
STATUTORY INSTRUMENTS

1986 No. 1915

The Insolvency (Scotland) Rules 1986

PART 4

WINDING UP BY THE COURT

CHAPTER 1

PROVISIONAL LIQUIDATOR

Appointment of provisional liquidator

4.1. An application to the court for the appointment of a provisional liquidator under section 135 may be made by the petitioner in the winding up, or by a creditor of the company, or by a contributory, or by the company itself, or by any person who under any enactment would be entitled to present a petition for the winding up of the company.

Order of appointment

4.2.—(1) The provisional liquidator shall forthwith after the order appointing him is made, give notice of his appointment to -

- (a) the registrar of companies;
- (b) the company; and
- (c) any receiver of the whole or any part of the property of the company.

(2) The provisional liquidator shall advertise his appointment in accordance with any directions of the court.

Caution

4.3. The cost of providing the caution required by the provisional liquidator under the Act shall unless the court otherwise directs be -

- (a) if a winding up order is not made, reimbursed to him out of the property of the company, and the court may make an order against the company accordingly, and
- (b) if a winding up order is made, reimbursed to him as an expense of the liquidation.

Failure to find or to maintain caution

4.4.—(1) If the provisional liquidator fails to find or to maintain his caution, the court may remove him and make such order as it thinks fit as to expenses.

(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.

Remuneration

4.5.—(1) The remuneration of the provisional liquidator shall be fixed by the court from time to time.

(2) Section 53(4) of the Bankruptcy Act shall apply to determine the basis for fixing the amount of the remuneration of the provisional liquidator, subject to the modifications specified in Rule 4.16(2) and to any other necessary modifications.

(3) The provisional liquidator's remuneration shall, unless the court otherwise directs, be paid to him, and the amount of any expenses incurred by him reimbursed -

- (a) if a winding up order is not made, out of the property of the company (and the court may make an order against the company accordingly), and
- (b) if a winding up order is made, as an expense of the liquidation.

Termination of appointment

4.6.—(1) The appointment of the provisional liquidator may be terminated by the court on his application, or on that of any of the persons entitled to make application for his appointment under Rule 4.1.

(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 fit with respect to -

- (a) the accounts of his administration;
- (b) the expenses properly incurred by the provisional liquidator; or
- (c) any other matters which it thinks appropriate

and, without prejudice to the power of the court to make an order against any other person, may direct that any expenses properly incurred by the provisional liquidator during the period of his appointment, including any remuneration to which he is entitled, be paid out of the property of the company, and authorise him to retain out of that property such sums as are required for meeting those expenses.

CHAPTER 2

STATEMENT OF AFFAIRS

Notice requiring statement of affairs

4.7.—(1) This Chapter applies where the liquidator or, in a case where a provisional liquidator is appointed, the provisional liquidator decides to require a statement as to the affairs of the company to be made out and submitted to him in accordance with section 131.

(2) In this Chapter the expression “liquidator” includes “provisional liquidator”.

(3) The liquidator shall send to each of the persons upon whom he decides to make such a requirement under section 131, a notice in the form required by Rule 7.30 and Schedule 5 requiring him to make out and submit a statement of affairs.

(4) Any person to whom a notice is sent under this Rule is referred to in this Chapter as “a deponent”.

Form of the statement of affairs

4.8.—(1) The statement of affairs shall be in the form required by Rule 7.30 and Schedule 5.

(2) The liquidator shall insert any statement of affairs submitted to him in the sederunt book.

Expenses of statement of affairs

4.9.—(1) At the request of any deponent, made on the grounds that he cannot himself prepare a proper statement of affairs, the liquidator may authorise an allowance towards expenses to be incurred by the deponent in employing some person or persons to be approved by the liquidator to assist the deponent in preparing it.

(2) Any such request by the deponent shall be accompanied by an estimate of the expenses involved.

(3) An authorisation given by the liquidator 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.

(4) Nothing in this Rule relieves a deponent from any obligation to make up and submit a statement of affairs, or to provide information to the liquidator.

(5) Any allowance by the liquidator under this Rule shall be an expense of the liquidation.

(6) The liquidator shall intimate to the deponent whether he grants or refuses his request for an allowance under this Rule and where such request is refused the deponent affected by the refusal may appeal to the court not later than 14 days from the date intimation of such refusal is made to him.

CHAPTER 3

INFORMATION

Information to creditors and contributories

4.10.—(1) The liquidator shall report to the creditors and, except where he considers it would be inappropriate to do so, the contributories with respect to the proceedings in the winding up within six weeks after the end of each accounting period or he may submit such a report to a meeting of creditors or of contributories held within such period.

(2) Any reference in this Rule to creditors is to persons known to the liquidator to be creditors of the company.

(3) Where a statement of affairs has been submitted to him, the liquidator may send out to creditors and contributories with the next convenient report to be made under paragraph (1) a summary of the statement and such observations (if any) as he thinks fit to make with respect to it.

Information to registrar of companies

4.11. The statement which section 192 requires the liquidator to send to the registrar of companies if the winding up is not concluded within one year from its commencement, shall be sent not more than 30 days after the expiration of that year and thereafter at 6 monthly intervals until the winding up is concluded in the form required by Rule 7.30 and Schedule 5 and shall contain the particulars specified therein.

CHAPTER 4

MEETINGS OF CREDITORS AND CONTRIBUTORIES

First meetings in the liquidation

4.12.—(1) This Rule applies where under section 138(3) the interim liquidator summons meetings of the creditors and the contributories of the company for the purpose of choosing a person to be liquidator of the company in place of the interim liquidator.

(2) Meetings summoned by the interim liquidator under that section are known respectively as “the first meeting of creditors” and “the first meeting of contributories”, and jointly as “the first meetings in the liquidation”.

