

SCHEDULE 1

PART 4

AMENDMENTS TO PART 4 OF THE PRINCIPAL RULES

Amendment to Rule 4.001

13. At end of paragraph (6) of Rule 4.001 there shall be inserted—

“(7) In a voluntary winding up which is commenced by the registration of a notice under paragraph 84(2) of Schedule B1 to the Order, the following provisions of this Part shall not apply—

Rules 4.037, 4.042, 4.053, 4.056, 4.058, 4.069, 4.107, 4.110, 4.113, 4.160, 4.161, 4.216-4.220.”.

Amendments to Rule 4.007

14. In Rule 4.007—

(a) for paragraph (2) there shall be substituted—

“(2) No petition shall be filed unless there is produced on presentation of the petition a receipt for the deposit payable or paragraph (2A) applies.

(2A) This paragraph applies in any case where the Department has given written notice to the court that the petitioner has made suitable alternative arrangements for the payment of the deposit to the official receiver and such notice has not been revoked in relation to the petitioner in accordance with paragraph (2B).

(2B) A notice of the kind referred to in paragraph (2A) may be revoked in relation to the petitioner in whose favour it is given by a further notice in writing to the court stating that the earlier notice is revoked in relation to the petitioner.”;

(b) in paragraph (4)(c) for the words “if an administration order is in force in relation to the company” there shall be substituted “if the company is in administration”;

(c) in paragraph (7)(b) for the words “the number of the petition on which the administration order was made and the date of that order” there shall be substituted “the court case number and the date that the company entered administration”;

(d) for paragraph (7)(c) there shall be substituted—

“(c) where applicable, contain an application under paragraph 80 of Schedule B1, requesting that the appointment of the administrator shall cease to have effect.”.

Amendment to Rule 4.010

15. In paragraph (2) of Rule 4.010 for the words “an administration order is in force in relation to it” there shall be substituted “the company is in administration”.

Amendment to Rule 4.011

16. In Rule 4.011(5)(a) after “the name” there shall be inserted “and registered number”.

Amendment to Rule 4.012

17. After paragraph (7) of Rule 4.012 there shall be inserted—

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“(8) The affidavit shall state whether, in the opinion of the person making the application, (i) the EC Regulation will apply and (ii) if so, whether the proceedings will be main proceedings or territorial proceedings.”.

Amendment to Rule 4.029

18. In Rule 4.029—

(a) in paragraph (2)—

(i) in sub-paragraph (a) for “2” there shall be substituted “3”; and

(ii) in sub-paragraph (b)(i) for “2” there shall be substituted “3”; and

(b) for paragraph (3) there shall be substituted—

“(3) Of the 3 copies of the order sent to the official receiver under paragraph (2)(a), or to another person under paragraph (2)(b)(i) of this Rule—

(i) one shall in each case be sent by the recipient to the company, or if a liquidator has been appointed for the company’s voluntary winding-up, to him; and

(ii) one shall be sent with Form 4.16A to the registrar.”.

Amendment to Rule 4.047

19. After Rule 4.047(1) there shall be inserted—

“(1A) The official receiver shall also include in the report under paragraph (1)—

(a) to the best of his knowledge and belief—

(i) an estimate of the value of the prescribed part (whether or not he proposes to make an application to the court under Article 150A(5) or Article 150A(3) applies);

(ii) an estimate of the value of the company’s net property; and

(b) whether, and if so, why, he proposes to make an application to court under Article 150A(5).

(1B) Nothing in this Rule is to be taken as requiring any such estimate to include any information, the disclosure of which could seriously prejudice the commercial interests of the company. If such information is excluded from the calculation the estimate shall be accompanied by a statement to that effect.”.

Amendment to Rule 4.053

20. After Rule 4.053 (which becomes paragraph (1) of Rule 4.053) there shall be inserted—

“(2) The report under paragraph (1) shall also include—

(a) to the best of the liquidator’s knowledge and belief—

(i) an estimate of the value of the prescribed part (whether or not he proposes to make an application to court under Article 150A(5) or Article 150A(3) applies); and

(ii) an estimate of the value of the company’s net property; and

(b) whether, and if so, why, the liquidator proposes to make an application to court under Article 150A(5).

(3) Nothing in this Rule is to be taken as requiring any such estimate to include any information, the disclosure of which could seriously prejudice the commercial interests of

the company. If such information is excluded from the calculation the estimate shall be accompanied by a statement to that effect.”.

