

## SCHEDULE 1

### Amendments to the Insolvency Rules 1986

#### New Rules after Rule 4.49A

174. After Rule 4.49A insert—

#### **“4.49B Reports to creditors and members – winding up by the court**

##### **4.49B (NO CVL APPLICATION)**

- (1) “Progress report” means a report which includes—
- (a) details of the court where the proceedings are and the relevant court reference number;
  - (b) full details of the company’s name, address of registered office and registered number;
  - (c) full details of the liquidator’s name and address and date of appointment, including any changes in office-holder;
  - (d) details of the basis fixed for the remuneration of the liquidator under Rule 4.127 (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);
  - (e) if the basis of remuneration has been fixed, a statement of—
    - (i) the remuneration charged by the liquidator during the period of the report (subject to paragraph (3)), and
    - (ii) where the report is the first to be made after the basis has been fixed, the remuneration charged by the liquidator during the periods covered by the previous reports (subject to paragraph (3)), together with a description of the things done by the liquidator during those periods in respect of which the remuneration was charged,irrespective in either case of whether payment was made in respect of that remuneration during that period;
  - (f) a statement of the expenses incurred by the liquidator during the period of the report, irrespective of whether payment was made in respect of them during that period;
  - (g) details of progress during the period of the report, including a receipts and payments account (as detailed in paragraph (2));
  - (h) details of any assets that remain to be realised;
  - (j) a statement of the creditors’ right to request information under Rule 4.49E and their right to challenge the liquidator’s remuneration and expenses under Rule 4.131; and
  - (k) any other relevant information for the creditors.

(2) A receipts and payments account must be in the form of an abstract showing receipts and payments during the period of the report and, where the liquidator has ceased to act, must also include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A.

(3) Where the basis for the remuneration is a set amount under Rule 4.127(2)(c), it may be shown as that amount without any apportionment to the period of the report.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(4) The progress report must, except where paragraph (5) or (6) applies, cover the period of 1 year commencing on the date on which the liquidator is appointed and every subsequent period of 1 year.

(5) The period to be covered by a progress report ends on the date when a liquidator ceases to act, and the period to be covered by each subsequent progress report is each successive period of 1 year beginning immediately after that date (subject to the further application of this paragraph when another liquidator ceases to act).

(6) A progress report is not required for any period which ends after the liquidator has sent a draft report to creditors under Rule 4.49D.

(7) The liquidator must send a copy of the progress report within 2 months of the end of the period covered by the report, to the registrar of companies, to the members of the company and to the creditors.

(8) The court may, on the liquidator's application, extend the period of 2 months mentioned in paragraph (7), or make such other order in respect of the content of the report as it thinks just.

(9) This Rule does not apply where the liquidator is the official receiver.

#### **4.49C CVL Progress reports – voluntary winding up**

(1) This Rule applies for the purposes of sections 92A and 104A(1).

(2) The prescribed period for which the liquidator must produce a progress report, except when the liquidator ceases to act (in which case paragraph (3) applies) and subject to paragraph (4), is the period of 1 year commencing on the date on which the liquidator is appointed and every subsequent period of 1 year.

(3) When a liquidator ceases to act, and subject to paragraph (4)—

- (a) the prescribed period for which the liquidator must produce a progress report ends on the date of that liquidator's ceasing to act, and
- (b) the prescribed period for which the new liquidator (if any) must produce a progress report is the period of 1 year commencing immediately after that date and every subsequent period of 1 year (subject to the further application of this paragraph when that new liquidator ceases to act).

(4) A progress report is not required for any period which ends after the liquidator has sent a draft report to creditors under Rule 4.49D (final report to creditors).

(5) The prescribed matters to which a progress report must relate are those set out in Rule 4.49B(1)(b) to (j), (2) and (3); and for that purpose in a members' voluntary winding up—

- (a) the reference in Rule 4.49B(1)(d) to Rule 4.127 is to be read as a reference to Rule 4.148A,
- (b) the reference in Rule 4.49B(1)(j) to—
  - (i) the creditors' right to request information is to be read as a reference to the members' right to request information,
  - (ii) Rule 4.131 is to be read as a reference to Rule 4.148C, and
- (c) the reference in Rule 4.49B(3) to Rule 4.127(2)(c) is to be read as a reference to Rule 4.148A(2)(c).

(6) The prescribed person (in addition to members and creditors) to whom the liquidator must send a copy of a progress report is the registrar of companies.

---

(1) Sections 92A and 104A were inserted by [S.I. 2010/18](#).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(7) The prescribed period commencing with the end of the period prescribed in subparagraph (a) or (b) of paragraph (3) within which the liquidator must send a copy of a progress report to members, creditors and the registrar of companies is 2 months.

#### **4.49D Final report to creditors**

(1) The liquidator must, at least 8 weeks before holding a final meeting in accordance with section 106 or 146, send to each creditor known to the liquidator a draft of the report which the liquidator intends to lay before the meeting under Rule 4.125 or 4.126.

