SCHEDULE

PART 1

AMENDMENT OF THE PRINCIPAL RULES

SECTION 5: AMENDMENT OF PART 4 OF THE RULES

Amendment of Rule 4.1

34.—(1) For paragraph (1) of Rule 4.1 there shall be substituted the following:—

"(1) In a members' voluntary winding up, the Rules in this Part do not apply, except as follows—

(a) Rule 4.3 applies in the same way as it applies in a creditors' voluntary winding up;

(b) Rule 4.72 (additional provisions concerning meetings in relation to Bank of England and Deposit Protection Board) applies in the winding up of authorised institutions or former authorised institutions within the meaning of the Banking Act 1987, whether members' or creditors' voluntary or by the court;

(c) Chapters 9 (proof of debts in a liquidation), 10 (secured creditors), 15 (disclaimer) and 18 (special manager) apply wherever, and in the same way as, they apply in a creditors' voluntary winding up;

(d) Section F of Chapter 11 (the liquidator) applies only in a members' voluntary winding up, and not otherwise;

(e) Section G of that Chapter (court's power to set aside certain transactions; rule against solicitation) applies in any winding up, whether members' or creditors' voluntary or by the court;

(f) Rule 4.182A applies only in a members' voluntary winding up, and not otherwise; and

(g) Rule 4.223-CVL (liquidator's statements) applies in the same way as it applies in a creditors' voluntary winding up.".

(2) After the words "creditors' voluntary" in line 3 of paragraph (2) of Rule 4.1 there shall be inserted the words "winding up".

(3) In paragraph (3) of Rule 4.1—

(a) after the line beginning "Chapter 19" there shall be inserted in a separate line the words "Chapter 11 (Section F)—The liquidator in a members' voluntary winding up;"; and

(b) there shall be added at the end in a separate line the words "Chapter 21 (Section C)—Dissolution after winding up".

Amendment at head of Rule 4.2

35. At the head of Rule 4.2 there shall be inserted the words "(NO CVL APPLICATION)".

Amendment of Rule 4.7

36.—(1) In subparagraph (e) of paragraph (4) of Rule 4.7 for the words from "(i) a recognised bank" to "were licensed" there shall be substituted the words "an authorised institution or former authorised institution within the meaning of the Banking Act 1987".

(2) After paragraph (6) of Rule 4.7 there shall be added the following paragraphs:—

"(7) Where a petition is filed at the instance of a company's administrator the petition shall—

(a) be expressed to be the petition of the company by its administrator,

(b) state the name of the administrator, the number of the petition on which the administration order was made and the date of that order, and

(c) contain an application under section 18 requesting that the administration order be discharged and that the court make any such order consequential upon that discharge as it thinks fit.

(8) Any petition filed in relation to a company in respect of which there is in force an administration order or a voluntary arrangement under Part I of the Act shall be presented to the court which made the administration order or, as the case may be, to which the nominee's report under section 2 was submitted.

(9) Any petition such as is mentioned in paragraph (7) above or presented by the supervisor of a voluntary arrangement under Part I of the Act in force for the company shall be treated as if it were a petition filed by contributories, and Chapter 4 in this Part of the Rules shall apply accordingly.

(10) Where a petition contains a request for the appointment of a person as liquidator in accordance with section 140 (appointment of former administrator or supervisor as liquidator) the person whose appointment is sought shall, not less than 2 days before the return day for the petition, file in court a report including particulars of—

(a) a date on which he notified creditors of the company, either in writing or at a meeting of creditors, of the intention to seek his appointment as liquidator, such date to be at least 10 days before the day on which the report under this paragraph is filed, and

(b) details of any response from creditors to that notification, including any objections to his appointment.".

Amendment of Rule 4.8

37.—(1) For paragraph (4) of Rule 4.8 there shall be substituted the following:—

"(4) If for any reason service at the registered office is not practicable, or the company has no registered office or is an unregistered company, the petition may be served on the company by leaving it at the company's last known principal place of business in such a way that it is likely to come to the attention of a person attending there, or by delivering it to the secretary or some director, manager or principal officer of the company, wherever that person may be found.".

(2) In paragraph (6) of Rule 4.8 after the words "the court may" there shall be inserted the words "approve or".

Amendment of Rule 4.10

38. In paragraph (4) of Rule 4.10 for the words from "a recognised bank" to "were a licensed institution" there shall be substituted the words "an authorised institution or former authorised institution within the meaning of the Banking Act 1987".

