SCHEDULE 1 Rules 4, 5(1), 6, 7, 8, 9(1), 10, 11, 12 and 13

PART 1

AMENDMENTS TO PART 1 OF THE PRINCIPAL RULES

Amendments to Rule 1.1

1. In Rule 1.1—

(a) in sub-paragraph (a)(i) of paragraph (2) for the words "an administration order (under Part II of the Act) in force in relation to it" there are substituted "the company in administration"; and

(b) in sub-paragraph (b) of paragraph (2) for the words "an administration order is in force" there are substituted "the company is in administration".

Amendments to Rule 1.3

2.—(1) After paragraph (2)(c) of Rule 1.3 there is inserted—

"(ca) an estimate (to the best of the directors' knowledge and belief and subject to paragraph (4)) of—

(i) the value of the prescribed part, should the company go into liquidation if the proposal for the voluntary arrangement is not accepted, whether or not section 176A is to be disapplied; and

(ii) the value of the company's net property on the date that the estimate is made."

(2) After paragraph (3) there is inserted—

"(4) Nothing in paragraph (2)(ca) is to be taken as requiring the estimate referred to in that paragraph 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 1.10

3. In Rule 1.10—

(a) in paragraph (1)(a)—

(i) for the words "subject to an administration order" there are substituted "in administration";

(ii) after the words "Rule 1.3" there is inserted "(subject to paragraph (3) below)"; and

(b) after paragraph (2) there is inserted—

"(3) The administrator or liquidator shall include, in place of the estimate required by Rule 1.3(2)(ca), a statement which contains—

(a) to the best of the administrator or 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 section 176A(5) or section 176A(3) applies), and

(ii) an estimate of the value of the company's net property, and

(b) whether, and, if so, why, the administrator or liquidator proposes to make an application to court under section 176A(5).

(4) 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 1.13

4. For Rule 1.13 there is substituted—

"(1) Subject as follows, in fixing the venue for the creditors' meeting and the company meeting, the person summoning the meeting ("the convener") shall have regard primarily to the convenience of the creditors.

(2) Meetings shall in each case be summoned for commencement between 10.00 and 16.00 hours on a business day.

(3) The meetings may be held on the same day or on different days. If held on the same day, the meetings shall be held in the same place, but in either case the creditors' meeting shall be fixed for a time in advance of the company meeting.

(4) Where the meetings are not held on the same day, they shall be held within 7 days of each other.

(5) With every notice summoning either meeting there shall be sent out forms of proxy.".

Amendments to Rule 1.17

5. In paragraph (2) of Rule 1.17 for the words "subject to an administration order" there is substituted "in administration" and for the words "of the administration order" there is substituted "when the company entered administration".

Amendments to Rule 1.23

6. In Rule 1.23—

(a) in paragraph (1)(b) for the words "subject to an administration order" there is substituted "in administration";

(b) in paragraph (2)—

(i) for the words "subject to an administration order" there is substituted "in administration"; and

(ii) in sub-paragraph (b) for the words "became subject to the administration order" there is substituted "entered administration".

Amendment to Rule 1.29

7. After paragraph (3) of Rule 1.29 there is inserted—

"(4) In the report under paragraph (2), the supervisor shall include a statement as to the amount paid, if any, to unsecured creditors by virtue of the application of section 176A (prescribed part).".

Amendments to Rule 1.52

8. In Rule 1.52—

(a) in paragraph 6(a) for "(5)" there is substituted "(4)"; and

(b) in paragraph (7) for "1.48(4)" there is substituted "1.48(5)".

PART 2

SUBSTITUTION OF PART 2 OF THE PRINCIPAL RULES

9. For Part 2 of the principal Rules there is substituted—

"PART 2

ADMINISTRATION PROCEDURE

CHAPTER 1

PRELIMINARY

Introductory and interpretation

2.1.—(1) In this Part—

(a) Chapter 2 applies in relation to the appointment of an administrator by the court;

(b) Chapter 3 applies in relation to the appointment of an administrator by the holder of a qualifying floating charge under paragraph 14;

(c) Chapter 4 applies in relation to the appointment of an administrator by the company or the directors under paragraph 22;

(d) The following Chapters apply in all the cases mentioned in sub-paragraphs (a)-(c) above:

— Chapter 5: Process of administration;

— Chapter 6: Meetings and reports;

— Chapter 7: The creditors' committee;

— Chapter 8: Disposal of charged property;

— Chapter 9: Expenses of the administration;

— Chapter 10: Distributions to creditors;

— Chapter 11: The administrator;

— Chapter 12: Ending administration;

— Chapter 13: Replacing administrator;

— Chapter 14: EC Regulation—conversion of administration into winding up;

— Chapter 15: EC Regulation—member State liquidator.

(2) In this Part of these Rules a reference to a numbered paragraph shall, unless otherwise stated, be to the paragraph so numbered in Schedule B1 to the Act.

CHAPTER 2

APPOINTMENT OF ADMINISTRATOR BY COURT

Affidavit in support of administration application

2.2.—(1) Where it is proposed to apply to the court for an administration order to be made in relation to a company, the administration application shall be in Form 2.1B and an affidavit complying with Rule 2.4 must be prepared and sworn, with a view to its being filed with the court in support of the application.

(2) If the administration application is to be made by the company or by the directors, the affidavit shall be made by one of the directors, or the secretary of the company, stating himself to make it on behalf of the company or, as the case may be, on behalf of the directors.

(3) If the application is to be made by creditors, the affidavit shall be made by a person acting under the authority of them all, whether or not himself one of their number. In any case there must be stated in the affidavit the nature of his authority and the means of his knowledge of the matters to which the affidavit relates.

(4) If the application is to be made by the supervisor of a voluntary arrangement under Part I of the Act, it is to be treated as if it were an application by the company.

Form of application

2.3.—(1) If made by the company or by the directors, the application shall state the name of the company and its address for service, which (in the absence of special reasons to the contrary) is that of the company's registered office.

(2) If the application is made by the directors, it shall state that it is so made under paragraph 12(1)(b); but from and after making it is to be treated for all purposes as the application of the company.

(3) If made by a single creditor, the application shall state his name and address for service.

(4) If the application is made by two or more creditors, it shall state that it is so made (naming them); but from and after making it is to be treated for all purposes as the application of only one of them, named in the application as applying on behalf of himself and other creditors. An address for service for that one shall be specified.

(5) There shall be attached to the application a written statement which shall be in Form 2.2B by each of the persons proposed to be administrator stating—

(a) that he consents to accept appointment;

(b) details of any prior professional relationship(s) that he has had with the company to which he is to be appointed as administrator; and

(c) his opinion that it is reasonably likely that the purpose of administration will be achieved.

Contents of application and affidavit in support

2.4.—(1) The administration application shall contain a statement of the applicant's belief that the company is, or is likely to become, unable to pay its debts, except where the applicant is the holder of a qualifying floating charge and is making the application in reliance on paragraph 35.

