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STATUTORY INSTRUMENTS

2017 No. 366

INSOLVENCY

COMPANIES

INDIVIDUALS

The Insolvency (England and Wales) (Amendment) Rules 2017

<i>Made</i>	- - - -	<i>10th March 2017</i>
<i>Laid before Parliament</i>		<i>13th March 2017</i>
<i>Coming into force</i>	- -	<i>6th April 2017</i>

The Lord Chancellor has consulted the committee existing for the purposes of section 413 of the Insolvency Act 1986(1) (“the Act”).

The Lord Chancellor, with the concurrence of the Secretary of State and with the concurrence of the Master of the Rolls (nominated by the Lord Chief Justice under section 411(6) and 412(6) of the Act) in relation to those rules which affect court procedure, in exercise of the powers conferred by sections 411 and 412 of the Insolvency Act 1986(2), makes the following Rules.

PART 1

Introductory Rules

Citation and Commencement

1. These Rules may be cited as the Insolvency (England and Wales) (Amendment) Rules 2017 and come into force on 6th April 2017.

(1) 1986 c.45.

(2) Sections 411 and 412 confer on the Lord Chancellor the power to make rules in relation to insolvency in England and Wales with the concurrence of the Secretary of State and the Lord Chief Justice (in the case of rules that affect court procedure). Relevant amendments to sections 411 and 412 are made by regulations 2 and 3 of S.I. 2002/1037; paragraphs 185, 188 and 189 of Schedule 4 to the Constitutional Reform Act 2005 (c.4); paragraphs 1 and 8 of Schedule 20 to the Tribunals, Courts and Enforcement Act 2007 (c.15); paragraph 44 of Schedule 4 to S.I. 2007/2194; and paragraph 79 of Schedule 1 to S.I. 2009/1941.

Extent

2. These Rules extend to England and Wales only.

PART 2

Amendments to the Insolvency (England and Wales) Rules 2016

3. The Insolvency (England and Wales) Rules 2016 are amended as follows.

Definition of “attendance” and “attend”

4. In rule 1.2, for the definition of “attendance and attend” substitute—
““attendance” and “attend” a person attends, or is in attendance at, a meeting who is present or attends remotely in accordance with section 246A or rule 15.6, or who participates in a virtual meeting, whether that person attends the meeting or virtual meeting in person, by proxy, or by corporate representative (in accordance with section 434B or section 323 of the Companies Act, as applicable);”.

Delivery to the creditors and opting out

5. In rule 1.37(1), for “(where the opt out applies)” substitute “unless the opt out does not apply”.

Registrar of companies: covering notices

- 6.—(1) In rule 1.20(1)(k) for “7.68(3)(b)” substitute “7.67(3)(b)”.
- (2) In rule 1.20(1)(l) for “7.69(4)(b)” substitute “7.68(4)(b)”.
- (3) In rule 1.20(m)(iv) for “6A” substitute “(6A)”.

Requisition of physical meeting by creditors

7. For rule 2.31(3), substitute—
“(3) A notice summoning a meeting of the creditors must be delivered to the creditors at least seven days before the day fixed for the meeting.”.

Report of consideration of proposal under section 4(6) and (6A) or paragraph 30(3) and (4) of Schedule A1

- 8.—(1) In rule 2.38(1), after “report” insert “or reports as the case may be”.
- (2) In rule 2.38(2)(b), after “resolution” insert “or whether they abstained”.
- (3) In rule 2.38(3), omit the words from “the deadline” to “correspondence) or”.

Revocation or suspension of IVA

9. In rule 2.40(4), for “a matter to be considered further” substitute “action to be taken”.

Supervisor’s accounts and reports

10. In rule 2.41(8), omit “(2)”.
11. In rule 8.28(7), omit “(3)”.

Appointment taking place out of court business hours: content of notice

12.—(1) In rule 3.21(1)(f)(i), for “from that date” substitute “since notice was given under paragraph 15(1)(a) of Schedule B1”.

(2) In rule 3.21(1)(f)(iii) and (iv), after “consent” insert “in writing”.

(3) In rule 3.21(1)(h), omit the words “and that a statement of the reasons for stating this in the appointer’s possession”.

(4) In rule 3.21(1)(i), after the words “non-EC proceedings” insert “and that a statement of the reasons for stating this is in the appointer’s possession”.

Notice of intention to appoint

13. In rule 3.23(4), for “delivered” substitute “sent”.

Notice of appointment after notice of intention to appoint

14. In rule 3.24(1)(i)(i), for “from that date” substitute “since notice was given under paragraph 26(1) of Schedule B1”.

