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STATUTORY INSTRUMENTS

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**2005 No. 527**

**The Insolvency (Amendment) Rules 2005**

**Substitution of Rule 4.90**

**23.** For Rule 4.90 substitute—

**“Mutual credits and set-off**

**4.90.**—(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) 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 section 98; 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 section 98;
  - (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) 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 4.86 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 4.91 to 4.93 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.”