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STATUTORY INSTRUMENTS

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**2016 No. 1024**

**The Insolvency (England and Wales) Rules 2016**

**PART 7**

**WINDING UP BY THE COURT**

**CHAPTER 11**

**Calls on contributories**

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

**Making of calls by the liquidator (sections 150 and 160)**

**7.86.**—(1) Subject as follows the powers relating to the making of calls on contributories are exercisable by the liquidator as an officer of the court.

(2) However as provided by section 160(2) the making of a call requires either the sanction of the liquidation committee or the court's special permission.

**Sanction of the liquidation committee for making a call**

**7.87.**—(1) Where the liquidator proposes to make a call, and there is a liquidation committee, the liquidator may summon a meeting of the committee for the purpose of obtaining its sanction.

(2) The liquidator must deliver a notice of the meeting to each member of the committee giving at least five business days' notice of the meeting.

(3) The notice must state the purpose of making the call and the proposed amount of the call.

**Application to court for permission to make a call (sections 150 and 160)**

**7.88.**—(1) Where the liquidator proposes to make a call the liquidator may apply to the court without notice to any other party for permission to make a call on any contributories of the company.

(2) The application must state the amount of the proposed call, and the contributories on whom it is to be made.

(3) The application must be supported by a witness statement accompanied by a schedule.

(4) The witness statement must have the title “Witness statement of liquidator in support of application for call” and must contain—

- (a) identification and contact details for the liquidator;
- (b) identification details for the company;
- (c) the number of persons on the list of contributories settled by the liquidator;
- (d) the total number of shares to which the proposed call relates;

- (e) the statement that in addition to the amount of the assets of the company mentioned in the schedule the liquidator believes a further sum will be required to satisfy the debts and liabilities of the company, and pay the expenses of and incidental to the winding up;
  - (f) the additional sum required;
  - (g) a statement that in order to provide the additional sum it is necessary to make a call upon the persons on the settled list of contributories, and that as it is probable that some of those contributories will partly or wholly fail to pay the amount of the call, the liquidator believes that it is necessary that a call of a specified amount per share be made in order to realise the amount required;
  - (h) the specified amount per share.
- (5) The accompanying schedule must show—
- (a) the amount due in respect of debts already proved;
  - (b) the estimated amount of—
    - (i) further liabilities of the company, and
    - (ii) the expenses of the winding up;
  - (c) the total of the amounts referred to in sub-paragraphs (a) and (b); and
  - (d) a list of the assets in hand belonging to the company with their total value.
- (6) The schedule must be verified by a statement of truth made by the liquidator.

### **Order giving permission to make a call**

**7.89.**—(1) The court's order giving permission to make a call must have the title “Order giving permission to make a call” 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 and contact details for the liquidator;
- (d) identification details for the company;
- (e) an order that the liquidator may make a call of the amount per share specified in the order on the contributories who are specified in the order;
- (f) the amount per share of the call;
- (g) the names of the contributories of the company on whom the liquidator is to make the call;
- (h) an order that each such contributory must on or before the date specified in the order pay to the liquidator of the company the amount due from that contributory in respect of the call; and
- (i) the date of the order.

(2) The court may direct that notice of the order be delivered to the contributories concerned, or to other contributories, or may direct that the notice be publicly advertised.

### **Making and enforcement of the call**

**7.90.**—(1) The liquidator must deliver a notice of the call to each of the contributories concerned.

(2) The notice must contain—

- (a) identification details for the company;
- (b) identification and contact details for the liquidator;

- (c) a statement that a call on the contributories specified in the notice of the amount per share stated in the notice was sanctioned by—
    - (i) a resolution of the liquidation committee of the company passed on the date which is stated in the notice, or
    - (ii) an order of the court named in the notice on the date which is stated in the notice;
  - (d) the amount per share of the call;
  - (e) the amount or balance due from the contributory to whom the notice is addressed in respect of the call;
  - (f) the date by which the sum must be paid;
  - (g) a warning to the contributory that, if the required sum is not paid by the date specified in the notice, interest at the rate specified in the notice will be charged on the unpaid amount from that date until payment; and
  - (h) the specified annual interest rate.
- (3) The notice must be accompanied by a copy of the resolution of the liquidation committee sanctioning the call or of the court's order giving permission as the case may be.

#### **Court order to enforce payment of call by a contributory**

**7.91.**—(1) The court may make an order to enforce payment of the amount due from a contributory.

(2) The order must have the title “Order for payment of call due from contributory” and must contain—

- (a) the name of the court (and hearing centre if applicable) in which the order is made;
- (b) identification and contact details for the liquidator who made the application;
- (c) the name and title of the judge making the order;
- (d) identification details for the company;
- (e) the name and postal address of the contributory who is the subject of the order;
- (f) the amount per share of the call;
- (g) an order that the contributory pay the liquidator the sum stated in the order in respect of the call on or before the date stated in the order or within four business days after service of the order whichever is the later;
- (h) an order that the contributory pay the liquidator interest at the rate stated in the order for the period commencing from the date specified in the order to the date of payment;
- (i) an order that the contributory pay the liquidator a stated sum in respect of the liquidator's costs of the application within the same period as the amount of the call must be paid;
- (j) a warning to the contributory that if the required sums are not paid within the time specified in the order further steps will be taken to compel the contributory to comply with the order; and
- (k) the date of the order.

**Changes to legislation:**

There are currently no known outstanding effects for the The Insolvency (England and Wales) Rules 2016, CHAPTER 11.