Statement of affairs: notice requiring and delivery to the administrator (paragraph 47(1) of Schedule B1)

15. For rule 3.29(2)(b)(ii), substitute—

“(ii) the requirement to deliver the statement of affairs to the administrator no later than eleven days after receipt of the notice requiring the statement of affairs;”.

Administrator’s proposals: revisions

16. In rule 3.42, after paragraph (5), insert—

“(6) A copy of the statement of revised proposals under rule 3.43(3) must be delivered to the registrar of companies not later than five days after the report under rule 3.43(1) is delivered.”

Receivers or managers appointed under an instrument: acceptance of appointment (section 33)

17. In rule 4.1(1), after the word “applies” in the second place it occurs, insert “(other than those appointed under section 51 (Scottish Receiverships))”.

Removal of liquidator by the court

18. In rule 5.7(7)(g)(ii), for “meeting of the company’s creditors” substitute “company meeting”.

Application for and appointment of special manager (section 177)

19. In rule 5.17(3)(h), for “177(4)” substitute “177(3)”.

20. In rule 6.37(3)(h), for “177(4)” substitute “177(3)”.

21. In rule 7.93(3)(g), for “177(4)” substitute “177(3)”.

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

22. In rule 6.13(1)(b), for "6.10" substitute "6.11".

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

23. In rule 6.12(6), for "deliver" substitute "send".

Appointment by creditors or by the company

24. For rule 6.20(2), substitute—

"(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."

Definition of "approval" and "authorisation"

25. In rule 6.44(1), in the definition of "approval" and "authorisation", for "176ZA(3)" substitute "176ZA(1)".

General Rule as to Priority

26. For rule 7.108(2), substitute—

"(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;
 - (iv) payments made as a result of an assignment or a settlement of any such action, arrangement or procedure in lieu of or before any judgment being given or award being made; and
- (b) subject as provided in rules 7.111 to 7.116, property comprised in or subject to a floating charge created by the company."

Report of the creditors' consideration of a proposal

27. For rule 8.24(2)(b), substitute—

"(b) list the creditors who voted or attended or who were represented at the meeting or decision procedure (as applicable) used to consider the proposal, setting out (with their respective values) how they voted on each resolution or whether they abstained;"

Debt Relief Orders, Excluded Debts

28. In rule 9.2(3)—

- (a) in sub-paragraph (b), omit “and”; and
- (b) for sub-paragraph (c) substitute—
“and includes any interest on the loan and any penalties or charges incurred in connection with it.”.

Income Payments Agreements, Interpretation

29. Before rule 10.115 insert—

“Interpretation

10.114A. In this Chapter, the “permitted fee” means the amount which is prescribed for the purposes of section 7(4)(a) of the Attachment of Earnings Act 1971.”

Annulment, the hearing

30. After rule 10.137(5), insert—

“(6) The adjudicator is not in any event to be liable for costs arising on an application under section 282.”

Bankruptcy, general rule as to priority

31. In rule 10.149(a)(i) for the words “the bankrupt” in the second place they occur, substitute “the official receiver or the trustee”.

Criminal bankruptcy, application

32. Before rule 10.154 insert—

“Application

10.153A. The rules in this chapter apply to proceedings arising out of criminal bankruptcy orders.”.

Rules not applying in criminal bankruptcy

33. Omit rule 10.158(a).

Appeals and reviews of court orders in corporate insolvency

34. In rule 12.59(2)(b)(iii), after “Registrar in Bankruptcy” insert “of the High Court”.

The prescribed decision procedures

35. In rule 15.3(d), omit “or”.

Physical meetings, calculation of the value of creditor’s debt

36. In rule 15.6, after (7) insert—

“(8) For the purpose of determining whether the thresholds under section 246ZE(7) or 379ZA(7) are met, the convener must calculate the value of the creditor’s debt by reference to rule 15.31.”.

Notices to creditors of decision procedure

37. In rule 15.8(3)—

- (a) in sub-paragraph (e), omit “except in the case of a decision in relation to a proposed CVA or IVA,”;
- (b) in sub-paragraph (h), after “173(2)” insert “, 174(2)”; and
- (c) in sub-paragraph (i), after “section” insert “299(1) or”.

Chair at meetings

38. After rule 15.21, insert—

“(2) However, where a decision on the appointment of a liquidator under rule 6.14(2) (b), 6.14(4) or 6.14(6) is made by a meeting or a virtual meeting, the chair of the meeting must be the convener.”

Requisite majorities

39. For 15.34(2), substitute—

“(2) In the case of an administration, a decision is not made if those voting against it include more than half in value of the creditors to whom notice of the decision procedure was delivered who are not, to the best of the convener’s or chair’s belief, persons connected with the company.”

