
STATUTORY RULES OF NORTHERN IRELAND

2008 No. 118

**INSOLVENCY
COMPANIES**

The Insolvency (Amendment) Rules (Northern Ireland) 2008

Made - - - - 12th March 2008

To be laid before Parliament

Coming into operation 6th April 2008

The Lord Chancellor makes the following Rules in exercise of the powers conferred by Article 359 of the Insolvency (Northern Ireland) Order 1989(1), with the concurrence of the Department of Enterprise, Trade and Investment, and, in relation to those rules that affect court procedure, with the concurrence of the Lord Chief Justice under Article 359(1A) of that Order.

In accordance with Article 360 of that Order the Lord Chancellor has consulted the Committee appointed to review Rules.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Insolvency (Amendment) Rules (Northern Ireland) 2008 and shall come into operation on 6th April 2008 (“the commencement date”).

(2) In these Rules—

“the principal Rules” means the Insolvency Rules (Northern Ireland) 1991(2), (any reference to a numbered Rule being a reference to a Rule so numbered in the principal Rules unless the context otherwise requires);

“the Order” means the Insolvency (Northern Ireland) Order 1989 (any reference to a numbered Article being a reference to an Article of that Order).

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- (1) S.I. 1989/2405 (N.I. 19). Section 1282 of the Companies Act 2006 (c. 46) inserted a new Article 150ZA into the Insolvency (Northern Ireland) Order 1989 providing for the payment and priority of general expenses of a winding up subject to exceptions prescribed by rules made under Article 359 of the 1989 Order. Article 359 of the Insolvency (Northern Ireland) Order 1989 was amended by the Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) 2002 (S.R. 2002 No. 223).
- (2) The Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364), as amended by the Insolvency (Amendment) Rules (Northern Ireland) 1994 (S.R. 1994 No. 26), the Insolvency (Amendment) Rules (Northern Ireland) 1995 (S.R. 1995 No. 291), the Insolvency (Amendment) Rules (Northern Ireland) 2000 (S.R. 2000 No. 247), the Insolvency (Amendment) Rules (Northern Ireland) 2002 (S.R. 2002 No. 261), the Insolvency (Amendment) Rules (Northern Ireland) 2003 (S.R. 2003 No. 549), the Insolvency (Amendment) Rules (Northern Ireland) 2006 (S.R. 2006 No. 47) and the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2004 (S.I. 2004/355).

Transitional provisions

2.—(1) The amendments to the principal Rules made by Rules 4, 5 and 6 of these Rules and the references in Rule 10(b) to the insertion of Form 4.74 into Schedule 2 to the principal Rules and in Rule 10(a) to the insertion of an entry for that form in the index of forms in Part 4 of that schedule shall apply—

- (a) to a creditors' voluntary winding up—
 - (i) in respect of which the resolution is passed; or
 - (ii) where it commenced as a members' voluntary winding up, for which the conversion to a creditors' voluntary winding up under Article 82 takes effect; or
 - (iii) in respect of which a notice is registered under paragraph 84 of Schedule B1 to the Order;
 on or after the commencement date;
- (b) to a members' voluntary winding up for which the resolution is passed on or after the commencement date; and
- (c) to a winding up of a company by the court where the winding-up order is made on or after the commencement date except where the winding-up order is made following a resolution for a voluntary winding up passed by that company before the commencement date.

(2) Rule 4.238 of the principal Rules as it stood before the commencement date shall, in relation to any arrangements referred to in paragraph (1) of that Rule which have been completed before that date, continue to apply to a person who was the director or shadow director of the insolvent company the whole, or substantially the whole, of whose business is acquired.

Amendments to the principal Rules

3. The principal Rules shall be amended as set out in Rules 4 to 10.
4. In Rule 4.228 (general rule as to priority),
 - (a) in paragraph (1) for the words “The expenses of the liquidation” at the beginning of that paragraph, to and including the words “by the official receiver” at the end of sub-paragraph (a)(iii), substitute the following—

“All fees, costs, charges and other expenses incurred in the course of the liquidation are to be regarded as expenses of the liquidation.
 - (2) The expenses of the liquidation are payable out of—
 - (a) assets of the company available for the payment of general creditors, which shall be taken to include proceeds—
 - (i) of any legal action which the liquidator has power to bring in his own name or in the name of the company; or
 - (ii) arising from any award made under any arbitration or other dispute resolution procedure which the liquidator has power to bring in his own name or in the name of the company;
 which shall, for the purposes of this sub-paragraph, also include—
 - (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; and
 - (iv) payments made as a result of a settlement of any such action, arrangement or procedure in lieu of or prior to any judgement being given or award being made;