Amendments to Rule 4.054

21. After the words “formerly its administrator” there shall be inserted the words “or a person is appointed as liquidator upon the registration of a notice under paragraph 84(2) of Schedule B1 to the Order” and for the words “Rule 2.19” there shall be substituted the words “Rule 2.034”.

Amendment to Rule 4.056

22. In Rule 4.056-CVL(2) after “summoning the meeting shall” there shall be inserted “state the name of the company and the registered number of the company, and”.

Amendment to Rule 4.079

23. After paragraph (7) of Rule 4.079 there shall be inserted—

“(8) Where a winding up is immediately preceded by an administration, a creditor proving in the administration shall be deemed to have proved in the winding up.”.

Substitution of Rule 4.080

24. For Rule 4.080 there shall be substituted—

“Supply of Forms

(NO CVL APPLICATION)

4.080. A form of proof shall be sent to any creditor of the company by the liquidator where the creditor so requests.

[E.R. 4.74]”

Amendment to Rule 4.081

25. For Rule 4.081(1) there shall be substituted—

“(1) Subject to Rule 4.079(5), the following matters shall be stated in a creditor’s proof of debt—

- (a) the creditor’s name and address, and, if a company, its company registration number;
- (b) the total amount of his claim (including any Value Added Tax) as at the date on which the company went into liquidation;
- (c) whether or not that amount includes outstanding uncapitalised interest;
- (d) particulars of how and when the debt was incurred by the company;
- (e) particulars of any security held, the date when it was given and the value which the creditor puts upon it;
- (f) details of any reservation of title in respect of goods to which the debt refers; and
- (g) the name, and address and authority of the person signing the proof (if other than the creditor himself).”.

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Substitution of Rule 4.096

26. For Rule 4.096 there shall be substituted—

“Mutual credits and set-off

4.096.—(1) This Rule applies where, before the company goes into liquidation there have been mutual credits, mutual debts or other mutual dealings between the company and any creditor of the company proving or claiming to prove for a debt in the liquidation.

(2) The reference in paragraph (1) of this Rule to mutual credits, mutual debts or other mutual dealings does not include—

- (a) any debt arising out of an obligation incurred at a time when the creditor had notice that—
 - (i) a meeting of creditors had been summoned under Article 84; or
 - (ii) a petition for the winding up of the company was pending;
- (b) any debt arising out of an obligation where—
 - (i) the liquidation was immediately preceded by an administration; and
 - (ii) at the time the obligation was incurred the creditor had notice that an application for an administration order was pending or a person had given notice of intention to appoint an administrator;
- (c) any debt arising out of an obligation incurred during an administration which immediately preceded the liquidation; or
- (d) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—
 - (i) after the company went into liquidation;
 - (ii) at a time when the creditor had notice that a meeting of creditors had been summoned under Article 84;
 - (iii) at a time when the creditor had notice that a winding up petition was pending;
 - (iv) where the liquidation was immediately preceded by an administration, at a time when the creditor had notice that an application for an administration order was pending or a person had given notice of intention to appoint an administrator; or
 - (v) during an administration which immediately preceded the liquidation.

(3) An account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sums due from one party shall be set off against the sums due from the other.

(4) A sum shall be regarded as being due to or from the company for the purposes of paragraph (3) of this Rule whether—

- (a) it is payable at present or in the future;
- (b) the obligation by virtue of which it is payable is certain or contingent; or
- (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(5) Rule 4.092 shall also apply for the purposes of this Rule to any obligation to or from the company which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.

(6) Rules 4.097 to 4.099 shall apply for the purposes of this Rule in relation to any sums due to the company which—

- (a) are payable in a currency other than sterling;
- (b) are of a periodical nature; or
- (c) bear interest.

(7) Rule 11.13 shall apply for the purposes of this Rule to any sum due to or from the company which is payable in the future.

(8) Only the balance (if any) of the account owed to the creditor is provable in the liquidation. Alternatively the balance (if any) owed to the company shall be paid to the liquidator as part of the assets except where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) shall be paid if and when that debt becomes due and payable.

(9) In this Rule “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

[E.R. 4.90]”

Amendment to Rule 4.097

27. In Rule 4.097—

- (a) at the end of paragraph (1) there shall be inserted “or, if the liquidation was immediately preceded by an administration, on the date that the company entered administration”.
- (b) In paragraph (2) for the words “middle market rate at the Bank of England” there shall be substituted “middle exchange rate on the London Foreign Exchange Market at the close of business”.

Amendment to Rule 4.098

28. At the end of Rule 4.098(1) there shall be inserted “or, if the liquidation was immediately preceded by an administration, up to the date that the company entered administration”.

