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STATUTORY INSTRUMENTS

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**1986 No. 1925**

The Insolvency Rules 1986

THE FIRST GROUP OF PARTS

PART 4

COMPANIES WINDING UP

CHAPTER 11

THE LIQUIDATOR

*SECTION B: RESIGNATION AND REMOVAL; VACATION OF OFFICE*

**Creditors' meeting to receive liquidator's resignation**

**4.108.**—(1) Before resigning his office, the liquidator must call a meeting of creditors for the purpose of receiving his resignation. The notice summoning the meeting shall indicate that this is the purpose, or one of the purposes, of it, and shall draw the attention of creditors to Rule 4.121 or, as the case may be, Rule 4.122-CVL with respect to the liquidator's release.

(2) A copy of the notice shall at the same time also be sent to the official receiver. (NO CVL APPLICATION)

(3) The notice to creditors under paragraph (1) must be accompanied by an account of the liquidator's administration of the winding up, including—

- (a) a summary of his receipts and payments, and
- (b) a statement by him that he has reconciled his account with that which is held by the Secretary of State in respect of the winding up.

(4) Subject as follows, the liquidator may only proceed under this Rule on grounds of ill health or because—

- (a) he intends ceasing to be in practice as an insolvency practitioner, or
- (b) there is some conflict of interest or change of personal circumstances which precludes or makes impracticable the further discharge by him of the duties of liquidator.

(5) Where two or more persons are acting as liquidator jointly, any one of them may proceed under this Rule (without prejudice to the continuation in office of the other or others) on the ground that, in his opinion and that of the other or others, it is no longer expedient that there should continue to be the present number of joint liquidators.

**Action following acceptance of resignation**

**4.109.** (NO CVL APPLICATION)

(1) This Rule applies where a meeting is summoned to receive the liquidator's resignation.

(2) If the chairman of the meeting is other than the official receiver, and there is passed at the meeting any of the following resolutions—

- (a) that the liquidator's resignation be accepted,
- (b) that a new liquidator be appointed,
- (c) that the resigning liquidator be not given his release,

the chairman shall, within 3 days, send to the official receiver a copy of the resolution.

If it has been resolved to accept the liquidator's resignation, the chairman shall send to the official receiver a certificate to that effect.

(3) If the creditors have resolved to appoint a new liquidator, the certificate of his appointment shall also be sent to the official receiver within that time; and Rule 4.100 shall be complied with in respect of it.

(4) If the liquidator's resignation is accepted, the notice of it required by section 172(6) shall be given by him forthwith after the meeting; and he shall send a copy of the notice to the official receiver.

The notice shall be accompanied by a copy of the account sent to creditors under Rule 4.108(3).

(5) The official receiver shall file a copy of the notice in court.

(6) The liquidator's resignation is effective as from the date on which the official receiver files the copy notice in court, that date to be endorsed on the copy notice.

#### **Action following acceptance of resignation**

**4.110-CVL.**—(1) This Rule applies where a meeting is summoned to receive the liquidator's resignation.

(2) If his resignation is accepted, the notice of it required by section 171(5) shall be given by him forthwith after the meeting.

(3) Where a new liquidator is appointed in place of the one who has resigned, the certificate of his appointment shall be delivered forthwith by the chairman of the meeting to the new liquidator.

#### **Leave to resign granted by the court**

**4.111.**—(1) If at a creditors' meeting summoned to accept the liquidator's resignation it is resolved that it be not accepted, the court may, on the liquidator's application, make an order giving him leave to resign.

(2) The court's order may include such provision as it thinks fit with respect to matters arising in connection with the resignation, and shall determine the date from which the liquidator's release is effective.

(3) The court shall send two sealed copies of the order to the liquidator, who shall send one of the copies forthwith to the official receiver. (NO CVL APPLICATION)

(4-CVL) The court shall send two sealed copies of the order to the liquidator, who shall forthwith send one of them to the registrar of companies.