Insertion of Rule 4.21A

39. After Rule 4.21 there shall be inserted the following rule:—

"**Expenses of voluntary arrangement**

4.21A. Where a winding-up order is made and there is at the time of the presentation of the petition in force for the company a voluntary arrangement under Part I of the Act, any expenses properly incurred as expenses of the administration of the arrangement in question shall be a first charge on the company's assets.".

Amendment of Rule 4.22

40.—(1) In paragraph (1) of Rule 4.22 the words "and the nature of the relief which is sought by the petitioner," shall be omitted.

(2) After paragraph (1) of Rule 4.22 there shall be inserted the following paragraph:—

"(1A) No petition shall be filed unless there is produced with it the receipt for the deposit payable on presentation.".

Amendment of Rule 4.24

41.—(1) In Rule 4.24 the word "and" at the end of the line beginning "Rule 4.20" shall be omitted.

(2) At the end of Rule 4.24 there shall be added the words:—

"; and

Rule 4.21A (expenses of voluntary arrangement)".

Insertion of Rule 4.25A

42. After Rule 4.25 there shall be inserted the following rule:—

"**Notice of appointment**

4.25A.—(1) Where a provisional liquidator has been appointed the court shall forthwith give notice of the fact to the official receiver.

(2) A copy of that notice shall at the same time be sent by the court to the provisional liquidator where he is not the official receiver.".

Amendment of Rule 4.30

43.—(1) In paragraph (3) of Rule 4.30 for the words from the beginning to "accordingly)" there shall be substituted the words:—

"Without prejudice to any order the court may make as to costs, the provisional liquidator's remuneration (whether the official receiver or another) shall be paid to him, and the amount of any expenses incurred by him (including the remuneration and expenses of any special manager appointed under section 177) reimbursed—

(a) if a winding-up order is not made, out of the property of the company".

(2) After paragraph (3) of Rule 4.30 there shall be inserted the following paragraph:—

"(3A) Unless the court otherwise directs, in a case falling within paragraph (3)(a) above the provisional liquidator may retain out of the company's property such sums or property as are or may be required for meeting his remuneration and expenses.".

Amendment of Rule 4.31

44. Paragraph (3) of Rule 4.31 shall be omitted.

Amendment of Rule 4.34-CVL

45. For paragraph (3) of Rule 4.34-CVL there shall be substituted the following:—

"(3) Where it is made out by the directors under section 99(1) the statement of affairs shall be delivered by them to the liquidator in office following the creditors' meeting summoned under section 98 forthwith after that meeting has been held; and he shall, within 7 days, deliver it to the registrar of companies.

(4) A statement of affairs under section 99(1) may be made up to a date not more than 14 days before that on which the resolution for voluntary winding up is passed by the company.".

Insertion of Rule 4.34A-CVL

46. After Rule 4.34-CVL there shall be inserted the following rule:—

"**Copy statement of affairs**

4.34A-CVL. Where a liquidator is nominated by the company at a general meeting held on a day prior to that on which the creditors' meeting summoned under section 98 is held, the directors shall forthwith after his nomination or the making of the statement of affairs, whichever is the later, deliver to him a copy of the statement of affairs.".

Amendment of Rule 4.43

47. In Rule 4.43 the existing paragraph shall be numbered "(1)" and there shall be added after it the following paragraph:—

"(2) The official receiver shall file in court a copy of any report sent under this Chapter.".

Amendment of Rule 4.45

48. In paragraph (1) of Rule 4.45 there shall be inserted after the words "summary of the statement" the words "(if he thinks fit, as amplified, modified or explained by virtue of Rule 4.42)".

Insertion of Rule 4.49A

49. After Rule 4.49-CVL there shall be inserted the following rule:—

"**Further information where liquidation follows administration**

4.49A. Where under section 140 the court appoints as the company's liquidator a person who was formerly its administrator and that person becomes aware of creditors not formerly known to him in his capacity as administrator, he shall send to those creditors a copy of any statement or report sent by him to creditors under Rule 2.16, so noted as to indicate that it is being sent under this Rule.".

Amendment of Rule 4.50

50. In paragraph (8) of Rule 4.50 for the words from "a recognised bank" to "were a licensed institution" there shall be substituted the words "an authorised institution or former authorised institution within the meaning of the Banking Act 1987".

Amendment of Rule 4.51-CVL

51.—(1) In paragraph (2) of Rule 4.51-CVL for the words "proofs and (if applicable) proxies" there shall be substituted the words "any proxies necessary to entitle them to vote at the meeting".

(2) In paragraph (3) of Rule 4.51-CVL for the words from "a recognised bank" to "were a licensed institution" there shall be substituted the words "an authorised institution or former authorised institution within the meaning of the Banking Act 1987".

