
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 6

CREDITORS' VOLUNTARY WINDING UP

CHAPTER 1

Application of Part 6

Application of Part 6

6.1.—(1) This Part applies to a creditors' voluntary winding up.

(2) However where a company moves from administration to creditors' voluntary winding up by the registration of a notice under paragraph 83(3) of Schedule B1 the following rules do not apply—

6.2 to 6.7 (statement of affairs etc.);

6.11 to 6.15 (information to creditors and contributories and appointment of liquidator);

6.17 (report by directors etc.);

6.18 (decisions on nomination);

6.20 (appointment by creditors or by the company);

6.22 (appointment by the court (section 100(3) or 108), other than in respect of appointments under section 108); and

6.23 (advertisement of appointment).

CHAPTER 2

Statement of affairs and other information

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Statement of affairs made out by the liquidator under section 95(1A)

[Note: (1) section 95(4A) requires the statement of affairs to be verified by a statement of truth;

(2) the “official rate” referred to in paragraph (2)(c) is defined in section 251 as being the rate referred to in section 189(4).]

6.2.—(1) This rule applies to the statement of affairs made out by the liquidator under section 95(1A) (effect of company's insolvency in members' voluntary winding up).

(2) The statement of affairs must be headed “Statement of affairs” and must contain—

(a) identification details for the company;

Status: Point in time view as at 05/07/2018.

Changes to legislation: There are currently no known outstanding effects for the The Insolvency (England and Wales) Rules 2016, PART 6. (See end of Document for details)

- (b) a statement that it is a statement of the affairs of the company on a date which is specified, being the date of the opinion formed by the liquidator under section 95(1);
- (c) a statement that as at that date, the liquidator formed the opinion that the company would be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration of solvency made under section 89; and
- (d) the date it is made.

(3) The statement of affairs must be delivered by the liquidator to the registrar of companies within five business days after the completion of the decision procedure or deemed consent procedure referred to in rule 6.11 in respect of the appointment of the liquidator.

(4) However the liquidator must not deliver to the registrar of companies with the statement of affairs any schedule required by rule 6.4(4)(b).

Statement of affairs made out by the directors under section 99(1)

[Note: section 99(2A) requires the statement of affairs to be verified by a statement of truth.]

6.3.—(1) This rule applies to the statement of affairs made out by the directors under section 99(1) ^{M1}.

- (2) The statement of affairs must be headed “Statement of affairs” and must contain—
 - (a) identification details for the company;
 - (b) a statement that it is a statement of the affairs of the company on a date which is specified, being a date not more than 14 days before the date of the resolution for winding up; and
 - (c) the date it is made.

(3) If a creditor requests a copy of the statement of affairs at a time when no liquidator is appointed the directors must deliver a copy to the creditor.

(4) The directors must deliver the statement of affairs to the liquidator as soon as reasonably practicable after the liquidator is appointed.

(5) The liquidator must deliver the statement of affairs to the registrar of companies within five business days after the completion of the decision procedure or deemed consent procedure referred to in rule 6.14 in respect of the appointment of the liquidator.

(6) However the liquidator must not deliver to the registrar of companies with the statement of affairs any schedule required by rule 6.4(4)(b).

Marginal Citations

M1 Section 99(1) is substituted by paragraph 23(2) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

Additional requirements as to statements of affairs

- 6.4.**—(1) A statement of affairs under section 95(1A) or 99(1) must also contain—
 - (a) a list of the company's shareholders, with the following details about each shareholder—
 - (i) name and postal address,
 - (ii) the type of shares held,
 - (iii) the nominal amount of the shares held,
 - (iv) the number of shares held,

- (v) the amount per share called up, and
 - (vi) the total amount called up;
 - (b) the total amount of shares called up held by all shareholders;
 - (c) a summary of the assets of the company, setting out the book value and estimated realisable value of—
 - (i) any assets subject to a fixed charge,
 - (ii) any assets subject to a floating charge,
 - (iii) any uncharged assets, and
 - (iv) the total value of all the assets available for preferential creditors;
 - (d) a summary of the liabilities of the company, setting out—
 - (i) the amount of preferential debts,
 - (ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts,
 - (iii) an estimate of the prescribed part, if applicable,
 - (iv) an estimate of the total assets available to pay debts secured by floating charges,
 - (v) the amount of debts secured by floating charges,
 - (vi) an estimate of the deficiency with respect to debts secured by floating charges or the surplus available after paying the debts secured by fixed or floating charges,
 - (vii) the amount of unsecured debts (excluding preferential debts),
 - (viii) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts,
 - (ix) any issued and called-up capital, and
 - (x) an estimate of the deficiency with respect to, or surplus available to, members of the company;
 - (e) a list of the company's creditors with the further particulars required by paragraph (2) indicating—
 - (i) any creditors under hire-purchase, chattel leasing or conditional sale agreements,
 - (ii) any creditors who are consumers claiming amounts paid in advance of the supply of goods or services, and
 - (iii) any creditors claiming retention of title over property in the company's possession.
- (2) The further particulars required by this paragraph relating to each creditor are as follows—
- (i) the name and postal address,
 - (ii) amount of the debt owed to the creditor, (as required by section 95(4) or 99(2)),
 - (iii) details of any security held by the creditor,
 - (iv) the date the security was given, and
 - (v) the value of any such security.
- (3) Paragraph (4) applies where the particulars required by paragraph (2) relate to creditors who are either—
- (a) employees or former employees of the company; or
 - (b) consumers claiming amounts paid in advance for the supply of goods or services.
- (4) Where this paragraph applies—

Status: Point in time view as at 05/07/2018.

Changes to legislation: There are currently no known outstanding effects for the The Insolvency (England and Wales) Rules 2016, PART 6. (See end of Document for details)

- (a) the statement of affairs must state separately for each of paragraphs (3)(a) and (b) the number of such creditors and the total of the debts owed to them; and
- (b) the particulars required by paragraph (2) must be set out in separate schedules to the statement of affairs for each of paragraphs (3)(a) and (b).

Statement of affairs: statement of concurrence

6.5.—(1) The liquidator may require a director (“the relevant person”) to deliver to the liquidator a statement of concurrence.

(2) A statement of concurrence is a statement that the relevant person concurs in the statement of affairs submitted by another director.

(3) The liquidator must inform the director who has been required to submit a statement of affairs that the relevant person has been required to deliver a statement of concurrence.

(4) The director who has been required to submit the statement of affairs must deliver a copy to every relevant person who has been required to submit a statement of concurrence.

(5) A statement of concurrence—

- (a) must identify the company; and
- (b) may be qualified in relation to matters dealt with in the statement of affairs, where the maker of the statement of concurrence—
 - (i) is not in agreement with the statement of affairs,
 - (ii) considers the statement of affairs to be erroneous or misleading, or
 - (iii) is without the direct knowledge necessary for concurring with it.

(6) The relevant person must deliver the required statement of concurrence, verified by a statement of truth, to the liquidator together with a copy before the end of the period of five business days (or such other period as the liquidator may agree) beginning with the day on which the relevant person receives the statement of affairs.

