

1988 No. 1739

INSOLVENCY

COMPANIES

INDIVIDUALS, ENGLAND AND WALES

The Insolvency (Amendment) Regulations 1988

<i>Made</i>	<i>10th October 1988</i>
<i>Laid before Parliament</i>	<i>14th October 1988</i>
<i>Coming into force</i> -	<i>7th November 1988</i>

The Secretary of State, in exercise of the powers conferred on him by Rule 12.1 of the Insolvency Rules 1986(a), hereby makes the following Regulations:-

Citation and Commencement

1. These Regulations may be cited as the Insolvency (Amendment) Regulations 1988 and shall come into force on 7th November 1988, and that date shall be referred to in these Regulations as "the commencement date".

Interpretation

2.—(1) In these Regulations references to "the principal Regulations" are to the Insolvency Regulations 1986(b) and a regulation or Schedule or Form referred to by number means the regulation or Schedule or Form so numbered in the principal Regulations.

(2) These Regulations shall be read and construed as one with the principal Regulations.

Application

3.—(1) Subject to paragraph (2), the principal Regulations have effect in relation to insolvency proceedings to which the principal Regulations apply by virtue of regulation 2(5) with the amendments set out in the Schedule to these Regulations.

(2) The principal Regulations as so amended apply to all such proceedings on and after the commencement date, whether or not those proceedings were commenced before, on or after the commencement date.

Francis Maude
Parliamentary Under-Secretary of State,
Department of Trade and Industry

10th October 1988

(a) S.I. 1986/1925, amended by S.I. 1987/1919.
(b) S.I. 1986/1994, amended by S.I. 1987/1959.

Amendment of regulation 2

1. In paragraph (4) of regulation 2 for the words "Gavrelle House, 2-14 Bunhill Row, London EC1Y 8LL" there shall be substituted the words "Bridge Place, 88-89 Eccleston Square, London SW1V 1PT".

Amendment of regulation 9

2.—(1) For paragraph (1) of regulation 9 there shall be substituted the following:—

"(1) The responsible insolvency practitioner shall prepare and keep—

- (a) separate financial records in respect of each insolvent; and
- (b) such other financial records as are required to explain the receipts and payments entered in the records described in subparagraph (a) above or regulation 10 below, including an explanation of the source of any receipts and the destination of any payments;

and shall, subject to regulation 10 below as to trading accounts, from day to day enter in those records all the receipts and payments made by him.

(1A) The responsible insolvency practitioner shall obtain and keep bank statements relating to any local bank account in the name of the insolvent."

(2) In paragraph (2) of regulation 9 after the words "Regulation 12(1)" there shall be inserted the words "or 12(2B)".

Amendment of regulation 10A

3. In paragraph (1) of regulation 10A—

- (a) for the words "8 and 9" there shall be substituted the words "8, 9 and 10"; and
- (b) for the words "following his vacation of that office" there shall be substituted the words—
"following—
(a) his vacation of that office, or
(b) in the case of the official receiver, his release as liquidator under section 174 or as trustee under section 299,".

Amendment of regulation 12

4.—(1) For paragraph (2) of regulation 12 there shall be substituted the following:—

"(2) The account shall—

- (a) incorporate all the particulars described in Form 1; and
- (b) where the Secretary of State gives notice in writing to the responsible insolvency practitioner that it is to be in Form 1, be in that Form; and

in all cases shall be certified by the responsible insolvency practitioner and shall be accompanied by any bank statements relating to any local bank account in the name of the insolvent.

(2A) Where any account sent to the Secretary of State under paragraph (1) above ("the first-mentioned account") is not in Form 1, the Secretary of State may give notice in writing to the responsible insolvency practitioner requiring him to send to the Secretary of State an account in Form 1 in respect of the same period as the first-mentioned account.

(2B) Within 14 days of receiving notice under paragraph (2A) above the responsible insolvency practitioner shall send to the Secretary of State an account in Form 1 in respect of the same period as the first-mentioned account and that account in Form 1 shall be certified by the responsible insolvency practitioner and shall be accompanied by any bank statements relating to any local bank account in the name of the insolvent which did not accompany the first-mentioned account."