Substitution of Rule 4.099

29. For Rule 4.099 there shall be substituted—

“Interest

4.099.—(1) Where a debt proved in the liquidation bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the company went into liquidation or, if the liquidation was immediately preceded by an administration, any period after the date that the company entered administration.

(2) In the circumstances described in paragraphs (3) and (4) of this Rule, and subject to paragraph (5) of this Rule, the creditor’s claim may include interest on the debt for periods before the company went into liquidation, although not previously reserved or agreed.

(3) If the debt is due by virtue of a written instrument, and payable at a certain time, interest may be claimed for the period from that time to the date when the company went into liquidation.

(4) If the debt is due otherwise, interest may only be claimed if, before that date, a demand for payment of the debt was made in writing by or on behalf of the creditor, and

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notice given that interest would be payable from the date of the demand to the date of payment.

(5) Interest under paragraph (4) may only be claimed for the period from the date of the demand to that of the company's going into liquidation and for all the purposes of the Order and the Rules shall be chargeable at a rate not exceeding that mentioned in paragraph (6).

(6) The rate of interest to be claimed under paragraphs (3) and (4) is the rate applicable to a money judgment of the High Court on the date when the company went into liquidation.

[E.R. 4.93]"

Amendments to Rule 4.100

30. In Rule 4.100 after "went into liquidation," there shall be inserted "or, if the liquidation was immediately preceded by an administration, on the date that the company entered administration".

Amendment to Rule 4.112

31. After the words "the court's order" there shall be inserted the words "or a copy of the notice registered in accordance with paragraph 84(2) of Schedule B1 to the Order".

Amendment to Rule 4.131

32. In Rule 4.131—

- (a) in paragraph (1) for the words "who have proved their debts" there shall be substituted "of which he is aware";
- (b) after paragraph (2) there shall be inserted—
 - "(2A) The summary of receipts and payments referred to in paragraph (2) shall also include a statement as to the amount paid to unsecured creditors by virtue of the application of Article 150A (prescribed part)."

Amendment to Rule 4.132

33. In Rule 4.132—

- (a) in paragraph (1) for the words "who have proved their debts" there shall be substituted "of which he is aware";
- (b) after paragraph (2) there shall be inserted—
 - "(2A) The liquidator's report shall also contain a statement as to the amount paid to unsecured creditors by virtue of the application of Article 150A (prescribed part)."
- (c) in paragraph (4) for the words "official receiver" there shall be substituted "Department".

Insertion of new Rule 4.132A

34. After Rule 4.132 there shall be inserted—

"Rule as to reporting

4.132A.—(1) The court may, on the liquidator or official receiver's application, relieve him of any duty imposed on him by Rule 4.131 or 4.132, or authorise him to carry out the duty in a way other than there required.

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(2) In considering whether to act under this Rule, the court shall have regard to the cost of carrying out the duty, to the amount of the assets available, and to the extent of the interest of creditors or contributories, or any particular class of them.

[E.R. 4.125A]”

Amendments to Rule 4.133

35. In Rule 4.133—

- (a) in paragraph (2) after “the account required under the Article” there shall be inserted “or paragraph (4) of this Rule”; and
- (b) after paragraph (3) there shall be inserted—

“(4) The account of the winding up required under Article 92 shall also include a statement as to the amount paid to unsecured creditors by virtue of the application of Article 150A (prescribed part).”.

Amendment to Rule 4.134

36. For paragraph (6) of Rule 4.134 there shall be substituted—

“(6) Where the liquidator is not the official receiver and his remuneration is not fixed as above, the liquidator shall be entitled to remuneration fixed in accordance with the provisions of Rule 4.134A.”.

Insertion of New Rules 4.134A and 4.134B

37. After Rule 4.134 there shall be inserted—

“Liquidator’s entitlement to remuneration where it is not fixed under Rule 4.134

4.134A.—(1) This Rule applies where the liquidator is not the official receiver and his remuneration is not fixed in accordance with Rule 4.134.

(2) The liquidator shall be entitled by way of remuneration for his services as such, to such sum as is arrived at by—

- (a) first applying the realisation scale set out in Schedule 4 to the monies received by him from the realisation of the assets of the company (including any Value Added Tax thereon but after deducting any sums paid to secured creditors in respect of their securities and any sums spent out of money received in carrying on the business of the company); and
- (b) then by adding to the sum arrived at under sub-paragraph (a) such sum as is arrived at by applying the distribution scale set out in Schedule 4 to the value of assets distributed to creditors of the company (including payments made in respect of preferential debts) and to contributories.