Insertion of Rules 4.53A-CVL and 4.53B-CVL

52. After Rule 4.53-CVL there shall be inserted the following rules:—

"**Effect of adjournment of company meeting**

4.53A-CVL. Where a company meeting at which a resolution for voluntary winding up is to be proposed is adjourned, any resolution passed at a meeting under section 98 held before the holding of the adjourned company meeting only has effect on and from the passing by the company of a resolution for winding up.

Report by director, etc.

4.53B-CVL.—(1) At any meeting held under section 98 where the statement of affairs laid before the meeting does not state the company's affairs as at the date of the meeting, the directors of the company shall cause to be made to the meeting, either by the director presiding at the meeting or by another person with knowledge of the relevant matters, a report (written or oral) on any material transactions relating to the company occurring between the date of the making of the statement of affairs and that of the meeting.

(2) Any such report shall be recorded in the minutes of the meeting kept under Rule 4.71.".

Amendment of Rule 4.56-CVL

53. In paragraph (1) of Rule 4.56-CVL for the words "section 98" there shall be substituted the words "section 95 or 98".

Amendment of Rule 4.63

54.—(1) In paragraph (1) of Rule 4.63 there shall be inserted at the beginning the words "Subject as follows,".

(2) In subparagraph (a) of paragraph (2) of Rule 4.63 there shall be inserted at the beginning the words "subject to paragraph (2A),".

(3) After paragraph (2) of Rule 4.63 there shall be inserted the following paragraph:—

"(2A) In a winding up by the court the support referred to in paragraph (2)(a) must represent a majority in value of all those present (in person or by proxy) at the meeting and entitled to vote. (NO CVL APPLICATION)".

(4) In the second subparagraph of paragraph (4) of Rule 4.63:—

(a) there shall be inserted after the word "person" the words "(whether personally or on his behalf by a proxy-holder)"; and

(b) there shall be substituted for the word "proxy" the word "proxy-holder".

Amendment of Rule 4.65

55.—(1) In paragraph (3) of Rule 4.65 there shall be inserted after the words "Rule 4.113(3)" the words "or, as the case may be, 4.114-CVL(3),".

(2) In paragraph (4) of Rule 4.65 there shall be substituted for the words from "by virtue of this Rule" to the end the words "the chairman may, at his discretion, adjourn the meeting to such time and place as he may appoint".

Omission of Rule 4.66

56. Rule 4.66 shall be omitted.

Amendment of Rule 4.72

57. In paragraph (1) of Rule 4.72 for the words from "— (a) a recognised bank" to the end there shall be substituted the words "an authorised institution or former authorised institution within the meaning of the Banking Act 1987".

Amendment of Rule 4.75

58. In paragraph (1) of Rule 4.75 there shall be inserted at the beginning the words "Subject to Rule 4.73(5),".

Amendment of Rule 4.93

59.—(1) In paragraph (5) of Rule 4.93 there shall be added at the end the words "and for all the purposes of the Act and the Rules shall be chargeable at a rate not exceeding that mentioned in paragraph (6)".

(2) For paragraph (6) of Rule 4.93 there shall be substituted the following:—

> "(6) The rate of interest to be claimed under paragraphs (3) and (4) is the rate specified in section 17 of the Judgments Act 1838 on the date when the company went into liquidation.".

Amendment of Rule 4.100

60. For paragraphs (3)—(5) of Rule 4.100 there shall be substituted the following:—

> "(3) The liquidator's appointment is effective from the date on which the appointment is certified, that date to be endorsed on the certificate.
>
> (4) The chairman of the meeting (if not himself the official receiver) shall send the certificate to the official receiver.
>
> (5) The official receiver shall in any case send the certificate to the liquidator and file a copy of it in court.".

Amendment of Rule 4.101-CVL

61. In paragraph (2) of Rule 4.101-CVL for the words "is effective from the date of the certificate" there shall be substituted the words "takes effect upon the passing of the resolution for that appointment".

Insertion of Rule 4.101A-CVL

62. After Rule 4.101-CVL there shall be inserted the following rule:—

"**Power to fill vacancy in office of liquidator**

4.101A-CVL. Where a vacancy in the office of liquidator occurs in the manner mentioned in section 104 a meeting of creditors to fill the vacancy may be convened by any creditor or, if there were more liquidators than one, by the continuing liquidators.".