(5) On sending notice of his resignation to the court, the liquidator shall send a copy of it to the official receiver. (NO CVL APPLICATION)

#### **Advertisement of resignation**

**4.112.** Where a new liquidator is appointed in place of one who has resigned, the former shall, in giving notice of his appointment, state that his predecessor has resigned and (if it be the case) that he has been given his release.

## **Meeting of creditors to remove liquidator**

### **4.113. (NO CVL APPLICATION)**

(1) Where a meeting of creditors is summoned for the purpose of removing the liquidator, the notice summoning it shall indicate that this is the purpose, or one of the purposes, of the meeting; and the notice shall draw the attention of creditors to section 174(4) with respect to the liquidator's release.

(2) A copy of the notice shall at the same time also be sent to the official receiver.

(3) At the meeting, a person other than the liquidator or his nominee may be elected to act as chairman; but if the liquidator or his nominee is chairman and a resolution has been proposed for the liquidator's removal, the chairman shall not adjourn the meeting without the consent of at least one-half (in value) of the creditors present (in person or by proxy) and entitled to vote.

(4) Where the chairman of the meeting is other than the official receiver, and there is passed at the meeting any of the following resolutions—

- (a) that the liquidator be removed,
- (b) that a new liquidator be appointed,
- (c) that the removed liquidator be not given his release,

the chairman shall, within 3 days, send to the official receiver a copy of the resolution.

If it has been resolved to remove the liquidator, the chairman shall send to the official receiver a certificate to that effect.

(5) If the creditors have resolved to appoint a new liquidator, the certificate of his appointment shall also be sent to the official receiver within that time; and Rule 4.100 above shall be complied with in respect of it.

## **Meeting of creditors to remove liquidator**

**4.114-CVL.**—(1) A meeting held under section 171(2)(b) for the removal of the liquidator shall be summoned by him if requested by 25 per cent. in value of the company's creditors, excluding those who are connected with it.

(2) The notice summoning the meeting shall indicate that the removal of the liquidator is the purpose, or one of the purposes, of the meeting; and the notice shall draw the attention of creditors to section 173(2) with respect to the liquidator's release.

(3) At the meeting, a person other than the liquidator or his nominee may be elected to act as chairman; but if the liquidator or his nominee is chairman and a resolution has been proposed for the liquidator's removal, the chairman shall not adjourn the meeting without the consent of at least one-half (in value) of the creditors present (in person or by proxy) and entitled to vote.

## **Court's power to regulate meetings under Rules 4.113, 4.114-CVL**

**4.115.** Where a meeting under Rule 4.113 or 4.114-CVL is to be held, or is proposed to be summoned, the court may, on the application of any creditor, give directions as to the mode of summoning it, the sending out and return of forms of proxy, the conduct of the meeting, and any other matter which appears to the court to require regulation or control under this Rule.

## **Procedure on removal**

### **4.116. (NO CVL APPLICATION)**

(1) Where the creditors have resolved that the liquidator be removed, the official receiver shall file in court the certificate of removal.

(2) The resolution is effective as from the date on which the official receiver files the certificate of removal in court, and that date shall be endorsed on the certificate.

(3) A copy of the certificate, so endorsed, shall be sent by the official receiver to the liquidator who has been removed and, if a new liquidator has been appointed, to him.

(4) The official receiver shall not file the certificate in court unless and until the Secretary of State has certified to him that the removed liquidator has reconciled his account with that held by the Secretary of State in respect of the winding up.

### **Procedure on removal**

**4.117-CVL.** Where the creditors have resolved that the liquidator be removed, the chairman of the creditors' meeting shall forthwith—

- (a) if at the meeting another liquidator was not appointed, send the certificate of the liquidator's removal to the registrar of companies, and
- (b) otherwise, deliver the certificate to the new liquidator, who shall send it to the registrar.

### **Advertisement of removal**

**4.118.** Where a new liquidator is appointed in place of one removed, the former shall, in giving notice of his appointment, state that his predecessor has been removed and (if it be the case) that he has been given his release.

### **Removal of liquidator by the court**

#### **4.119. (NO CVL APPLICATION)**

(1) This Rule applies where application is made to the court for the removal of the liquidator, or for an order directing the liquidator to summon a meeting of creditors for the purpose of removing him.