(7) The liquidator must deliver the verified statement of concurrence to the registrar of companies.

Order limiting disclosure of statement of affairs etc.

6.6.—(1) Where the liquidator thinks that disclosure of the whole or part of the statement of affairs or of any statement of concurrence would be likely to prejudice the conduct of the winding up or might reasonably be expected to lead to violence against any person, the liquidator may apply to the court for an order that the statement of affairs, statement of concurrence or any specified part of them must not be delivered to the registrar of companies.

(2) The court may order that the whole or a specified part of the statement of affairs or a statement of concurrence must not be delivered to the registrar of companies.

(3) The liquidator must as soon as reasonably practicable deliver to the registrar of companies a copy of the order, the statement of affairs and any statement of concurrence to the extent allowed by the order.

Expenses of statement of affairs and decisions sought from creditors

6.7.—(1) Any reasonable and necessary expenses of preparing the statement of affairs under section 99 may be paid out of the company's assets, either before or after the commencement of the winding up, as an expense of the winding up.

(2) Any reasonable and necessary expenses of the decision procedure or deemed consent procedure to seek a decision from the creditors on the nomination of a liquidator under rule 6.14

may be paid out of the company's assets, either before or after the commencement of the winding up, as an expense of the winding up.

(3) Where payment under paragraph (1) or (2) is made before the commencement of the winding up, the directors must deliver to the creditors with the statement of affairs a statement of the amount of the payment and the identity of the person to whom it was made.

(4) The liquidator appointed under section 100^{M2} may make such a payment, but if there is a liquidation committee, the liquidator must deliver to the committee at least five business days' notice of the intention to make it.

(5) However such a payment may not be made to the liquidator, or to any associate of the liquidator, otherwise than with the approval of the liquidation committee, the creditors, or the court.

(6) This is without prejudice to the court's powers under rule 7.109 (voluntary winding up superseded by winding up by the court).

Marginal Citations

M2 Section 100 is amended by paragraph 24 of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#) which inserts new subsections (1), (1A) and (1B).

Delivery of accounts to liquidator (section 235)

6.8.—(1) A person who is specified in section 235(3) must deliver to the liquidator accounts of the company of such nature, as at such date, and for such period, as the liquidator requires.

(2) The period for which the liquidator may require accounts may begin from a date up to three years before the date of the resolution for winding up, or from an earlier date to which audited accounts of the company were last prepared.

(3) The accounts must, if the liquidator so requires, be verified by a statement of truth.

(4) The accounts (verified by a statement of truth if so required) must be delivered to the liquidator within 21 days from the liquidator's request, or such longer period as the liquidator may allow.

Expenses of assistance in preparing accounts

6.9.—(1) Where the liquidator requires a person to deliver accounts under rule 6.8 the liquidator may, with the approval of the liquidation committee (if there is one) and as an expense of the winding up, employ a person or firm to assist that person in the preparation of the accounts.

(2) The person who is required to deliver accounts may request an allowance of all or part of the expenses to be incurred in employing a person or firm to assist in preparing the accounts.

(3) A request for an allowance must be accompanied by an estimate of the expenses involved.

(4) The liquidator must only authorise the employment of a named person or a named firm approved by the liquidator.

(5) The liquidator may, with the approval of the liquidation committee (if there is one), authorise such an allowance, payable as an expense of the winding up.

CHAPTER 3

Nomination and appointment of liquidators and information to creditors

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Application of the rules in this Chapter

6.10.—(1) The rules in this Chapter apply as follows.

(2) Rules 6.11 to 6.13 only apply to a conversion from a members' voluntary winding up to a creditors' voluntary winding up.

(3) Rule 6.16 only applies where the administrator becomes the liquidator in a voluntary winding up which follows an administration.

(4) Rules 6.14, 6.15 and 6.17 only apply to a creditors' voluntary winding up which has not been commenced by a conversion from a members' voluntary winding up or an administration.

(5) Rules 6.18 and 6.19 apply to all creditors' voluntary windings up.

Nomination of liquidator and information to creditors on conversion from members' voluntary winding up (section 96)

6.11.—(1) This rule applies in respect of the conversion of a members' voluntary winding up to a creditors' voluntary winding up under section 96^{M3}.

(2) The liquidator must seek a nomination from the creditors for a liquidator in the creditors' voluntary winding up by—

- (a) a decision procedure; or
- (b) the deemed consent procedure.

(3) The liquidator must deliver to the creditors a copy of the statement of affairs required by section 95(1A) and Chapter 2 of this Part together with a notice which complies with rules 15.7 or 15.8 so far as are relevant.

(4) The notice must also contain—

- (a) identification and contact details for the existing liquidator; and
- (b) a statement that if no person is nominated by the creditors then the existing liquidator will be the liquidator in the creditors' voluntary winding up.

(5) The decision date in the notice must be not later than 28 days from the date under section 95(1) that the liquidator formed the opinion that the company will be unable to pay its debts in full.

(6) Subject to paragraph (9), the creditors must be given at least 14 days' notice of the decision date.

(7) Paragraph (8) applies where—

- (a) the liquidator has sought a decision from creditors on the nomination of a liquidator by the deemed consent procedure; but
- (b) the level of objections to the proposed nomination have meant, under section 246ZF, that no nomination is deemed to have been made.

(8) Where this paragraph applies, the liquidator must seek a nomination from creditors by way of a decision procedure in accordance with this rule, the decision date to be as soon as reasonably practicable, but no more than 28 days from the date that the level of objections had the effect that no nomination was deemed to have been made.

(9) Where paragraph (8) applies, the creditors must be given at least seven days' notice of the decision date.

(10) Where the liquidator is required by rule 15.6 to summon a physical meeting as a result of requests from creditors received in response to a notice delivered under this rule, the physical meeting must be summoned to take place—

- (a) within 28 days of the date on which the threshold for requiring a physical meeting was met; and

- (b) with at least 14 days' notice.

Marginal Citations

- M3** Section 96 is substituted by paragraph 20(1) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

Creditors' decision on appointment other than at a meeting (conversion from members' voluntary winding up)

6.12.—(1) This rule applies where the creditors' decision on the nomination of a liquidator in a conversion of a members' into a creditors' voluntary winding up is intended to be sought otherwise than through a meeting or through the deemed consent procedure, including where the conditions in rule 6.11(7) are met and the liquidator, under rule 6.11(8), goes on to seek a nomination from creditors by way of a decision procedure other than a meeting.

(2) Instead of delivering a notice of the decision procedure or deemed consent procedure under rule 6.11, the liquidator must deliver a notice to creditors inviting them to make proposals for the nomination of a liquidator.

(3) Such a notice must—

- (a) identify any liquidator for whom a proposal which is in compliance with paragraph 4 has already been received;
- (b) explain that the liquidator is not obliged to seek the creditors' views on any proposal that does not meet the requirements of paragraphs (4) and (5); and
- (c) be accompanied by the statement of affairs unless that has previously been delivered to the creditor.