(2) The draft report must—

- (a) contain such matters and be in such terms as would comply with Rule 4.125 or 4.126, as the case may be, if the report were to be laid before a meeting as soon as reasonably practicable after the draft had been sent to creditors, and
- (b) be accompanied by a statement of the creditors' right to request information under Rule 4.49E and their right to challenge the liquidator's remuneration and expenses under Rule 4.131.

(3) The liquidator may not send a draft report to creditors under this Rule before giving notice under Rule 4.186 of intention to declare a final dividend or that no dividend or further dividend will be declared.

(4) If any creditor has applied to the court under Rule 4.131 and given a copy of the application to the liquidator, the final meeting may not be held until the application (including any appeal) has been disposed of and the liquidator has complied with any order of the court.

(5) This Rule does not apply where the liquidator is the official receiver.

#### **4.49E Creditors' and members' request for further information**

(1) If—

- (a) within the period mentioned in paragraph (2)—
  - (i) a secured creditor, or
  - (ii) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question), or
  - (iii) members of the company in a members' voluntary winding up with at least 5% of the total voting rights of all the members having the right to vote at general meetings of the company, or
- (b) with the permission of the court upon an application made within the period mentioned in paragraph (2)—
  - (i) any unsecured creditor, or
  - (ii) any member of the company in a members' voluntary winding up,

makes a request in writing to the liquidator for further information about remuneration or expenses set out in a progress report in accordance with Rule 4.49B(1)(e) or (f) (including by virtue of Rule 4.49C(5)) or in a draft report under Rule 4.49D, the liquidator must, within 14 days of receipt of the request, comply with paragraph (3) except to the extent that the request is in respect of matter in a draft report under Rule 4.49D or a progress report required by Rule 4.108 which (in either case) was previously included in a progress report not required by Rule 4.108.

(2) The period referred to in paragraph (1)(a) and (b) is—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (a) 7 business days of receipt (by the last of them in the case of an application by more than one member) of the progress report where it is required by Rule 4.108, and
  - (b) 21 days of receipt (by the last of them in the case of an application by more than one member) of the report or draft report in any other case.
- (3) The liquidator complies with this paragraph by either—
- (a) providing all of the information asked for, or
  - (b) so far as the liquidator considers that—
    - (i) the time or cost of preparation of the information would be excessive, or
    - (ii) disclosure of the information would be prejudicial to the conduct of the liquidation or might reasonably be expected to lead to violence against any person, or
    - (iii) the liquidator is subject to an obligation of confidentiality in respect of the information,giving reasons for not providing all of the information.
- (4) Any creditor, and any member of the company in a members' voluntary winding up, who need not be the same as the creditors or members who asked for the information, may apply to the court within 21 days of—
- (a) the giving by the liquidator of reasons for not providing all of the information asked for, or
  - (b) the expiry of the 14 days provided for in paragraph (1),
- and the court may make such order as it thinks just.
- (5) Without prejudice to the generality of paragraph (4), the order of the court under that paragraph may extend the period of 8 weeks or, as the case may be, 4 weeks provided for in Rule 4.131(1B) or 4.148C(2) by such further period as the court thinks just.
- (6) This Rule does not apply where the liquidator is the official receiver.

**4.49F Arrangements under s 110 (acceptance of shares, etc., as consideration for sale of company property)**

- (1) Where there has been an arrangement under section 110 and a distribution to members has taken place pursuant to subsection (2) or (4) of that section, the liquidator must comply with paragraph (2) in respect of any account or report which the liquidator is required to prepare pursuant to any of the following—
- (a) section 92A (progress report to company at year's end);
  - (b) section 94 (final meeting prior to dissolution – members' voluntary winding up);
  - (c) section 104A (progress report to company and creditors at year's end);
  - (d) section 106 (final meeting prior to dissolution – creditors' voluntary winding up);
  - (e) Rule 4.49B (reports to creditors and members – winding up by the court);
  - (f) Rule 4.49D (final report to creditors);
  - (g) Rule 4.108 (creditors' meeting to receive liquidator's resignation);
  - (h) Rule 4.126 (final meeting – creditors' voluntary liquidation);
  - (j) Rule 4.142 (company meeting to receive liquidator's resignation).
- (2) The liquidator must—
- (a) in any account or summary of receipts and payments which is required to be included in the account or report, state the estimated value of—

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (i) the property transferred to the transferee;
  - (ii) the property received from the transferee; and
  - (iii) the property distributed to members pursuant to section 110(2) or (4), during the period to which the account or report relates, and
- (b) as a note to the account or summary of receipts and payments, provide details of the basis of the valuation.

#### **4.49G Other distributions to members in specie**

(1) In a members' voluntary winding up, where there has been a distribution of property to members in its existing form other than pursuant to an arrangement under section 110, the liquidator must comply with paragraph (2) in respect of any account or report which the liquidator is required to prepare pursuant to any of the following—

- (a) section 92A (progress report to company at year's end);
- (b) section 94 (final meeting prior to dissolution);
- (c) Rule 4.142 (company meeting to receive liquidator's resignation)

(2) The liquidator must—

- (a) in any account or summary of receipts and payments which is required to be included in the account or report, state the estimated value of the property distributed amongst the members of the company during the period to which the account or report relates, and
- (b) as a note to the account or summary of receipts and payments, provide details of the basis of the valuation.”.