(2) There shall be attached to the application an affidavit in support which shall contain—

(a) a statement of the company's financial position, specifying (to the best of the applicant's knowledge and belief) the company's assets and liabilities, including contingent and prospective liabilities;

(b) details of any security known or believed to be held by creditors of the company, and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver or to appoint an administrator under paragraph 14. If an administrative receiver has been appointed, that fact shall be stated;

(c) details of any insolvency proceedings in relation to the company including any petition that has been presented for the winding up of the company so far as within the immediate knowledge of the applicant;

(d) where it is intended to appoint a number of persons as administrators, details of the matters set out in paragraph 100(2) regarding the exercise of the function of the administrators; and

(e) any other matters which, in the opinion of those intending to make the application for an administration order, will assist the court in deciding whether to make such an order, so far as lying within the knowledge or belief of the applicant.

(3) Where the application is made by the holder of a qualifying floating charge in reliance on paragraph 35, he shall give sufficient details in the affidavit in support to satisfy the court that he is entitled to appoint an administrator under paragraph 14.

(4) 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.

Filing of application

2.5.—(1) The application (and all supporting documents) shall be filed with the court, with a sufficient number of copies for service and use as provided by Rule 2.6.

(2) Each of the copies filed shall have applied to it the seal of the court and be issued to the applicant; and on each copy there shall be endorsed the date and time of filing.

(3) The court shall fix a venue for the hearing of the application and this also shall be endorsed on each copy of the application issued under paragraph (2).

(4) After the application is filed, it is the duty of the applicant to notify the court in writing of the existence of any insolvency proceedings, and any insolvency proceedings under the EC Regulation, in relation to the company, as soon as he becomes aware of them.

Service of application

2.6.—(1) In the following paragraphs of this Rule, references to the application are to a copy of the application issued by the court under Rule 2.5(2) together with the affidavit in support of it and the documents attached to the application.

(2) Notification for the purposes of paragraph 12(2) shall be by way of service in accordance with Rule 2.8, verified in accordance with Rule 2.9.

(3) The application shall be served in addition to those persons referred to in paragraph 12(2)—

(a) if an administrative receiver has been appointed, on him;

(b) if there is pending a petition for the winding-up of the company, on the petitioner (and also on the provisional liquidator, if any);

(c) if a member State liquidator has been appointed in main proceedings in relation to the company, on him;

(d) on the person proposed as administrator;

(e) on the company, if the application is made by anyone other than the company;

(f) if a supervisor of a voluntary arrangement under Part I of the Act has been appointed, on him.

Notice to sheriff, etc

2.7. The applicant shall as soon as reasonably practicable after filing the application give notice of its being made to—

(a) any sheriff or other officer who to his knowledge is charged with an execution or other legal process against the company or its property; and

(b) any person who to his knowledge has distrained against the company or its property.

Manner in which service to be effected

2.8.—(1) Service of the application in accordance with Rule 2.6 shall be effected by the applicant, or his solicitor, or by a person instructed by him or his solicitor, not less than 5 days before the date fixed for the hearing.

(2) Service shall be effected as follows—

(a) on the company (subject to paragraph (3) below), by delivering the documents to its registered office;

(b) on any other person (subject to paragraph (4) below), by delivering the documents to his proper address;

(c) in either case, in such other manner as the court may direct.

(3) If delivery to a company's registered office is not practicable, service may be effected by delivery to its last known principal place of business in England and Wales.

(4) Subject to paragraph (5), for the purposes of paragraph (2)(b) above, a person's proper address is any which he has previously notified as his address for service; but if he has not notified any such address, service may be effected by delivery to his usual or last known address.

(5) In the case of a person who—

(a) is an authorised deposit-taker or former authorised deposit-taker;

(b) (i) has appointed, or is or may be entitled to appoint, an administrative receiver of the company, or

(ii) is, or may be, entitled to appoint an administrator of the company under paragraph 14; and

(c) has not notified an address for service,

the proper address is the address of an office of that person where, to the knowledge of the applicant, the company maintains a bank account or, where no such office is known to the applicant, the registered office of that person, or, if there is no such office, his usual or last known address.

(6) Delivery of documents to any place or address may be made by leaving them there, or sending them by first class post.

Proof of service

2.9.—(1) Service of the application shall be verified by an affidavit of service in Form 2.3B, specifying the date on which, and the manner in which, service was effected.

(2) The affidavit of service, with a sealed copy of the application exhibited to it, shall be filed with the court as soon as reasonably practicable after service, and in any event not less than 1 day before the hearing of the application.

Application to appoint specified person as administrator by holder of qualifying floating charge

2.10.—(1) Where the holder of a qualifying floating charge applies to the court under paragraph 36(1)(b), he shall produce to the court—

(a) the written consent of all holders of any prior qualifying floating charge;

(b) a written statement in the Form 2.2B made by the specified person proposed by him as administrator; and

(c) sufficient evidence to satisfy the court that he is entitled to appoint an administrator under paragraph 14.

(2) If an administration order is made appointing the specified person, the costs of the person who made the administration application and the applicant under paragraph 36(1)(b) shall, unless the court otherwise orders, be paid as an expense of the administration.

Application where company in liquidation

2.11.—(1) Where an administration application is made under paragraph 37 or paragraph 38, the affidavit in support of the administration application shall contain—

(a) full details of the existing insolvency proceedings, the name and address of the liquidator, the date he was appointed and by whom;

(b) the reasons why it has subsequently been considered appropriate that an administration application should be made;

(c) all other matters that would, in the opinion of the applicant, assist the court in considering the need to make provisions in respect of matters arising in connection with the liquidation; and

(d) the details required in Rules 2.4(2) and (4).

(2) Where the application is made by the holder of a qualifying floating charge he shall set out sufficient evidence in the affidavit to satisfy the court that he is entitled to appoint an administrator under paragraph 14.

The hearing

2.12.—(1) At the hearing of the administration application, any of the following may appear or be represented—

(a) the applicant;

(b) the company;

(c) one or more of the directors;

(d) if an administrative receiver has been appointed, that person;

(e) any person who has presented a petition for the winding-up of the company;

(f) the person proposed for appointment as administrator;

(g) if a member State liquidator has been appointed in main proceedings in relation to the company, that person;

(h) any person that is the holder of a qualifying floating charge;

(j) any supervisor of a voluntary arrangement under Part I of the Act;

(k) with the permission of the court, any other person who appears to have an interest justifying his appearance.

(2) If the court makes an administration order, it shall be in Form 2.4B.

(3) If the court makes an administration order, the costs of the applicant, and of any person whose costs are allowed by the court, are payable as an expense of the administration.

2.13. Where the court makes an administration order in relation to a company upon an application under paragraph 37 or 38, the court shall include in the order—

(a) in the case of a liquidator appointed in a voluntary winding-up, his removal from office;

(b) details concerning the release of the liquidator;

(c) provision for payment of the expenses of the liquidation;

(d) provisions regarding any indemnity given to the liquidator;

(e) provisions regarding the handling or realisation of any of the company's assets in the hands of or under the control of the liquidator;

(f) such provision as the court thinks fit with respect to matters arising in connection with the liquidation; and

(g) such other provisions as the court shall think fit.

Notice of administration order

2.14.—(1) If the court makes an administration order, it shall as soon as reasonably practicable send two sealed copies of the order to the person who made the application.