Amendment of Rule 4.106

63. In paragraph (4) of Rule 4.106 there shall be inserted at the end the words "(NO CVL APPLICATION)".

Amendment of Rule 4.108

64. After paragraph (5) of Rule 4.108 there shall be added the following paragraphs:—

"(6) If there is no quorum present at the meeting summoned to receive the liquidator's resignation, the meeting is deemed to have been held, a resolution is deemed to have been passed that the liquidator's resignation be accepted and the creditors are deemed not to have resolved against the liquidator having his release.

(7) Where paragraph (6) applies any reference in the Rules to a resolution that the liquidator's resignation be accepted is replaced by a reference to the making of a written statement, signed by the person who, had there been a quorum present, would have been chairman of the meeting, that no quorum was present and that the liquidator may resign.".

Amendment of Rule 4.130

65. In paragraph (4) of Rule 4.130 after the word "appearing" in both places where it occurs there shall be inserted the words "or being represented".

Amendment of Rule 4.137

66. For Rule 4.137 there shall be substituted the following:—

"**Notice to official receiver of intention to vacate office (NO CVL APPLICATION)**

4.137.—(1) Where the liquidator intends to vacate office, whether by resignation or otherwise, he shall give notice of his intention to the official receiver together with notice of any creditors' meeting to be held in respect of his vacation of office, including any meeting to receive his resignation.

(2) The notice to the official receiver must be given at least 21 days before any such creditors' meeting.

(3) Where there remains any property of the company which has not been realised, applied, distributed or otherwise fully dealt with in the winding up, the liquidator shall include in his notice to the official receiver details of the nature of that property, its value (or the fact that it has no value), its location, any action taken by the liquidator to deal with that property or any reason for his not dealing with it, and the current position in relation to it.".

Amendment of Rule 4.138

67. After paragraph (2) of Rule 4.138 there shall be added the following paragraph:—

"(3) Where the liquidator vacates office under section 172(8) (final meeting of creditors), he shall deliver up to the official receiver the company's books, papers and other records which have not already been disposed of in accordance with general regulations in the course of the liquidation. (NO CVL APPLICATION)".

Amendment of Rule 4.142

68. After paragraph (4) of Rule 4.142 there shall be inserted the following paragraph:—

"(4A) If there is no quorum present at the meeting summoned to receive the liquidator's resignation, the meeting is deemed to have been held.".

Insertion of Rule 4.148A

69. After Rule 4.148 there shall be inserted the following rule:—

"**Remuneration of liquidator in members' voluntary winding up**

4.148A.—(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;

and the company in general meeting shall determine whether the remuneration is to be fixed under subparagraph (a) or (b) and, if under subparagraph (a), the percentage to be applied as there mentioned.

(3) In arriving at that determination the company in general meeting shall have regard to the matters set out in paragraph (4) of Rule 4.127.

(4) 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.

(5) Rule 4.128 shall apply in relation to the remuneration of the liquidator in respect of the matters there mentioned and for this purpose references in that Rule to "the liquidation committee" and "a meeting of creditors" shall be read as references to the company in general meeting.

(6) If the liquidator considers that the remuneration fixed for him by the company in general meeting, or as under paragraph (4), is insufficient, he may apply to the court for an order increasing its amount or rate.

(7) The liquidator shall give at least 14 days' notice of an application under paragraph (6) to the company's contributories, or such one or more of them as the court may direct, and the contributories may nominate any one or more of their number to appear or be represented.

(8) The court may, if it appears to be a proper case, order the costs of the liquidator's application, including the costs of any contributory appearing or being represented on it, to be paid out of the assets.".

Amendment of Rule 4.152

70. In paragraph (7) of Rule 4.152 for the words "28 of the Banking Act 1979(a)" there shall be substituted the words "58 of the Banking Act 1987".

Amendment of Rule 4.153

71. For paragraph (3) of Rule 4.153 there shall be substituted the following:—

"(3) No person may act as a member of the committee unless and until he has agreed to do so and, unless the relevant proxy or authorisation contains a statement to the contrary,

such agreement may be given by his proxy-holder or representative under section 375 of the Companies Act present at the meeting establishing the committee.

(3A) The liquidator's certificate of the committee's due constitution shall not issue before the minimum number of persons (in accordance with Rule 4.152) who are to be members of the committee have agreed to act.".

Amendment of Rule 4.154

72. In paragraph (4) of Rule 4.154 for the words from "substituting" to the end there shall be substituted the words "substituting for the reference in paragraph (3) of that Rule to Rule 4.152 a reference to this paragraph".

