notice of administrator's appointment*

[

Form 2.13B *Notice requiring submission of a statement of affairs*

Form 2.14B *Statement of affairs*

[Forms not available in online format. Please see original printed copy.]

] ²⁶³¹

Form 2.15B *Statement of concurrence*

Form 2.16B [...] ²⁶²⁸

Form 2.17B [...] ²⁶²⁸

Form 2.18B *Notice of extension of time period*

²⁶³⁰ Forms 1.1-1.19 substituted for forms 1.1-1.4 by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(6) para.1 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 8(3)-(4))

²⁶³¹ Forms 2.8B, 2.11B, 2.13B, 2.14B, 3.1A, 3.2, 4.6, 4.11, 4.12, 4.13, 4.14, 4.17, 4.18, 4.19, 4.68, 6.9, 6.24A, 6.28, 6.80, 6.83 and 6.84 substituted by Insolvency (Amendment) Rules 2005/527 Sch.1(B) para.1 (April 1, 2005)

²⁶³² Forms 2.8B, 2.9B, 2.11B, 2.25B, 4.25, 5.7, 5.8, 6.28, 6.37, 6.71, 6.79A, 6.82 and 6.84 substituted by Insolvency (Amendment) Rules 2004/584 Sch.1 para.1 (April 1, 2004)

Form 2.19B *Notice to attend meeting of creditors*

Form 2.20B *Notice of a meeting of creditors*

Form 2.21B *Creditor's request for a meeting*

Form 2.22B *Statement of administrator's revised proposals*

Form 2.23B *Notice of result of meeting of creditors*

Form 2.24B *Administrator's progress report*

[

Form 2.25B *Notice of conduct of business by correspondence*

[Form not available in online format. Please see original printed copy.]

] ²⁶³²

Form 2.26B *[Amended] Certificate of constitution of creditors' committee*

Form 2.27B [...] ²⁶²⁸

Form 2.30B *Notice of automatic end of administration*

Form 2.31B [...] ²⁶²⁸

Form 2.32B *Notice of end of administration*

Form 2.33B [...] ²⁶²⁸

Form 2.37B *Notice of intention to resign as administrator*

Form 2.38B *Notice of resignation by administrator*

[Forms not available in online format. Please see original printed copy.]

Form 2.39B [...] ²⁶²⁸

Form 2.40B [...] ²⁶²⁸

] ²⁶³³ [

Form 3.1 *Written acceptance of appointment by Receiver*

Rule 3.1

[Form not available in online format. Please see original printed copy.]

[

Form 3.1A *[Notice of appointment of administrative receiver (for Gazette and other advertising)]* ²⁶³⁴

Rule 3.2

[Form not available in online format. Please see original printed copy.]

²⁶³³ Forms 2.1B to 2.40B substituted for forms 2.1 to 2.23 by Insolvency (Amendment) Rules 2003/1730 Sch.2(A) para.1 (September 15, 2003)

²⁶³⁴ Words substituted by Insolvency (Amendment) Rules 2009/642 Sch.2 para.2(c) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/642 rule3(1))

]²⁶³¹]²⁶³⁵ [

Form 3.1B *Notice Requiring Preparation and Submission of Administrative Receivership Statement of Affairs*

Rule 3.3

[Form not available in online format. Please see original printed copy.]

]²⁶³⁶ [

Form 3.2 *Statement of Affairs*

Rule 3.4

[Form not available in online format. Please see original printed copy.]

]²⁶³¹

Form 3.3 [...] ²⁶²⁸

Form 3.6 *Receiver or Manager or Administrative Receiver's Abstract of Receipts and Payments*

Rule 3.32

Form 3.7 [...] ²⁶²⁸

Form 3.9 *Notice of Resignation of Administrative Receiver Pursuant to Section 45(1) of the Insolvency Act 1986*

Section 45(1)

Form 3.10 [...] ²⁶²⁸

[

Form 4.1 *Statutory Demand under section 123(1)(a) or 222(1)(a) of the Insolvency Act 1986*

Rule 4.5

[Form not available in online format. Please see original printed copy.]

]²⁶³⁷ [

Form 4.2 *Winding-Up Petition*

Rule 4.7

[Form not available in online format. Please see original printed copy.]

