
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE FIRST GROUP OF PARTS

PART 4

COMPANIES WINDING UP

CHAPTER 11

THE LIQUIDATOR

SECTION A: APPOINTMENT AND ASSOCIATED FORMALITIES

Appointment by creditors or contributories

4.100. (NO CVL APPLICATION)

(1) This Rule applies where a person is appointed as liquidator either by a meeting of creditors or by a meeting of contributories.

(2) The chairman of the meeting shall certify the appointment, but not unless and until the person appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.

(3) Where the chairman of the meeting is not the official receiver, he shall send the certificate to him.

(4) The official receiver shall in any case file a copy of the certificate in court; and the liquidator's appointment is effective as from the date on which the official receiver files the copy certificate in court, that date to be endorsed on the copy certificate.

(5) The certificate, so endorsed, shall be sent by the official receiver to the liquidator.

Appointment by creditors or by the company

4.101-CVL.—(1) This Rule applies where a person is appointed as liquidator either by a meeting of creditors or by a meeting of the company.

(2) Subject as follows, the chairman of the meeting shall certify the appointment, but not unless and until the person appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act; the liquidator's appointment is effective from the date of the certificate.

(3) The chairman shall send the certificate forthwith to the liquidator, who shall keep it as part of the records of the liquidation.

(4) Paragraphs (2) and (3) need not be complied with in the case of a liquidator appointed by a company meeting and replaced by another liquidator appointed on the same day by a creditors' meeting.

Appointment by the court

4.102. (NO CVL APPLICATION)

(1) This Rule applies where the liquidator is appointed by the court under section 139(4) (different persons nominated by creditors and contributories) or section 140 (liquidation following administration or voluntary arrangement).

(2) The court's order shall not issue unless and until the person appointed has filed in court a statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.

(3) Thereafter, the court shall send 2 copies of the order to the official receiver. One of the copies shall be sealed, and this shall be sent to the person appointed as liquidator.

(4) The liquidator's appointment takes effect from the date of the order.

(5) The liquidator shall, within 28 days of his appointment, give notice of it to all creditors and contributories of the company of whom he is aware in that period. Alternatively, if the court allows, he may advertise his appointment in accordance with the court's directions.

(6) In his notice or advertisement under this Rule the liquidator shall—

- (a) state whether he proposes to summon meetings of creditors and contributories for the purpose of establishing a liquidation committee, or proposes to summon only a meeting of creditors for that purpose, and
- (b) if he does not propose to summon any such meeting, set out the powers of the creditors under the Act to require him to summon one.

Appointment by the court

4.103-CVL.—(1) This Rule applies where the liquidator is appointed by the court under section 100(3) or 108.

(2) The court's order shall not issue unless and until the person appointed has filed in court a statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.

(3) Thereafter, the court shall send a sealed copy of the order to the liquidator, whose appointment takes effect from the date of the order.

(4) Not later than 28 days from his appointment, the liquidator shall give notice of it to all creditors of the company of whom he is aware in that period. Alternatively, if the court allows, he may advertise his appointment in accordance with the court's directions.

Appointment by Secretary of State

4.104. (NO CVL APPLICATION)

(1) This Rule applies where the official receiver applies to the Secretary of State to appoint a liquidator in place of himself, or refers to the Secretary of State the need for an appointment.

(2) If the Secretary of State makes an appointment, he shall send two copies of the certificate of appointment to the official receiver, who shall transmit one such copy to the person appointed, and file the other in court.

(3) The certificate shall specify the date from which the liquidator's appointment is to be effective.

Authentication of liquidator's appointment

4.105. A copy of the certificate of the liquidator's appointment or (as the case may be) a sealed copy of the court's order, may in any proceedings be adduced as proof that the person appointed is

duly authorised to exercise the powers and perform the duties of liquidator in the company's winding up.

Appointment to be advertised and registered

4.106.—(1) Subject as follows, where the liquidator is appointed by a creditors' or contributories' meeting, or by a meeting of the company, he shall, on receiving his certificate of appointment, give notice of his appointment in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the company's creditors and contributories.

(2-CVL) Paragraph (1) need not be complied with in the case of a liquidator appointed by a company meeting and replaced by another liquidator appointed on the same day by a creditors' meeting.

(3) The expense of giving notice under this Rule shall be borne in the first instance by the liquidator; but he is entitled to be reimbursed out of the assets, as an expense of the liquidation.

The same applies also in the case of the notice or advertisement required where the appointment is made by the court or the Secretary of State.

(4) In the case of a winding up by the court, the liquidator shall also forthwith notify his appointment to the registrar of companies.