(2) For paragraph (7) of regulation 12 there shall be substituted the following:—

"(7) Any account sent to the Secretary of State under paragraph (1) or (2B) above shall, if he so requires, be audited, but whether or not the Secretary of State requires the account to be audited, the responsible insolvency practitioner shall send to the Secretary of State on demand any vouchers, any bank statements and any information relating to the account."

Insertion of regulation 12A

5. After regulation 12 there shall be inserted the following regulation:-

“Production and inspection of records

12A.—(1) The responsible insolvency practitioner shall produce on demand to the Secretary of State, and allow him to inspect, any accounts, books and other records kept by the responsible insolvency practitioner, and this duty to produce and inspect shall extend-

- (a) to production and inspection at the premises of the responsible insolvency practitioner; and
- (b) to production and inspection of any financial records of the kind described in regulation 9(1)(b) above prepared by the responsible insolvency practitioner before 7th November 1988 and kept by him;

and any such demand may-

- (i) require the responsible insolvency practitioner to produce any such accounts, books or other records to the Secretary of State, and allow him to inspect them-
 - (A) at the same time as any account is sent to the Secretary of State under regulation 12(1) or (2B) above; or
 - (B) at any time after such an account is sent to the Secretary of State; whether or not the Secretary of State requires the account to be audited; or
- (ii) where it is made for the purpose of ascertaining whether the provisions of these Regulations relating to the handling of moneys received by the responsible insolvency practitioner in the course of carrying out his functions have been or are likely to be complied with, be made at any time, whether or not an account has been sent or should have been sent to the Secretary of State under regulation 12(1) or (2B) above and whether or not the Secretary of State has required any account to be audited.

(2) The responsible insolvency practitioner shall allow the Secretary of State on demand to remove, and take copies of, any accounts, books and other records kept by the responsible insolvency practitioner, whether or not they are kept at the premises of the responsible insolvency practitioner.”.

Insertion of regulation 16A

6. After regulation 16 there shall be inserted the following regulation:-

“Payment of unclaimed or undistributed assets, dividends or other money in a bankruptcy

16A. Notwithstanding anything in these Regulations, any moneys-

- (a) in the hands of any trustee in bankruptcy at the date of his vacation of office; or
- (b) which come into the hands of any former trustee in bankruptcy at any time after his vacation of office;

representing, in either case, unclaimed or undistributed assets of the bankrupt or dividends, shall forthwith be paid by him into the Insolvency Services Account.”.

Amendment of regulation 27

7. For paragraph (1) of regulation 27 there shall be substituted the following:-

“(1) In a creditors’ voluntary winding up, the liquidator shall prepare and keep-

- (a) separate financial records in respect of each company; and
- (b) such other financial records as are required to explain the receipts and payments entered in the records described in subparagraph (a) above or regulation 10 above as to trading accounts applied by regulation 28 below, including an explanation of the source of any receipts and the destination of any payments;

and shall, subject to regulation 10 above as to trading accounts applied by regulation 28 below, from day to day enter in those records all the receipts and payments, including those relating to the Insolvency Services Account, made by him.”.

Amendment of regulation 28A

8. In paragraph (1) of regulation 28A for the words “26 and 27” there shall be substituted the words “26, 27 and 28”.

Amendment of regulation 30

9. For paragraphs (2) and (3) of regulation 30 there shall be substituted the following:-

“(2) The account shall-

- (a) incorporate all the particulars described in Form 1; and
- (b) where the Secretary of State gives notice in writing to the liquidator that it is to be in Form 1, be in that Form; and

in all cases shall be certified by the liquidator.

(3) Where any account sent to the Secretary of State under paragraph (1) above (“the first-mentioned account”) is not in Form 1, the Secretary of State may give notice in writing to the liquidator requiring him to send to the Secretary of State an account in Form 1 in respect of the same period as the first-mentioned account.

(4) Within 14 days of receiving notice under paragraph (3) above the liquidator shall send to the Secretary of State an account in Form 1 in respect of the same period as the first-mentioned account and that account in Form 1 shall be certified by the liquidator.

(5) Any account sent to the Secretary of State under paragraph (1) or (4) above shall, if he so requires, be audited, but whether or not the Secretary of State requires the account to be audited, the liquidator shall send to the Secretary of State on demand any vouchers, any bank statements and any information relating to the account.”.