(2) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for an ex parte hearing, of which he has been given at least 7 days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard.

(3) The court may require the applicant to make a deposit or give security for the costs to be incurred by the liquidator on the application.

(4) The applicant shall, at least 14 days before the hearing, send to the liquidator and the official receiver a notice stating the venue and accompanied by a copy of the application, and of any evidence which he intends to adduce in support of it.

(5) Subject to any contrary order of the court, the costs of the application are not payable out of the assets.

(6) Where the court removes the liquidator—

- (a) it shall send copies of the order of removal to him and to the official receiver;
- (b) the order may include such provision as the court thinks fit with respect to matters arising in connection with the removal; and
- (c) if the court appoints a new liquidator, Rule 4.102 applies.

### **Removal of liquidator by the court**

**4.120-CVL.**—(1) This Rule applies where application is made to the court for the removal of the liquidator, or for an order directing the liquidator to summon a creditors' meeting for the purpose of removing him.

(2) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for an ex parte hearing, of which he has been given at least 7 days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard.

(3) The court may require the applicant to make a deposit or give security for the costs to be incurred by the liquidator on the application.

(4) The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application, and of any evidence which he intends to adduce in support of it.

(5) Subject to any contrary order of the court, the costs of the application are not payable out of the assets.

(6) Where the court removes the liquidator—

- (a) it shall send 2 copies of the order of removal to him, one to be sent by him forthwith to the registrar of companies, with notice of his ceasing to act;
- (b) the order may include such provision as the court thinks fit with respect to matters arising in connection with the removal; and
- (c) if the court appoints a new liquidator, Rule 4.103-CVL applies.

### **Release of resigning or removed liquidator**

#### **4.121. (NO CVL APPLICATION)**

(1) Where the liquidator's resignation is accepted by a meeting of creditors which has not resolved against his release, he has his release from when his resignation is effective under Rule 4.109.

(2) Where the liquidator is removed by a meeting of creditors which has not resolved against his release, the fact of his release shall be stated in the certificate of removal.

(3) Where—

- (a) the liquidator resigns, and the creditors' meeting called to receive his resignation has resolved against his release, or
- (b) he is removed by a creditors' meeting which has so resolved, or is removed by the court,

he must apply to the Secretary of State for his release.

(4) When the Secretary of State gives the release, he shall certify it accordingly, and send the certificate to the official receiver, to be filed in court.

(5) A copy of the certificate shall be sent by the Secretary of State to the former liquidator, whose release is effective from the date of the certificate.

### **Release of resigning or removed liquidator**

**4.122-CVL.**—(1) Where the liquidator's resignation is accepted by a meeting of creditors which has not resolved against his release, he has his release from when he gives notice of his resignation to the registrar of companies.

(2) Where the liquidator is removed by a creditors' meeting which has not resolved against his release, the fact of his release shall be stated in the certificate of removal.

- (3) Where—
  - (a) the liquidator resigns, and the creditors' meeting called to receive his resignation has resolved against his release, or
  - (b) he is removed by a creditors' meeting which has so resolved, or is removed by the court, he must apply to the Secretary of State for his release.
- (4) When the Secretary of State gives the release, he shall certify it accordingly, and send the certificate to the registrar of companies.
- (5) A copy of the certificate shall be sent by the Secretary of State to the former liquidator, whose release is effective from the date of the certificate.

### **Removal of liquidator by Secretary of State**

#### **4.123. (NO CVL APPLICATION)**

- (1) If the Secretary of State decides to remove the liquidator, he shall before doing so notify the liquidator and the official receiver of his decision and the grounds of it, and specify a period within which the liquidator may make representations against implementation of the decision.
- (2) If the Secretary of State directs the removal of the liquidator, he shall forthwith—
  - (a) file notice of his decision in court, and
  - (b) send notice to the liquidator and the official receiver.
- (3) If the liquidator is removed by direction of the Secretary of State—
  - (a) Rule 4.121 applies as regards the liquidator obtaining his release, as if he had been removed by the court, and
  - (b) the court may make any such order in his case as it would have power to make if he had been so removed.