

SCHEDULE 1

Rule 5

MODIFICATIONS OF PART 4 IN RELATION TO CREDITORS' VOLUNTARY WINDING UP

1. The following paragraphs describe the modifications to be made to the provisions of Part 4 in their application by Rule 5 to a creditors' voluntary winding up of a company.

General

2. Any reference, in any provision in Part 4, which is applied to a creditors' voluntary winding up, to any other Rule is a reference to that Rule as so applied.

Chapter 1 (Provisional liquidator)

3. This Chapter shall not apply.

Chapter 2 (Statement of affairs)

Rules 4.7 and 4.8

4. For these Rules, there shall be substituted the following:-

“4.7.—(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).

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

(3) Where the statement of affairs is made out by the directors under section 99(1), it shall be sent by them to the liquidator, when appointed.

(4) The liquidator shall insert a copy of the statement of affairs made out under this Rule in the sederunt book.”.

Rule 4.9

5. For this Rule, there shall be substituted -

“Expenses of statement of affairs

4.9.—(1) Payment may be made as an expense of the liquidation, 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.

(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.

(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 7 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 4.67(2) (voluntary winding up succeeded by winding up by the court).”.

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Chapter 3 (Information)

Rule 4.10

6. For this Rule, there shall be substituted the following:-

“Information to creditors and contributories

4.10. 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.”.

Chapter 4 (Meetings of creditors and contributories)

Rule 4.12

7. This Rule shall not apply.

Rule 4.14

8. After this Rule, there shall be inserted the following:-

“Expenses of meeting under section 98

4.14A.—(1) Payment may be made out of the company's assets as an expense of the liquidation, 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.

(2) Where any 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 7 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 4.67(2) (voluntary winding up succeeded by winding up by the court).”.

Rule 4.15

9. In paragraph (5), for the reference to section 129, there shall be substituted a reference to section 86.

Rule 4.16

10. In paragraph (2), for the reference to section 129, there shall be substituted a reference to section 86.

Chapter 6 (The liquidator)

Rule 4.18

11.—(1) For paragraph (1), there shall be substituted the following:-

“(1) This Rule applies where the liquidator is appointed by the court under section 100(3) or 108.”.

(2) Paragraphs 4(a) and 5 shall be deleted.

Rule 4.19

12.—(1) For paragraphs (1) to (3) there shall be substituted the following:-

“(1) This Rule applies where a person is nominated for appointment as liquidator under section 100(1) either by a meeting of the 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 to be appointed has provided him with a written cot 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 is effective from the date of the certificate.

(3) The chairman shall forthwith send the certificate to the liquidator, who shall keep it in the sederunt book.”.

(2) Paragraphs(4)(a) and (5) shall not apply.

(3) In paragraph (6), for the reference to paragraphs (4) and (5), there shall be substituted a reference to paragraphs (3) and (4).

Rule 4.23

13.—(1) In paragraph (1), for the references to section 172(2) and (3), there shall be substituted a reference to section 171(2) and (3).

(2) In paragraph (2), for the references to section 172(2) and 174(4)(a) or (/J), there shall be substituted a reference to section 171(2) and 173(2)(a) or (b).

Rule 4.24

14. In this Rule the references to the court shall be deleted.

Rule 4.25

15. In paragraph (1), for the reference to section 174(4)(a), there shall be substituted a reference to section 173(2)(a), and the reference to the court shall be deleted.

Rule 4.28

16.—(1) In paragraph (1), for the reference to section 172(6), there shall be substituted a reference to section 171(5).

(2) In paragraph (2), for the reference to section 174(4)(c), there shall be substituted a reference to section 173(2)(c).

Rule 4.29

17. In this Rule for paragraph (3) there shall be substituted the following:-

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“(3) The liquidator, whose resignation is accepted, shall forthwith after the meeting give notice of his resignation to the registrar of companies as required by section 171(5).”.

Rule 4.31

18. For this Rule, substitute the following:-

“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 106. The notice shall be sent to all creditors whose claims in the liquidation have been accepted.

(2) At the final meeting, the creditors may question the liquidator with respect to any matter contained in the account required under that section and may resolve against the liquidator having his release.

(3) The liquidator shall, within 7 days of the meeting, give notice to the registrar of companies under section 171(6) that the final meeting has been held. The notice shall state whether or not he has been released.

(4) If the creditors at the final meeting have not resolved against the liquidator having his release, he is released in terms of section 173(2)(e)(ii) when he vacates office under section 171(6). If they have so resolved, he must obtain his release from the Accountant of Court and Rule 4.25(2) and (3) shall apply accordingly.”.

Rule 4.36

19. For the reference to the court there shall be substituted a reference to the liquidation committee (if any) or a member of that committee.

Rule 4.37

20.—(1) In paragraph (2), the reference to the court shall be omitted.

(2) At the end of this Rule, there shall be inserted the following:-

“Vacation of office on making of winding up order

4.37A. Where the liquidator vacates office in consequence of the court making a winding up order against the company, Rule 4.25(2) and (3) apply as regards the liquidator obtaining his release, as if he had been removed by the court.”.

Chapter 7 (The liquidation committee)

Rule 4.40

21. This Rule shall not apply.

Rule 4.41

21. For paragraph (1) there shall be substituted the following:-

“(1) The committee must have at least 3 members before it can be established.”.

Rule 4.43

23. This Rule shall not apply.

Rule 4.47

24. For this Rule, there shall be substituted the following:-

“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 members are present or represented.”.

Rule 4.53

25. After paragraph (4) there shall be inserted the following:-

“(4A) 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 fit, appoint another person (being a contributory) to fill the vacancy on the committee.”.

Rule 4.54

26. Paragraphs (2) and (3) shall not apply.

Rule 4.55

27. In paragraphs (3) and (4), the word “creditor” shall be omitted.

Chapter 8 (The liquidation committee where winding up follows immediately on administration)

28. This Chapter shall not apply.

Chapter 9 (Distribution of company's assets by liquidator)

Rule 4.66

29.—(1) At the beginning of paragraph (1), insert the following:-

“Subject to the provision of section 107,”.

(2) In paragraph (1)(b), for the reference to section 129, there shall be substituted a reference to section 86.

Chapter 10 (Special manager)

Rule 4.70

30. For paragraph (5), there shall be substituted the following:-

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“(5) The cost of finding caution shall be paid in the first instance by the special manager; but he is entitled to be reimbursed out of the assets as an expense of the liquidation.”.

Rule 4.71

31. Paragraph (1) shall not apply.

Chapter 11 (Public examination of company officers and others)

32. This Chapter shall not apply.

Chapter 12 (Miscellaneous)

Rule 4.77

33. This Rule shall not apply.