(4) Any proposal must state the name and contact details of the proposed liquidator, and contain a statement that the proposed liquidator is qualified to act as an insolvency practitioner in relation to the company and has consented to act as liquidator of the company.

(5) Any proposal must be received by the liquidator within five business days of the date of the notice under paragraph (2).

(6) Within two business days of the end of the period referred to in paragraph (5), the liquidator must [^{F1}send] a notice to creditors of a decision procedure under rule 6.11.

Textual Amendments

- F1** Word in [rule 6.12\(6\)](#) substituted (6.4.2017) by [The Insolvency \(England and Wales\) \(Amendment\) Rules 2017 \(S.I. 2017/366\)](#), [rules 1, 23](#)

Information to creditors and contributories (conversion of members' voluntary winding up into creditors' voluntary winding up)

6.13.—(1) The liquidator must deliver to the creditors and contributories within 28 days of the conversion of a members' voluntary winding up into a creditors' voluntary winding up under section 96 a notice which must contain—

- (a) the date the winding up became a creditors' voluntary winding up;
- (b) a report of the decision procedure or deemed consent procedure which took place under rule [^{F2}6.11]; and
- (c) the information required by paragraph (3).

Status: Point in time view as at 05/07/2018.

Changes to legislation: There are currently no known outstanding effects for the The Insolvency (England and Wales) Rules 2016, PART 6. (See end of Document for details)

(2) The notice must be accompanied by a copy of the statement of affairs or a summary except where the notice is being delivered to a creditor to whom a copy of the statement of affairs has previously been delivered under section 95(1A) ^{M4}.

(3) The required information is an estimate to the best of the liquidator's knowledge and belief of—

(a) the value of the prescribed part (whether or not the liquidator might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts); and

(b) the value of the company's net property (as defined by section 176A(6)).

(4) The liquidator may exclude from an estimate under paragraph (3) information the disclosure of which could seriously prejudice the commercial interests of the company.

(5) If the exclusion of such information affects the calculation of an estimate, the report must say so.

(6) If the liquidator proposes to make an application to court under section 176A(5) the report must say so and give the reason for the application.

Textual Amendments

F2 Word in [rule 6.13\(1\)\(b\)](#) substituted (6.4.2017) by [The Insolvency \(England and Wales\) \(Amendment\) Rules 2017 \(S.I. 2017/366\)](#), [rules 1](#), [22](#)

Marginal Citations

M4 Section 95(1A) is inserted by paragraph 19(2) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#) which also omitted subsections (2) to (3) and (5) to (7).

Information to creditors and appointment of liquidator

6.14.—(1) This rule applies in respect of the appointment of a liquidator under section 100.

(2) The directors of the company must deliver to the creditors a notice seeking their decision on the nomination of a liquidator by—

(a) the deemed consent procedure; or

(b) a virtual meeting.

(3) The decision date for the decision of the creditors on the nomination of a liquidator must be not earlier than three business days after the notice under paragraph (2) is delivered but not later than 14 days after the resolution is passed to wind up the company.

(4) Where the directors have sought a decision from the creditors through the deemed consent procedure under paragraph (2)(a) but, pursuant to section 246ZF(5)(a) (deemed consent procedure), more than the specified number of creditors object so that the decision cannot be treated as having been made, the directors must then seek a decision from the creditors on the nomination of a liquidator by holding a physical meeting under rule 15.6 (physical meetings) as if a physical meeting had been required under section 246ZE(4) (decisions by creditors and contributories: general).

(5) Where paragraph (4) applies, the meeting must not be held earlier than three business days after the notice under rule 15.6(3) is delivered or later than 14 days after the level of objections reach that described in paragraph (4).

(6) A request for a physical meeting under section 246ZE must be made in accordance with rule 15.6 except that—

- (a) such a request may be made at any time between the delivery of the notice under paragraph (2) and the decision date under paragraph (3); and
 - (b) the decision date where this paragraph applies must be not earlier than three business days after the notice under rule 15.6(3) is delivered and not later than 14 days after the level of requests reach that described in section 246ZE.
- (7) The directors must deliver to the creditors a copy of the statement of affairs required under section 99 of the Act not later than on the business day before the decision date.
- (8) A notice delivered under paragraph (2), in addition to the information required by rules 15.7 (deemed consent) and 15.8 (notices to creditors of decision procedure), must contain—
- (a) the date the resolution to wind up is to be considered or was passed;
 - (b) identification and contact details of any liquidator nominated by the company;
 - (c) a statement of either—
 - (i) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who during the period before the decision date, will furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require, or
 - (ii) a place in the relevant locality where, on the two business days falling next before the decision date, a list of the names and addresses of the company's creditors will be available for inspection free of charge; and
 - (d) where the notice is sent to creditors in advance of the copy of the statement of affairs, a statement that the directors, before the decision date and before the end of the period of seven days beginning with the day after the day on which the company passed a resolution for winding up, are required by section 99 of the Insolvency Act 1986—
 - (i) to make out a statement in the prescribed form as to the affairs of the company, and
 - (ii) send the statement to the company's creditors.
- (9) Where the company's principal place of business in England or Wales was situated in different localities at different times during the relevant period, the duty imposed by sub-paragraph (8)(c)(ii) above applies separately in relation to each of those localities.
- (10) Where the company had no place of business in England or Wales during the relevant period, the reference in paragraph (9) to the company's principal place of business in England or Wales are replaced by references to its registered office.
- (11) In paragraph (9), “the relevant period” means the period of six months immediately preceding the day on which the notices referred to in paragraph (2) were delivered.
- (12) Where a virtual or physical meeting is held under this rule and a liquidator has already been nominated by the company, the liquidator or an appointed person must attend any meeting held under this rule and report on any exercise of the liquidator's powers under section 112, 165 or 166 of the Act ^{M5}.
- (13) A director who is in default in seeking a decision on the nomination of a liquidator in accordance with this rule is guilty of an offence and is liable to a fine.

Marginal Citations

- M5** In section 165, a new subsection (2) is inserted by section 120(2) of the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#); section 166 is amended, subsection (4) is omitted and a new subsection (5) is inserted by paragraph 40 of Schedule 9 to the same Act.

Status: Point in time view as at 05/07/2018.

Changes to legislation: There are currently no known outstanding effects for the The Insolvency (England and Wales) Rules 2016, PART 6. (See end of Document for details)

Information to creditors and contributories

6.15.—(1) The liquidator must deliver to the creditors and contributories within 28 days of the appointment of the liquidator under section 100 a notice which must—

- (a) be accompanied by a statement of affairs or a summary where the notice is delivered to any contributory or creditor to whom the notice under rule 6.14 was not delivered;
- (b) [^{F3}be accompanied by] a report on the decision procedure or deemed consent procedure under rule 6.14; and
- (c) be accompanied by the information required by paragraph (2).