(2) The applicant shall send a sealed copy of the order as soon as reasonably practicable to the person appointed as administrator.

(3) If the court makes an order under paragraph 13(1)(d) or any other order under paragraph 13(1)(f), it shall give directions as to the persons to whom, and how, notice of that order is to be given.

CHAPTER 3

APPOINTMENT OF ADMINISTRATOR BY HOLDER OF FLOATING CHARGE

Notice of intention to appoint

2.15.—(1) The prescribed form for the notice of intention to appoint for the purposes of paragraph 44(2) is Form 2.5B.

(2) For the purposes of paragraph 44(2), a copy of Form 2.5B shall be filed with the court at the same time as it is sent in accordance with paragraph 15(1) to the holder of any prior qualifying floating charge.

(3) The provisions of Rule 2.8(2) to 2.8(6) shall apply to the sending of a notice under this Rule as they apply to the manner in which service of an administration application is effected under that Rule.

Notice of appointment

2.16.—(1) The notice of appointment for the purposes of an appointment under paragraph 14 shall be in Form 2.6B.

(2) The copies of the notice filed with the court, shall be accompanied by—

(a) the administrator's written statement in Form 2.2B; and

(b) either—

(i) evidence that the person making the appointment has given such notice as may be required by paragraph 15(1)(a); or

(ii) copies of the written consent of all those required to give consent in accordance with paragraph 15(1)(b); and

(c) a statement of those matters provided for in paragraph 100(2), if applicable.

(3) The statutory declaration on Form 2.6B shall be made not more than 5 business days before the form is filed with the court.

(4) Written consent may be given by the holder of a prior qualifying floating charge where a notice of intention to appoint an administrator has been given and filed with the court in accordance with Rule 2.15 above, by completing the section provided on Form 2.5B and returning to the appointor a copy of the form.

(5) Where the holder of a prior qualifying floating charge does not choose to complete the section provided on Form 2.5B to indicate his consent, or no such form has been sent to him, his written consent shall include—

(a) details of the name, address of registered office and registered number of the company in respect of which the appointment is proposed to be made;

(b) details of the charge held by him including the date it was registered and, where applicable, any financial limit and any deeds of priority;

(c) his name and address;

(d) the name and address of the holder of the qualifying floating charge who is proposing to make the appointment;

(e) the date that notice of intention to appoint was given;

(f) the name of the proposed administrator;

(g) a statement of consent to the proposed appointment,

and it shall be signed and dated.

(6) This Rule and the following Rule are subject to Rule 2.19, the provisions of which apply when an appointment is to be made out of court business hours.

2.17.—(1) Three copies of the notice of appointment shall be filed with the court and shall have applied to them the seal of the court and be endorsed with the date and time of filing.

(2) The court shall issue two of the sealed copies of the notice of appointment to the person making the appointment, who shall as soon as reasonably practicable send one of the sealed copies to the administrator.

2.18. Where, after receiving notice that an administration application has been made, the holder of a qualifying floating charge appoints an administrator in reliance on paragraph 14, he shall as soon as reasonably practicable send a copy of the notice of appointment to the person making the administration application and to the court in which the application has been made.

Appointment taking place out of court business hours

2.19.—(1) The holder of a qualifying floating charge may file a notice of appointment with the court, notwithstanding that the court is not open for public business. When the court is closed (and only when it is closed) a notice of appointment may be filed with the court by faxing that form in accordance with paragraph (3). The notice of appointment shall be in Form 2.7B.

(2) The filing of a notice in accordance with this Rule shall have the same effect for all purposes as a notice of appointment filed in accordance with Rule 2.16 with the court specified in the notice as having jurisdiction in the case.

(3) The notice shall be faxed to a designated telephone number which shall be provided by the Court Service for that purpose. The Secretary of State shall publish the telephone number of the relevant fax machine on The Insolvency Service website and on request to The Insolvency Service, make it available in writing.

(4) The appointor shall ensure that a fax transmission report detailing the time and date of the fax transmission and containing a copy of the first page (in part or in full) of the document faxed is created by the fax machine that is used to fax the form.

(5) The appointment shall take effect from the date and time of that fax transmission. The appointor shall notify the administrator, as soon as reasonably practicable, that the notice has been filed.

(6) The copy of the faxed notice of appointment received by the Court Service fax machine shall be forwarded as soon as reasonably practicable to the court specified in the notice as the court having jurisdiction in the case, to be placed on the relevant court file.

(7) The appointor shall take three copies of the notice of appointment that was faxed to the designated telephone number, together with the transmission report showing the date and time that the form was faxed to the designated telephone number and all the necessary supporting documents listed on Form 2.7B, to the court on the next day that the court is open for business.

(8) The appointor shall attach to the notice a statement providing full reasons for the out of hours filing of the notice of appointment, including why it would have been damaging to the company and its creditors not to have so acted.

(9) The copies of the notice shall be sealed by the court and shall be endorsed with the date and time when, according to the appointor's fax transmission report, the notice was faxed and the date when the notice and accompanying documents were delivered to the court.

(10) The administrator's appointment shall cease to have effect if the requirements of paragraph (7) are not completed within the time period indicated in that paragraph.

(11) Where any question arises in respect of the date and time that the notice of appointment was filed with the court it shall be a presumption capable of rebuttal that the date and time shown on the appointor's fax transmission report is the date and time at which the notice was so filed.

(12) The court shall issue two of the sealed copies of the notice of appointment to the person making the appointment, who shall, as soon as reasonably practicable, send one of the copies to the administrator.

CHAPTER 4

APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS

Notice of intention to appoint

2.20.—(1) The notice of intention to appoint an administrator for the purposes of paragraph 26 shall be in Form 2.8B.

(2) A copy of the notice of intention to appoint must, in addition to the persons specified in paragraph 26, be given to—

(a) any sheriff who, to the knowledge of the person giving the notice, is charged with execution or other legal process against the company;

(b) any person who, to the knowledge of the person giving the notice, has distrained against the company or its property;

(c) any supervisor of a voluntary arrangement under Part I of the Act; and

(d) the company, if the company is not intending to make the appointment.

(3) The provisions of Rule 2.8(2) to 2.8(6) shall apply to the sending or giving of a notice under this Rule as they apply to the manner in which service of an administration application is effected under that Rule.

2.21. The statutory declaration on Form 2.8B shall be made not more than 5 business days before the notice is filed with the court.

2.22. The notice of intention to appoint shall be accompanied by either a copy of the resolution of the company to appoint an administrator (where the company intends to make the appointment) or a record of the decision of the directors (where the directors intend to make the appointment).

Notice of appointment

2.23.—(1) The notice of appointment for the purposes of an appointment under paragraph 22 shall be in Form 2.9B or Form 2.10B, as appropriate.

(2) The copies of the notice filed with the court shall be accompanied by—

(a) the administrator's written statement in Form 2.2B;

(b) the written consent of all those persons to whom notice was given in accordance with paragraph 26(1) unless the period of notice set out in paragraph 26(1) has expired; and

(c) a statement of the matters provided for in paragraph 100(2), where applicable.

2.24. The statutory declaration on Form 2.9B or Form 2.10B shall be made not more than 5 business days before the notice is filed with the court.