- (b) subject as provided in Rules 4.228A to 4.228E, property comprised in or subject to a floating charge created by the company.
- (3) Subject as provided in Rules 4.228A to 4.228E, the expenses are payable in the following order of priority—
 - (a) expenses which—
 - (i) are properly chargeable or incurred by the provisional liquidator in carrying out the functions conferred on him by the court;
 - (ii) are properly chargeable or incurred by the official receiver or the liquidator in preserving, realising or getting in any of the assets of the company or otherwise in the preparation or conduct of any legal proceedings, arbitration or other dispute resolution procedures, which he has power to bring in his own name or bring or defend in the name of the company or in the preparation or conduct of any negotiations intended to lead or leading to a settlement or compromise of any legal action or dispute to which the proceedings or procedures relate;
 - (iii) relate to the employment of a shorthand writer, if appointed by an order of the court made at the instance of the official receiver in connection with an examination; or
 - (iv) are incurred in holding an examination under Rule 4.224 (examinee unfit) where the application for it was made by the official receiver;”.
 - (b) Delete paragraph (2).
 - (c) After new paragraph (3) insert new paragraph (4).

“(4) Sub-paragraphs (a)(iii) and (1a) of paragraph (3) shall apply to the costs of a mechanical recording as they apply to the costs of a shorthand writer.”.

5. After Rule 4.228 insert—

“Litigation expenses and property subject to a floating charge — general provisions

4.228A.—(1) In this Rule and Rules 4.228B to 4.228E—

- (a) “approval” and “authorisation” respectively mean:
 - (i) where yet to be incurred, the approval; and
 - (ii) where already incurred the authorisation, of expenses specified in Article 150ZA(3);
- (b) “the creditor” means—
 - (i) a preferential creditor of the company; or
 - (ii) a holder of a debenture secured by, or a holder of, a floating charge created by the company.
- (c) “legal proceedings” means -
 - (i) proceedings under Articles 176, 177, 178, 202, 203, 206 and 367 and any arbitration or other dispute resolution proceedings invoked for purposes corresponding to those to which the Articles relate and any other proceedings, including arbitration or other dispute resolution procedures, which a liquidator has power to bring in his own name for the purpose of preserving, realising, or getting in any of the assets of the company;

- (ii) legal actions and proceedings, arbitration or any other dispute resolution procedures which a liquidator has power to bring or defend in the name of the company; and
- (iii) negotiations intended to lead or leading to a settlement or compromise of any action, proceeding or procedure to which sub-paragraph (i) or (ii) relate.
- (d) “litigation expenses” means expenses of a liquidation which—
 - (i) are properly chargeable or incurred in the preparation or conduct of any legal proceedings; and
 - (ii) as expenses in the liquidation, exceed, or in the opinion of the liquidator are likely to exceed (and only in so far as they exceed or are likely to exceed), in the aggregate £5000.

(2) Litigation expenses shall not have the priority provided by Article 150ZA over any claims to property comprised in or subject to a floating charge created by the company and shall not be paid out of any such property unless and until approved or authorised in accordance with Rules 4.228B to 4.228E.

Litigation expenses and property subject to a floating charge — requirement for approval or authorisation

4.228B.—(1) Subject to Rules 4.228C to 4.228E, paragraphs (2) and (3) or (4) apply where, in the course of winding up a company, the liquidator—

- (a) ascertains that property is comprised in or subject to a floating charge;
- (b) has himself instituted or proposes to institute or continue legal proceedings or is in the process of defending or proposes to defend any legal proceeding brought or likely to be brought against the company; and
- (c) prior to or at any stage in those proceedings, is of the opinion, that—
 - (i) the assets of the company available for payment of general creditors are or will be insufficient to pay litigation expenses; and
 - (ii) in order to pay litigation expenses he will have to have recourse to property comprised in or subject to a floating charge created by the company.

(2) As soon as reasonably practicable after the date on which he forms the opinion referred to in paragraph (1), the liquidator shall identify the creditor who, in his opinion at that time—

- (a) has a claim to property comprised in or subject to a floating charge created by the company; and
- (b) taking into account the value of that claim and any subsisting property then comprised in or secured by such a charge, appears to the liquidator to be the creditor most immediately likely of any persons having such claims to receive some payment in respect of his claim but whose claim would not be paid in full (“the specified creditor”).

(3) The liquidator shall request from the specified creditor the approval or authorisation of such amount for litigation expenses as the liquidator thinks fit.