(2) The required information is an estimate to the best of the liquidator's knowledge and belief of—

- (a) the value of the prescribed part (whether or not the liquidator might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts); and
- (b) the value of the company's net property (as defined by section 176A(6)).

(3) The liquidator may exclude from an estimate under paragraph (2) information the disclosure of which could seriously prejudice the commercial interests of the company.

(4) If the exclusion of such information affects the calculation of an estimate, the report must say so.

(5) If the liquidator proposes to make an application to court under section 176A(5) the report must say so and give the reason for the application.

Textual Amendments

F3 Words in [rule 6.15\(1\)\(b\)](#) inserted (8.12.2017) by [The Insolvency \(England and Wales\) and Insolvency \(Scotland\) \(Miscellaneous and Consequential Amendments\) Rules 2017 \(S.I. 2017/1115\)](#), [rules 1\(1\), 6](#)

Further information where administrator becomes liquidator (paragraph 83(3) of Schedule B1)

6.16.—(1) This rule applies where an administrator becomes liquidator on the registration of a notice under paragraph 83(3) of Schedule B1, and becomes aware of creditors not formerly known to that person as administrator.

(2) The liquidator must deliver to those creditors a copy of any statement delivered by the administrator to creditors in accordance with paragraph 49(4) ^{M6} of Schedule B1 and rule 3.35.

Marginal Citations

M6 Paragraph 49(4) is amended by paragraph 10(2) of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

Report by director etc.

6.17.—(1) Where the statement of affairs sent to creditors under section 99(1) does not, or will not, state the company's affairs at the decision date for the creditors' nomination of a liquidator, the directors of the company must cause a report (written or oral) to be made to the creditors in accordance with this rule on any material transactions relating to the company occurring between the date of the making of the statement and the decision date.

(2) In the case of a decision being taken through a meeting, the report must be made at the meeting by the director chairing the meeting or by another person with knowledge of the relevant matters.

(3) Where the deemed consent procedure is used, the report must be delivered to creditors as soon as reasonably practicable after the material transaction takes place in the same manner as the deemed consent procedure.

(4) Where the decision date is within the period of three business days from the delivery of a report under paragraph (3), this rule extends the decision date until the end of that period notwithstanding the requirement in rule 6.14(3) relating to the timing of the decision date.

(5) On delivery of a report under paragraph (3), the directors must notify the creditors of the effects of paragraph (4).

(6) A report under this rule must be recorded in the record of the decision under rule 15.40.

Decisions on nomination

6.18.—(1) In the case of a decision on the nomination of a liquidator—

- (a) if on any vote there are two nominees, the person who obtains the most support is appointed;
- (b) if there are three or more nominees, and one of them has a clear majority over both or all the others together, that one is appointed; and
- (c) in any other case, the convener or chair must continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time) until a clear majority is obtained for any one nominee.

(2) In the case of a decision being made at a meeting, the chair may at any time put to the meeting a resolution for the joint nomination of any two or more nominees.

Invitation to creditors to form a liquidation committee

6.19.—(1) Where any decision is sought from the company's creditors—

- (a) in a creditors' voluntary winding up; or
- (b) where a members' voluntary winding up is converting in a creditors' voluntary winding up;

the convener of the decision must at the same time deliver to the creditors a notice inviting them to decide whether a liquidation committee should be established if sufficient creditors are willing to be members of the committee.

(2) The notice must also invite nominations for membership of the committee, such nominations to be received by a date specified in the notice.

(3) The notice must state that nominations—

- (a) must be delivered to the convener by the specified date; and
- (b) can only be accepted if the convener is satisfied as to the creditor's eligibility under rule 17.4.

CHAPTER 4

The liquidator

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Appointment by creditors or by the company

6.20.—(1) This rule applies where a person is appointed as liquidator by creditors or the company.

Status: Point in time view as at 05/07/2018.

Changes to legislation: There are currently no known outstanding effects for the The Insolvency (England and Wales) Rules 2016, PART 6. (See end of Document for details)

[^{F4}(2) The liquidator’s appointment takes effect from the date of the passing of the resolution of the company or, where the creditors decide to appoint a person who is not the person appointed by the company, from the relevant decision date.]

(3) Their appointment must be certified by—

- (a) the convener or chair of the decision procedure or deemed consent procedure; or
- (b) in respect of an appointment by the company the chair of the company meeting or a director or the secretary of the company (in the case of a written resolution).

(4) The person who certifies the appointment must not do so unless and until the proposed liquidator (“the appointee”) has provided that person with a statement of being an insolvency practitioner qualified under the Act to be the liquidator and of consenting to act.

(5) The certificate must be authenticated and dated by the person who certifies the appointment and must contain—

- (a) identification details for the company;
- (b) identification and contact details for the person appointed as liquidator;
- (c) the date of the meeting of the company or conclusion of the decision procedure or deemed consent procedure when the liquidator was appointed;
- (d) a statement that the appointee—
 - (i) has provided a statement of being qualified to act as an insolvency practitioner in relation to the company,
 - (ii) has consented to act, and
 - (iii) was appointed liquidator of the company.

(6) Where two or more liquidators are appointed the certificate must also specify (as required by section 231) whether any act required or authorised under any enactment to be done by the liquidator is to be done by all or any one or more of them.

(7) The person who certifies the appointment must deliver the certificate as soon as reasonably practicable to the liquidator, who must keep it as part of the records of the winding up.

Textual Amendments

F4 Rule 6.20(2) substituted (6.4.2017) by [The Insolvency \(England and Wales\) \(Amendment\) Rules 2017 \(S.I. 2017/366\)](#), rules 1, 24

Power to fill vacancy in office of liquidator

6.21. Where a vacancy in the office of liquidator occurs in the manner mentioned in section 104 a decision procedure to fill the vacancy may be initiated by any creditor or, if there was more than one liquidator, by the continuing liquidator or liquidators.

Appointment by the court (section 100(3) or 108)

6.22.—(1) This rule applies where the liquidator is appointed by the court under section 100(3) or 108.

(2) The court's order must not be made unless and until the proposed liquidator has filed with the court a statement of being qualified under the Act to act as an insolvency practitioner in relation to the company and of consenting to act.

(3) The order of the court must contain—

- (a) the name of the court (and hearing centre if applicable) in which the order is made;
- (b) the name and title of the judge making the order;
- (c) the date on which it is made;
- (d) identification details for the company;
- (e) the name and postal address of the applicant;
- (f) the capacity in which the applicant made the application;
- (g) identification details for the proposed liquidator; and
- (h) an order that the proposed liquidator, having filed a statement of being qualified to act as an insolvency practitioner in relation to the company and having consented to act, is appointed liquidator of the company from the date of the order, or such other date as the court orders.

(4) Where two or more liquidators are appointed the order must also specify (as required by section 231) whether any act required or authorised under any enactment to be done by the liquidator is to be done by all or any one or more of them.

(5) The court must deliver a sealed copy of the order to the liquidator.