[E.R. 4.127A]

Liquidator’s remuneration where he realises assets on behalf of chargeholder

4.134B.—(1) This Rule applies where the liquidator is not the official receiver and realises assets on behalf of a secured creditor.

(2) Where the assets realised for a secured creditor are subject to a charge which when created was a mortgage or a fixed charge, the liquidator shall be entitled to such sum by way of remuneration as is arrived at by applying the realisation scale set out in Schedule 4

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to the monies received by him in respect of the assets realised (including any sums received in respect of Value Added Tax thereon but after deducting any sums spent out of money received in carrying on the business of the company).

(3) Where the assets realised for a secured creditor are subject to a charge which when created was a floating charge, the liquidator shall be entitled to such sum by way of remuneration as is arrived at by—

- (a) first applying the realisation scale set out in Schedule 4 to monies received by him from the realisation of those assets (including any Value Added Tax thereon but ignoring any sums received which are spent in carrying on the business of the company); and
- (b) then by adding to the sum arrived at under sub-paragraph (a) such sum as is arrived at by applying the distribution scale set out in Schedule 4 to the value of the assets distributed to the holder of the charge and payments made in respect of preferential debts.

[E.R. 4.127B]”

Amendment to Rule 4.135

38. Omit Rule 4.135(1).

Amendment to Rule 4.145

39. Omit Rule 4.145(2).

Amendment to Rule 4.156

40. In Rule 4.156—

(a) for paragraph (4) there shall be substituted—

“(4) Where the liquidator’s remuneration is not fixed under paragraphs (2) and (3) of this Rule, the liquidator shall be entitled to remuneration calculated in accordance with the provisions of Rule 4.156A.”;

(b) in paragraph (5) after “Rule 4.135” there shall be inserted “and Rule 4.134B”.

Insertion of new Rule 4.156A

41. After Rule 4.156 there shall be inserted—

“Liquidator’s remuneration in members’ voluntary liquidation where it is not fixed under Rule 4.156

4.156A.—(1) This Rule applies where the liquidator’s remuneration is not fixed in accordance with Rule 4.156.

(2) The liquidator shall be entitled by way of remuneration for his services as such, to such sum as is arrived at by—

- (a) first applying the realisation scale set out in Schedule 4 to the monies received by him from the realisation of the assets of the company (including any Value Added Tax thereon but after deducting any sums paid to secured creditors in respect of their securities and any sums spent out of money received in carrying on the business of the company); and

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- (b) then by adding to the sum arrived at under sub-paragraph (a) such sum as is arrived at by applying the distribution scale set out in Schedule 4 to the value of assets distributed to creditors of the company (including payments made in respect of preferential debts) and to contributories.

[E.R. 4.148B]”

Amendment to Rule 4.167

42. In paragraph (4) of Rule 4.167 after the word “bankrupt” there shall be inserted “or a disqualified director,” and for the words “composition or arrangement with his creditors” there shall be substituted “bankruptcy restrictions order”.

Amendment to Rule 4.169

43. In paragraph (1)(a) of Rule 4.169 omit the words “or compounds or arranges with his creditors”.

Amendment to Rule 4.182

44. In paragraph (1)(a) of Rule 4.182 for the words “immediately upon the discharge of an administration order under Part III of the Order” there shall be substituted the words “by the court upon an application under paragraph 80 of Schedule B1 to the Order”.

Amendments to Rule 4.183

45. In Rule 4.183—

- (a) in paragraph (1) for the words “Article 38” there shall be substituted the words “paragraph 58 of Schedule B1 to the Order”; and
- (b) in paragraph (2) for the words “Article 38” there shall be substituted the words “paragraph 58 of Schedule B1 to the Order”.

Amendment to Rule 4.184

46. In paragraph (1) of Rule 4.184 for the words “Article 38” there shall be substituted the words “paragraph 58 of Schedule B1 to the Order”.

Amendments to Rule 4.194

47. In Rule 4.194(1) after “liquidation committee” there shall be inserted “(or if there is no such committee, a meeting of the company’s creditors)” and after “under” insert “Article 140(2) or”.

Amendment to Rule 4.228

48. In Rule 4.228—

- (a) in paragraph (1)(c) after the words “under Article 361” there shall be inserted the words “or Article 361A”;
- (b) in paragraph (1)(o) for the words “to the official receiver under general regulations” there shall be substituted “under Schedule 4”.

Amendment to Rule 4.233

49. Omit paragraph (5) of Rule 4.233.

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Amendment to Rule 4.241

50. In Rule 4.241(3) after “4.132(1) (final meeting),” there shall be inserted “4.132A(2) (rule on reporting),”.