Blank proxy

40. In rule 16.3—

(a) for paragraph (2) substitute—

“(2) A blank proxy must state that the creditor, member or contributory named in the document (when completed) appoints a person who is named or identified as the proxy-holder of the creditor, member or contributory.”;

(b) in paragraph (3)(b), omit “and”;

(c) for paragraph (c), substitute—

“(c) a statement that the proxy is either—

- (i) for a specific meeting, which is identified in the proxy, or
- (ii) a continuing proxy for the proceedings; and

(d) if the proxy is for a specific meeting, instructions as to the extent to which the proxy holder is directed to vote in a particular way, to abstain or to propose any resolution.”

Information about remuneration

41.—(1) For rule 18.4(1)(e)(i), substitute—

“(i) in a case other than a members’ voluntary winding up, the remuneration expected to be charged by the office-holder is likely to exceed the fees estimate under rule 18.16(4) or any approval given,”.

(2) In rule 18.4(1)(f), for “and” in the first place it occurs, substitute “or”.

Progress reports in voluntary winding up: timing

- 42.—(1) In rule 18.7(5)—
- (a) after the word “after”, insert “a notice is delivered under rule 5.9(1) (members’ voluntary winding up) or after”;
 - (b) omit the words “94 or”; and
 - (c) omit the words “to members (members’ voluntary winding up) or”.
- (2) In rule 18.7(6), for “send” substitute “deliver”.

Creditors’ and members’ requests for further information in administration, winding up and bankruptcy

- 43.—(1) In rule 18.9(1), after “final report” insert “or account”.
- (2) In rule 18.9(2), after “report” insert “or account”.

Remuneration: procedure for initial determination in an administration

44. In rule 18.18(3), after the word “procedure” insert “except in a case under paragraph (4)”.

Savings in respect of meetings taking place on or after the commencement date and resolutions by correspondence

45. In paragraph 5(1)(d) of Schedule 2—
- (a) omit the word “progress”;
 - (b) for “section 104A” substitute “sections 93 or 105”.
46. In paragraph 5(2) of Schedule 2, omit subparagraph (j).

Savings in respect of final meetings taking place on or after the commencement date

47. In paragraph 6(1)(a)(iii) of Schedule 2—
- (a) for “section 94” substitute “sections 94, 106, 146 or 331”; and
 - (b) omit “prior to dissolution”.

Progress reports and statements to the registrar of companies

48. In paragraph 7(2) of Schedule 2, omit “but has not been registered on the commencement date” and “once the notice has been registered”.
49. After paragraph 7(4) of Schedule 2 insert—
- “(5) Where rules 18.6, 18.7 or 18.8 prescribe the periods for which progress reports must be made but before the commencement date an office-holder has ceased to act resulting in a change in reporting period under 1986 rule 2.47(3A), 2.47(3B) 4.49B(5), 4.49C(3), or 6.78A(4), the period for which reports must be made is the period for which reports were required to be made under the 1986 Rules immediately before the commencement date.”

Service of notice of intention to appoint

50. In the table of requirements for service under paragraph 6 of Schedule 4, in the third column, against the corresponding entries in the first column “3.16 (& para 15 of Sch B1)” and “3.23 (& para 26 of Sch B1)”, for “Claim form” substitute “Other document”.

Calculation of time periods

51. In Schedule 5—

(a) for paragraph 2(2)(a)(ii)(aa) substitute—

“(aa) the day before the date corresponding to the date in the month on which it begins, or”; and

(b) for paragraph 2(2)(b)(ii)(aa) substitute—

“(aa) the day after the date corresponding to the date in the month on which it ends, or”.

Information to be provided in the bankruptcy application

52. In paragraph 16(c) of Schedule 8, after “is” insert “or was”.

Information to be given to creditors

53. In paragraph 15(b) of Schedule 9, after “is” insert “or was”.

54. In paragraph 16 of Schedule 9, for “in relation of” substitute “in relation to”.

55. In paragraphs 17, 18 and 22 of Schedule 9 for “in relation to” substitute “in respect of”.

Signed by the authority of the Lord Chancellor

9th March 2017

Oliver Heald
Minister of State
Ministry of Justice

I concur, by the authority of the Lord Chief Justice

10th March 2017

Geoffrey Vos
Chancellor of the High Court

I concur, on behalf of the Secretary of State

9th March 2017

Margot James
Minister for Small Business, Consumer and
Corporate Responsibility
Department for Business, Energy and Industrial
Strategy

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend provisions in the Insolvency (England and Wales) Rules 2016, which come into force on 6th April 2017. The purpose of these amendments is to effect minor corrections and clarifications.

No impact assessment has been prepared for these Rules as no impact on the private or voluntary sectors is foreseen.

An Explanatory Memorandum has been prepared and is available alongside these Rules at www.legislation.gov.uk.