]²⁶³⁸

Form 4.3 [...] ²⁶³⁹

²⁶³⁵ Forms 2.4A, 3.1, 3.1A, 4.14A, 5.1, 5.2, 5.3, 5.4, 6.24A, 6.24B and 6.79A added by Insolvency (Amendment) Rules 1987/1919 Sch.1(4) para.1 (January 11, 1988)

²⁶³⁶ Form 3.1B substituted for form 3.1 by Insolvency (Amendment) Rules 1987/1919 Sch.1(5)(2) para.1 (January 11, 1988)

²⁶³⁷ Form 1.1, 2.1, 2.5, 2.8, 2.11, 2.12, 2.16, 2.17, 4.1, 4.12, 4.13, 4.14, 4.16, 4.53, 4.61, 4.64, 4.66, 4.67, 4.68, 4.70, 6.1, 6.2, 6.3, 6.11, 6.14, 6.26, 6.30, 6.55, 6.57, 6.59, 6.60, 6.61, 6.78, 7.9 and 7.15 substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(5)(1) para.1 (January 11, 1988)

²⁶³⁸ Forms 2.1, 2.4, 4.2, 4.11, 4.12, 4.14, 4.15, 4.25, 6.7, 6.8, 6.9, 6.10, 6.25, 6.32 and 6.37 substituted by Insolvency (Amendment) Rules 2002/1307 Sch.1(2) para.1 (May 31, 2002)

²⁶³⁹ Form 4.3 repealed by Insolvency (Amendment) Rules 2005/527 rule 49(2)(a) (April 1, 2005)

Form 4.4 [...]²⁶²⁸

[

Form 4.6 *Advertisement of Winding-Up Petition*

Rule 4.11

[Form not available in online format. Please see original printed copy.]

]²⁶³¹**Form 4.7** *Certificate that Relevant Provisions of Rules have been Complied with*

Rule 4.14

Form 4.8 *Order for Leave to Withdraw Winding-Up Petition*

Rule 4.15

Form 4.9 *Notice of Intention to Appear on Petition*

Rule 4.16

Form 4.10 *List of Persons Intending to Appear on the Hearing of the Petition*

Rule 4.17

[

Form 4.11 *Order for Winding Up by the Court*

Rule 4.20

Form 4.12 *Order for Winding Up by the Court following upon the cessation of the appointment of an administrator*

Rule 4.20

Form 4.13 *Notice to Official Receiver of Winding-Up Order*

Rule 4.20

Form 4.14 *Petition by Contributory*

Rule 4.22

[Forms not available in online format. Please see original printed copy.]

]²⁶³¹ [**Form 4.14A** *Notice to Official Receiver of appointment of Provisional Liquidator*

Rule 4.25A

[Form not available in online format. Please see original printed copy.]

]²⁶³⁵**Form 4.15A [...]**²⁶²⁸

[

Form 4.16 *Notice Requiring Preparation and Submission of Statement of Company's Affairs*

Rule 4.32

[Form not available in online format. Please see original printed copy.]

]²⁶³⁷ [**Form 4.17** *Statement of Affairs*

Rule 4.33

Form 4.18 *Statement of Affairs*

Rule 4.34-CVL

Form 4.19 *Statement of Affairs*

Rule 4.34-CVL

[Forms not available in online format. Please see original printed copy.]

] ²⁶³¹**Form 4.20** [...] ²⁶²⁸**Form 4.21** *Request by Creditor(s) for a Meeting of the Company's Creditors [and Contributories]*

Rule 4.50, 4.57

Form 4.22 *Notice to Creditors of Meeting of Creditors*

Rule 4.54, 4.108, 4.113, 4.114-CVL, 4.125, 4.126-CVL

Form 4.23 *Notice to Contributories of Meeting of Contributories*

Rule 4.54

Form 4.24 *Request by Contributory/Contributories for a Meeting of the Company's Contributories*

Rule 4.57

[

Form 4.25 *Proof of Debt — General Form*

Rule 4.73

[Form not available in online format. Please see original printed copy.]

] ²⁶³²**Form 4.26** [...] ²⁶²⁸**Form 4.27** *Certificate of Appointment of Liquidator by Meeting*

Rule 4.100, 4.101-CVL, 4.139

Form 4.28 *Certificate of Appointment of Two or More Liquidators by Meeting*

Rule 4.100, 4.101-CVL, 4.139

Form 4.29 *Order of Court Appointing Liquidator*

Rule 4.102, 4.103-CVL, 4.140

Form 4.30 *Order of Court Appointing Two or More Liquidators*

Rule 4.102, 4.103-CVL, 4.140

Form 4.31 [...] ²⁶²⁸**Form 4.32** *Notice to Court of Resignation of Liquidator Following Meeting of Creditors*