(3) Subject as follows, no resolutions shall be taken at the first meeting of creditors other than the following: -

- (a) a resolution to appoint one or more named insolvency practitioners to be liquidator or, as the case may be, joint liquidators and, in the case of joint liquidators, whether any act required or authorised to be done by the liquidator is to be done by both or all of them, or by any one or more;
- (b) a resolution to establish a liquidation committee under section 142(1);
- (c) unless a liquidation committee is to be established, a resolution specifying the terms on which the liquidator is to be remunerated, or to defer consideration of that matter;
- (d) a resolution to adjourn the meeting for not more than 3 weeks;
- (e) any other resolution which the chairman considers it right to allow for special reason.

(4) This rule also applies with respect to the first meeting of contributories except that that meeting shall not pass any resolution to the effect of paragraph (3)(c).

Other meetings

4.13.—(1) The liquidator shall summon a meeting of the creditors in each year during which the liquidation is in force.

(2) Subject to the above provision, the liquidator may summon a meeting of the creditors or of the contributories at any time for the purpose of ascertaining their wishes in all matters relating to the liquidation.

Attendance at meetings of company's personnel

4.14.—(1) This Rule applies to meetings of creditors and to meetings of contributories.

(2) Whenever a meeting is summoned, the liquidator may, if he thinks fit, give at least 21 days' 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 be in attendance.

(3) In this Rule, "the company's personnel" means the persons referred to in paragraphs (a) to (d) of section 235(3) (present and past officers, employees, etc.).

(4) The liquidator may authorise payment to any person whose attendance is requested at a meeting under this Rule of his reasonable expenses incurred in travelling to the meeting and any payment so authorised shall be an expense of the liquidation.

(5) In the case of any meeting, any of the company's personnel may, if he has given reasonable notice of his wish to be present, be admitted to take part; but this is at the discretion of the chairman of the meeting, whose decision as to what (if any) intervention may be made by any of them is final.

(6) If it is desired to put questions to any of the company's personnel who are not present, the meeting may be adjourned 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.

CHAPTER 5 CLAIMS IN LIQUIDATION

Submission of claims

- 4.15.**—(1) A creditor, in order to obtain an adjudication as to his entitlement -
- (a) to vote at any meeting of the creditors in the liquidation; or
 - (b) to a dividend (so far as funds are available) out of the assets of the company in respect of any accounting period,

shall submit his claim to the liquidator -

- (a) at or before the meeting; or, as the case may be,
 - (b) not later than 8 weeks before the end of the accounting period.
- (2) A creditor shall submit his claim by producing to the liquidator -
- (a) a statement of claim in the form required by Rule 7.30 and Schedule 5; and
 - (b) an account or voucher (according to the nature of the debt claimed) which constitutes prima facie evidence of the debt,

but the liquidator may dispense with any requirement of this paragraph in respect of any debt or any class of debt.

(3) A claim submitted by a creditor, which has been accepted in whole or in part by the liquidator for the purpose of voting at a meeting or of drawing a dividend in respect of any accounting period, shall be deemed to have been resubmitted for the purpose of obtaining an adjudication as to his entitlement both to vote at any subsequent meeting and (so far as funds are available) to a dividend in respect of an accounting period or, as the case may be, any subsequent accounting period.

(4) A creditor, who has submitted a claim, may at any time submit a further claim specifying a different amount for his claim:

Provided that a secured creditor shall not be entitled to produce a further claim specifying a different value for the security at any time after the liquidator has required the creditor to discharge, or convey or assign, the security under paragraph 5(2) of Schedule 1 to the Bankruptcy Act, as applied by the following Rule.

(5) Votes are calculated according to the amount of a creditor's debt as at the date of the commencement of the winding up within the meaning of section 129, deducting any amounts paid in respect of that debt after that date.

(6) In this Rule and in Rule 4.16, including the provisions of the Bankruptcy Act applied by that Rule, any reference to the liquidator includes a reference to the chairman of the meeting.

Application of the Bankruptcy Act

4.16.—(1) Subject to the provisions in this Chapter, the following provisions of the Bankruptcy Act shall apply in relation to a liquidation of a company in like manner as they apply in a sequestration of a debtor's estate, subject to the modifications specified in paragraph (2) and to any other necessary modifications:-

- (a) section 22(5) and (10) (criminal offence in relation to producing false claims or evidence);
- (b) section 48(5), (6) and (8), together with sections 44(2) and (3) and 47(1) as applied by those sections (further evidence in relation to claims);
- (c) section 49 (adjudication of claim);
- (d) section 50 (entitlement to vote and draw dividend);

- (e) section 60 (liabilities and rights of co-obligants); and
 (f) Schedule 1 except paragraphs 2, 4 and 6 (determination of amount of creditor's claim).

(2) For any reference in the provisions of the Bankruptcy Act, as applied by these Rules, to any expression in column 1 below, there shall be substituted a reference to the expression in column 2 opposite thereto -

<i>Column 1</i>	<i>Column 2</i>
Interim trustee	Liquidator
Permanent trustee	Liquidator
Sequestration	Liquidation
Date of sequestration	Date of commencement of winding up within the meaning of section 129
Debtor	Company
Debtor's assets	Company's assets
Accountant in Bankruptcy	The court
Commissioners	Liquidation committee
Sheriff	The court
Preferred debts	Preferential debts within the meaning of section 386

Claims in foreign currency

4.17.—(1) A creditor may state the amount of his claim in a currency other than sterling where -

- (a) his claim is constituted by decree or other order made by a court ordering the company to pay to the creditor a sum expressed in a currency other than sterling, or
 (b) where it is not so constituted, his claim arises from a contract or bill of exchange in terms of which payment is or may be required to be made by the company to the creditor in a currency other than sterling.