This applies however the liquidator is appointed.

Hand-over of assets to liquidator

4.107. (NO CVL APPLICATION)

(1) This Rule applies only where the liquidator is appointed in succession to the official receiver acting as liquidator.

(2) When the liquidator's appointment takes effect, the official receiver shall forthwith do all that is required for putting him into possession of the assets.

(3) On taking possession of the assets, the liquidator shall discharge any balance due to the official receiver on account of—

- (a) expenses properly incurred by him and payable under the Act or the Rules, and
- (b) any advances made by him in respect of the assets, together with interest on such advances at the rate specified in section 17 of the Judgments Act 1838 at the date of the winding-up order.

(4) Alternatively, the liquidator may (before taking office) give to the official receiver a written undertaking to discharge any such balance out of the first realisation of assets.

(5) The official receiver has a charge on the assets in respect of any sums due to him under paragraph (3). But, where the liquidator has realised assets with a view to making those payments, the official receiver's charge does not extend in respect of sums deductible by the liquidator from the proceeds of realisation, as being expenses properly incurred therein.

(6) The liquidator shall from time to time out of the realisation of assets discharge all guarantees properly given by the official receiver for the benefit of the estate, and shall pay all the official receiver's expenses.

(7) The official receiver shall give to the liquidator all such information relating to the affairs of the company and the course of the winding up as he (the official receiver) considers to be reasonably required for the effective discharge by the liquidator of his duties as such.

(8) The liquidator shall also be furnished with a copy of any report made by the official receiver under Chapter 7 of this Part of the Rules.

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.

SECTION C: RELEASE ON COMPLETION OF ADMINISTRATION

Release of official receiver

4.124. (NO CVL APPLICATION)

(1) The official receiver shall, before giving notice to the Secretary of State under section 174(3) (that the winding up is for practical purposes complete), send out notice of his intention to do so to all creditors who have proved their debts.

(2) The notice shall in each case be accompanied by a summary of the official receiver's receipts and payments as liquidator.

(3) The Secretary of State, when he has determined the date from which the official receiver is to have his release, shall give notice to the court that he has done so. The notice shall be accompanied by the summary referred to in paragraph (2).

Final meeting

4.125. (NO CVL APPLICATION)

(1) Where the liquidator is other than the official receiver, he shall give at least 28 days' notice of the final meeting of creditors to be held under section 146. The notice shall be sent to all creditors who have proved their debts; and the liquidator shall cause it to be gazetted at least one month before the meeting is to be held.

(2) The liquidator's report laid before the meeting under that section shall contain 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.

(3) At the final meeting, the creditors may question the liquidator with respect to any matter contained in his report, and may resolve against him having his release.

(4) The liquidator shall give notice to the court that the final meeting has been held; and the notice shall state whether or not he has been given his release, and be accompanied by a copy of the report laid before the final meeting. A copy of the notice shall be sent by the liquidator to the official receiver.

(5) If there is no quorum present at the final meeting, the liquidator shall report to the court that a final meeting was summoned in accordance with the Rules, but there was no quorum present; and the final meeting is then deemed to have been held, and the creditors not to have resolved against the liquidator having his release.

(6) If the creditors at the final meeting have not so resolved, the liquidator is released when the notice under paragraph (4) is filed in court. If they have so resolved, the liquidator must obtain his release from the Secretary of State and Rule 4.121 applies accordingly.

Final meeting

4.126-CVL.—(1) The liquidator shall give at least 28 days' notice of the final meeting of creditors to be held under section 106. The notice shall be sent to all creditors who have proved their debts.

(2) At the final meeting, the creditors may question the liquidator with respect to any matter contained in the account required under the section, and may resolve against the liquidator having his release.

(3) Where the creditors have so resolved, he must obtain his release from the Secretary of State; and Rule 4.122-CVL applies accordingly.

SECTION D: REMUNERATION

Fixing of remuneration

4.127.—(1) The liquidator is entitled to receive remuneration for his services as such.

(2) The remuneration shall be fixed either—

- (a) as a percentage of the value of the assets which are realised or distributed, or of the one value and the other in combination, or
- (b) by reference to the time properly given by the insolvency practitioner (as liquidator) and his staff in attending to matters arising in the winding up.

(3) Where the liquidator is other than the official receiver, it is for the liquidation committee (if there is one) to determine whether the remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.

(4) In arriving at that determination, the committee shall have regard to the following matters—

- (a) the complexity (or otherwise) of the case,
- (b) any respects in which, in connection with the winding up, there falls on the insolvency practitioner (as liquidator) any responsibility of an exceptional kind or degree,
- (c) the effectiveness with which the insolvency practitioner appears to be carrying out, or to have carried out, his duties as liquidator, and
- (d) the value and nature of the assets with which the liquidator has to deal.