(4) Where, in the liquidator’s opinion, two or more creditors who are holders of debentures secured by, or holders of floating charges created by the company, meet the conditions in paragraph (2), the liquidator is to seek from each of them (“the specified creditors”) approval or authorisation of such amount of litigation expenses as the liquidator thinks fit, apportioned between them (“the apportioned amount”) according to the value of the property to the extent covered by their charges.

(5) For so long as the conditions specified in paragraph (1) subsist, the liquidator may, in the course of a winding up, make such further requests to the specified creditor or creditors for approval or authorisation of such further amount for litigation expenses as he thinks fit to be paid out of property comprised in or subject to a floating charge created by the company, taking into account any amount for litigation expenses previously approved or authorised and the value of the property comprised in or subject to the floating charge.

Litigation expenses and property subject to a floating charge — request for approval or authorisation

4.228C.—(1) All requests made by the liquidator for approval or authorisation pursuant to Rule 4.228B shall be in writing whether in Form 4.74 or otherwise, and shall include the following—

- (a) a statement describing the nature of the legal proceedings, including, where relevant, the statutory provision under which proceedings are or are to be brought and the grounds upon which the liquidator relies;
- (b) where the power to bring those proceedings is subject to sanction, a statement that the liquidator has sought and been given the relevant permissions or an undertaking that the liquidator will seek the relevant permissions upon authorisation or approval being granted;
- (c) a statement specifying the amount or apportioned amount of litigation expenses for which approval or authorisation is sought (“the specified amount”);
- (d) notice that approval or authorisation or other reply to the request must be made in writing (whether by way of Form 4.74 or otherwise) within 28 days from the date of its being received (“the specified time limit”); and
- (e) a statement explaining the consequences of a failure to reply within the specified time limit.

(2) Where anything in paragraph (1) requires the inclusion of any information, the disclosure of which could be seriously prejudicial to the winding up of the company, the liquidator may—

- (a) exclude such information from any of the above, provided that it is accompanied by a statement to that effect; or
- (b) include it on terms —
 - (i) that bind the creditor to keep the information confidential; and
 - (ii) that include an undertaking on the part of the liquidator to apply to the court for an order that so much of the information as may be kept in the files of the court, not be open to public inspection.

(3) The creditor may within the specified time limit apply to the liquidator in writing for such further particulars as is reasonable and in such a case, the time limit specified in paragraph (1)(d) shall apply from the date of the creditor’s receipt of the liquidator’s response to any such request.

(4) Where the liquidator requires the approval or authorisation of two or more creditors, he shall send a request to each creditor in writing (whether by way of Form 4.74 or otherwise), containing the matters listed in paragraph (1) and also giving—

- (a) the number of creditors concerned;
- (b) the total value of their claims, or if not known, as it is estimated to be by the liquidator immediately prior to sending any such request; and

- (c) to each preferential creditor, notice that approval or authorisation of the specified amount shall be taken to be given where a majority in value of those preferential creditors who respond within the specified time limit are in favour of it; or
- (d) where Rule 4.228B(4) applies, notice to the specified creditors, that the amount of litigation expenses will be apportioned between them in accordance with that Rule and notice of the value of the portion allocated to, and the identity of the specified creditors affected by that apportionment.

Litigation expenses and property subject to a floating charge — grant of approval or authorisation

4.228D.—(1) Where the liquidator fails to include in his request any one of the matters, statements or notices required to be specified by paragraph (1) or paragraphs (1) and (4), of Rule 4.228C, as the case may be, the request for approval or authorisation shall be treated as not having been made.

(2) Subject to paragraphs (3), (4) and (5), approval or authorisation shall be taken to have been given where the specified amount has been requested by the liquidator, and—

- (a) that amount is approved or authorised within the specified time; or
- (b) a different amount is approved or authorised within the specified time limit and the liquidator considers it sufficient.

(3) Where the liquidator requires the approval or authorisation of two or more preferential creditors, approval or authorisation shall be taken to be given where a majority in value of those who respond within the specified time limit approve or authorise—

- (a) the specified amount, or
- (b) a different amount which the liquidator considers sufficient.

(4) Where a majority in value of two or more preferential creditors propose an amount other than that specified by the liquidator, they shall be taken to have approved or authorised an amount equal to the lowest of the amounts so proposed.

(5) In any case in which there is no response in writing within the specified time limit to the liquidator's request—

- (a) at all, or
- (b) at any time following the liquidator's provision of further particulars under Rule 4.228C(3),

the liquidator's request shall be taken to have been approved or authorised from the date of the expiry of that time limit.