(6) Within 28 days from appointment, the liquidator must—

- (a) deliver a notice of the appointment to creditors of the company; or
- (b) advertise the appointment in accordance with any directions given by the court.

Advertisement of appointment

6.23.—(1) A liquidator appointed in a voluntary winding up in addition to delivering a notice of the appointment in accordance with section 109(1)^{M7} may advertise the notice in such other manner as the liquidator thinks fit.

(2) The notice must state—

- (a) that a liquidator has been appointed; and
- (b) the date of the appointment.

(3) The liquidator must initially bear the expense of giving notice under this rule but is entitled to be reimbursed for the expenditure as an expense of the winding up.

Marginal Citations

M7 See Part 3 of Schedule 2 to SI 1987/752 for the prescribed forms for the notice to the registrar of companies and the Gazette notice also required by that section.

Cost of liquidator's security (section 390(3))

6.24. The cost of the liquidator's security required by section 390(3) for the proper performance of the liquidator's functions is an expense of the winding up.

Liquidator's resignation and replacement

6.25.—(1) A liquidator may resign only—

- (a) on grounds of ill health;
- (b) because of the intention to cease to practise as an insolvency practitioner;

Status: Point in time view as at 05/07/2018.

Changes to legislation: There are currently no known outstanding effects for the The Insolvency (England and Wales) Rules 2016, PART 6. (See end of Document for details)

- (c) because the further discharge of the duties of liquidator is prevented or made impractical by—
 - (i) a conflict of interest, or
 - (ii) or a change of personal circumstances; or
 - (d) where two or more persons are acting as liquidator jointly and it is the opinion of both or all of them that it is no longer expedient that there should continue to be that number of joint liquidators.
- (2) Before resigning the liquidator must invite the creditors by a decision procedure, or by deemed consent, to consider whether a replacement should be appointed except where the resignation is under paragraph (1)(d).
- (3) The notice of the decision procedure or of deemed consent must—
- (a) state the liquidator's intention to resign;
 - (b) state that under rule 6.25(7) of these Rules the liquidator will be released 21 days after the date of delivery of the notice of resignation to the registrar of companies under section 171(5), unless the court orders otherwise; and
 - (c) comply with rules 15.7 and 15.8 so far as are relevant.
- (4) The notice may suggest the name of a replacement liquidator.
- (5) The notice must be accompanied by a summary of the liquidator's receipts and payments.
- (6) The decision date must be not more than five business days before the date on which the liquidator intends to give notice of resignation to the registrar of companies under section 171(5).
- (7) The resigning liquidator's release is effective 21 days after the date of delivery of the notice of resignation to the registrar of companies under section 171(5), unless the court orders otherwise.

Removal of liquidator by creditors

6.26.—(1) Where the creditors decide that the liquidator be removed, the convener of the decision procedure or the chair of the meeting (as the case may be) must as soon as reasonably practicable deliver the certificate of the liquidator's removal to the removed liquidator.

(2) The removed liquidator must deliver a notice of the removal to the registrar of companies as soon as reasonably practicable.

Removal of liquidator by the court

6.27.—(1) This rule applies where an application is made to the court for the removal of the liquidator, or for an order directing the liquidator to initiate a decision procedure of creditors for the purpose of removing the liquidator.

(2) On receipt of an application, the court may, if it is satisfied that no sufficient cause is shown for it, dismiss it without giving notice to any party other than the applicant.

(3) Unless the application is dismissed, the court must fix a venue for it to be heard.

(4) The applicant must, at least 14 days before any hearing, deliver to the liquidator a notice stating the venue with a copy of the application and of any evidence on which the applicant intends to rely.

(5) A respondent may apply for security for the costs of the application and the court may make such an order if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order.

(6) The liquidator may do either or both of the following—

- (a) file a report of any matters which the liquidator thinks ought to be drawn to the court's attention; or
 - (b) appear and be heard on the application.
- (7) The costs of the application are not payable as an expense of the winding up unless the court orders otherwise.
- (8) On a successful application the court's order must contain the following—
- (a) the name of the court (and hearing centre if applicable) in which the order is made;
 - (b) the name and title of the judge making the order;
 - (c) identification details for the company;
 - (d) the name and postal address of the applicant;
 - (e) the capacity in which the applicant made the application;
 - (f) identification and contact details for the liquidator;
 - (g) an order either—
 - (i) that the liquidator is removed from office from the date of the order (unless the order specifies otherwise), or
 - (ii) that the liquidator must initiate a decision procedure of the company's creditors (specifying which procedure is to be used) on or before a date stated in the order for the purpose of considering the liquidator's removal from office; and
 - (h) the date of the order.
- (9) Where the court removes the liquidator—
- (a) it must deliver the sealed order of removal to the former liquidator; and
 - (b) the former liquidator must deliver a copy of the order to the registrar of companies as soon as reasonably practicable.
- (10) If the court appoints a new liquidator rule 6.22 applies.

Final account prior to dissolution (section 106)

6.28.—(1) The final account which the liquidator is required to make up under section 106(1)^{M8} and deliver to members and creditors must comply with the requirements of rule 18.14.

(2) When the account is delivered to the creditors it must be accompanied by a notice which states—

- (a) that the company's affairs are fully wound up;
- (b) that the creditors have the right to request information from the liquidator under rule 18.9;
- (c) that the creditors have the right to challenge the liquidator's remuneration and expenses under rule 18.34;
- (d) that a creditor may object to the release of the liquidator by giving notice in writing to the liquidator before the end of the prescribed period;
- (e) that the prescribed period is the period ending at the later of—
 - (i) eight weeks after delivery of the notice, or
 - (ii) if any request for information under rule 18.9 or any application to court under that rule or rule 18.34 is made, when that request or application is finally determined;
- (f) that the liquidator will vacate office under section 171 on delivering to the registrar of companies the final account and notice saying whether any creditor has objected to release; and

Status: Point in time view as at 05/07/2018.

Changes to legislation: There are currently no known outstanding effects for the The Insolvency (England and Wales) Rules 2016, PART 6. (See end of Document for details)

(g) that the liquidator will be released under section 173^{M9} at the same time as vacating office unless any of the company's creditors objected to the liquidator's release.

(3) The copy of the account which the liquidator delivers to the registrar of companies under section 106(3) must be accompanied by a notice containing the statement required by section 106(3)(a) of whether any creditors have objected to the liquidator's release.

(4) Where a creditor has objected to the liquidator's release rule 6.33 applies to an application by the liquidator to the Secretary of State for release.

(5) The liquidator is not obliged to prepare or deliver any progress report which may become due under these Rules in the period between the date to which the final account is made up and the date when the account is delivered to the registrar of companies under section 106(3)(a).

Marginal Citations

M8 New section 106 substituted by paragraph 29 of Schedule 9 to the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

M9 Section 173(2)(d) is amended and a new (2)(a), (b) and (e) and (2A) are inserted by paragraph 44 of Schedule 9 to the Small Business, Enterprise and Employment act 2015 (c.26).

