
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 3

ADMINISTRATION

CHAPTER 10

Expenses of the Administration

Pre-administration costs

3.52.—(1) Where the administrator has made a statement of pre-administration costs under rule 3.35(10)(a), 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) Paragraph (3) applies where—

- (a) there is no creditors' committee;
- (b) there is a creditors' committee but it does not make the necessary determination; or
- (c) the creditors' committee does make the necessary 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.

(3) When this paragraph applies, determination of whether and to what extent the unpaid pre-administration costs are approved for payment must be—

- (a) by a decision of the creditors through a decision procedure; or
- (b) in a case where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1, by—
 - (i) the consent of each of the secured creditors, or
 - (ii) if the administrator has made, or intends to make, a distribution to preferential creditors, by—
 - (aa) the consent of each of the secured creditors, and
 - (bb) a decision of the preferential creditors in a decision procedure.

(4) The administrator must call a meeting of the creditors' committee or seek a decision of creditors by a decision procedure 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 deliver notice of the meeting or decision procedure within 28 days of receipt of the request.

(5) 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 if either—

- (a) there is no determination under paragraph (1) or (3); or

(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.

(6) Where there is a creditors' committee the administrator or other insolvency practitioner must deliver at least 14 days' notice of the hearing to the members of the committee; and the committee may nominate one or more of its members to appear, or be represented, and to be heard on the application.

(7) If there is no creditors' committee, notice of the application must be delivered to such one or more of the company's creditors as the court may direct, and those creditors may nominate one or more of their number to appear or be represented, and to be heard on the application.

(8) The court may, if it appears to be a proper case, order the costs of the application, including the costs of any member of the creditors' committee appearing or being represented on it, or of any creditor so appearing or being represented, to be paid as an expense of the administration.

(9) Where the administrator fails to call a meeting of the creditors' committee or seek a decision from creditors in accordance with paragraph (4), the other insolvency practitioner may apply to the court for an order requiring the administrator to do so.