Litigation expenses and property subject to a floating charge — application to court by the liquidator

4.228E.—(1) In the circumstances specified below the court may, upon the application of the liquidator, approve or authorise such amount of litigation expenses as it thinks fit.

(2) Save as provided by paragraph (3), application to the court by a liquidator for an order approving or authorising an amount for litigation expenses may only be made where—

- (a) the specified creditor (or, if more than one, any one of them) is or is intended to be a respondent in the legal proceedings in respect of which the litigation expenses have been or are to be incurred; or
- (b) the specified creditor has been requested to approve or authorise the amount specified under Rule 4.228(C)(1)(c) and has, in any case—

- (i) declined to approve or authorise, as the case may be, the specified amount; or
 - (ii) has approved or authorised an amount which is less than the specified amount and which lesser amount the liquidator considers insufficient; or
 - (iii) made such applications for further particulars or other response to the liquidator's request as is in the liquidator's opinion, unreasonable.
- (3) Where the liquidator is of the view that circumstances are such that he requires urgent approval or authorisation of litigation expenses, he may apply to the court for approval or authorisation either—
- (a) without seeking approval or authorisation from the specified creditor; or
 - (b) if sought, prior to the expiry of the specified time limit.
- (4) The court may grant such application for approval or authorisation—
- (a) provided that the liquidator satisfies it of the urgency of the case; and
 - (b) subject to such terms and conditions as it thinks fit.
- (5) The liquidator shall, at the same time as making any application to the court under this Rule, send copies of it to the specified creditor or creditors, unless the court orders otherwise.
- (6) The specified creditor (including any one or all of them where there are two or more such creditors) is entitled to be heard on any such application unless the court orders otherwise.
- (7) The court may grant approval or authorisation subject to such terms and conditions as it may think fit, including terms and conditions relating to the amount or nature of the litigation expenses and as to any obligation to make further applications to the court under this Rule.
- (8) The costs of the liquidator's application under this Rule, including the costs of any specified creditor appearing or represented on it, shall be an expense of the liquidation unless the court orders otherwise."

Consequential amendments

6.—(1) In Rules 4.030(3), 4.031(2)(b), 4.033(3)(b), 4.041(2), 4.045(2), 4.068(4), 4.103(4), 4.126(6), 4.127(6), 4.137(4), 4.138(6), 4.150(6), 4.156(8), 4.177, 4.178(7), 4.196(3)(a), 4.217(5)(b) and (6), 4.224(4) and 4.227(1), for "out of the assets" substitute "as an expense of the liquidation".

(2) In Rule 4.022, for "a first charge on the company's assets" substitute "payable in priority to any expenses of the liquidation".

(3) In Rule 4.040(9), for "unless the court otherwise orders, no allowance towards them shall be made out of the assets" substitute "unless and to the extent that the court otherwise orders, shall not be an expense of the liquidation".

(4) In Rule 4.041—

(a) in paragraph (1), for "at the expense of the assets" substitute "as an expense of the liquidation"; and

(b) in paragraph (6), for "out of the assets" substitute "made as an expense of the liquidation".

(5) In Rule 4.045(1), for "at the expense of the assets" substitute "as an expense of the liquidation".

(6) In Rules 4.057(1)(e), omit "out of the assets".

(7) In Rule 4.068(3), omit "out of the assets".

(8) In Rule 4.069(1), omit “out of the company’s assets”.

(9) In Rule 4.084(2) and Rule 4.113(3) omit “out of the assets,”.

(10) In Rule 4.158(1), for “out of the assets be allowed” substitute “be allowed as an expense of the liquidation”.

(11) In Rule 4.178(2)(a), for “out of the company’s assets” substitute “as an expense of the liquidation”.

(12) In Rule 7.30(1), for “are payable out of the insolvent estate” substitute—

“are payable—

(a) in relation to a company insolvency, as an expense of the liquidation, or

(b) in relation to an individual insolvency, out of the bankrupt’s estate or (as the case may be) the debtor’s property.”.

(13) In Rule 9.6(3), for “be paid out of the insolvent estate” substitute —

“be paid—

(a) in relation to a company insolvency, as an expense of the liquidation;

(b) in relation to an individual insolvency, out of the bankrupt’s estate or (as the case may be) the debtor’s property.”.

(14) In Rule 4.229, for the reference to “4.228(1)(a)”, substitute a reference to “4.228(3)(a)”.