2.25. Where a notice of intention to appoint an administrator has not been given, the notice of appointment shall be accompanied by the documents specified in Rule 2.22 above.

2.26.—(1) Three copies of the notice of appointment shall be filed with the court and shall have applied to them the seal of the court and be endorsed with the date and time of filing.

(2) The court shall issue two of the sealed copies of the notice of appointment to the person making the appointment who shall as soon as reasonably practicable send one of the sealed copies to the administrator.

CHAPTER 5

PROCESS OF ADMINISTRATION

Notification and advertisement of administrator's appointment

2.27.—(1) The administrator shall advertise his appointment once in the Gazette, and once in such newspaper as he thinks most appropriate for ensuring that the appointment comes to the notice of the company's creditors. The advertisement shall be in Form 2.11B.

(2) The administrator shall, as soon as reasonably practicable after the date specified in paragraph 46(6), give notice of his appointment—

(a) if a receiver or an administrative receiver has been appointed, to him;

(b) if there is pending a petition for the winding up of the company, to the petitioner (and also to the provisional liquidator, if any);

(c) to any sheriff who, to the administrator's knowledge, is charged with execution or other legal process against the company;

(d) to any person who, to the administrator's knowledge, has distrained against the company or its property; and

(e) any supervisor of a voluntary arrangement under Part I of the Act.

(3) Where, under a provision of Schedule B1 to the Act or these Rules, the administrator is required to send a notice of his appointment to any person he shall do so in Form 2.12B.

Notice requiring statement of affairs

2.28.—(1) In this Chapter "relevant person" shall have the meaning given to it in paragraph 47(3).

(2) The administrator shall send notice in Form 2.13B to each relevant person whom he determines appropriate requiring him to prepare and submit a statement of the company's affairs.

(3) The notice shall inform each of the relevant persons—

(a) of the names and addresses of all others (if any) to whom the same notice has been sent;

(b) of the time within which the statement must be delivered;

(c) of the effect of paragraph 48(4) (penalty for non-compliance); and

(d) of the application to him, and to each other relevant person, of section 235 (duty to provide information, and to attend on the administrator, if required).

(4) The administrator shall furnish each relevant person to whom he has sent notice in Form 2.13B with the forms required for the preparation of the statement of affairs.

Verification and filing

2.29.—(1) The statement of the company's affairs shall be in Form 2.14B, contain all the particulars required by that form and be verified by a statement of truth by the relevant person.

(2) The administrator may require any relevant person to submit a statement of concurrence in Form 2.15B stating that he concurs in the statement of affairs. Where the administrator does so, he shall inform the person making the statement of affairs of that fact.

(3) The statement of affairs shall be delivered by the relevant person making the statement of truth, together with a copy, to the administrator. The relevant person shall also deliver a copy of the statement of affairs to all those persons whom the administrator has required to make a statement of concurrence.

(4) A person required to submit a statement of concurrence shall do so before the end of the period of 5 business days (or such other period as the administrator may agree) beginning with the day on which the statement of affairs being concurred with is received by him.

(5) A statement of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the statement of concurrence is not in agreement with the relevant person, or he considers the statement of affairs to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.

(6) Every statement of concurrence shall be verified by a statement of truth and be delivered to the administrator by the person who makes it, together with a copy of it.

(7) Subject to Rule 2.30 below, the administrator shall as soon as reasonably practicable send to the registrar of companies and file with the court a Form 2.16B together with a copy of the statement of affairs and any statement of concurrence.

Limited disclosure

2.30.—(1) Where the administrator thinks that it would prejudice the conduct of the administration for the whole or part of the statement of the company's affairs to be disclosed, he may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it.

(2) The court may, on such application, order that the statement or, as the case may be, the specified part of it, shall not be filed with the registrar of companies.

(3) The administrator shall as soon as reasonably practicable send to the registrar of companies a Form 2.16B together with a copy of the order and the statement of affairs (to the extent provided by the order) and any statement of concurrence.

(4) If a creditor seeks disclosure of a statement of affairs or a specified part of it in relation to which an order has been made under this Rule, he may apply to the court for an order that the administrator disclose it or a specified part of it. The application shall be supported by written evidence in the form of an affidavit.

(5) The applicant shall give the administrator notice of his application at least 3 days before the hearing.

(6) The court may make any order for disclosure subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees fit.

(7) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the administrator shall, as soon as reasonably practicable after the change, apply to the court for the order or any part of it to be rescinded.

(8) The administrator shall, as soon as reasonably practicable after the making of an order under paragraph (7) above, file with the registrar of companies Form 2.16B together with a copy of the statement of affairs to the extent provided by the order.

(9) When the statement of affairs is filed in accordance with paragraph (8), the administrator shall, where he has sent a statement of proposals under paragraph 49, provide the creditors with a copy of the statement of affairs as filed, or a summary thereof.

(10) The provisions of Part 31 of the CPR shall not apply to an application under this Rule.

Release from duty to submit statement of affairs; extension of time

2.31.—(1) The power of the administrator under paragraph 48(2) to give a release from the obligation imposed by paragraph 47(1), or to grant an extension of time, may be exercised at the administrator's own discretion, or at the request of any relevant person.

(2) A relevant person may, if he requests a release or extension of time and it is refused by the administrator, apply to the court for it.

(3) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it without a hearing but it shall not do so without giving the relevant person at least 7 days' notice, upon receipt of which the relevant person may request the court to list the application for a without notice hearing. If the application is not dismissed the court shall fix a venue for it to be heard, and give notice to the relevant person accordingly.

(4) The relevant person shall, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application and of any evidence which he (the relevant person) intends to adduce in support of it.

(5) The administrator may appear and be heard on the application and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the court's attention.

If such a report is filed, a copy of it shall be sent by the administrator to the relevant person, not later than 5 days before the hearing.

(6) Sealed copies of any order made on the application shall be sent by the court to the relevant person and the administrator.

(7) On any application under this Rule the relevant person's costs shall be paid in any event by him and, unless the court otherwise orders, no allowance towards them shall be made out of the assets.

Expenses of statement of affairs

2.32.—(1) A relevant person making the statement of the company's affairs or statement of concurrence shall be allowed, and paid by the administrator out of his receipts, any expenses incurred by the relevant person in so doing which the administrator considers reasonable.

(2) Any decision by the administrator under this Rule is subject to appeal to the court.

(3) Nothing in this Rule relieves a relevant person from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the administrator.

Administrator's proposals

2.33.—(1) The administrator shall, under paragraph 49, make a statement which he shall send to the registrar of companies attached to Form 2.17B.

