

2006 No. 1272

INSOLVENCY, ENGLAND AND WALES

COMPANIES

The Insolvency (Amendment) Rules 2006

<i>Made</i> - - - -	<i>9th May 2006</i>
<i>Laid before Parliament</i>	<i>10th May 2006</i>
<i>Coming into force</i> - -	<i>1st June 2006</i>

The Lord Chancellor, in the exercise of the powers conferred on him by section 411 of the Insolvency Act 1986(a), with the concurrence of the Secretary of State, and after consulting the committee existing for that purpose under section 413 of that Act, hereby makes the following Rules:—

Citation and commencement

- 1.—(1) These Rules may be cited as the Insolvency (Amendment) Rules 2006.
(2) These Rules shall come into force on 1st June 2006 (“the commencement date”).

Interpretation

- 2.—(1) In these Rules reference to the “principal Rules” is to the Insolvency Rules 1986(b) and a Rule referred to by number alone means the Rule so numbered in the principal Rules.
(2) In these Rules “the Act” means the Insolvency Act 1986.

Transitional provisions

3. The amendment to the principal Rules made by Rule 4 of these Rules shall apply in respect of a company which—
- (a) on or after the commencement date enters administration except where—
- (i) it enters administration by virtue of an administration order under paragraph 10 of Schedule B1 to the Act on an application made before the commencement date;
 - (ii) the administration is immediately preceded by a voluntary liquidation in respect of which the resolution to wind up was passed before the commencement date; or
 - (iii) the administration is immediately preceded by a liquidation on the making of a winding-up order on a petition which was presented before the commencement date;

(a) 1986 c.45 as amended by the Enterprise Act 2002 (c.40). Section 411 was amended by the Insolvency Act 1986 (Amendment) Regulations 2002 (S.I. 2002/1037).
(b) S.I. 1986/1925, amended by S.I.s 1987/1919, 1989/397, 1991/495, 1993/602, 1995/586, 1999/359, 1999/1022, 2001/763, 2002/1307, 2002/2712, 2003/1730, 2004/584, 2004/1070 and 2005/527.

- (b) goes into liquidation upon the passing, on or after the commencement date, of a resolution to wind up;
- (c) goes into voluntary liquidation under paragraph 83 of Schedule B1 except where the preceding administration—
 - (i) commenced before the commencement date; or
 - (ii) is an administration which commenced by virtue of an administration order under paragraph 10 of Schedule B1 on an application which was made before the commencement date;
- (d) goes into liquidation on the making of a winding-up order on a petition presented on or after the commencement date except where the liquidation is immediately preceded by—
 - (i) an administration under paragraph 10 of Schedule B1 to the Act where the administration order was made on an application made before the commencement date;
 - (ii) an administration in respect of which the appointment of an administrator under paragraphs 14 or 22 of Schedule B1 took effect before the commencement date; or
 - (iii) a voluntary liquidation in respect of which the resolution to wind up was passed before the commencement date.

Amendment to Rule 13.12

4. For Rule 13.12 of the principal Rules substitute the following—

““Debt”, “liability” (winding up)

13.12.—(1) “Debt”, in relation to the winding up of a company, means (subject to the next paragraph) any of the following—

- (a) any debt or liability to which the company is subject at the date on which it goes into liquidation;
- (b) any debt or liability to which the company may become subject after that date by reason of any obligation incurred before that date; and
- (c) any interest provable as mentioned in Rule 4.93(1).

(2) For the purposes of any provision of the Act or the Rules about winding up, any liability in tort is a debt provable in the winding up, if either—

- (a) the cause of action has accrued at the date on which the company goes into liquidation; or
- (b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.

(3) For the purposes of references in any provision of the Act or the Rules about winding up to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in any such provision to owing a debt are to be read accordingly.

(4) In any provision of the Act or the Rules about winding up, except in so far as the context otherwise requires, “liability” means (subject to paragraph (3) above) a liability to pay money or money’s worth, including any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution.

(5) This Rule shall apply where a company is in administration and shall be read as if references to winding-up were a reference to administration.”.

Falconer of Thoroton,
C

3rd May 2006

I concur, on behalf of the Secretary of State,

9th May 2006

Ian McCartney
Minister of State for Trade, Investment and Foreign Affairs
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make an amendment to Rule 13.12 of the Insolvency Rules 1986 (S.I. 1986/1925) (“the Rules”).

Rule 13.12 defines “debt” in relation to the winding up and administration of a company. Rule 13.12(2) is amended to extend the interpretation of debt to include claims founded in tort where all of the elements required to bring an action against the company exist at the time the company goes into liquidation or enters administration, except that the claimant has not yet suffered any damage and does not therefore, at that time, have a cause of action against the company. When read with Rule 12.3 of the Rules this interpretation has the effect of extending the category of debts provable in a winding up or administration.

The amendment made by these Rules will apply to all companies which enter administration or go into liquidation on or after the commencement date, other than where that administration or liquidation is immediately preceded by an administration (subject as follows) or liquidation which commenced before that date. The amendment will also apply to a company which, on the commencement date, is subject to an administration order made on a petition presented before 15 September 2003 and which goes into liquidation on or after the commencement date. Such an administration is governed by the provisions of Part 2 of the Insolvency Act 1986 which were in force prior to the coming into force of the amendments made by the Enterprise Act 2002. There is no provision for proofs of debt and distribution of assets in that Part of the Insolvency Act 1986.

No regulatory impact assessment has been prepared in relation to these Rules, as they will not impose any significant costs on business.

£3.00

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E0664 5/2006 160664T 19585