7. For Rule 4.238 substitute—

“First excepted case

(1) This rule applies where a person (“the person”) has, within the period mentioned in Article 180(1), been a director, or shadow director of an insolvent company (“the insolvent company”) which goes into insolvent liquidation.

(2) On and after the date on which the insolvent company goes into insolvent liquidation it shall, in the circumstances mentioned in paragraph (3), be lawful for the person to act in all or any of the ways specified in Article 180(3), provided that the person complies with the requirements stated in paragraph (4).

(3) The circumstances referred to in paragraph (2) are—

(a) that the person acts in connection with, or for the purposes of, the carrying on or the proposed carrying on of the whole or substantially the whole of the business of the insolvent company; and

(b) that the business has been or is to be acquired under either—

(i) arrangements made by the liquidator of the insolvent company; or

(ii) arrangements made prior to the date on which the insolvent company entered into insolvent liquidation by an office-holder acting in relation to it as administrator, administrative receiver or supervisor of a voluntary arrangement under Part II of the Order.

(4) The requirements referred to in paragraph (2) are that, for the person to be able to act or continue to act lawfully in all or any of the ways specified in Article 180(3), after the date on which the insolvent company goes into insolvent liquidation—

(a) in all cases the person must, before he acts in any of the ways specified in Article 180(3), have given and published the notice in accordance with the requirements of paragraph (5);

- (b) subject to compliance with the requirement in sub-paragraph (a), the notice may, in the circumstances mentioned in paragraph 3(b)(ii), be given and published before or after the date on which the insolvent company enters insolvent liquidation, but must in either event, be given and published no later than 28 days after the date on which the arrangements referred to in paragraph 3(b)(ii) are completed;
 - (c) subject to compliance with the requirement in sub-paragraph (a), the notice may, in the circumstances mentioned in paragraph 3(b)(ii) be given prior to completion of the arrangements referred to in paragraph 3(b)(ii).
- (5) The notice as referred to in paragraph (4) must—
- (a) be given by the person, to every creditor of the insolvent company whose name and address—
 - (i) is known by him; or
 - (ii) is ascertainable by him on the making of such enquiries as are reasonable in the circumstances;
 - (b) be given using Form 4.75;
 - (c) be published in the Gazette;
 - (d) state—
 - (i) the name and registered number of the insolvent company;
 - (ii) the name of the person;
 - (iii) particulars of the function and duration of the person’s directorship of the insolvent company, including whether or not he was registered as a director and if so the date of registration;
 - (iv) that it is his intention to act (or, in a case where the notice is being given and published before the insolvent company has entered insolvent liquidation, to act or continue to act in the event of its doing so) in any of the ways specified in Article 180(3) in connection with, or for the purposes of, the carrying on of the whole or substantially the whole of the business of the insolvent company; and
 - (v) the prohibited name or, where the notice is being given and published before the insolvent company has entered insolvent liquidation, the name under which the business is being, or is to be, carried on which would be a prohibited name in respect of the person in the event of the insolvent company entering insolvent liquidation.
- (6) Notice may in particular be given under this Rule—
- (a) prior to the insolvent company entering insolvent liquidation where the business (or substantially the whole of the business) is, or is to be acquired by another company under arrangements made by an office-holder acting in relation to the insolvent company as administrator, administrative receiver or supervisor of a voluntary arrangement (whether or not at the time of the giving of the notice the director is a director of that other company); or
 - (b) at a time where the person is a director of another company where—
 - (i) the other company has acquired, or is to acquire the whole, or substantially the whole, of the business of the insolvent company under arrangements made by its liquidator; and
 - (ii) it is proposed that after the giving of the notice a prohibited name should be adopted by the other company.”
8. In paragraph (1) of Rule 6.031—

- (a) at the end of sub-paragraph (a) insert the word “and”; and
 - (b) omit sub-paragraph (b).
9. In paragraph (1) of Rule 6.043—
- (a) at the end of sub-paragraph (a) insert the word “and”; and
 - (b) omit sub-paragraph (b).

Amendment to Schedule 2 to the principal Rules

10. In Schedule 2—
- (a) in Part 4 of the index to forms, immediately after the entry for Form 4.73 insert “4.74 Property subject to floating charge: notice of request to specified creditor for approval or authorisation of litigation expenses”; and “4.75 Notice to the creditors of an insolvent company of the re-use of a prohibited name”; and
 - (b) after Form 4.73 insert Forms 4.74 and 4.75 as set out in the Schedule to these Rules.