Rule 4.109

Form 4.33 [...] ²⁶²⁸**Form 4.34** *Order of Court Giving Liquidator Leave to Resign*

Rule 4.111

Form 4.35 [...]²⁶²⁸**Form 4.36** *Notice to Court of Resignation of Liquidator Following Leave of the Court*

Rule 4.111

Form 4.37 *Certificate of Removal of Liquidator*

Rule 4.113

Form 4.38 [...]²⁶²⁸**Form 4.39** *Order of Court Removing Liquidator or Directing Liquidator to Summon a Meeting of Creditors for the Purpose of His Removal*

Rule 4.119, 4.120-CVL, 4.143

Form 4.40 [...]²⁶²⁸**Form 4.41** *Liquidator's Application to the Secretary of State for his release*

Rule 4.121, 4.122-CVL, 4.144

Form 4.42 *Notice to Court of Final Meeting of Creditors*

Rule 4.125

Form 4.43 [...]²⁶²⁸**Form 4.45** *Notice to Official Receiver or Secretary of State by Liquidator on Loss of Qualification as Insolvency Practitioner*

Rule 4.134, 4.135-CVL, 4.146

Form 4.46 [...]²⁶²⁸**Form 4.47** *Certificate of Constitution [Amended Certificate] of Liquidation Committee*

Rule 4.153

Form 4.48 [...]²⁶²⁸

[

Form 4.52 *Liquidator's Certificate of Continuance of Liquidation Committee*

Rule 4.176

[Form not available in online format. Please see original printed copy.]

]²⁶⁴⁰ [**Form 4.53A** *Notice of Disclaimer under section 178 of the Insolvency Act 1986*

Rule 4.187, 4.188, 4.189

[Form not available in online format. Please see original printed copy.]

]²⁶⁰³**Form 4.54** *Notice to Elect*

Rule 4.191

²⁶⁴⁰ Forms 3.2, 4.12, 4.17, 4.18, 4.19, 4.52, 5.2, 6.1, 6.2, 6.3 and 6.25 substituted by Insolvency (Amendment) Rules 2003/1730 Sch.2(C) para.1 (September 15, 2003 for the forms specified in SI 2003/1730 rule 14(2)(c)(i); April 1, 2004 otherwise)

Form 4.55	<i>Notice of Intended Disclaimer to Interested Party</i>	Rule 4.192
Form 4.56	<i>[Witness Statement]²⁶⁰⁴ of Liquidator in Support of Application for Call</i>	Rule 4.204
Form 4.57	<i>Order Giving Leave to Make a Call</i>	Rule 4.204
Form 4.58	<i>Notice of Call Sanctioned by the Court or the Liquidation Committee to be sent to Contributory</i>	Rule 4.205
Form 4.59	<i>Order for Payment of Call Due from Contributory</i>	Rule 4.205
Form 4.60	<i>Order of Appointment of Special Manager</i>	Rule 4.206
[
Form 4.61	<i>Order of Public Examination</i>	Rule 4.211
	[Form not available in online format. Please see original printed copy.]	
] ²⁶³⁷		
Form 4.62	<i>Notice to Official Receiver by Creditor Requesting Him to Make Application for the Holding of a Public Examination</i>	Rule 4.213
Form 4.63	<i>Notice to Official Receiver by Contributory Requesting Him to Make Application for the Holding of a Public Examination</i>	Rule 4.213
[
Form 4.64	<i>Order as to Examination of Person who Lacks Capacity to Manage and Administer his Property and Affairs or is Suffering from Physical Affliction or Disability</i>	Rule 4.214
	[Form not available in online format. Please see original printed copy.]	
] ²⁶⁴¹		
Form 4.65	<i>[Statement of Truth Verifying]²⁶⁰⁷ Record of the Public Examination</i>	Rule 4.215
[
Form 4.66	<i>Order of Adjournment of Public Examination</i>	Rule 4.216

²⁶⁴¹ Form 4.64 substituted by Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007/1898 Sch.2 para.1 (October 1, 2007)

Form 4.67 *Order Appointing Time for Proceeding with Public Examination Adjourned Generally*
Rule 4.216

[Forms not available in online format. Please see original printed copy.]
] ²⁶³⁷ [...] ²⁶²⁸ [

Form 4.70 *Members' Voluntary Winding Up Declaration of Solvency Embodying a Statement of Assets and Liabilities*
Section 89(3)

