

**2009 No. 2472**

**INSOLVENCY, ENGLAND AND WALES**

**COMPANIES**

**INDIVIDUALS**

**The Insolvency (Amendment) (No. 2) Rules 2009**

<i>Made</i> - - - -	<i>8th September 2009</i>
<i>Laid before Parliament</i>	<i>10th September 2009</i>
<i>Coming into force</i> - -	<i>1st October 2009</i>

The Lord Chancellor has consulted the committee existing for the purposes of section 413 of the Insolvency Act 1986(a).

The Lord Chancellor makes the following Rules—

in exercise of the powers conferred by section 411 and 412(b) of that Act,  
with the concurrence of the Secretary of State, and  
with the concurrence of the Chancellor of the High Court (by authority of the Lord Chief Justice under section 411(7) and 412(6)(c) of that Act) in relation to those Rules which affect court procedure.

**Citation and commencement**

1. These Rules may be cited as the Insolvency (Amendment) (No. 2) Rules 2009 and come into force on 1st October 2009.

**Transitional provisions**

2.—(1) The amendments to the Insolvency Rules 1986(d) made by these Rules apply as follows.  
(2) They apply where, in a company voluntary arrangement, a moratorium comes into force in relation to a company on or after 1st October 2009.

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(a) 1986 c.45.  
(b) Sections 411 and 412 were amended by the Insolvency Act 1986 (Amendment) Regulations 2002 (S.I. 2002/1037). Subsection (1) of section 412 was amended by the Tribunals, Courts and Enforcement Act 2007 (c.15), section 108(3), Schedule 20, paragraphs 1 and 8. Subsection (3) was amended by S.I. 2007/2194 (amendments consequential to the Companies Act 2006 (c.46)).  
(c) Subsection (7) of section 411 and subsection (6) of section 412 were inserted by the Constitutional Reform Act 2005 (c.4), section 15(1) and Schedule 4, paragraphs 185 and 188(1) and (3), and 185 and 189(1) and (3), respectively.  
(d) S.I. 1986/1925; amending instruments are S.I.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, 2005/527, 2006/1272, 2007/1974, 2008/737 and 2009/642.

(3) They apply where a company enters administration on or after 1st October 2009, except where—

- (a) it enters administration by virtue of an administration order under paragraph 10 of Schedule B1 to the 1986 Act on an application made before 1st October 2009;
- (b) the administration is immediately preceded by a voluntary liquidation in respect of which the resolution to wind up was passed before 1st October 2009, or
- (c) the administration is immediately preceded by a liquidation on the making of a winding-up order on a petition which was presented before 1st October 2009.

(4) They apply where, in a receivership, a receiver or manager is appointed in respect of a company on or after 1st October 2009.

(5) They apply where a company goes into liquidation upon the passing on or after 1st October 2009 of a resolution to wind up.

(6) They apply where a company goes into voluntary liquidation under paragraph 83 of Schedule B1 to the 1986 Act, except where the preceding administration—

- (a) commenced before 1st October 2009, or
- (b) is an administration which commenced by virtue of an administration order under paragraph 10 of Schedule B1 to the 1986 Act on an application which was made before 1st October 2009.

(7) They apply where a company goes into liquidation on the making of a winding-up order on a petition presented on or after 1st October 2009, except where the liquidation is immediately preceded by—

- (a) an administration under paragraph 10 of Schedule B1 to the 1986 Act where the administration order was made on an application made before 1st October 2009;
- (b) an administration in respect of which the appointment of an administrator under paragraph 14 or 22 of Schedule B1 to the 1986 Act took effect before 1st October 2009, or
- (c) a voluntary liquidation in respect of which the resolution to wind up was passed before 1st October 2009.

(8) In this Rule, “the 1986 Act” means the Insolvency Act 1986.

### **Amendments to the Insolvency Rules 1986**

3. Subject to Rule 2, the Insolvency Rules 1986 are amended as follows.

#### **Amendment of Rule 0.2**

4.—(1) Rule 0.2(1) (construction and interpretation) is amended as follows.

(2) In paragraph (1), for “the Companies Act 1985”, substitute “the Companies Act 2006”.

#### **Amendment to Rule 1.22A**

5.—(1) Rule 1.22A (notice of order made under section 4A(6)) is amended as follows.

(2) In paragraph (5), for “an office copy”, substitute “a copy”.

#### **Amendment to Rule 1.41**

6.—(1) Rule 1.41 (notice of extension of moratorium) is amended as follows.

(2) In paragraph (2), for “an office copy”, substitute “a copy”.

#### **Amendment to Rule 2.49**

7.—(1) Rule 2.49 (venue and conduct of company meeting) is amended as follows.