Dated 12th March 2008

David Hanson
Signed by authority of the Lord
Chancellor/Minister of State Ministry of Justice

I concur

Dated 13th March 2008

Brian Kerr
Lord Chief Justice of Northern Ireland

The Department of Enterprise, Trade and Investment hereby concurs with the foregoing Rules.
Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 13th
March 2008.

Michael J. Bohill
A senior officer of the
Department of Enterprise, Trade and Investment

SCHEDULE

Rule 10(b) Form 4.74

**“Rule 4.228C,
4.228D**

**Request by Liquidator for Approval or Authorisation
of Litigation Expenses by Creditor**

(TITLE)

- (a) Insert name and address of liquidator
- (b) Insert name of company
- (c) Insert amount of money for which approval/authorisation is requested (*/+delete as appropriate).
- Give details at (d) of earlier requests in respect of litigation expenses
- (e) Insert description of legal proceedings, including statutory provision under which proceedings are to be or have been brought, if relevant, and the grounds upon which relied

I (a) _____

the liquidator of (b) _____

request your *approval/authorisation for the [+further] expenditure of (c)

£ _____

in respect of litigation expenses *yet to be incurred/incurred in legal proceedings.

Details of earlier requests

(d) _____

The legal proceedings which I wish to take or have taken are

(e) _____

These proceedings;

* **are** subject to sanction * **are not** subject to sanction

In the event that these proceedings **are** subject to sanction:

* I undertake to seek the relevant permissions upon authorisation or approval being granted

* I have sought and been given the relevant permissions

*Tick as applicable
Note to liquidator: you do not have to complete this part if these proceedings are not subject to sanction.
*Tick as applicable

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(f) If there is more than one, from whom approval etc is sought, insert number of specified creditors
 The number of specified creditors from whom approval or authorisation is sought is (f) _____

(g) If there is more than one creditor, insert the total value of their claims
 The total value of claims of specified creditors for the purpose of this request is (g) _____

Note to creditor: where there is more than one holder of floating charge, see Note (4) below
 Identity of other floating charge holders and value of apportioned parts are:

Date _____

Signed _____
(Liquidator)

You must reply to this request in writing within 28 days of it being received by you either by completing Annex A and returning it to the liquidator or otherwise (see note (2) below).

Notes:

(1) **Sensitive Information:** Where any information, the disclosure of which could be seriously prejudicial to the winding up of the company is excluded from this request, this form must be accompanied by a statement to that effect. Where such information is included, the statement must give notice to the recipient creditor that he is bound to keep the information confidential and include an undertaking on the part of the liquidator to apply to the court for an order that so much of that information as may be kept in the files of the court, not be open to public inspection.

(2) **Time limit applicable to Creditor Responses:** Approval, authorisation or other reply to this request must be made in writing (whether by way of the Annexed Reply Form or otherwise) **within 28 days** from the date of it being received by you. If there is no response in writing to this request within the specified time limit it shall be taken to have been approved or authorised from the date of the expiry of that time limit.

(3) **Note to Preferential Creditors:** If there is more than one preferential creditor requested to provide authorisation/ approval for the above expenditure, approval or authorisation of the specified amount shall be taken to be given where a **majority in value** of those preferential creditors who respond within the specified time limit are in favour of it. Where the majority in value of two or more preferential creditors propose an amount other than that specified by the liquidator ("a different amount"), they shall be taken to have approved or authorised an amount equal to the lowest of the amounts so proposed.

(4) **Note to Creditors who are holders of debentures secured by, or holders of, floating charges created by the company:** If approval or authorisation is required of two or more holders of debentures secured by, or holders of, floating charges created by the company, the amount of litigation expenses sought will be apportioned between the holders according to the value of the property to the extent covered by the charge.

Rule 4.228C
4.228D

Annex A — Creditor Reply Form

Form 4.74

Reply by Creditor to Liquidator's request for Approval or Authorisation of Litigation Expenses

(TITLE)

- (a) Insert Name and address of creditor
- (b) Insert date of request
*Tick ONE BOX ONLY as applicable
**For holders of Floating charge only
- (c) Insert maximum level of expenses which you authorise/approve
- (d) Insert matters on which you request further information

I (a)

In response to your request for approval or authorisation of litigation expenses dated (b),

- * approve/authorise the [******apportioned] amount of expenses requested by the liquidator
- * do not approve/authorise the [******apportioned] amount of expenses requested by the liquidator
- * approve/authorise expenses up to a maximum amount of (c) _____
- * request further information on (d)

Date _____

Signed _____

Creditor _____

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Rule 4.238

Form 4.75

Notice to the Creditors of an Insolvent Company of the Re-Use of a Prohibited Name

WARNING — THIS FORM MAY NOT BE USED IF YOU HAVE ALREADY ACTED IN BREACH OF ARTICLE 180 OF THE INSOLVENCY (NORTHERN IRELAND) ORDER 1989

Notes for completion
* delete as applicable

_____ (a)

(a) Insert name of insolvent company

Registered Number _____ (b)

(b) Insert registered number of insolvent company then complete either Section A or Section B.