(2) The statement shall include, in addition to those matters set out in paragraph 49—

(a) details of the court where the proceedings are and the relevant court reference number;

(b) the full name, registered address, registered number and any other trading names of the company;

(c) details relating to his appointment as administrator, including the date of appointment and the person making the application or appointment and, where there are joint administrators, details of the matters set out in paragraph 100(2);

(d) the names of the directors and secretary of the company and details of any shareholdings in the company they may have;

(e) an account of the circumstances giving rise to the appointment of the administrator;

(f) if a statement of the company's affairs has been submitted, a copy or summary of it, with the administrator's comments, if any;

(g) if an order limiting the disclosure of the statement of affairs (under Rule 2.30) has been made, a statement of that fact, as well as—

(i) details of who provided the statement of affairs;

(ii) the date of the order of limited disclosure; and

(iii) the details or a summary of the details that are not subject to that order;

(h) if a full statement of affairs is not provided, the names, addresses and debts of the creditors including details of any security held;

(j) if no statement of affairs has been submitted, details of the financial position of the company at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the company entered administration), a list of the company's creditors including their names, addresses and details of their debts, including any security held, and an explanation as to why there is no statement of affairs;

(k) the basis upon which it is proposed that the administrator's remuneration should be fixed under Rule 2.106;

(l) (except where the administrator proposes a voluntary arrangement in relation to the company and subject to paragraph (3))—

(i) to the best of the administrator's knowledge and belief—

(aa) an estimate of the value of the prescribed part (whether or not he proposes to make an application to court under section 176A(5) or section 176A(3) applies); and

(bb) an estimate of the value of the company's net property; and

(ii) whether, and, if so, why, the administrator proposes to make an application to court under section 176A(5);

(m) how it is envisaged the purpose of the administration will be achieved and how it is proposed that the administration shall end. If a creditors' voluntary liquidation is proposed, details of the proposed liquidator must be provided, and a statement that, in accordance with paragraph 83(7) and Rule 2.117(3), creditors may nominate a different person as the proposed liquidator, provided that the nomination is made after the receipt of the proposals and before the proposals are approved;

(n) where the administrator has decided not to call a meeting of creditors, his reasons;

(o) the manner in which the affairs and business of the company—

(i) have, since the date of the administrator's appointment, been managed and financed, including, where any assets have been disposed of, the reasons for such disposals and the terms upon which such disposals were made; and

(ii) will, if the administrator's proposals are approved, continue to be managed and financed;

(p) whether—

(i) the EC Regulation applies; and

(ii) if so, whether the proceedings are main proceedings or territorial proceedings; and

(q) such other information (if any) as the administrator thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.

(3) Nothing in paragraph (2)(l) 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.

(4) Where the court orders, upon an application by the administrator under paragraph 107, an extension of the period of time in paragraph 49(5), the administrator shall notify in Form 2.18B all the persons set out in paragraph 49(4) as soon as reasonably practicable after the making of the order.

(5) Where the administrator has made a statement under paragraph 52(1) and has not called an initial meeting of creditors, the proposals sent out under this Rule and paragraph 49 will (if no meeting has been requisitioned under paragraph 52(2) within the period set out in Rule 2.37(1)) be deemed to have been approved by the creditors.

(6) Where the administrator intends to apply to the court (or file a notice under paragraph 80(2)) for the administration to cease at a time before he has sent a statement of his proposals to creditors in accordance with paragraph 49, he shall, at least 10 days before he makes such an application (or files such a notice), send to all creditors of the company (so far as he is aware of their addresses) a report containing the information required by paragraphs (2)(a)-(p) of this Rule.

(7) Where the administrator wishes to publish a notice under paragraph 49(6) he shall publish the notice once in such newspaper as he thinks most appropriate for ensuring that the notice comes to the attention of the company's members. The notice shall—

(a) state the full name of the company;

(b) state the full name and address of the administrator;

(c) give details of the administrator's appointment; and

(d) specify an address to which members can write for a copy of the statement of proposals.

(8) This notice must be published as soon as reasonably practicable after the administrator sends his statement of proposals to the company's creditors but no later than 8 weeks (or such other period as may be agreed by the creditors or as the court may order) from the date that the company entered administration.

CHAPTER 6

MEETINGS AND REPORTS

SECTION A: CREDITORS' MEETINGS

Meetings to consider administrator's proposals

2.34.—(1) Notice of an initial creditors' meeting shall (unless the court otherwise directs) be given by notice in the newspaper in which the administrator's appointment was advertised and, if he considers it appropriate to do so, in such other newspaper as he thinks most appropriate for ensuring that the notice comes to the attention of the company's creditors.

(2) Notice in Form 2.19B to attend the meeting shall be sent out at the same time to any directors or officers of the company (including persons who have been directors or officers in the past) whose presence at the meeting is, in the administrator's opinion, required.

(3) Where the court orders an extension to the period set out in paragraph 51(2)(b) the administrator shall send a notice in Form 2.18B to each person to whom he is required to send notice by paragraph 49(4).

(4) If at the meeting there is not the requisite majority for approval of the administrator's proposals (with modifications, if any), the chairman may, and shall if a resolution is passed to that effect, adjourn the meeting for not more than 14 days and may only adjourn once (subject to any direction by the court).

Creditors' meetings generally

2.35.—(1) This Rule applies to creditors' meetings summoned by the administrator under—

(a) paragraph 51 (initial creditors' meeting);

(b) paragraph 52(2) (at the request of the creditors);

(c) paragraph 54(2) (to consider revision to the administrator's proposals);

(d) paragraph 56(1) (further creditors' meetings); and

(e) paragraph 62 (general power to summon meetings of creditors).

(2) Notice of any of the meetings set out in paragraph (1) above shall be in Form 2.20B.

(3) In fixing the venue for the meeting, the administrator shall have regard to the convenience of creditors and the meeting shall be summoned for commencement between 10.00 and 16.00 hours on a business day, unless the court otherwise directs.

(4) Subject to paragraphs (6) and (7) below, at least 14 days' notice of the meeting shall be given to all creditors who are known to the administrator and had claims against the company at the date when the company entered administration unless that creditor has subsequently been paid in full; and the notice shall—

(a) specify the purpose of the meeting;

(b) contain a statement of the effect of Rule 2.38 (entitlement to vote); and

(c) contain the forms of proxy.

(5) If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chairman, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(6) The meeting may be adjourned once, if the chairman thinks fit, but not for more than 14 days from the date on which it was fixed to commence, subject to the direction of the court.

(7) If a meeting is adjourned the administrator shall as soon as reasonably practicable notify the creditors of the venue of the adjourned meeting.

The chairman at meetings

2.36.—(1) At any meeting of creditors summoned by the administrator, either he shall be chairman, or a person nominated by him in writing to act in his place.

(2) A person so nominated must be either—

(a) one who is qualified to act as an insolvency practitioner in relation to the company; or

(b) an employee of the administrator or his firm who is experienced in insolvency matters.

Meeting requisitioned by creditors

2.37.—(1) The request for a creditors' meeting under paragraph 52(2) or 56(1) shall be in Form 2.21B. A request for an initial creditors' meeting shall be made within 12 days of the date on which the administrator's statement of proposals is sent out. A request under paragraph 52(2) or 56(1) shall include—

(a) a list of the creditors concurring with the request, showing the amounts of their respective debts in the administration;

(b) from each creditor concurring, written confirmation of his concurrence; and

(c) a statement of the purpose of the proposed meeting,

but sub-paragraph (a) does not apply if the requisitioning creditor's debt is alone sufficient without the concurrence of other creditors.

(2) A meeting requested under paragraph 52(2) or 56(1) shall be held within 28 days of the administrator's receipt of the notice requesting the meeting.