[Form not available in online format. Please see original printed copy.]
] ²⁶³⁷

Form 4.71 [...] ²⁶²⁸
[

Form 4.73 *Notice to the creditors of an insolvent company of the re-use of a prohibited name*
[Form not available in online format. Please see original printed copy.]
] ²⁶⁴² [

Form 4.74 *Request by Liquidator for Approval or Authorisation of Litigation Expenses by Creditor*
Rule 4.218C, 4.218D
[Form not available in online format. Please see original printed copy.]
] ²⁶⁴³ [

Form 5.1 *Order granting stay pending hearing of application for Interim Order*
Section 254
[Form not available in online format. Please see original printed copy.]
[[

Form 5.2 *Interim Order of Court under section 252 of the Insolvency Act 1986*
Rule 5.10
[Form not available in online format. Please see original printed copy.]
] ²⁶⁴⁰

Form 5.3 *Order extending effect of interim Order*
Section 256
[Form not available in online format. Please see original printed copy.]
] ²⁶⁴⁴ [

Form 5.4 *Alternative orders to be made at hearing to consider chairman's report*
Sections 259 and 260
[Form not available in online format. Please see original printed copy.]

²⁶⁴² Form 4.73 inserted by Insolvency (Amendment) Rules 2007/1974 Sch.1 para.1 (August 6, 2007)

²⁶⁴³ Form 4.74 inserted by Insolvency (Amendment) Rules 2008/737 Sch.1 para.1 (April 6, 2008)

²⁶⁴⁴ Forms 5.2 and 5.3 substituted by Insolvency (Amendment) (No. 2) Rules 2002/2712 Sch.1(6) para.1 (January 1, 2003: substitution has effect subject to the conditions specified in SI 2002/2712 rule 8(3)-(4))

]²⁶⁴⁵]²⁶³⁵

Form 5.5 [...]²⁶²⁸

[

Form 5.6 *Voting form in relation to a proposal for a voluntary arrangement under section 263A of the Insolvency Act 1986*

[Form not available in online format. Please see original printed copy.]

[

Form 5.7 *Order of Annulment under Section 261 of the Insolvency Act 1986*

Form 5.8 *Order of Annulment under Section 263D of the Insolvency Act 1986*

[Forms not available in online format. Please see original printed copy.]

]²⁶³²]²⁶⁴⁶ [

Form 6.1 *Statutory Demand under section 268(1)(a) of the Insolvency Act 1986. Debt for Liquidated Sum Payable Immediately*

Rule 6.1

Form 6.2 *Statutory Demand under section 268(1)(a) of the Insolvency Act 1986. Debt for Liquidated Sum Payable Immediately Following a Judgment or Order of the Court*

Rule 6.1

Form 6.3 *Statutory Demand under section 268(2) of the Insolvency Act 1986. Debt Payable at Future Date.*

Rule 6.1

[Forms not available in online format. Please see original printed copy.]

]²⁶⁴⁰

Form 6.4 *Application to Set Aside a Statutory Demand*

Rule 6.4

Form 6.5 *[Witness Statement]²⁶¹¹ in Support of Application to Set Aside Statutory Demand*

Rule 6.4

Form 6.6 *Order Setting Aside Statutory Demand*

Rule 6.5

[

Form 6.7 *Creditor's Bankruptcy Petition on Failure to Comply with a Statutory Demand for a Liquidated Sum Payable Immediately*

Rule 6.6

²⁶⁴⁵ Forms 5.4, 6.30, 6.72, 6.73 and 6.79A substituted by Insolvency (Amendment) Rules 2003/1730 Sch.2(C) para.1 (April 1, 2004: September 15, 2003 for the forms specified in SI 2003/1730 rule 14(2)(c)(i); April 1, 2004 otherwise)

²⁶⁴⁶ Forms 5.6, 5.7, 5.8, 6.81, 6.82, 6.83 and 6.84 inserted by Insolvency (Amendment) Rules 2003/1730 Sch.2(B) para.1 (April 1, 2004: September 15, 2003 for the purpose specified in SI 2003/1730 rule 1(2); April 1, 2004 otherwise)

Form 6.8 *Creditor's Bankruptcy Petition on Failure to Comply with a Statutory Demand for a Liquidated Sum Payable at a Future Date*

Rule 6.6

[

Form 6.9 *Creditor's Bankruptcy Petition Where Execution or Other Process on a Judgment has been Returned in Whole or Part*

Rule 6.6

[Form not available in online format. Please see original printed copy.]