(5) If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the liquidation committee.

(6) If not fixed as above, the liquidator's remuneration shall be in accordance with the scale laid down for the official receiver by general regulations.

Other matters affecting remuneration

4.128.—(1) Where the liquidator sells assets on behalf of a secured creditor, he is entitled to take for himself, out of the proceeds of sale, a sum by way of remuneration equivalent to that which is chargeable in corresponding circumstances by the official receiver under general regulations.

(2) Where there are joint liquidators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred—

- (a) to the court, for settlement by order, or
- (b) to the liquidation committee or a meeting of creditors, for settlement by resolution.

(3) If the liquidator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the company, profit costs shall not be paid unless this is authorised by the liquidation committee, the creditors or the court.

Recourse of liquidator to meeting of creditors

4.129. If the liquidator's remuneration has been fixed by the liquidation committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

Recourse to the court

4.130.—(1) If the liquidator considers that the remuneration fixed for him by the liquidation committee, or by resolution of the creditors, or as under Rule 4.127(6), is insufficient, he may apply to the court for an order increasing its amount or rate.

(2) The liquidator shall give at least 14 days' notice of his application to the members of the liquidation committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

(3) If there is no liquidation committee, the liquidator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

(4) The court may, if it appears to be a proper case, order the costs of the liquidator's application, including the costs of any member of the liquidation committee appearing on it, or any creditor so appearing, to be paid out of the assets.

Creditors' claim that remuneration is excessive

4.131.—(1) Any creditor of the company may, with the concurrence of at least 25 per cent. in value of the creditors (including himself), apply to the court for an order that the liquidator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

(2) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; 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, and give notice to the applicant accordingly.

(3) 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 the applicant intends to adduce in support of it.

(4) If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

(5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable out of the assets.

SECTION E: SUPPLEMENTARY PROVISIONS

Liquidator deceased

4.132. (NO CVL APPLICATION)

(1) Subject as follows, where the liquidator (other than the official receiver) has died, it is the duty of his personal representatives to give notice of the fact to the official receiver, specifying the date of the death.

This does not apply if notice has been given under any of the following paragraphs of this Rule.

(2) If the deceased liquidator was a partner in a firm, notice may be given to the official receiver by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners.

(3) Notice of the death may be given by any person producing to the official receiver the relevant death certificate or a copy of it.

(4) The official receiver shall give notice to the court, for the purpose of fixing the date of the deceased liquidator's release.

Liquidator deceased

4.133-CVL.—(1) Subject as follows, where the liquidator has died, it is the duty of his personal representatives to give notice of the fact, and of the date of death, to the registrar of companies and to the liquidation committee (if any) or a member of that committee.

(2) In the alternative, notice of the death may be given—

- (a) if the deceased liquidator was a partner in a firm, by a partner qualified to act as an insolvency practitioner or who is a member of any body approved by the Secretary of State for the authorisation of insolvency practitioners, or
- (b) by any person, if he delivers with the notice a copy of the relevant death certificate.

Loss of qualification as insolvency practitioner

4.134. (NO CVL APPLICATION)

(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) He shall forthwith give notice of his doing so to the official receiver, who shall give notice to the Secretary of State.

The official receiver shall file in court a copy of his notice under this paragraph.

(3) Rule 4.121 applies as regards the liquidator obtaining his release, as if he had been removed by the court.

Loss of qualification as insolvency practitioner

4.135-CVL.—(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) He shall forthwith give notice of his doing so to the registrar of companies and the Secretary of State.

(3) Rule 4.122-CVL applies as regards the liquidator obtaining his release, as if he had been removed by the court.

Vacation of office on making of winding-up order

4.136-CVL. Where the liquidator vacates office in consequence of the court making a winding-up order against the company, Rule 4.122-CVL applies as regards his obtaining his release, as if he had been removed by the court.

Notice to official receiver of intention to vacate office

4.137. (NO CVL APPLICATION)

(1) Where the liquidator intends to vacate office, whether by resignation or otherwise, and there remain any unrealised assets, he shall give notice of his intention to the official receiver, informing him of the nature, value and whereabouts of the assets in question.

(2) Where there is to be a creditors' meeting to receive the liquidator's resignation, or otherwise in respect of his vacation of office, the notice to the official receiver must be given at least 21 days before the meeting.