Insertion of regulation 30A

10. After regulation 30 there shall be inserted the following regulation:-

“Production and inspection of records

30A.—(1) The liquidator shall produce on demand to the Secretary of State, and allow him to inspect, any accounts, books and other records kept by the liquidator, and this duty to produce and inspect shall extend-

- (a) to production and inspection at the premises of the liquidator; and
- (b) to production and inspection of any financial records of the kind described in regulation 27(1)(b) above prepared by the responsible insolvency practitioner before 7th November 1988 and kept by him;

and any such demand may-

- (i) require the liquidator to produce any such accounts, books or other records to the Secretary of State, and allow him to inspect them-
 - (A) at the same time as any account is sent to the Secretary of State under regulation 30(1) or (4) above; or
 - (B) at any time after such an account is sent to the Secretary of State; whether or not the Secretary of State requires the account to be audited; or
- (ii) where it is made for the purpose of ascertaining whether the provisions of these Regulations relating to the handling of moneys received by the liquidator in the course of carrying out his functions have been or are likely to be complied with, be made at any time, whether or not an account has been sent or should have been sent to the Secretary of State under regulation 30(1) or (4) above and whether or not the Secretary of State has required any account to be audited.

(2) The liquidator shall allow the Secretary of State on demand to remove, and take copies of, any accounts, books and other records kept by the liquidator, whether or not they are kept at the premises of the liquidator.”.

Amendment of regulation 36

11. After paragraph (4) of regulation 36 there shall be inserted the following:-

“(5) Regulations 12A and 30A apply where any demand is made under those regulations on or after 7th November 1988.”.

Amendment of the Schedule

12. For the Schedule to the principal Regulations there shall be substituted the following Schedule:-

Regulations 12(2) and (2B)
and 30(2) and (4)

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FORM 1

Liquidator/Trustee Receipts and Payments Account

*[In the
Re]

*[No of 19.....]

Date	Voucher No.	Receipts (nature and of whom received)	VAT	Total	Paid into Bank	Date	Voucher No.	Payments (nature and to whom paid)	VAT	Total	Drawn from Bank

*Delete information in [] if Voluntary Liquidation case

Forms Relating to Accounts and Application for Payment Instrument For Payment of Dividends

THE SCHEDULE

Regulations 12(2) and (2B),
15(2) and 30(2) and (4)

Regulation
15(2)

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Application to the Department of Trade and Industry for the issue of Payment Instruments for the payment of dividend to the Trustee or Liquidator.

(Title)

In my records the sum of £ stands to the credit of the above estate with the Insolvency Services Account at the Bank of England. The sum of £ is required to pay the dividends as shown on the attached certified list of proofs and accordingly I apply for payment instruments to be issued to me for distribution among the creditors whose proofs I have admitted for dividend.

The dividend is payable on

Date _____

*Delete as
appropriate

Signed _____
trustee*/liquidator

Name of trustee*/liquidator
(in BLOCK LETTERS) _____

Full address including postcode to which payment instruments should be sent.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Insolvency Regulations 1986 (S.I. 1986/1994) as amended by the Insolvency (Amendment) Regulations 1987 (S.I. 1987/1959), which regulate matters which are of an administrative and not of a judicial character in the conduct of company and individual insolvency proceedings. In particular they:-

- (a) alter the address to which communications to the Secretary of State or the Department must be sent;
- (b) extend the obligations of insolvency practitioners as regards the financial records they must prepare and keep;
- (c) clarify the obligations of the official receiver as regards the length of time he must keep records of insolvency cases, and extend the obligations of all insolvency practitioners in this regard to records kept under regulation 10 or 28 of the Insolvency Regulations 1986;
- (d) provide that accounts sent by insolvency practitioners to the Secretary of State shall include the particulars described in a specified Form and, where the Secretary of State so requires, shall be in that specified Form;
- (e) extend the provisions relating to the production and inspection of records kept by insolvency practitioners; and
- (f) provide, in the case of a bankruptcy, for the payment of unclaimed or undistributed assets or dividends into the Insolvency Services Account.

These Regulations apply to all insolvency proceedings to which the Insolvency Regulations 1986 as amended apply on and after 7th November 1988, whether or not those proceedings were commenced before, on or after that date.