] ²⁶³¹

Form 6.10 *Bankruptcy Petition for Default in Connection with Voluntary Arrangement*

Rule 6.6

[Forms not available in online format. Please see original printed copy.]

] ²⁶³⁸ [

Form 6.11 *[Certificate]²⁶¹² of Personal Service of Statutory Demand*

Rule 6.11

[Form not available in online format. Please see original printed copy.]

] ²⁶³⁷

Form 6.12 *[Certificate]²⁶¹³ of Substituted Service of Statutory Demand*

Rule 6.11

[

Form 6.13A *Statement of Truth of Statements in Bankruptcy Petition*

Rule 6.12

[Form not available in online format. Please see original printed copy.]

] ²⁶¹⁴ [

Form 6.14 *Application for Registration of Petition in Bankruptcy against an Individual under Land Charges Act 1972*

Rule 6.13, 6.43

[Form not available in online format. Please see original printed copy.]

] ²⁶³⁷ [

Form 6.15A *Order for Substituted Service of a Bankruptcy Petition*

Rule 6.14

[Form not available in online format. Please see original printed copy.]

] ²⁶¹⁵

Form 6.16 *Substituted Service of Bankruptcy Petition—Notice in Gazette*

Rule 6.14

[

Form 6.17A *Certificate of Personal Service of Bankruptcy Petition*

Rule 6.15A

[Form not available in online format. Please see original printed copy.]

] ²⁶¹⁶ [

Form 6.18A *Certificate of Substituted Service of Bankruptcy Petition*

Rule 6.15A

[Form not available in online format. Please see original printed copy.]

] ²⁶¹⁷**Form 6.19** *Notice by Debtor of Intention to Oppose Bankruptcy Petition*

Rule 6.21

Form 6.20 *Notice of Intention to Appear on Bankruptcy Petition*

Rule 6.23

Form 6.21 *List of Creditors Intending to Appear on the Hearing of the Bankruptcy Petition*

Rule 6.24

Form 6.22 *Dismissal of Bankruptcy Petition*

Rule 6.25, 6.27, 6.32

Form 6.23 *Order of Adjournment of Bankruptcy Petition*

Rule 6.29

Form 6.24 *Notice to Debtor and Creditors of Order of Adjournment of Bankruptcy Petition*

Rule 6.29

[[

Form 6.24A *Order for substitution of petitioner on creditor's petition*

Rule 6.30

[Form not available in online format. Please see original printed copy.]

] ²⁶³¹**Form 6.24B** *Change of carriage order*

Rule 6.31

[Form not available in online format. Please see original printed copy.]

] ²⁶³⁵ [**Form 6.25** *Bankruptcy Order on Creditor's Petition*

Rule 6.33

[Form not available in online format. Please see original printed copy.]

] ²⁶⁴⁰ [**Form 6.26** *Application for Registration of a Bankruptcy Order against an Individual under Land Charges Act 1972*

Rule 6.34, 6.46

[Form not available in online format. Please see original printed copy.]

] ²⁶³⁷**Form 6.27** *Debtor's Bankruptcy Petition*

Rule 6.37

[

Form 6.28 *Statement of Affairs (Debtor's Petition)*

Rule 6.41(1)

[Form not available in online format. Please see original printed copy.]

] ²⁶³¹**Form 6.29** *Order of Appointment of Insolvency Practitioner to Prepare a Report Under Section 274(1) of the Insolvency Act 1986*

Rule 6.44

[

Form 6.30 *Bankruptcy Order on Debtor's Petition*

Rule 6.45

[Form not available in online format. Please see original printed copy.]

] ²⁶⁴⁵**Form 6.31** [...] ²⁶¹⁸

[

Form 6.32 *Order of Appointment of Interim Receiver*

Rule 6.52

[Form not available in online format. Please see original printed copy.]

] ²⁶³⁸ [**Form 6.33A** *Statement of Affairs (Creditor's Petition) Insolvency Act 1986*

Rule 6.59

[Form not available in online format. Please see original printed copy.]

] ²⁶¹⁹**Form 6.34** *Request by Creditor(s) for a Meeting of the Bankrupt's Creditors*

Rule 6.79, 6.83

Form 6.35 *Notice to Creditors of Meeting of Creditors*

Rule 6.81, 6.127, 6.129, 6.137

Form 6.36 *Notice to Bankrupt of Meeting of Creditors*

Rule 6.84

[

Form 6.37 *Proof of Debt — General Form*

Rule 6.96

[Form not available in online format. Please see original printed copy.]