Liquidator's duties on vacating office

4.138.—(1) Where the liquidator ceases to be in office as such, in consequence of removal, resignation or cesser of qualification as an insolvency practitioner, he is under obligation forthwith to deliver up to the person succeeding him as liquidator the assets (after deduction of any expenses properly incurred, and distributions made, by him) and further to deliver up to that person—

- (a) the records of the liquidation, including correspondence, proofs and other related papers appertaining to the administration while it was within his responsibility, and
- (b) the company's books, papers and other records.

(2) When the winding up is for practical purposes complete, the liquidator shall forthwith file in court all proofs remaining with him in the proceedings. (NO CVL APPLICATION)

SECTION F: THE LIQUIDATOR IN A MEMBERS' VOLUNTARY WINDING UP

Appointment by the company

4.139.—(1) This Rule applies where the liquidator is appointed by a meeting of the company.

(2) Subject as follows, the chairman of the meeting shall certify the appointment, but not unless and until the person appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.

(3) The chairman shall send the certificate forthwith to the liquidator, who shall keep it as part of the records of the liquidation.

(4) Not later than 28 days from his appointment, the liquidator shall give notice of it to all creditors of the company of whom he is aware in that period.

Appointment by the court

4.140.—(1) This Rule applies where the liquidator is appointed by the court under section 108.

(2) The court's order shall not issue unless and until the person appointed has filed in court a statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.

(3) Thereafter, the court shall send a sealed copy of the order to the liquidator, whose appointment takes effect from the date of the order.

(4) Not later than 28 days from his appointment, the liquidator shall give notice of it to all creditors of the company of whom he is aware in that period.

Authentication of liquidator's appointment

4.141. A copy of the certificate of the liquidator's appointment or (as the case may be) a sealed copy of the court's order appointing him may in any proceedings be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of liquidator in the company's winding up.

Company meeting to receive liquidator's resignation

4.142.—(1) Before resigning his office, the liquidator must call a meeting of the company 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.

(2) The notice 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.

(3) 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.

(4) 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 or that of the other or others, it is no longer expedient that there should continue to be the present number of joint liquidators.

(5) The notice of the liquidator's resignation required by section 171(5) shall be given by him forthwith after the meeting.

(6) 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.

Removal of liquidator by the court

4.143.—(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 company 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.

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

- (5) 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 4.140 applies.

Release of resigning or removed liquidator

4.144.—(1) Where the liquidator resigns, he has his release from the date on which he gives notice of his resignation to the registrar of companies.

(2) Where the liquidator is removed by a meeting of the company, he shall forthwith give notice to the registrar of companies of his ceasing to act.

(3) Where the liquidator 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.

Liquidator deceased

4.145.—(1) Subject as follows, where the liquidator has died, it is the duty of his personal representatives to give notice of the fact, and of the date of death, to the company's directors, or any one of them, and to the registrar of companies.

(2) In the alternative, notice of the death may be given—

- (a) if the deceased liquidator was a partner in a firm, by a partner qualified to act as an insolvency practitioner or who is a member of any body approved by the Secretary of State for the authorisation of insolvency practitioners, or
- (b) by any person, if he delivers with the notice a copy of the relevant death certificate.

Loss of qualification as insolvency practitioner

4.146.—(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) He shall forthwith give notice of his doing so to the registrar of companies and the Secretary of State.

(3) Rule 4.144 applies as regards the liquidator obtaining his release, as if he had been removed by the court.

Vacation of office on making of winding-up order

4.147. Where the liquidator vacates office in consequence of the court making a winding-up order against the company, Rule 4.144 applies as regards his obtaining his release, as if he had been removed by the court.

Liquidator's duties on vacating office

4.148. Where the liquidator ceases to be in office as such, in consequence of removal, resignation or cesser of qualification as an insolvency practitioner, he is under obligation forthwith to deliver

up to the person succeeding him as liquidator the assets (after deduction of any expenses properly incurred, and distributions made, by him) and further to deliver up to that person—

- (a) the records of the liquidation, including correspondence, proofs and other related papers appertaining to the administration while it was within his responsibility, and
- (b) the company's books, papers and other records.

*SECTION G: RULES APPLYING IN EVERY WINDING
UP, WHETHER VOLUNTARY OR BY THE COURT*

Power of court to set aside certain transactions

4.149.—(1) If in the administration of the estate the liquidator enters into any transaction with a person who is an associate of his, the court may, on the application of any person interested, 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 with respect to a liquidator's dealings with trust property, or the fiduciary obligations of any person.

Rule against solicitation

4.150.—(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 his appointment, it may order that no remuneration out of the assets be allowed 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 the Rules relating to the liquidator's remuneration.