Deceased liquidator

6.29.—(1) If the liquidator dies a notice of the fact and date of death must be delivered as soon as reasonably practicable—

- (a) where there is a liquidation committee, to the members of that committee; and
- (b) to the registrar of companies.

(2) The notice must be delivered by one of the following—

- (a) a surviving joint liquidator;
- (b) a member of the deceased liquidator's firm (if the deceased was a member or employee of a firm);
- (c) an officer of the deceased liquidator's company (if the deceased was an officer or employee of a company); or
- (d) a personal representative of the deceased liquidator.

(3) If such a notice has not been delivered within the 21 days following the liquidator's death then any other person may deliver the notice.

Loss of qualification as insolvency practitioner

6.30.—(1) This rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company.

(2) A notice of the fact must be delivered as soon as reasonably practicable to the registrar of companies and the Secretary of State by one of the following—

- (a) the liquidator who has vacated office;
- (b) a continuing joint liquidator;
- (c) the recognised professional body which was the source of the vacating liquidator's authorisation to act in relation to the company.

(3) Each notice must be authenticated and dated by the person delivering the notice.

Vacation of office on making of winding-up order

6.31. Where the liquidator vacates office in consequence of the court making a winding-up order against the company, rule 6.33 applies in relation to the application to the Secretary of State for release of the liquidator.

Liquidator's duties on vacating office

6.32. A liquidator who ceases to be in office in consequence of removal, resignation or ceasing to be qualified as an insolvency practitioner in relation to the company, must as soon as reasonably practicable deliver to the succeeding liquidator—

- (a) the assets (after deduction of any expenses properly incurred, and distributions made, by the former liquidator);
- (b) the records of the winding up, including correspondence, proofs and other documents; and
- (c) the company's records.

Application by former liquidator for release (section 173(2)(b))

6.33.—(1) An application to the Secretary of State by a former liquidator for release under section 173(2)(b) must contain—

- (a) identification and contact details for the former liquidator;
- (b) identification details for the company;
- (c) details of the circumstances under which the liquidator has ceased to act as liquidator;
- (d) a statement that the former liquidator of the company is applying to the Secretary of State for a certificate of release as liquidator as a result of the circumstances specified in the application.

(2) The application must be authenticated and dated by the former liquidator.

(3) When the Secretary of State releases the former liquidator, the Secretary of State must certify the release and deliver the certificate to the former liquidator whose release is effective from the date of the certificate or such other date as the certificate specifies.

(4) The Secretary of State must deliver a notice of the release to the registrar of companies.

Power of court to set aside certain transactions

6.34.—(1) If in dealing with the insolvent estate the liquidator enters into any transaction with a person who is an associate of the liquidator, the court may, on the application of any interested person, set the transaction aside and order the liquidator to compensate the company for any loss suffered in consequence of it.

(2) This does not apply if either—

- (a) the transaction was entered into with the prior consent of the court; or
- (b) it is shown to the court's satisfaction that the transaction was for value, and that it was entered into by the liquidator without knowing, or having any reason to suppose, that the person concerned was an associate.

(3) Nothing in this rule is to be taken as prejudicing the operation of any rule of law or equity relating to a liquidator's dealings with trust property or the fiduciary obligations of any person.

Rule against improper solicitation

6.35.—(1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the liquidator in obtaining proxies or procuring the liquidator's appointment, it may order that no remuneration be allowed as an expense of the winding up to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the court under this rule overrides any resolution of the liquidation committee or the creditors, or any other provision of these Rules relating to the liquidator's remuneration.

Permission for exercise of powers by liquidator

6.36.—(1) Where these Rules require permission for the liquidator to exercise a power any permission given must not be a general permission but must relate to a particular proposed exercise of the liquidator's power.

(2) A person dealing with the liquidator in good faith and for value is not concerned to enquire whether any such permission has been given.

(3) Where the liquidator has done anything without such permission, the court or the liquidation committee may, for the purpose of enabling the liquidator to meet the liquidator's expenses out of the assets, ratify what the liquidator has done; but neither may do so unless satisfied that the liquidator has acted in a case of urgency and has sought ratification without undue delay.

(4) In this rule “permission” includes “sanction”.

CHAPTER 5

Special Manager

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Application for and appointment of special manager (section 177)

6.37.—(1) An application by the liquidator under section 177 for the appointment of a special manager must be supported by a report setting out the reasons for the application.

(2) The report must include the applicant's estimate of the value of the business or property in relation to which the special manager is to be appointed.

(3) The court's order appointing a special manager must have the title “Order of Appointment of Special Manager” and must contain—

- (a) the name of the court (and hearing centre if applicable) in which the order is made;
- (b) the name and title of the judge making the order;
- (c) identification details for the proceedings;
- (d) the name and address of the applicant;
- (e) the name and address of the proposed special manager;
- (f) the order that that the proposed special manager is appointed as special manager of the company from the date of the order (or otherwise as the order provides);
- (g) details of the special manager's responsibility over the company's business or property;
- (h) the powers entrusted to the special manager under section [F5177(3)];
- (i) the time allowed for the special manager to give the required security for the appointment;
- (j) the duration of the special manager's appointment, being one of the following—
 - (i) for a fixed period stated in the order,

- (ii) until the occurrence of a specified event, or
 - (iii) until the court makes a further order;
 - (k) the order that the special manager's remuneration will be fixed from time to time by the court; and
 - (l) the date of the order.
- (4) The appointment of the special manager may be renewed by order of the court.
- (5) The acts of the special manager are valid notwithstanding any defect in the special manager's appointment or qualifications.

Textual Amendments

- F5** Word in [rule 6.37\(3\)\(h\)](#) substituted (6.4.2017) by [The Insolvency \(England and Wales\) \(Amendment\) Rules 2017 \(S.I. 2017/366\)](#), [rules 1, 20](#)

Security

6.38.—(1) The appointment of the special manager does not take effect until the person appointed has given (or, if the court allows, undertaken to give) security to the applicant for the appointment.

(2) A person appointed as special manager may give security either specifically for a particular winding up, or generally for any winding up in relation to which that person may be appointed as special manager.

(3) The amount of the security must be not less than the value of the business or property in relation to which the special manager is appointed, as estimated in the applicant's report which accompanied the application for appointment.

(4) When the special manager has given security to the applicant, the applicant must file with the court a certificate as to the adequacy of the security.

(5) The cost of providing the security must be paid in the first instance by the special manager; but the special manager is entitled to be reimbursed as an expense of the winding up, in the prescribed order of priority.

Failure to give or keep up security

6.39.—(1) If the special manager fails to give the required security within the time stated in the order of appointment, or any extension of that time that may be allowed, the liquidator must report the failure to the court which may discharge the order appointing the special manager.

(2) If the special manager fails to keep up the security, the liquidator must report the failure to the court, which may remove the special manager, and make such order as it thinks just as to costs.

(3) If the court discharges the order appointing the special manager or makes an order removing the special manager, the court must give directions as to whether any, and if so what, steps should be taken for the appointment of another special manager.