SECTION A — COMPANY IN ADMINISTRATION, ADMINISTRATIVE RECEIVER APPOINTED, OR COMPANY SUBJECT TO VOLUNTARY ARRANGEMENT (c)

(c) Complete this Section where the company has entered administration, an administrative receiver has been appointed in respect of the company or the company is subject to a voluntary arrangement under Part II of the Insolvency (Northern Ireland) Order 1989.

On _____ (d), [*the above-named company entered administration] [*an administrative receiver was appointed in respect of the above-named company] [*a voluntary arrangement under Part II of the Insolvency (Northern Ireland) Order 1989 was approved in respect of the above-named company.]

This Section should not be completed if the company is in insolvent liquidation. In that case, complete Section B.

I, _____ (e)

of _____ (f)

was a director of the above-named company on the day it [*entered administration] [*the administrative receiver was appointed] [*the voluntary arrangement under Part II of the Insolvency (Northern Ireland) Order 1989 was approved.]

(d) Insert date. In cases where the company has been subject to different insolvency procedures which immediately follow each other, eg administration followed by a voluntary arrangement, the date of the first proceedings should be entered.

(e) Insert name of Director.

(f) Insert address of Director.

(g) The Director in question may already be acting in relation to a successor company that has adopted a name which in the event that the insolvent company enters insolvent liquidation would be a prohibited name. Alternatively he may be proposing so to act. The appropriate deletion should accordingly be made.

I give notice that (g) [*I am acting and intend to continue to act in one or more of the ways to which Article 180(3) of the Insolvency (Northern Ireland) Order 1989 would apply if the above-named company were to go into insolvent liquidation] [*it is my intention to act in one or more of the ways to which Article 180(3) of the Insolvency (Northern Ireland) Order 1989 would apply if the above-named company were to go into insolvent liquidation] in connection with, or for the purposes of, the carrying on of the whole or substantially the whole of the business of the above-named company under the following name:

(h) Insert name which would be a prohibited name if the company were to enter insolvent liquidation.

_____ (h)

**FORM 4.75
Cont'd**

Notes for completion

SECTION B — COMPANY IN INSOLVENT LIQUIDATION

(i) Insert date.

On _____ (i) the above-named company went into insolvent liquidation.

(j) Insert name of Director.

I, _____ (j)

(k) Insert address of Director.

of _____ (k)

was a director of the above-named company during the 12 months ending with the day before it went into liquidation.

I give notice that it is my intention to act in one or more of the ways specified in Article 180(3) of the Insolvency (Northern Ireland) Order 1989 in connection with, or for the purposes of, the carrying on of the whole or substantially the whole of the business of the insolvent company under the following name:

(l) Insert name under which the business is to be carried on.

_____ (l)

Notes

Article 180(3) of the Insolvency (Northern Ireland) Order 1989, which is referred to above, lists the activities that a director of a company that has gone into insolvent liquidation may not undertake without the court giving leave or the application of an exception created under Rules made under the Insolvency (Northern Ireland) Order 1989. (This includes Rule 4.238 of the Insolvency Rules (Northern Ireland) 1991). These activities are:

- (a) acting as a director of another company that is known by a name which is either the same as a name used by the company in insolvent liquidation in the period of 12 months ending on the day before it entered liquidation or is so similar as to suggest an association with that company;
- (b) directly or indirectly being concerned or taking part in the promotion, formation or management of any such company; or
- (c) directly or indirectly being concerned in the carrying on of a business otherwise than through a company under a name of the kind mentioned in (a) above.

This notice is given in pursuance of Rule 4.238 of the Insolvency Rules (Northern Ireland) 1991 where the business of a company which is in, or may go into, insolvent liquidation is, or is to be, carried on otherwise than by the company in liquidation with the involvement of a director of that company and under the same or a similar name to that of that company. The purpose of the giving of this notice is to permit the director to act in these circumstances where the company enters (or has entered) insolvent liquidation without the director committing a criminal offence and in the case of the carrying on of the business through another company, being personally liable for that company's debts.