(2) Where a claim is stated in currency other than sterling for the purpose of the preceding paragraph, it shall be converted into sterling at the rate of exchange for that other currency at the mean of the buying and selling spot rates prevailing in the London market at the close of business on the date of commencement of winding up.

CHAPTER 6

THE LIQUIDATOR

SECTION A: APPOINTMENT AND FUNCTIONS OF LIQUIDATOR

Appointment of liquidator by the court

4.18.—(1) This Rule applies where a liquidator is appointed by the court under section 138(1) (appointment of interim liquidator), 138(5) (no person appointed or nominated by the meetings of creditors and contributories), 139(4) (different persons nominated by creditors and contributories) or 140(1) or (2) (liquidation following administration or voluntary arrangement).

(2) The court shall not make the appointment unless and until there is lodged in court a statement to the effect that the person to be appointed 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 copy of the order to the liquidator, whose appointment takes effect from the date of the order.

(4) The liquidator shall -

- (a) within 7 days of his appointment, give notice of it to the registrar of companies; and
- (b) within 28 days of his appointment, give notice of it to the creditors and contributories or, if the court so permits, he shall advertise his appointment in accordance with the directions of the court.

(5) In any notice or advertisement to be given by him under this Rule, the liquidator shall -

- (a) state whether he intends to summon meetings of creditors and contributories for the purpose of establishing a liquidation committee or whether he proposes to summon only a meeting of creditors for that purpose; and
- (b) if he does not propose to summon any meeting, set out the powers of the creditors under section 142(3) to require him to summon such a meeting.

Appointment by creditors or contributories

4.19.—(1) This Rule applies where a person is nominated for appointment as liquidator under section 139(2) either by a meeting of creditors or by a meeting of contributories.

(2) Subject to section 139(4) the interim liquidator, as chairman of the meeting, or, where the interim liquidator is nominated as liquidator, the chairman of the meeting, shall certify the appointment of a person as liquidator by the meeting but not until and unless 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 be the liquidator and that he consents so to act.

(3) The appointment of the liquidator shall be effective as from the date when his appointment is certified under paragraph (2) by the chairman of the meeting of the creditors or, where no person has been nominated to be liquidator by that meeting, the chairman of the meeting of the contributories and this date shall be stated in the certificate.

(4) The liquidator shall -

- (a) within 7 days of his appointment, give notice of his appointment to the court and to the registrar of companies; and
- (b) within 28 days of his appointment, give notice of it in a newspaper circulating in the area where the company has its principal place of business, or in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the company's creditors and contributories.

(5) The provisions of Rule 4.18(5) shall apply to any notice given by the liquidator under this Rule.

(6) Paragraphs (4) and (5) 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.

Authentication of liquidator's appointment

4.20. A copy certified by the clerk of court of any order of court appointing the liquidator or, as the case may be, a copy, certified by the chairman of the meeting which appointed the liquidator, of the certificate of the liquidator's appointment under Rule 4.19(2), shall be sufficient evidence for all

purposes and in any proceedings that he has been appointed to exercise the powers and perform the duties of liquidator in the winding up of the company.

Hand-over of assets to liquidator

4.21.—(1) This Rule applies where a person appointed as liquidator (“the succeeding liquidator”) succeeds a previous liquidator (“the former liquidator”) as the liquidator.

(2) When the succeeding liquidator's appointment takes effect, the former liquidator shall forthwith do all that is required for putting the succeeding liquidator into possession of the assets.

(3) The former liquidator shall give to the succeeding liquidator all such information, relating to the affairs of the company and the course of the winding up, as the succeeding liquidator considers to be reasonably required for the effective discharge by him of his duties as such and shall hand over all books, accounts, statements of affairs, statements of claim and other records and documents in his possession relating to the affairs of the company and its winding up.

Taking possession and realisation of the company's assets

4.22.—(1) Sections 38 and 39(4) and (7) of the Bankruptcy Act shall apply in relation to a liquidation of a company as it applies in relation to a sequestration of a debtor's estate, subject to the modifications specified in paragraph (2) and Rule 4.16(2) and to any other necessary modifications.

(2) For subsection (1) of section 38, there shall be substituted the following section:-

“(1) The liquidator shall -

- (a) as soon as may be after his appointment take possession of the whole assets of the company and any property, books, papers or records in the possession or control of the company or to which the company appears to be entitled; and
- (b) make up and maintain an inventory and valuation of the assets which he shall retain in the sederunt book.”.

SECTION B: REMOVAL AND RESIGNATION; VACATION OF OFFICE

Summoning of meeting for removal of liquidator

4.23.—(1) Subject to section 172(3) and without prejudice to any other method of summoning the meeting, a meeting of creditors for the removal of the liquidator in accordance with section 172(2) shall be summoned by the liquidator if requested to do so by not less than one quarter in value of the creditors.

(2) Where a meeting of creditors is summoned especially for the purpose of removing the liquidator in accordance with section 172(2), the notice summoning it shall draw attention to section 174(4)(a) or (b) 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.

(4) Where a meeting is to be held or is proposed to be summoned under this Rule, 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.

Procedure on liquidator's removal

4.24.—(1) Where the creditors have resolved that the liquidator be removed, the chairman of the creditors' meeting shall forthwith -

- (a) if, at the meeting, another liquidator was not appointed, send a certificate of the liquidator's removal to the court and to the registrar of companies, and
- (b) otherwise, deliver the certificate to the new liquidator, who shall forthwith send it to the court and to the registrar of companies.