Accounting

6.40.—(1) The special manager must produce accounts, containing details of the special manager's receipts and payments, for the approval of the liquidator.

(2) The account must be for—

- (a) each three month period for the duration of the special manager's appointment;

Status: Point in time view as at 05/07/2018.

Changes to legislation: There are currently no known outstanding effects for the The Insolvency (England and Wales) Rules 2016, PART 6. (See end of Document for details)

(b) any shorter period ending with the termination of the special manager's appointment.

(3) When the accounts have been approved, the special manager's receipts and payments must be added to those of the liquidator.

Termination of appointment

6.41.—(1) If the liquidator thinks that the employment of the special manager is no longer necessary or beneficial for the company, the liquidator must apply to the court for directions, and the court may order the special manager's appointment to be terminated.

(2) The liquidator must also make such an application if the creditors decide that the appointment should be terminated.

CHAPTER 6

Priority of payment of costs and expenses, etc.

General rule as to priority

6.42.—(1) All fees, costs, charges and other expenses incurred in the course of the winding up are to be treated as expenses of the winding up.

(2) The expenses of the winding up are payable out of—

(a) assets of the company available for the payment of general creditors, including—

(i) proceeds of any legal action which the liquidator has power to bring in the liquidator's own name or in the name of the company,

(ii) proceeds arising from any award made under any arbitration or other dispute resolution procedure which the liquidator has power to bring in the liquidator's own name or in the name of the company,

(iii) any payments made under any compromise or other agreement intended to avoid legal action or recourse to arbitration or to any other dispute resolution procedure, and

(iv) payments made as a result of an assignment or a settlement of any such action, arbitration or other dispute resolution procedure in lieu of or before any judgment being given or award being made; and

(b) subject as provided in rules 6.44 to 6.48, property comprised in or subject to a floating charge created by the company.

(3) The expenses associated with the prescribed part must be paid out of the prescribed part.

(4) Subject as provided in rules 6.44 to 6.48, the expenses are payable in the following order of priority—

(a) expenses which are properly chargeable or incurred by the liquidator in preserving, realising or getting in any of the assets of the company or otherwise in the preparation, conduct or assignment of any legal proceedings, arbitration or other dispute resolution procedures, which the liquidator has power to bring in the liquidator's own name or bring or defend in the name of the company or in the preparation or conduct of any negotiations intended to lead or leading to a settlement or compromise of any legal action or dispute to which the proceedings or procedures relate;

(b) the cost of any security provided by the liquidator or special manager under the Act or these Rules;

(c) the remuneration of the special manager (if any);

- (d) any amount payable to a person employed or authorised, under Chapter 2 of this Part, to assist in the preparation of a statement of affairs or of accounts;
- (e) the costs of employing a shorthand writer on the application of the liquidator;
- (f) any necessary disbursements by the liquidator in the course of the administration of the winding up (including any [^{F6}costs referred to in Articles 30 or 59 of the EU Regulation and] expenses incurred by members of the liquidation committee or their representatives and allowed by the liquidator under rule 17.24, but not including any payment of corporation tax in circumstances referred to in sub-paragraph (i));
- (g) the remuneration or emoluments of any person who has been employed by the liquidator to perform any services for the company, as required or authorised by or under the Act or these Rules;
- (h) the remuneration of the liquidator, up to an amount not exceeding that which is payable under Schedule 11 (determination of insolvency office-holder's remuneration);
- (i) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company (irrespective of the person by whom the realisation is effected);
- (j) the balance, after payment of any sums due under sub-paragraph (h) above, of any remuneration due to the liquidator; and
- (k) any other expenses properly chargeable by the liquidator in carrying out the liquidator's functions in the winding up.

Textual Amendments

- F6** Words in rule 6.42(4)(f) inserted (26.6.2017) by [The Insolvency Amendment \(EU 2015/848\) Regulations 2017 \(S.I. 2017/702\)](#), reg. 1, [Sch. para. 38](#) (with reg. 3)

Saving for powers of the court

6.43. Nothing in these Rules—

- (a) applies to or affects the powers of any court, in proceedings by or against the company, to order costs to be paid by the company, or the liquidator; or
- (b) affects the rights of any person to whom such costs are ordered to be paid.

CHAPTER 7

Litigation expenses and property subject to a floating charge

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Interpretation

6.44.—(1) In this Chapter—

“approval” and “authorisation” respectively mean—

- (a) where yet to be incurred, the approval; and
- (b) where already incurred, the authorisation;

of expenses specified in section [^{F7}176ZA(1)]^{M10};

“the creditor” means—

- (a) a preferential creditor of the company; or

Status: Point in time view as at 05/07/2018.

Changes to legislation: There are currently no known outstanding effects for the The Insolvency (England and Wales) Rules 2016, PART 6. (See end of Document for details)

- (b) a holder of a debenture secured by, or a holder of, a floating charge created by the company;

“legal proceedings” means—

- (a) proceedings under sections 212, 213, 214^{M11}, 238, 239, 244 and 423 and any arbitration or other dispute resolution proceedings invoked for purposes corresponding to those to which the sections relate and any other proceedings, including arbitration or other dispute resolution procedures, which a liquidator has power to bring in the liquidator's own name for the purpose of preserving, realising, or getting in any of the assets of the company;
- (b) legal actions and proceedings, arbitration or any other dispute resolution procedures which a liquidator has power to bring or defend in the name of the company; and
- (c) negotiations intended to lead or leading to a settlement or compromise of any action, proceeding or procedure to which sub-paragraphs (a) or (b) relate;

“litigation expenses” means expenses of a winding up which—

- (a) are properly chargeable or incurred in the preparation or conduct of any legal proceedings; and
- (b) as expenses in the winding up, exceed, or in the opinion of the liquidator are likely to exceed (and only in so far as they exceed or are likely to exceed), in the aggregate £5,000; and

“specified creditor” means a creditor identified under rule 6.45(2).

(2) Litigation expenses will not have the priority provided by section 176ZA over any claims to property comprised in or subject to a floating charge created by the company and must not be paid out of any such property unless and until approved or authorised in accordance with rules 6.45 to 6.48.

Textual Amendments

- F7** Word in [rule 6.44\(1\)](#) substituted (6.4.2017) by [The Insolvency \(England and Wales\) \(Amendment\) Rules 2017 \(S.I. 2017/366\)](#), [rules 1, 25](#)

Marginal Citations

- M10** Section 176ZA was inserted by section 1282 of the [Companies Act 2006 \(c.46\)](#).
- M11** Section 214(2)(b) and (3) are amended and (6A) is inserted by section 117(3) of the [Small Business, Enterprise and Employment Act 2015 \(c.26\)](#).