(3) The expenses of summoning and holding a meeting at the request of a creditor shall be paid by that person, who shall deposit with the administrator security for their payment.

(4) The sum to be deposited shall be such as the administrator may determine, and he shall not act without the deposit having been made.

(5) The meeting may resolve that the expenses of summoning and holding it are to be payable out of the assets of the company as an expense of the administration.

(6) To the extent that any deposit made under this Rule is not required for the payment of expenses of summoning and holding the meeting, it shall be repaid to the person who made it.

Entitlement to vote

2.38.—(1) Subject as follows, at a meeting of creditors in administration proceedings a person is entitled to vote only if—

(a) he has given to the administrator, not later than 12.00 hours on the business day before the day fixed for the meeting, details in writing of the debt which—

(i) he claims to be due to him from the company; or

(ii) in relation to a member State liquidator, is claimed to be due to creditors in proceedings in relation to which he holds office;

(b) the claim has been duly admitted under the following provisions of this Rule; and

(c) there has been lodged with the administrator any proxy which he intends to be used on his behalf,

and details of the debt must include any calculation for the purposes of Rules 2.40 to 2.42.

(2) The chairman of the meeting may allow a creditor to vote, notwithstanding that he has failed to comply with paragraph (1)(a), if satisfied that the failure was due to circumstances beyond the creditor's control.

(3) The chairman of the meeting may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim.

(4) Votes are calculated according to the amount of a creditor's claim as at the date on which the company entered administration, less any payments that have been made to him after that date in respect of his claim and any adjustment by way of set-off in accordance with Rule 2.85 as if that Rule were applied on the date that the votes are counted.

(5) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

(6) No vote shall be cast by virtue of a claim more than once on any resolution put to the meeting.

(7) Where—

(a) a creditor is entitled to vote under this Rule;

(b) has lodged his claim in one or more sets of other proceedings; and

(c) votes (either in person or by proxy) on a resolution put to the meeting; and

(d) the member State liquidator casts a vote in respect of the same claim,

only the creditor's vote shall be counted.

(8) Where—

(a) a creditor has lodged his claim in more than one set of other proceedings; and

(b) more than one member State liquidator seeks to vote by virtue of that claim,

the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.

(9) For the purposes of paragraph (6), the claim of a creditor and of any member State liquidator in relation to the same debt are a single claim.

(10) For the purposes of paragraphs (7) and (8), "other proceedings" means main proceedings, secondary proceedings or territorial proceedings in another member State.

Admission and rejection of claims

2.39.—(1) At any creditors' meeting the chairman has power to admit or reject a creditor's claim for the purpose of his entitlement to vote; and the power is exercisable with respect to the whole or any part of the claim.

(2) The chairman's decision under this Rule, or in respect of any matter arising under Rule 2.38, is subject to appeal to the court by any creditor.

(3) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained.

(4) If on an appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks fit.

(5) In the case of the meeting summoned under paragraph 51 to consider the administrator's proposals, an application to the court by way of appeal under this Rule against a decision of the chairman shall not be made later than 14 days after the delivery of the administrator's report in accordance with paragraph 53(2).

(6) Neither the administrator nor any person nominated by him to be chairman is personally liable for costs incurred by any person in respect of an appeal to the court under this Rule, unless the court makes an order to that effect.

Secured creditors

2.40.—(1) At a meeting of creditors a secured creditor is entitled to vote only in respect of the balance (if any) of his debt after deducting the value of his security as estimated by him.

(2) However, in a case where the administrator has made a statement under paragraph 52(1)(b) and an initial creditors' meeting has been requisitioned under paragraph 52(2) then a secured creditor is entitled to vote in respect of the full value of his debt without any deduction of the value of his security.

Holders of negotiable instruments

2.41. A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing—

(a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands; and

(b) to estimate the value of the security and, for the purpose of his entitlement to vote, to deduct it from his claim.

Hire-purchase, conditional sale and chattel leasing agreements

2.42.—(1) Subject as follows, an owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to him by the company on the date that the company entered administration.

(2) In calculating the amount of any debt for this purpose, no account shall be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the making of an administration application, a notice of intention to appoint an administrator or any matter arising as a consequence, or of the company entering administration.

Resolutions

2.43.—(1) Subject to paragraph (2), at a creditors' meeting in administration proceedings, a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of it.

(2) Any resolution is invalid if those voting against it include more than half in value of the creditors to whom notice of the meeting was sent and who are not, to the best of the chairman’s belief, persons connected with the company.

Minutes

2.44.—(1) The chairman of the meeting shall cause minutes of its proceedings to be entered in the company’s minute book.

(2) The minutes shall include a list of the names and addresses of creditors who attended (personally or by proxy) and, if a creditors' committee has been established, the names and addresses of those elected to be members of the committee.

Revision of the administrator's proposals

2.45.—(1) The administrator shall, under paragraph 54, make a statement setting out the proposed revisions to his proposals which he shall attach to Form 2.22B and send to all those to whom he is required to send a copy of his revised proposals.

(2) The statement of revised proposals shall include—

(a) details of the court where the proceedings are and the relevant court reference number;

(b) the full name, registered address, registered number and any other trading names of the company;

(c) details relating to his appointment as administrator, including the date of appointment and the person making the administration application or appointment;

(d) the names of the directors and secretary of the company and details of any shareholdings in the company they may have;

(e) a summary of the initial proposals and the reason(s) for proposing a revision;

(f) details of the proposed revision including details of the administrator's assessment of the likely impact of the proposed revision upon creditors generally or upon each class of creditors (as the case may be);

(g) where a proposed revision relates to the ending of the administration by a creditors' voluntary liquidation and the nomination of a person to be the proposed liquidator of the company, a statement that, in accordance with paragraph 83(7) and Rule 2.117(3), creditors may nominate a different person as the proposed liquidator, provided that the nomination is made after the receipt of the revised proposals and before those revised proposals are approved; and

(h) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions.

(3) Subject to paragraph 54(3), within 5 days of sending out the statement in paragraph (1) above, the administrator shall send a copy of the statement to every member of the company.

(4) When the administrator is acting under paragraph 54(3), the notice shall be published once in such newspaper as he thinks most appropriate for ensuring that the notice comes to the attention of the company's members. The notice shall—

(a) state the full name of the company;

(b) state the name and address of the administrator;

(c) specify an address to which members can write for a copy of the statement; and

(d) be published as soon as reasonably practicable after the administrator sends the statement to creditors.

Notice to creditors

2.46. As soon as reasonably practicable after the conclusion of a meeting of creditors to consider the administrator's proposals or revised proposals, the administrator shall—

(a) send notice in Form 2.23B of the result of the meeting (including details of any modifications to the proposals that were approved) to every creditor who received notice of the meeting and any other person who received a copy of the original proposals; and

(b) file with the court, and send to the registrar of companies, and any creditors who did not receive notice of the meeting (of whose claim he has become subsequently aware), a copy of Form 2.23B, attaching a copy of the proposals considered at the meeting.