(2) The liquidator's removal is effective as from such date as the meeting of the creditors shall determine, and this shall be stated in the certificate of removal.

Release of liquidator on removal

4.25.—(1) Where the liquidator has been removed by a creditors' meeting which has not resolved against his release, the date on which he has his release in terms of section 174(4)(a) shall be stated in the certificate of removal before a copy of it is sent to the court and to the registrar of companies under Rule 4.24(1).

(2) Where the liquidator is removed by a creditors' meeting which has resolved against his release, or is removed by the court, he must apply to the Accountant of Court for his release.

(3) When the Accountant of Court releases the former liquidator, he shall -

- (a) issue a certificate of release to the new liquidator who shall send a copy of it to the court and to the registrar of companies, and
- (b) send a copy of the certificate to the former liquidator,

and in this case release of the former liquidator is effective from the date of the certificate.

Removal of liquidator by the court

4.26.—(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 require the applicant to make a deposit or give caution for the expenses to be incurred by the liquidator on the application.

(3) The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating its date, time and place and accompanied by a copy of the application, and of any evidence which he intends to adduce in support of it.

(4) Subject to any contrary order of the court, the expenses of the application are not payable as an expense of the liquidation.

(5) Where the court removes the liquidator -

- (a) it shall send two copies of the order of removal to him;
- (b) the order may include such provision as the court thinks fit with respect to matters arising in connection with the removal; and
- (c) if the court appoints a new liquidator, Rule 4.18 applies,

and the liquidator, on receipt of the two court orders under sub-paragraph (a), shall send one copy of the order to the registrar of companies, together with a notice of his ceasing to act as a liquidator.

Advertisement of removal

4.27. Where a new liquidator is appointed in place of the one removed, Rules 4.19 to 4.21 shall apply to the appointment of the new liquidator except that the notice to be given by the new liquidator under Rule 4.19(4) shall also state -

- (a) that his predecessor as liquidator has been removed; and
- (b) whether his predecessor has been released.

Resignation of liquidator

4.28.—(1) Before resigning his office under section 172(6) the liquidator shall call a meeting of creditors for the purpose of receiving his resignation.

(2) The notice summoning the meeting shall draw attention to section 174(4)(c) and Rule 4.29(4) with respect of the liquidator's release and shall also be accompanied by an account of the liquidator's administration of the winding up, including a summary of his receipts and payments.

(3) Subject to paragraph (4), the liquidator may only proceed under this Rule on the grounds of ill health or because -

- (a) he intends ceasing to be in practice as an insolvency practitioner; or
- (b) there has been some conflict of interest or change of personal circumstances which precludes or makes impracticable the further discharge by him of the duties of the liquidator.

(4) Where two or more persons are acting as liquidator jointly, any one of them may resign (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.

Action following acceptance of liquidator's resignation

4.29.—(1) This Rule applies where a meeting is summoned to receive the liquidator's resignation.

(2) If the liquidator's resignation is accepted, it is effective as from such date as the meeting of the creditors may determine and that date shall be stated in the notice given by the liquidator under paragraph (3).

(3) The liquidator, whose resignation is accepted, shall forthwith after the meeting give notice of his resignation to the court as required by section 172(6) and shall send a copy of it to the registrar of companies.

(4) The meeting of the creditors may grant the liquidator his release from such date as they may determine. If the meeting resolves against the liquidator having his release, Rule 4.25(2) and (3) shall apply.

(5) Where the creditors have resolved to appoint a new liquidator in place of the one who has resigned, Rules 4.19 to 4.21 shall apply to the appointment of the new liquidator, except that the notice to be given by the new liquidator under Rule 4.19(4) shall also state that his predecessor as liquidator has resigned and whether he has been released.

Leave to resign granted by the court

4.30.—(1) If, at a creditors' meeting summoned to receive 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 leave to resign.

(2) The court's order under this Rule may include such provision as it thinks fit with respect to matters arising in connection with the resignation including the notices to be given to the creditors

and the registrar of companies and shall determine the date from which the liquidator's release is effective.

SECTION C: RELEASE ON COMPLETION OF WINDING UP

Final meeting

4.31.—(1) The liquidator 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 whose claims in the liquidation have been accepted.

(2) The liquidator's report laid before the meeting shall contain an account of his administration of the winding up, including a summary of his receipts and payments.

(3) At the final meeting, the creditors may question the liquidator with respect to any matter contained in his report, and may resolve against the liquidator having his release.

(4) The liquidator shall within 7 days of the meeting give notice to the court and to the registrar of companies under section 172(8) that the final meeting has been held and the notice shall state whether or not he has been released, and be accompanied by a copy of the report laid before the meeting.

(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 that 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 being released.

(6) If the creditors at the final meeting have not resolved against the liquidator having his release, he is released in terms of section 174(4)(d)(ii) when he vacates office under section 172(8). If they have so resolved he shall apply for his release to the Accountant of Court, and Rules 4.25(2) and (3) shall apply accordingly.

SECTION D: OUTLAYS AND REMUNERATION

Determination of amount of outlays and remuneration

4.32.—(1) Subject to the provisions of Rules 4.33 to 4.35, claims by the liquidator for the outlays reasonably incurred by him and for his remuneration shall be made in accordance with section 53 of the Bankruptcy Act as applied by Rule 4.68 and as further modified by paragraphs (2) and (3) below.

(2) After section 53(1) of the Bankruptcy Act, there shall be inserted the following subsection:-

“(1A) The liquidator may, at any time before the end of an accounting period, submit to the liquidation committee (if any) an interim claim in respect of that period for the outlays reasonably incurred by him and for his remuneration and the liquidation committee may make an interim determination in relation to the amount of the outlays and remuneration payable to the liquidator and, where they do so, they shall take into account that interim determination when making their determination under subsection (3)(a)(ii).”