Amendment of Rule 4.159

73. In paragraph (2) of Rule 4.159 there shall be added at the end the words ", and for this purpose any proxy or any authorisation under section 375 of the Companies Act in relation to any meeting of creditors (or, as the case may be, members or contributories) of the company shall, unless it contains a statement to the contrary, be treated as such a letter of authority to act generally signed by or on behalf of the committee-member".

Amendment of Rule 4.167

74. In paragraph (2) of Rule 4.167 for the words from "a statement incorporating" to the end there shall be substituted the words "a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent".

Insertion of Rule 4.172A

75. After Rule 4.172 there shall be inserted the following rule:—

"**Formal defects**

4.172A. The acts of the liquidation committee established for any winding up are valid notwithstanding any defect in the appointment, election or qualifications of any member of the committee or any committee-member's representative or in the formalities of its establishment.".

Amendment of Rule 4.178

76. In Rule 4.178 for "4.172" there shall be substituted "4.172A".

Amendment of Rule 4.181

77. In Rule 4.181 the existing paragraph shall be numbered "(1)" and there shall be added after it the following paragraph:—

"(2) Paragraph (1) applies whether or not the company is unable to pay its debts.".

Insertion of Rule 4.182A

78. After Rule 4.182 there shall be inserted the following rule:—

"**Distribution in members' voluntary winding up (NO CVL APPLICATION)**

4.182A.—(1) In a members' voluntary winding up the liquidator may give notice in such newspaper as he considers most appropriate for the purpose of drawing the matter to the attention of the company's creditors that he intends to make a distribution to creditors.

(2) The notice shall specify a date ("the last date for proving") up to which proofs may be lodged. The date shall be the same for all creditors and not less than 21 days from that of the notice.

(3) The liquidator is not obliged to deal with proofs lodged after the last date for proving; but he may do so, if he thinks fit.

(4) A creditor who has not proved his debt before the last date for proving or after that date increases the claim in his proof is not entitled to disturb, by reason that he has not participated in it, either at all or, as the case may be, to the extent that his increased claim would allow, that distribution or any other distribution made before his debt was proved or his claim increased; but when he has proved his debt or, as the case may be, increased his claim, he is entitled to be paid, out of any money for the time being available for the payment of any further distribution, any distribution or distributions which he has failed to receive.

(5) Where the distribution proposed to be made is to be the only or the final distribution in that winding up, the liquidator may, subject to paragraph (6), make that distribution without regard to the claim of any person in respect of a debt not already proved.

(6) Where the distribution proposed to be made is one specified in paragraph (5), the notice given under paragraph (1) shall state the effect of paragraph (5).".

Amendment of Rule 4.218

79. In subparagraphs (m) and (p) of paragraph (l) of Rule 4.218 there shall be substituted for the words "capital gains" the word "corporation".

Amendment of Rule 4.223-CVL

80.—(1) For paragraph (1) of Rule 4.223-CVL there shall be substituted the following:—

"(1) Subject to paragraphs (3) and (3A), the statement which section 192 requires the liquidator to send to the registrar of companies, if the winding up is not concluded within one year from its commencement, shall be sent not more than 30 days after the expiration of that year, and thereafter 6-monthly until the winding up is concluded.".

(2) After paragraph (3) of Rule 4.223-CVL there shall be inserted the following paragraph:—

"(3A) No statement shall be required to be delivered under this Rule where the return of the final meeting in respect of the company under sections 94 or 106 is delivered before the date at which the statement is to be delivered and that return shows that no assets or funds of the company remain unclaimed or undistributed in the hands or under the control of the liquidator or any former liquidator; but where this paragraph applies, the liquidator shall deliver a copy of that return to the Secretary of State.".

Amendment of Rule 4.226

81. At the end of subparagraph (a) of Rule 4.226 the word "and" shall be omitted and at the end of subparagraph (b) of that Rule there shall be added the following words:—

", and

(c) apply to all windings up to which section 216 applies, whether or not the winding up commenced before the coming into force of the Rules".

Amendment of Rule 4.229

82. For Rule 4.229 there shall be substituted the following:—

"**Second excepted case**

4.229.—(1) Where a person to whom section 216 applies as having been a director or shadow director of the liquidating company applies for leave of the court under that section not later than 7 days from the date on which the company went into liquidation, he may, during the period specified in paragraph (2) below, act in any of the ways mentioned in section 216(3), notwithstanding that he has not the leave of the court under that section.

(2) The period referred to in paragraph (1) begins with the day on which the company goes into liquidation and ends either on the day falling six weeks after that date or on the day on which the court disposes of the application for leave under section 216, whichever of those days occurs first.".