
STATUTORY INSTRUMENTS

2007 No. 1974

The Insolvency (Amendment) Rules 2007

Substitution of Rule 4.228

3.—(1) The Insolvency Rules 1986 are amended as follows.

(2) For Rule 4.228 substitute—

“First excepted case

4.—(1) This Rule applies where—

- (a) a person (“the person”) was within the period mentioned in section 216(1) a director, or shadow director, of an insolvent company that has gone into insolvent liquidation
- (b) the person acts in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on (or proposed carrying on) of the whole or substantially the whole of the business of the insolvent company where that business (or substantially the whole of it) is (or is to be) acquired from the insolvent company under arrangements—
 - (i) made by its liquidator; or
 - (ii) made before 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 1 of the Act.

(2) The person, will not be taken to have contravened section 216 if prior to his acting in the circumstances set out in paragraph (1) a notice is, in accordance with the requirements of paragraph (3),—

- (a) 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; and
- (b) published in the Gazette.

(3) The notice referred to in paragraph (2)—

- (a) may, subject to compliance with sub-paragraph (a), be given and published before the completion of the arrangements referred to in paragraph (1)(b) but must be given and published no later than 28 days after that completion;
- (b) must state—
 - (i) the name and registered number of the insolvent company;
 - (ii) the name of the person;
 - (iii) that it is his intention to act (or, where the insolvent company has not entered insolvent liquidation, to act or continue to act) in all or any of the ways specified in section 216(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

(iv) the prohibited name or, where the company has not 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; and

(c) must in the case of notice given to each creditor of the company be given using Form 4.73.

(4) 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.”

(3) After the entry in the index to forms in Schedule 4 to the Insolvency Rules 1986 there is inserted—

“4.73 Notice to the creditors of an insolvent company of the re-use of a prohibited name”.

(4) After Form 4.72 in Schedule 4 to the Insolvency Rules 1986 there shall be inserted into that Schedule Form 4.73 as set out in the Schedule to these Rules.