(3) In section 53(6) of the Bankruptcy Act, for the reference to “subsection (3)(a)(ii)” there shall be substituted a reference to “subsection (1A) or (3)(a)(ii)”.

Recourse of liquidator to meeting of creditors

4.33. If the liquidator's remuneration has been fixed by the liquidation committee and he considers the amount to be insufficient, he may request that it be increased by resolution of the creditors.

Recourse to the court

4.34.—(1) If the liquidator considers that the remuneration fixed for him by the liquidation committee, or by resolution of the creditors, is insufficient, he may apply to the court for an order increasing its amount or rate.

(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 expenses of the liquidator's application, including the expenses of any member of the liquidation committee appearing on it, or any creditor so appearing, to be paid as an expense of the liquidation.

Creditors' claim that remuneration is excessive

4.35.—(1) If the liquidator's remuneration has been fixed by the liquidation committee or by the creditors, any creditor or creditors of the company representing in value at least 25 per cent of the creditors may apply to the court for an order that the liquidator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

(2) If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

(3) Unless the court orders otherwise, the expenses of the application shall be paid by the applicant, and are not payable as an expense of the liquidation.

SECTION E: SUPPLEMENTARY PROVISIONS

Liquidator deceased

4.36.—(1) Subject to the following paragraph, where the liquidator has died, it is the duty of his executors or, where the deceased liquidator was a partner in a firm, of a partner in that firm to give notice of that fact to the court and to the registrar of companies, specifying the date of death. This does not apply if notice has been given under the following paragraph.

(2) Notice of the death may also be given by any person producing to the court and to the registrar of companies a copy of the death certificate.

Loss of qualification as insolvency practitioner

4.37.—(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 forthwith give notice of his doing so to the court and to the registrar of companies.

(3) Rule 4.25(2) and (3) apply as regards the liquidator obtaining his release, as if he had been removed by the court.

Power of court to set aside certain transactions

4.38.—(1) If in the course of the liquidation 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 with respect to a trustee's dealings with trust property, or the fiduciary obligations of any person.

Rule against solicitation

4.39.—(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 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.

CHAPTER 7

THE LIQUIDATION COMMITTEE

Preliminary

4.40. For the purposes of this Chapter -

- (a) an “insolvent winding up” takes place where a company is being wound up on grounds which include its inability to pay its debts, and
- (b) a “solvent winding up” takes place where a company is being wound up on grounds which do not include that one.

Membership of committee

4.41.—(1) Subject to Rule 4.43 below, the liquidation committee shall consist as follows:-

- (a) in the case of any winding up, of at least 3 and not more than 5 creditors of the company, elected by the meeting of creditors held under section 138 or 142 of the Act, and also
- (b) in the case of a solvent winding up where the contributories' meeting held under either of those sections so decides, up to 3 contributories, elected by that meeting.

(2) Any creditor of the company (other than one whose debt is fully secured and who has not agreed to surrender his security to the liquidator) is eligible to be a member of the committee, so long as -

- (a) he has lodged a claim of his debt in the liquidation, and
- (b) his claim has neither been wholly rejected for voting purposes, nor wholly rejected for the purposes of his entitlement so far as funds are available to a dividend.

(3) No person can be a member as both a creditor and a contributory.

(4) A body corporate or a partnership may be a member of the committee, but it cannot act as such otherwise than by a member's representative appointed under Rule 4.48 below.

(5) In this Chapter, members of the committee elected or appointed by a creditors' meeting are called “creditor members”, and those elected or appointed by a contributories' meeting are called “contributory members”.

(6) Where the Deposit Protection Board exercises the right (under section 28 of the Banking Act 1979(1)) to be a member of the committee, the Board is to be regarded as an additional creditor member.

Formalities of establishment

4.42.—(1) The liquidation committee shall 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 forthwith give notice of the resolution to the liquidator (or, as the case may be, the person appointed as liquidator by the 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 the liquidator's certificate of the committee's due constitution shall not be issued until at least the minimum number of persons in accordance with Rule 4.41 who are to be members of it have agreed to act, but shall be issued forthwith thereafter.

(4) As and when the others (if any) agree to act, the liquidator shall issue an amended certificate.

(5) The certificate (and any amended certificate) shall be sent by the liquidator to the registrar of companies.

(6) If after the first establishment of the committee there is any change in its membership, the liquidator shall report the change to the registrar of companies.

Committee established by contributories

4.43.—(1) The following applies where the creditors' meeting under section 138 or 142 of the Act does not decide that a liquidation committee should be established or decides that a liquidation committee should not be established.

(2) A meeting of contributories under section 138 or 142 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 142.

(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 4.42 shall apply to such a committee with the substitution of references to contributories for references to creditors.

Obligations of liquidator to committee

4.44.—(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 -

(1) 1979 c.37.

- (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.

(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 cash book and sederunt book, or from seeking an explanation of any matter within the committee's responsibility.

Meetings of the committee

4.45.—(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 3 months 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) The liquidator shall give 7 days' written notice of the time and place of any 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.

The chairman at meetings

4.46.—(1) The chairman at any meeting of the liquidation committee shall be the liquidator, or a person nominated by him to act.

(2) A person so nominated must be either -

- (a) a person 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.

Quorum

4.47. 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 or, in the case of a committee of contributories, 2 contributory members are present or represented.

Committee members' representatives

4.48.—(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.

(2) A person acting as a committee-member's representative must hold a mandate entitling him so to act (either generally or specially) and signed 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 mandate and may exclude him if it appears that his mandate is deficient.

(4) No member may be represented by a body corporate or by a partnership, or by an undischarged bankrupt.