Requirement for approval or authorisation

6.45.—(1) Subject to rules 6.46 to 6.48, either paragraphs (3) and (4) apply or paragraph (5) applies where, in the course of winding up a company, the liquidator—

- (a) ascertains that property is comprised in or subject to a floating charge;
- (b) has personally instituted or proposes to institute or continue legal proceedings or is in the process of defending or proposes to defend any legal proceeding brought or likely to be brought against the company; and
- (c) before or at any stage in those proceedings, is of the opinion that—
- (i) the assets of the company available for payment of general creditors are or will be insufficient to pay litigation expenses; and
- (ii) in order to pay litigation expenses the liquidator will have to have recourse to property comprised in or subject to a floating charge created by the company.

(2) As soon as reasonably practicable after the date on which the liquidator forms the opinion referred to in paragraph (1), the liquidator must identify the creditor who, in the liquidator's opinion at that time—

- (a) has a claim to property comprised in or subject to a floating charge created by the company; and
- (b) taking into account the value of that claim and any subsisting property then comprised in or secured by such a charge, appears to the liquidator to be the creditor most immediately likely of any persons having such claims to receive some payment in respect of a claim but whose claim would not be paid in full.

(3) The liquidator must request from the specified creditor the approval or authorisation of such amount for litigation expenses as the liquidator thinks fit.

(4) Where the liquidator identifies two or more specified creditors, the liquidator must seek from each of them approval or authorisation of such amount of litigation expenses as the liquidator thinks fit, apportioned between them (“the apportioned amount”) according to the value of the property to the extent covered by their charges.

(5) For so long as the conditions specified in paragraph (1) subsist, the liquidator may, in the course of a winding up, make such further requests to the specified creditor or creditors for approval or authorisation of such further amount for litigation expenses as the liquidator thinks fit to be paid out of property comprised in or subject to a floating charge created by the company, taking into account any amount for litigation expenses previously approved or authorised and the value of the property comprised in or subject to the floating charge.

Request for approval or authorisation

6.46.—(1) All requests made by the liquidator for approval or authorisation must include the following—

- (a) a statement describing the nature of the legal proceedings, including, where relevant, the statutory provision under which proceedings are or are to be brought and the grounds upon which the liquidator relies;
- (b) a statement specifying the amount or apportioned amount of litigation expenses for which approval or authorisation is sought (“the specified amount”);
- (c) notice that approval or authorisation or other reply to the request must be made in writing within 28 days from the date of its being received (“the specified time limit”); and
- (d) a statement explaining the consequences of a failure to reply within the specified time limit.

(2) Where anything in paragraph (1) requires the inclusion of any information, the disclosure of which could be seriously prejudicial to the winding up of the company, the liquidator may—

- (a) exclude such information from any of the above statements or notices if accompanied by a statement to that effect; or
- (b) include it on terms—
 - (i) that bind the creditor to keep the information confidential; and
 - (ii) that include an undertaking on the part of the liquidator to apply to the court for an order that so much of the information as may be kept in the files of the court is not to be open to public inspection.

(3) The creditor may within the specified time limit apply to the liquidator in writing for such further particulars as is reasonable and in such a case, the time limit specified in paragraph (1)(c) will apply from the date of the creditor's receipt of the liquidator's response to any such request.

(4) Where the liquidator requires the approval or authorisation of two or more creditors, the liquidator must deliver a request to each creditor, containing the matters listed in paragraph (1) and also giving—

- (a) the number of creditors concerned;
- (b) the total value of their claims, or if not known, as it is estimated to be by the liquidator immediately before delivering any such request; and
- (c) to each preferential creditor, notice that approval or authorisation of the specified amount will be taken to be given where a majority in value of those preferential creditors who respond within the specified time limit are in favour of it; or
- (d) where rule 6.45 applies, notice to the specified creditors that the amount of litigation expenses will be apportioned between them in accordance with that rule and notice of the value of the portion allocated to, and the identity of, the specified creditors affected by that apportionment.

Grant of approval or authorisation

6.47.—(1) Where the liquidator fails to include in the liquidator's request any one of the matters, statements or notices required to be specified by paragraph (1) or paragraphs (1) and (4), of rule 6.46, the request for approval or authorisation will be treated as not having been made.

(2) Subject to paragraphs (3), (4) and (5), approval or authorisation will be taken to have been given where the specified amount has been requested by the liquidator, and—

- (a) that amount is approved or authorised within the specified time limit; or
- (b) a different amount is approved or authorised within the specified time limit and the liquidator considers it sufficient.

(3) Where the liquidator requires the approval or authorisation of two or more preferential creditors, approval or authorisation will be taken to be given where a majority in value of those who respond within the specified time limit approve or authorise—

- (a) the specified amount; or
- (b) a different amount which the liquidator considers sufficient.

(4) Where a majority in value of two or more preferential creditors propose an amount other than that specified by the liquidator, they will be taken to have approved or authorised an amount equal to the lowest of the amounts so proposed.

(5) In any case in which there is no response in writing within the specified time limit to the liquidator's request—

- (a) at all, or
- (b) at any time following the liquidator's provision of further particulars under rule 6.46(3),

the liquidator's request will be taken to have been approved or authorised from the date of the expiry of that time limit.

Application to the court by the liquidator

6.48.—(1) In the circumstances specified below the court may, on the application of the liquidator, approve or authorise such amount of litigation expenses as it thinks just.

(2) Except where paragraph (3) applies, the liquidator may apply to the court for an order approving or authorising an amount for litigation expenses only where the specified creditor (or, if more than one, any one of them)—

- (a) is or is intended to be a defendant in the legal proceedings in relation to which the litigation expenses have been or are to be incurred; or
 - (b) has been requested to approve or authorise the amount specified under rule 6.46(1)(b) and has—
 - (i) declined to approve or authorise, as the case may be, the specified amount;
 - (ii) approved or authorised an amount which is less than the specified amount and which lesser amount the liquidator considers insufficient; or
 - (iii) made such application for further particulars or other response to the liquidator's request as is, in the liquidator's opinion, unreasonable.
- (3) Where the liquidator thinks that circumstances are such that the liquidator requires urgent approval or authorisation of litigation expenses, the liquidator may apply to the court for approval or authorisation either—
- (a) without seeking approval or authorisation from the specified creditor; or
 - (b) if sought, before the expiry of the specified time limit.
- (4) The court may grant such application for approval or authorisation—
- (a) if the liquidator satisfies the court of the urgency of the case; and
 - (b) subject to such terms and conditions as the court thinks just.
- (5) The liquidator must, at the same time as making any application to the court under this rule, deliver copies of it to the specified creditor, unless the court orders otherwise.
- (6) The specified creditor (or, if more than one, any one of them) is entitled to be heard on any such application unless the court orders otherwise.
- (7) The court may grant approval or authorisation subject to such terms and conditions as it may think just, including terms and conditions relating to the amount or nature of the litigation expenses and as to any obligation to make further applications to the court under this rule.
- (8) The costs of the liquidator's application under this rule, including the costs of any specified creditor appearing or represented on it, are an expense of the winding up unless the court orders otherwise.

Status:

Point in time view as at 05/07/2018.

Changes to legislation:

There are currently no known outstanding effects for the The Insolvency (England and Wales) Rules 2016, PART 6.