Reports to creditors

2.47.—(1) "Progress report" means a report which includes—

(a) details of the court where the proceedings are and the relevant court reference number;

(b) full details of the company's name, address of registered office and registered number;

(c) full details of the administrator's name and address, date of appointment and name and address of appointor, including any changes in office-holder, and, in the case of joint administrators, their functions as set out in the statement made for the purposes of paragraph 100(2);

(d) details of any extensions to the initial period of appointment;

(e) details of progress during the period of the report, including a receipts and payments account (as detailed in paragraph (2) below);

(f) details of any assets that remain to be realised; and

(g) any other relevant information for the creditors.

(2) A receipts and payments account shall state what assets of the company have been realised, for what value, and what payments have been made to creditors or others. The account is to be in the form of an abstract showing receipts and payments during the period of the report and where the administrator has ceased to act, the receipts and payments account shall include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A (prescribed part).

(3) The progress report shall cover—

(a) the period of 6 months commencing on the date that the company entered administration, and every subsequent period of 6 months; and

(b) when the administrator ceases to act, any period from the date of the previous report, if any, and from the date that the company entered administration if there is no previous report, until the time that the administrator ceases to act.

(4) The administrator shall send a copy of the progress report, attached to Form 2.24B, within 1 month of the end of the period covered by the report, to—

(a) the creditors;

(b) the court; and

(c) the registrar of companies.

(5) The court may, on the administrator's application, extend the period of 1 month mentioned in paragraph (4) above, or make such other order in respect of the content of the report as it thinks fit.

(6) If the administrator makes default in complying with this Rule, he is liable to a fine and, for continued contravention, to a daily default fine.

Correspondence instead of creditors' meetings

2.48.—(1) The administrator may seek to obtain the passing of a resolution by the creditors by sending a notice in Form 2.25B to every creditor who is entitled to be notified of a creditors' meeting under Rule 2.35(4).

(2) In order to be counted, votes must be received by the administrator by 12.00 hours on the closing date specified on Form 2.25B and must be accompanied by the statement in writing on entitlement to vote required by Rule 2.38.

(3) If any votes are received without the statement as to entitlement, or the administrator decides that the creditor is not entitled to vote according to Rules 2.38 and 2.39, then that creditor's votes shall be disregarded.

(4) The closing date shall be set at the discretion of the administrator. In any event it must not be set less than 14 days from the date of issue of the Form 2.25B.

(5) For any business to be transacted the administrator must receive at least 1 valid Form 2.25B by the closing date specified by him.

(6) If no valid Form 2.25B is received by the closing date specified then the administrator shall call a meeting of the creditors in accordance with Rule 2.35.

(7) Any single creditor, or a group of creditors, of the company whose debt(s) amount to at least 10% of the total debts of the company may, within 5 business days from the date of the administrator sending out a resolution or proposals, require him to summon a meeting of creditors to consider the matters raised therein in accordance with Rule 2.37. Any meeting called under this Rule shall be conducted in accordance with Rule 2.35.

(8) If the administrator's proposals or revised proposals are rejected by the creditors pursuant to this Rule, the administrator may call a meeting of creditors.

(9) A reference in these Rules to anything done, or required to be done, at, or in connection with, or in consequence of, a creditors' meeting includes a reference to anything done in the course of correspondence in accordance with this Rule.

SECTION B: COMPANY MEETINGS

Venue and conduct of company meeting

2.49.—(1) Where the administrator summons a meeting of members of the company, he shall fix a venue for it having regard to their convenience.

(2) The chairman of the meeting shall be the administrator or a person nominated by him in writing to act in his place.

(3) A person so nominated must be either—

(a) one who is qualified to act as an insolvency practitioner in relation to the company; or

(b) an employee of the administrator or his firm who is experienced in insolvency matters.

(4) If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chairman, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(5) Subject as above, the meeting shall be summoned and conducted as if it were a general meeting of the company summoned under the company's articles of association, and in accordance with the applicable provisions of the Companies Act.

(6) Paragraph (5) does not apply where the laws of a member State and not the laws of England and Wales apply in relation to the conduct of the meeting. The meeting shall be summoned and conducted in accordance with the constitution of the company and the laws of the member State referred to in this paragraph shall apply to the conduct of the meeting.

(7) The chairman of the meeting shall cause minutes of its proceedings to be entered in the company's minute book.

CHAPTER 7

THE CREDITORS' COMMITTEE

Constitution of committee

2.50.—(1) Where it is resolved by a creditors' meeting to establish a creditors' committee for the purposes of the administration, the committee shall consist of at least 3 and not more than 5 creditors of the company elected at the meeting.

(2) Any creditor of the company is eligible to be a member of the committee, so long as his claim has not been rejected for the purpose of his entitlement to vote.

(3) A body corporate may be a member of the committee, but it cannot act as such otherwise than by a representative appointed under Rule 2.55 below.

Formalities of establishment

2.51.—(1) The creditors' committee does not come into being, and accordingly cannot act, until the administrator has issued a certificate in Form 2.26B of its due constitution.

(2) 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.

(3) The administrator's certificate of the committee's due constitution shall not be issued unless and until at least 3 of the persons who are to be members of the committee have agreed to act and shall be issued as soon as reasonably practicable thereafter.

(4) As and when the others (if any) agree to act, the administrator shall issue an amended certificate in Form 2.26B.

(5) The certificate, and any amended certificate, shall be filed with the court and a copy sent to the registrar of companies by the administrator, as soon as reasonably practicable.

(6) If after the first establishment of the committee there is any change in its membership, the administrator shall as soon as reasonably practicable report the change to the court and the registrar of companies in Form 2.27B.

Functions and meetings of the committee

2.52.—(1) The creditors' committee shall assist the administrator in discharging his functions, and act in relation to him in such manner as may be agreed from time to time.

(2) Subject as follows, meetings of the committee shall be held when and where determined by the administrator.

(3) The administrator shall call a first meeting of the committee not later than 6 weeks after its first establishment, and thereafter he shall call a meeting—

(a) if so requested by a member of the committee or his representative (the meeting then to be held within 14 days of the request being received by the administrator); and

(b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

(4) The administrator shall give 7 days' written notice of the venue of any meeting to every member of the committee (or his representative designated for that purpose), unless in any case the requirement of notice has been waived by or on behalf of any member. Waiver may be signified either at or before the meeting.

The chairman at meetings

2.53.—(1) Subject to Rule 2.62(3), the chairman at any meeting of the creditors' committee shall be the administrator or a person nominated by him in writing to act.

(2) A person so nominated must be either—

(a) one who is qualified to act as an insolvency practitioner in relation to the company; or

(b) an employee of the administrator or his firm who is experienced in insolvency matters.

Quorum

2.54. A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least 2 members are present or represented.

Committee-members' representatives

2.55.—(1) A member of the committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.

(2) A person acting as a committee-member's representative must hold a letter of authority entitling him so to act (either generally or specially) and signed by or on behalf of the committee-member, and for this purpose any proxy or any authorisation under section 375 of the Companies Act in relation to any meeting of creditors of the company shall, unless it contains a statement to the contrary, be treated as a letter of authority to act generally signed by or on behalf of the committee-member.