(5) No person shall -

(a) on the same committee, act at one and the same time as representative of more than one committee-member, or

(b) act both as a member of the committee and as representative of another member.

(6) Where a member's representative signs any document on the member's behalf, the fact that he so signs must be stated below his signature.

Resignation

4.49. A member of the liquidation committee may resign by notice in writing delivered to the liquidator.

Termination of membership

4.50. Membership of the liquidation committee of any person is automatically terminated if -

(a) his estate is sequestrated or he becomes bankrupt or grants a trust deed for the benefit of or makes a composition with his creditors, 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) that creditor being a creditor member, he ceases to be, or is found never to have been a creditor.

Removal

4.51. 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.

Vacancy (creditor members)

4.52.—(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 the minimum required by Rule 4.41(1).

(3) The liquidator may appoint any creditor, who is qualified under the Rules to be a member of the committee, to fill the vacancy, if a majority of the other creditor members agrees 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.

Vacancy (contributory members)

4.53.—(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 the minimum required by Rule 4.41(1) or, as the case may be, 4.59(4).

(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) 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.

Voting rights and resolutions

4.54.—(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.

(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 4.43(4) or 4.59, 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 signed by the chairman and kept as part of the sederunt book.

Resolutions by post

4.55.—(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 statement incorporating the resolution to which their agreement is sought, each resolution (if more than one) being set out in a separate document.

(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.

(4) 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.

(5) A copy of every resolution passed under this Rule, and a note that the committee's concurrence was obtained, shall be kept in the sederunt book.

Liquidator's reports

4.56.—(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 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 4.44.

Expenses of members, etc.

4.57.—(1) The liquidator shall defray 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, as an expense of the liquidation.

(2) Paragraph (1) does not apply to any meeting of the committee held within 3 months of a previous meeting.

Dealings by committee-members and others

4.58.—(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 of 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 company's assets any payment for services given or goods supplied in connection with the liquidation, or
- (b) obtains any profit from the liquidation, or
- (c) acquires any part of the company's assets.

(3) Such a transaction may be entered into by a person to whom this Rule applies -

- (a) with the prior leave 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 leave 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 transaction will be on normal commercial terms.

(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 leave 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 fit, 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 company's assets 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 expenses of an application to the court for leave under this Rule are not payable as an expense of the liquidation, unless the court so orders.

Composition of committee when creditors paid in full

4.59.—(1) This Rule applies if the liquidator issues a certificate that the creditors have been paid in full, with interest in accordance with section 189.

(2) The liquidator shall forthwith send a copy of the certificate to the registrar of companies.

(3) The creditor members of the liquidation committee shall cease to be members of the committee.

(4) The committee continues in being unless and until abolished by decision of a meeting of contributories, and (subject to the next paragraph) so long as it consists of at least 2 contributory members.

(5) The committee does not cease to exist on account of the number of contributory members falling below 2, unless and until 28 days have elapsed since the issue of the liquidator's certificate under paragraph (1), but at any time when the committee consists of less than 2 contributory members, it is suspended and cannot act.

(6) Contributories may be co-opted by the liquidator, or appointed by a contributories' meeting, to be members of the committee; but the maximum number of members is 5.

(7) The foregoing Rules in this Chapter continue to apply to the liquidation committee (with any necessary modifications) as if all the members of the committee were creditor members.

CHAPTER 8

THE LIQUIDATION COMMITTEE WHERE WINDING UP FOLLOWS IMMEDIATELY ON ADMINISTRATION

Preliminary

4.60.—(1) The Rules in this Chapter apply where -

- (a) the winding up order has been made immediately upon the discharge of an administration order under Part II of the Act, and
- (b) the court makes an order under section 140(1) appointing as liquidator the person who was previously the administrator.

(2) In this Chapter the expressions “insolvent winding up”, “solvent winding up”, “creditor member”, and “contributory member” each have the same meaning as in Chapter 7.

Continuation of creditors' committee

4.61.—(1) If under section 26 a creditors' committee has been established for the purposes of the administration, then (subject as follows in this Chapter) that committee continues in being as the liquidation committee for the purposes of the winding up, and -

- (a) it is deemed to be a committee established as such under section 142, and
- (b) no action shall be taken under subsections (1) to (4) of that section to establish any other.

(2) This Rule does not apply if, at the time when the court's order under section 140(1) is made, the committee under section 26 consists of less than 3 members; and a creditor who was, immediately before the date of that order, a member of such a committee ceases to be a member on the making of the order if his debt is fully secured (and he has not agreed to surrender his security to the liquidator).

Membership of committee

4.62.—(1) Subject as follows, the liquidation committee shall consist of at least 3, and not more than 5, creditors of the company, elected by the creditors' meeting held under section 26 or (in order to make up numbers or fill vacancies) by a creditors' meeting summoned by the liquidator after the company goes into liquidation.

(2) In the case of a solvent winding up, the liquidator shall, on not less than 21 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.

Liquidator's certificate

4.63.—(1) The liquidator shall issue a certificate of the liquidation committee's continuance specifying the persons 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 4.62(2), and whether (if so) the meeting has elected contributories to be members of the committee.

(3) Pending the issue of the liquidator's certificate, the committee is suspended and cannot act.

(4) No person may act, or continue to act, as a member of the committee unless and until he has agreed to do so; and the liquidator's certificate shall not be issued until at least the minimum number of persons required under Rule 4.62 to form a committee elected, whether under Rule 4.62 above or under section 26, have signified their agreement.

(5) As and when the others signify their agreement, the liquidator shall issue an amended certificate.

(6) The liquidator's certificate (or, as the case may be, the amended certificate) shall be sent by him to the registrar of companies.