Notice using this form may be given where the director giving the notice is already the director of a company which proposes to adopt a prohibited name."

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Insolvency Rules (Northern Ireland) 1991 (S.R. [1991 No. 364](#)) (“the principal Rules”).

Rule 2 makes transitional provision and Rule 3 provides for the principal Rules to be amended by the Rules in these Rules.

Rule 4 amends Rules 4.228 of the principal Rules (general rules as to priority) by replacing paragraph (1)(a), with new paragraphs (1), (2) and (3)(a). The provisions of Rule 4.228(1)(b) to (r) continue in force as Rule 4.228(3)(b) to (r). The new paragraphs provide for the costs and expenses of a liquidation, including expenses properly incurred in preparing for and conducting any legal proceedings or arbitration or dispute resolution procedures which the liquidator has power to bring or defend in his own name or that of the company, or in preparing for and conducting any negotiations leading to a settlement or compromise of the legal action or dispute, to be payable out of any proceeds from the legal proceedings, or from any award under arbitration or dispute resolution procedure or any compromise or settlement of the legal action or dispute reached prior to a judgement or award being made.

Rule 5 inserts new Rules 4.228A to 4.228E into the principal Rules.

Article 150ZA (payment of expenses of winding up) of the Insolvency (Northern Ireland) Order 1989 (S.I. [1989/2405](#) (N.I. 19)) (“the 1989 Order”) provides for the expenses of a winding up, insofar as the assets of the company available for the payment of general creditors are insufficient to meet them, to be payable out of any property comprised in or subject to a floating charge in priority to any claims against that property. New Rules 4.228A to 4.228E restrict Article 150ZA in its application to litigation expenses so that these may not be paid out of property comprised in or subject to a floating charge without the approval or authorisation of the holder of a debenture secured by, or holder, of the floating charge or any preferential creditor or the court, as the case may be.

Rule 6 makes consequential amendments.

Rule 7 substitutes a new version of Rule 4.238 in the principal Rules.

Both the original rule, and its replacement, are one of three Rules, numbers 4.238 to 4.240 in the principal Rules, which create exceptions to the prohibition in Article 180 of the 1989 Order on a person who has been a director (or shadow director) of a company in the 12 months prior to its entering into insolvent liquidation re-using that company’s name or a name so similar to it as to suggest an association with the insolvent company (such a name is referred to as “a prohibited name”).

The former version of Rule 4.238 allowed a director to act as the director of a company or otherwise in connection with its management where—

- (a) the company used a prohibited name; and
- (b) the company acquired the whole or substantially the whole of the insolvent company’s business; and
- (c) a notice was given to the insolvent company’s creditors.

In *First Independent Factors and Finance Limited v Churchill* [2006] EWCA Civ 1623 the Court of Appeal in England and Wales ruled that such a notice could not be given where an individual was already a director of the successor company that wished to acquire the business of the insolvent company and adopt the prohibited name.

The new Rule 4.238 makes provision for a director of a company that enters insolvent liquidation to act as a director of a company (or otherwise be involved in the formation, promotion or management of that company) where that company—

- (a) uses a prohibited name; and
- (b) acquires the whole or substantially the whole of the insolvent company's business.

The new Rule provides that the prescribed notice may be given before the company enters insolvent liquidation (where, for example, the insolvent company is in administration and it is likely (or possible) that it will subsequently go into insolvent liquidation). In cases where the insolvent company is not in insolvent liquidation and also in cases where the acquiring company has not yet adopted a prohibited name, notice can be given where the director of the insolvent company is already a director of the acquiring company. However, notice must always be given before a director acts in a way that would be prohibited by Article 180.

The new Rule also allows a person to carry on the business of the insolvent company using a prohibited name other than through a limited company provided the relevant notice has been given.

Notice must be published in the Gazette and given to all creditors known to the director or whose names and addresses could be ascertained by the director by making reasonable enquiries.

Rules 8 and 9 abolish the requirement for the court to send copies of bankruptcy orders it has made to the Clerk of the Crown.

Rule 10 amends Schedule 2 to the principal Rules by providing for two forms to be inserted, one relating to the approval of litigation expenses by specified creditors, the other to the notice to be given to the creditors of an insolvent company of the intention to re-use a prohibited name.

With reference to rules 4, 5 and 6 a Regulatory Impact Assessment identifying the costs and benefits to business of the insolvency provisions contained within the Companies Act 2006 was prepared for that Act. No Regulatory Impact Assessment has been prepared in relation to the other rules as they do not impose any significant burdens on business.