] ²⁶³²**Form 6.38** *Proof by Existing Trustee as a Claim in Later Bankruptcy*

Rule 6.96

Form 6.39 [...] ²⁶²⁸**Form 6.40** *Certificate of Appointment of Trustee by Creditors' Meeting*

Rule 6.120

Form 6.41	<i>Certificate of Appointment of Two or More Trustees by Creditors' Meeting</i>	Rule 6.120
Form 6.42	<i>Order of Court Appointing Trustee</i>	Rule 6.121
Form 6.43	<i>Order of Court Appointing Two or More Trustees</i>	Rule 6.121
Form 6.44	<i>Notice to Court of Resignation of Trustee Following Meeting of Creditors</i>	Rule 6.127
Form 6.45	<i>Order of Court Giving Trustee Leave to Resign</i>	Rule 6.128
Form 6.46	<i>Notice to Court of Resignation of Trustee Following Leave of the Court</i>	Rule 6.128
Form 6.47	<i>Certificate of Removal of Trustee</i>	Rule 6.129
Form 6.48	<i>Order of Court Removing Trustee or Directing Trustee to Summon a Meeting of Creditors for the Purpose of His Removal</i>	Rule 6.132
Form 6.49	<i>Trustee's Application to the Secretary of State for His Release</i>	Rule 6.135
Form 6.50	<i>Notice to Court of Final Meeting of Creditors</i>	Rule 6.137
Form 6.51	<i>Notice to Official Receiver by Trustee on Loss of Qualification as Insolvency Practitioner</i>	Rule 6.144
Form 6.52	<i>Certificate of Constitution [Amended Certificate] of Creditors' Committee</i>	Rule 6.151
Form 6.53	[...] ²⁶²⁸	
Form 6.54	<i>Order of Appointment of Special Manager</i>	Rule 6.167
Form 6.55	<i>Order for Public Examination of Bankrupt</i>	Rule 6.172
	[Form not available in online format. Please see original printed copy.]	
Form 6.56	<i>Request by Creditor(s) for the Holding of a Public Examination of the Bankrupt</i>	Rule 6.173

] ²⁶³⁷

[

Form 6.57 *Order as to Examination of Bankrupt who Lacks Capacity to Manage and Administer his Property and Affairs or is Suffering from Physical Affliction or Disability*

Rule 6.174

[Form not available in online format. Please see original printed copy.]

] ²⁶⁴⁷

Form 6.58 *[Statement of Truth Verifying]²⁶²² Record of the Public Examination of the Bankrupt*

Rule 6.175

[

Form 6.59 *Order of Adjournment of Public Examination of Bankrupt*

Rule 6.176

Form 6.60 *Order Appointing Time for Proceeding with Public Examination of Bankrupt Adjourned Generally*

Rule 6.176

[Forms not available in online format. Please see original printed copy.]

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Form 6.61A *Notice of Disclaimer under section 315 of the Insolvency Act 1986*

Rule 6.178, 6.179, 6.180

[Form not available in online format. Please see original printed copy.]

] ²⁶²³] ²⁶³⁷

Form 6.62 *Notice to Elect*

Rule 6.183

Form 6.63 *Notice of Intended Disclaimer to Interested Party*

Rule 6.184

Form 6.64 *Notice to Bankrupt of Application Under Section 310 of the Insolvency Act 1986 for Income Payments Order*

Rule 6.189

Form 6.65 *Order for Income Claimed Under Section 310(3)(a) of the Insolvency Act 1986*

Rule 6.190

Form 6.66 *Order for Income Claimed Under Section 310(3)(b) of the Insolvency Act 1986*

Rule 6.190

Form 6.67 *Order Converting Income Payments Order Made Under Section 310(3)(a) to an Order Under Section 310(3)(b) of the Insolvency Act 1986*

Rule 6.191

Form 6.68 *Discharge or Variation of Order for Income Claimed Under Section 310 of the Insolvency Act 1986*

Rule 6.193

²⁶⁴⁷ Form 6.57 substituted by Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007/1898 Sch.2 para.1 (October 1, 2007)

Form 6.69 *Order Under Section 369(1) of the Insolvency Act 1986*

Rule 6.195

Form 6.70 *Order Under Section 369(2) of the Insolvency Act 1986*

Section 369(2)

[

Form 6.71 *Order of Annulment Under Section 282 of the Insolvency Act 1986*

Rule 6.210

[Form not available in online format. Please see original printed copy.]