(7) If subsequently there is any change in the committee's membership, the liquidator shall report the change to the registrar of companies.

Obligations of liquidator to committee

4.64.—(1) As soon as may be after the issue of the liquidator's certificate under Rule 4.63, 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 that date 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 sederunt book (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.

Application of Chapter 7

4.65. Except as provided elsewhere in this Chapter, Rules 4.44 to 4.59 of Chapter 7 shall apply to a liquidation committee established under this Chapter from the date of issue of the certificate under Rule 4.63 as if it had been established under section 142.

CHAPTER 9

DISTRIBUTION OF COMPANY'S ASSETS BY LIQUIDATOR

Order of priority in distribution

4.66.—(1) The funds of the company's assets shall be distributed by the liquidator to meet the following expenses and debts in the order in which they are mentioned:-

- (a) the expenses of the liquidation;
- (b) any preferential debts within the meaning of section 386 (excluding any interest which has been accrued thereon to the date of commencement of the winding up within the meaning of section 129);
- (c) ordinary debts, that is to say a debt which is neither a secured debt nor a debt mentioned in any other sub-paragraph of this paragraph;
- (d) interest at the official rate on -
 - (i) the preferential debts, and
 - (ii) the ordinary debts,between the said date of commencement of the winding up and the date of payment of the debt; and

(e) any postponed debt.

(2) In the above paragraph -

- (a) "postponed debt" means a creditor's right to any alienation which has been reduced or restored to the company's assets under section 242 or to the proceeds of sale of such an alienation; and
- (b) "official rate" shall be construed in accordance with subsection (4) of section 189 and, for the purposes of paragraph (a) of that subsection, as applied to Scotland by subsection (5), the rate specified in the Rules shall be 15 per centum per annum.

(3) The expenses of the liquidation mentioned in sub-paragraph (a) of paragraph (1) are payable in the order of priority mentioned in Rule 4.67.

(4) Subject to the provisions of section 175, any debt falling within any of sub-paragraphs (b) to (e) of paragraph (1) shall have the same priority as any other debt falling within the same sub-paragraph and, where the funds of the company's assets are inadequate to enable the debts mentioned in this sub-paragraph to be paid in full, they shall abate in equal proportions.

(5) Any surplus remaining, after all expenses and debts mentioned in paragraph (1) have been paid in full, shall (unless the articles of the company otherwise provide) be distributed among the members according to their rights and interests in the company.

(6) Nothing in this Rule shall affect -

- (a) the right of a secured creditor which is preferable to the rights of the liquidator; or

- (b) any preference of the holder of a lien over a title deed or other document which has been delivered to the permanent trustee in accordance with a requirement under section 38(4) of the Bankruptcy Act, as applied by Rule 4.22.

Order of priority of expenses of liquidation

4.67.—(1) Subject to section 156 and paragraph (2), the expenses of the liquidation are payable out of the assets in the following order of priority -

- (a) any outlays properly chargeable or incurred by the provisional liquidator or liquidator in carrying out his functions in the liquidation, except those outlays specifically mentioned in the following sub-paragraphs;
- (b) the cost, or proportionate cost, of any caution provided by a provisional liquidator, liquidator or special manager in accordance with the Act or the Rules;
- (c) the remuneration of the provisional liquidator (if any);
- (d) the expenses of the petitioner in the liquidation, and of any person appearing in the petition whose expenses are allowed by the court;
- (e) the remuneration of the special manager (if any);
- (f) any allowance made by the liquidator under Rule 4.9(1) (expenses of statement of affairs);
- (g) 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;
- (h) the remuneration of the liquidator determined in accordance with Rule 4.32;
- (i) the amount of any capital gains 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 otherwise).

(2) In any winding up by the court which follows immediately on a voluntary winding up (whether members' voluntary or creditors' voluntary), such outlays and remuneration of the voluntary liquidator as the court may allow, shall have the same priority as the outlays mentioned in sub-paragraph (a) of paragraph (1).

(3) Nothing in this Rule applies to or affects the power of any court, in proceedings by or against the company, to order expenses to be paid by the company, or the liquidator; nor does it affect the rights of any person to whom such expenses are ordered to be paid.

Application of the Bankruptcy Act

4.68.—(1) Sections 52, 53 and 58 of the Bankruptcy Act shall apply in relation to the liquidation of a company as they apply in relation to a sequestration of a debtor's estate, subject to the modifications specified in Rules 4.16(2) and 4.32(2) and (3) and the following paragraph and to any other necessary modifications.

(2) In section 52, the following modifications shall be made: -

- (a) in subsection (4)(a) for the reference to “the debts mentioned in subsection (1)(a) to (d)”, there shall be substituted a reference to the expenses of the winding up mentioned in Rule 4.67(1)(a);
- (b) in subsection (5), the words “with the consent of the commissioners or if there are no commissioners of the Accountant in Bankruptcy” should be deleted; and
- (c) in subsection (7) and (8) for the references to section 48(5) and 49(6)(b) there should be substituted a reference to those sections as applied by Rule 4.16(1).

CHAPTER 10 SPECIAL MANAGER

Appointment and remuneration

4.69.—(1) This Chapter applies to an application under section 177 by the liquidator or, where one has been appointed, by the provisional liquidator for the appointment of a person to be special manager (references in this Chapter to the liquidator shall be read as including the provisional liquidator).

(2) An application shall be supported by a report setting out the reasons for the appointment. The report shall include the applicant's estimate of the value of the assets in respect of which the special manager is to be appointed.

(3) The order of the court 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.

Caution

4.70.—(1) The appointment of the special manager does not take effect until the person appointed has found (or, being allowed by the court to do so, has undertaken to find) caution to the person who applies for him to be appointed.