(2) In paragraph (5), omit “of association”.

**Amendments to Rules 2.51, 2.55, 3.17, 3.21, 4.153, 4.159, 8.7 and 12.4A**

**8.**—(1) Rules 2.51(2) (formalities of establishment), 2.55(2) (committee-members’ representatives), 3.17(2) (formalities of establishment), 3.21(2) (committee-members’ representatives), 4.153(3) (formalities of establishment), 4.159(2) (committee-members’ representatives), 8.7(1) (company representation) and 12.4A(3) (quorum at meeting of creditors or contributories) are amended as follows.

(2) For “section 375”, where it occurs, substitute “section 323”.

**Amendment of Rule 3.35**

**9.**—(1) Rule 3.35 (vacation of office) is amended as follows.

(2) In paragraph (2), for “section 405(2)”, substitute “section 871(2)”.

**Amendment of Rule 3.38**

**10.**—(1) Rule 3.38 (preservation of certificate with company’s records) is amended as follows.

(2) In paragraph (1), for “section 222”, substitute “sections 388 and 389”.

**Amendment of Rule 4.2**

**11.**—(1) Rule 4.2 (winding up by the court: the various forms of petition) is amended as follows.

(2) In paragraph (1), in the second indent referring to paragraph (b) of section 122(1), for “section 117”, substitute “section 761”.

**Amendment of Rule 4.8**

**12.**—(1) Rule 4.8 (service of petition) is amended as follows.

(2) In paragraph (2)—

(a) in subparagraph (a), for “section 10”, substitute “section 9”; and

(b) in subparagraph (b), for “section 287”, substitute “section 87”.

(3) In paragraph (5), for “oversea”, substitute “overseas” and for “section 695”, substitute “section 1139(2)”.

**Amendment of Rule 4.11**

**13.**—(1) Rule 4.11 (advertisement of petition) is amended as follows.

(2) In paragraph (5)(a)(ii), for “oversea”, substitute “overseas”.

**Amendment of Rule 4.230**

**14.**—(1) Rule 4.230 (prohibited names - third excepted case) is amended as follows.

(2) In paragraph (b), for “section 252(5)”, substitute “section 1169(1), (2) and (3)(a)”.

**Amendment of Rule 5A.24**

**15.**—(1) Rule 5A.24 (application for leave) is amended as follows.

(2) In paragraph (4), for “section 13”, substitute “section 15”.

### **Amendment of Rule 6.203**

16.—(1) Rule 6.203 (application for leave) is amended as follows.

(2) In paragraph (4), for “section 13”, substitute “section 15”.

### **Amendment to Schedule 4 – forms**

17. In the forms in Schedule 4 listed below, the contents are amended as follows—

- (a) in Form 2.1B, for “the Companies Act 19”, substitute “the Companies Act 19\_\_ or 2006”;
- (b) in Form 3.8, for “An office copy”, substitute “A copy”;
- (c) in Form 4.2—
  - (i) for “the Companies Act 19”, substitute “the Companies Act 19\_\_ or 2006”; and
  - (ii) for “memorandum of association of the company”, substitute “the company’s articles”;
- (d) in Form 4.5, for “oversea” in each place where it occurs, substitute “overseas”;
- (e) in Form 4.14—
  - (i) for “the Companies Act 19”, substitute “the Companies Act 19\_\_ or 2006”; and
  - (ii) for “memorandum of association of the company”, substitute “the company’s articles”;
- (f) in Form 7.8, after “236” where it occurs, insert “, 251N”;
- (g) in Form 7.9, after “236,” where it occurs, insert “251N,”, and
- (h) in Form 9.1, after “236” where it occurs, insert “, 251N”.

Signed by authority of the Lord Chancellor

3rd September 2009

*Bach*  
Parliamentary Under Secretary of State,  
Ministry of Justice

I concur, by the authority of the Lord Chief Justice

7th September 2009

*The Rt Hon Sir Andrew Morritt*  
Chancellor of the High Court

I concur, on behalf of the Secretary of State

8th September 2009

*Ian Lucas*  
Minister for Business and Regulatory Reform,  
Department for Business, Innovation and Skills

## **EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules amend the Insolvency Rules 1986 (S.I. 1986/1925) to give effect to changes consequential upon the coming into effect of amendments made to the Insolvency Act 1986 (c.45) by the Companies Act 2006 (c.46), including relevant consequential amendments to certain Forms in Schedule 4 to those Rules. They also effect amendments to the headings to Forms 7.8, 7.9 and 9.1 in order to extend their application to warrants and the examination of persons in relation to debt relief orders under section 251N of the Insolvency Act 1986.

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STATUTORY INSTRUMENTS

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