] ²⁶³² [**Form 6.72** *Order of Suspension of Discharge under Section 279(3) of the Insolvency Act 1986*

Rule 6.215

[Form not available in online format. Please see original printed copy.]

] ²⁶⁴⁵**Form 6.73** *Order of Court Lifting Suspension of Discharge*

Rule 6.216

Form 6.74 *Certificate that Order Suspending Discharge has been Lifted*

Rule 6.216

Form 6.75 *Notice to Court by Bankrupt that he Intends to Dispute Statements Made by Official Receiver in His Report Under Section 289(2) of the Insolvency Act 1986*

Rule 6.218

Form 6.76 *Order Granting Absolute/Suspended Discharge Under Section 280(2)(b) or (c) of the Insolvency Act 1986*

Rule 6.219

Form 6.77 *Certificate of Discharge*

Rule 6.220

[

Form 6.78 *Notice to Existing Trustee of the Presentation of a Petition for a Later Bankruptcy*

Section 334(2)

[Form not available in online format. Please see original printed copy.]

] ²⁶³⁷**Form 6.79** *Criminal Bankruptcy Petition*

Rule 6.229

[

Form 6.79A *Charging Order under Section 313 of the Insolvency Act 1986*

Rule 6.237D

[Form not available in online format. Please see original printed copy.]

] ²⁶³² [

Form 6.80 *Order to postal operator under Section 371 of the Insolvency Act 1986*

Rule 6.235A

[Form not available in online format. Please see original printed copy.]

]²⁶³¹ [**Form 6.81** *Variation of income payments agreement under section 310A of the Insolvency Act 1986*

[Form not available in online format. Please see original printed copy.]

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Form 6.82 *Notice under Section 279(2) of the Insolvency Act 1986*

[Form not available in online format. Please see original printed copy.]

]²⁶³² [**Form 6.83** *Notice to interested parties of a dwelling-house falling within Section 283A of the Insolvency Act 1986*

Rule 6.237

Form 6.84 *Certificate issued pursuant to Rule 6.237B(1) of the Insolvency Rules 1986*

Rule 6.237B

[Forms not available in online format. Please see original printed copy.]

]²⁶³¹]²⁶⁴⁶ [**Form 7.1A** *Application Notice*

Rule 7.3

[Form not available in online format. Please see original printed copy.]

]²⁶²⁵**Form 7.3** [...] ²⁶²⁸**Form 7.16** [...] ²⁶⁴⁸**Form 7.17** [...] ²⁶²⁸

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Form 7.20A *Confirmation by Court of Creditors' Voluntary Winding Up Application and Order*

Rule 7.62

[Form not available in online format. Please see original printed copy.]

]²⁶²⁶**Form 8.1** *Proxy (Company or Individual Voluntary Arrangements)*

Rule 8.1

Form 8.2 *Proxy (Administration)*

Rule 8.1

Form 8.3 *Proxy (Administrative Receivership)*

Rule 8.1

²⁶⁴⁸ Form 7.16 repealed by Insolvency (Amendment) Rules 1987/1919 Sch.1(2) para.159 (January 11, 1988)

Form 8.4 *Proxy (Winding up by the Court or Bankruptcy)*

Rule 8.1

Form 8.5 *Proxy (Members' or Creditors' Voluntary Winding Up)*

Rule 8.1

Form 9.1 *Order Under Section 236 or 366 of the Insolvency Act 1986*

Rule 9.1

[Forms not available in online format. Please see original printed copy.]

Form 12.1 [...] ²⁶²⁸
] ²⁶⁴⁹**Commencement**

Sch. 4 para. 1: December 29, 1986

SCHEDULE 5**PUNISHMENT OF OFFENCES UNDER THE RULES****Rule 12.21**

Note: In the fourth and fifth columns of this Schedule, “the statutory maximum” means the prescribed sum under section 32 of the Magistrates' Courts Act 1980 (c.43).

Rule creating offence.	General nature of offence.	Mode of prosecution.	Punishment.	Daily default fine (where applicable).
[...]] ²⁶⁵⁰
In [Part 2, Rule 2.47(6)] ²⁶⁵¹	Administrator failing to send [a progress report] ²⁶⁵² .	Summary.	[Level 3 on the standard scale] ²⁶⁵³ .	[One-tenth of level 3 on the standard scale] ²⁶⁵⁴ .