(2) It is not necessary that caution be found for each separate company liquidation; but it may be found 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 caution shall be not less than the value of the assets in respect of which he is appointed, as estimated by the applicant in his report under Rule 4.69.

(4) When the special manager has found caution to the person applying for his appointment, that person shall certify the adequacy of the security and notify the court accordingly.

(5) The cost of finding caution 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 has been or is subsequently made, he is entitled to be reimbursed as an expense of the liquidation.

Failure to find or to maintain caution

4.71.—(1) If the special manager fails to find the required caution 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 maintain his caution the liquidator shall report his failure to the court, which may thereupon remove the special manager and make such order as it thinks fit as to expenses.

(3) If an order is made under this Rule removing the special manager, or recalling the order appointing him, the court shall give directions as to whether any, and if so what, steps should be taken to appoint another special manager in his place.

Accounting

4.72.—(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.

Termination of appointment

4.73.—(1) The special manager's appointment terminates if the winding up petition is dismissed or, if a provisional liquidator having been appointed, he is discharged without a winding up order having been made.

(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.

CHAPTER 11

PUBLIC EXAMINATION OF COMPANY OFFICERS AND OTHERS

Notice of order for public examination

4.74. Where the court orders the public examination of any person under section 133(1), then, unless the court otherwise directs, the liquidator shall give at least 14 days' notice of the time and place of the examination to the persons specified in paragraphs (c) to (e) of section 133(4) and the liquidator may, if he thinks fit, cause notice of the order to be given, by public advertisement in one or more newspapers circulating in the area of the principal place of business of the company, at least 14 days before the date fixed for the examination but there shall be no such advertisement before at least 7 days have elapsed from the date when the person to be examined was served with the order.

Order on request by creditors or contributories

4.75.—(1) A request to the liquidator by a creditor or creditors or contributory or contributories under section 133(2) shall be made in writing and be accompanied by -

- (a) a list of the creditors (if any) concurring with the request and the amounts of their respective claims in the liquidation, or (as the case may be) of the contributories (if any) so concurring, with their respective values, and
- (b) from each creditor or contributory concurring, written confirmation of his concurrence.

(2) The request must specify the name of the proposed examinee, the relationship which he has, or has had, to the company and 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 liquidator such sum as the latter may determine to be appropriate by way of caution for the expenses of the hearing of a public examination, if ordered.

(4) Subject as follows, the liquidator shall, within 28 days of receiving the request, make the application to the court required by section 133(2).

(5) If the liquidator 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.

(6) If the court so orders, and the application for the order was made ex parte, notice of the order shall be given forthwith by the liquidator to the requisitionists. If the application for an order is dismissed, the liquidator's application under section 133(2) shall be made forthwith on conclusion of the hearing of the application first mentioned.

(7) Where a public examination of the examinee has been ordered by the court on a creditors' or contributories' requisition under this Rule the court may order that the expenses of the examination are to be paid, as to a specified proportion, out of the caution under paragraph (3), instead of out of the assets.

CHAPTER 12 MISCELLANEOUS

Limitation

4.76. The provisions of section 8(5) and 22(8), as read with section 73(5), of the Bankruptcy (Scotland) Act 1985 (presentation of petition or submission of claim to bar effect of limitation of actions) shall apply in relation to the liquidation as they apply in relation to a sequestration, subject to the modifications specified in Rule 4.16(2) and to any other necessary modifications.

Dissolution after winding up

4.77. Where the court makes an order under section 204(5) or 205(5), the person on whose application the order was made shall deliver to the registrar of companies a copy of the order.

CHAPTER 13 COMPANY WITH PROHIBITED NAME

Preliminary

4.78. The Rules in this Chapter -

- (a) relate to the leave required under section 216 (restriction on re-use 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, and
- (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 leave.

Application for leave under section 216(3)

4.79. When considering an application for leave 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.

First excepted case

4.80.—(1) Where a company (“the successor company”) acquires the whole, or substantially the whole, of the business of an insolvent company, under arrangements made by an insolvency

practitioner acting as its liquidator, administrator or receiver, or as supervisor of a voluntary arrangement under Part I of the Act, the successor company may for the purposes of section 216 give notice under this Rule to the insolvent company's creditors.

(2) To be effective, the notice must be given within 28 days from the completion of the arrangements to all creditors of the insolvent company of whose addresses the successor is aware in that period; and it must specify -

- (a) the name and registered number of the insolvent company and the circumstances in which its business has been acquired by the successor company,
- (b) the name which the successor company has assumed, or proposes to assume for the purpose of carrying on the business, if that name is or will be a prohibited name under section 216, and
- (c) any change of name which it has made, or proposes to make, for that purpose under section 28 of the Companies Act.

(3) The notice may name a person to whom section 216 may apply as having been a director or shadow director of the insolvent company, and give particulars as to the nature and duration of that directorship, with a view to his being a director of the successor company or being otherwise associated with its management.

(4) If the successor company has effectively given notice under this Rule to the insolvent company's creditors, a person who is so named in the notice may act in relation to the successor company in any of the ways mentioned in section 216(3), notwithstanding that he has not the leave of the court under that section.

Second excepted case

4.81.—(1) In the circumstances specified below, a person to whom section 216 applies as having been a director or shadow director of the liquidating company may act in any of the ways mentioned in section 216(3), notwithstanding that he has not the leave of the court under that section.

(2) Those circumstances are that -

- (a) he applies to the court for leave, not later than 7 days from the date on which the company went into liquidation, and
- (b) leave is granted by the court not later than 6 weeks from that date.

Third excepted case

4.82. The court's leave 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 252(5) of the Companies Act.