²⁶⁴⁹ Substituted by Insolvency (Amendment) Rules 1987/1919 Sch.1(2) para.155 (January 11, 1988)

²⁶⁵⁰ Entries repealed by Insolvency (Amendment) (No. 2) Rules 2002/2712 rule 9 (January 1, 2003)

²⁶⁵⁴ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.560(6) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶⁵³ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.560(5) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶⁵² Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.560(1) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶⁵¹ Entry substituted by Insolvency (Amendment) Rules 2003/1730 rule 15(1)(a) (September 15, 2003)

Rule creating offence.	General nature of offence.	Mode of prosecution.	Punishment.	Daily default fine (where applicable).
[In Rule 2.111(3).	Administrator failing to file a notice of automatic end of administration[and progress report] ²⁶⁵⁵	summary	[Level 3 on the standard scale] ²⁶⁵³	[One-tenth of level 3 on the standard scale] ²⁶⁵⁴ .
In Rule 2.129(2).	[Failure to comply with administrator's] ²⁶⁵⁶ duties on vacating office	summary	[Level 3 on the standard scale] ²⁶⁵³	[One-tenth of level 3 on the standard scale] ²⁶⁵⁴ .] ²⁶⁵⁷
In Part 3, Rule 3.32(5).	Administrative receiver failing to send [requisite accounts of receipts and payments as receiver] ²⁶⁵⁸ .	Summary.	[Level 3 on the standard scale] ²⁶⁵³ .	[One-tenth of level 3 on the standard scale] ²⁶⁵⁴ .
[...]] ²⁶⁵⁰
In Part 12, Rule 12.18.	False representation of status for purpose of inspecting documents.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	

Commencement

Sch. 5 para. 1: December 29, 1986

[SCHEDULE 6

DETERMINATION OF INSOLVENCY OFFICE HOLDER'S REMUNERATION

Rules 4.127A, 4.127B, 4.148B and 6.138A

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As regards the determination of the remuneration of trustees and liquidators the realisation and distribution scales are as set out in the table below—

The realisation scale

(i) on the first £5000 or fraction thereof	20%
(ii) on the next £5000 or fraction thereof	15%
(iii) on the next £90000 or fraction thereof	10%
(iv) on all further sums realised	5%

²⁶⁵⁵ Words added by Insolvency (Amendment) Rules 2010/686 Sch.1 para.560(2) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶⁵⁷ Entries inserted by Insolvency (Amendment) Rules 2003/1730 rule 15(1)(b) (September 15, 2003)

²⁶⁵⁶ Words inserted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.560(3) (April 6, 2010: insertion has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶⁵⁸ Words substituted by Insolvency (Amendment) Rules 2010/686 Sch.1 para.560(4) (April 6, 2010: substitution has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

²⁶⁵⁹ Added by Insolvency (Amendment) Rules 2004/584 rule 47 (April 1, 2004)

The distribution scale

(i) on the first £5000 or fraction thereof	10%
(ii) on the next £5000 or fraction thereof	7.5%
(iii) on the next £90000 or fraction thereof	5%
(iv) on all further sums distributed	2.5%

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EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules set out the detailed procedure for the conduct of all company and individual insolvency proceedings in England and Wales under the Insolvency Act 1986 and otherwise give effect to that Act. The insolvency proceedings concerned are—

- company voluntary arrangements (Part 1 of the Rules),
- administration (Part 2),
- administrative receivership (Part 3),
- companies winding up (Part 4),
- individual voluntary arrangements (Part 5), and
- bankruptcy (Part 6).

Parts 7 to 13 of the Rules apply to both company and individual insolvency proceedings and are concerned with the following matters—

- court procedure and practice (Part 7),
- proxies and company representation (Part 8),
- examination of persons concerned in company and individual insolvency (Part 9),
- official receivers (Part 10),
- declaration and payment of dividend (winding up and bankruptcy) (Part 11),
- miscellaneous and general (Part 12), and interpretation and application (Part 13).

The Arrangement of Rules at the beginning of the statutory instrument lists the number and contents of all the Rules and Schedules. The Rules come into force on 29th December 1986 and generally apply to all insolvency proceedings commenced on or after that date. The Rules also apply to such proceedings commenced before that date to which provisions of the Insolvency Act 1986 are applied by Schedule 11 of the Act to the extent necessary to give effect to those provisions. In addition, Rules 6.36, 7.11 and 7.34 expressly provide for their application to insolvency proceedings, whenever commenced.

²⁶⁶⁰ Added by Insolvency (Amendment) Rules 2004/584 rule 47 (April 1, 2004)