(3) The chairman at any meeting of the committee may call on a person claiming to act as a committee-member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

(4) No member may be represented by a body corporate, a person who is an undischarged bankrupt, a disqualified director or a person who is subject to a composition or arrangement with his creditors.

(5) No person shall on the same committee, act at one and the same time as representative of more than one committee-member.

(6) Where a member's representative signs any document on the member's behalf, the fact that he so signs must be stated below his signature.

Resignation

2.56. A member of the committee may resign by notice in writing delivered to the administrator.

Termination of membership

2.57.—(1) Membership of the creditors' committee is automatically terminated if the member—

(a) becomes bankrupt, or compounds or arranges with his creditors; or

(b) at 3 consecutive meetings of the committee is neither present nor represented (unless at the third of those meetings it is resolved that this Rule is not to apply in his case); or

(c) ceases to be, or is found never to have been, a creditor.

(2) However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.

Removal

2.58. A member of the committee may be removed by resolution at a meeting of creditors' at least 14 days' notice having been given of the intention to move that resolution.

Vacancies

2.59.—(1) The following applies if there is a vacancy in the membership of the creditors' committee.

(2) The vacancy need not be filled if the administrator and a majority of the remaining members of the committee so agree, provided that the total number of members does not fall below the minimum required under Rule 2.50(1).

(3) The administrator may appoint any creditor (being qualified under the Rules to be a member of the committee) to fill the vacancy, if a majority of the other members of the committee agree to the appointment, and the creditor concerned consents to act.

Procedure at meetings

2.60.—(1) At any meeting of the creditors' committee, each member of it (whether present himself, or by his representative) has one vote; and a resolution is passed when a majority of the members present or represented have voted in favour of it.

(2) Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting.

(3) A record of each resolution shall be signed by the chairman and placed in the company's minute book.

Resolutions of creditors' committee by post

2.61.—(1) In accordance with this Rule, the administrator may seek to obtain the agreement of members of the creditors' committee to a resolution by sending to every member (or his representative designated for the purpose) a copy of the proposed resolution.

(2) Where the administrator makes use of the procedure allowed by this Rule, he shall send out to members of the committee or their representatives (as the case may be) 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.

(3) Any member of the committee may, within 7 business days from the date of the administrator sending out a resolution, require him to summon a meeting of the committee to consider matters raised by the resolution.

(4) In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the administrator is notified in writing by a majority of the members that they concur with it.

(5) A copy of every resolution passed under this Rule, and a note that the committee's concurrence was obtained, shall be placed in the company's minute book.

Information from administrator

2.62.—(1) Where the committee resolves to require the attendance of the administrator under paragraph 57(3)(a), the notice to him shall be in writing signed by the majority of the members of the committee for the time being. A member's representative may sign for him.

(2) The meeting at which the administrator's attendance is required shall be fixed by the committee for a business day, and shall be held at such time and place as he determines.

(3) Where the administrator so attends, the members of the committee may elect any one of their number to be chairman of the meeting, in place of the administrator or a nominee of his.

Expenses of members

2.63.—(1) Subject as follows, the administrator shall, out of the assets of the company, defray any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in relation to their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the administration.

(2) Paragraph (1) does not apply to any meeting of the committee held within 6 weeks of a previous meeting, unless the meeting in question is summoned at the instance of the administrator.

Members' dealing with the company

2.64.—(1) Membership of the committee does not prevent a person from dealing with the company while the company is in administration, provided that any transactions in the course of such dealings are in good faith and for value.

(2) The court may, on the application of any person interested, set aside any transaction which appears to it to be contrary to the requirements of this Rule, and may give such consequential directions as it thinks fit for compensating the company for any loss which it may have incurred in consequence of the transaction.

Formal defects

2.65. The acts of the creditors' committee established for any administration 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.

CHAPTER 8

DISPOSAL OF CHARGED PROPERTY

2.66.—(1) The following applies where the administrator applies to the court under paragraphs 71 or 72 for authority to dispose of property of the company which is subject to a security (other than a floating charge), or goods in the possession of the company under a hire purchase agreement.

(2) The court shall fix a venue for the hearing of the application, and the administrator shall as soon as reasonably practicable give notice of the venue to the person who is the holder of the security or, as the case may be, the owner under the agreement.

(3) If an order is made under paragraphs 71 or 72 the court shall send two sealed copies to the administrator.

(4) The administrator shall send one of them to that person who is the holder of the security or owner under the agreement.

(5) The administrator shall send a Form 2.28B to the registrar of companies with a copy of the sealed order.

CHAPTER 9

EXPENSES OF THE ADMINISTRATION

2.67.—(1) The expenses of the administration are payable in the following order of priority—

(a) expenses properly incurred by the administrator in performing his functions in the administration of the company;

(b) the cost of any security provided by the administrator in accordance with the Act or the Rules;

(c) where an administration order was made, the costs of the applicant and any person appearing on the hearing of the application and where the administrator was appointed otherwise than by order of the court, any costs and expenses of the appointor in connection with the making of the appointment and the costs and expenses incurred by any other person in giving notice of intention to appoint an administrator;

(d) any amount payable to a person employed or authorised, under Chapter 5 of this Part of the Rules, to assist in the preparation of a statement of affairs or statement of concurrence;

(e) any allowance made, by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs or statement of concurrence;

(f) any necessary disbursements by the administrator in the course of the administration (including any expenses incurred by members of the creditors' committee or their representatives and allowed for by the administrator under Rule 2.63, but not including any payment of corporation tax in circumstances referred to in sub-paragraph (j) below);

(g) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the company, as required or authorised under the Act or the Rules;

(h) the remuneration of the administrator agreed under Chapter 11 of this Part of the Rules;

(j) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company (without regard to whether the realisation is effected by the administrator, a secured creditor, or a receiver or manager appointed to deal with a security).

(2) The priorities laid down by paragraph (1) of this Rule are subject to the power of the court to make orders under paragraph (3) of this Rule where the assets are insufficient to satisfy the liabilities.

(3) The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the administration in such order of priority as the court thinks just.

CHAPTER 10

DISTRIBUTIONS TO CREDITORSSECTION A: APPLICATION OF CHAPTER AND GENERAL

2.68.—(1) This Chapter applies where the administrator makes, or proposes to make, a distribution to any class of creditors. Where the distribution is to a particular class of creditors, references in this Chapter to creditors shall, in so far as the context requires, be a reference to that class of creditors only.

(2) The administrator shall give notice to the creditors of his intention to declare and distribute a dividend in accordance with Rule 2.95.

(3) Where it is intended that the distribution is to be a sole or final dividend, the administrator shall, after the date specified in the notice referred to in paragraph (2)—

(a) defray any outstanding expenses of a liquidation (including any of the items mentioned in Rule 4.218) or provisional liquidation that immediately preceded the administration;

(b) defray any items payable in accordance with the provisions of paragraph 99;

(c) defray any amounts (including any debts or liabilities and his own remuneration and expenses) which would, if the administrator were to cease to be the administrator of the company, be payable out of the property of which he had custody or control in accordance with the provisions of paragraph 99; and

(d) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.

(4) The court may, on the application of any person, postpone the date specified in the notice.

Debts of insolvent company to rank equally

2.69. Debts other than preferential debts rank equally between themselves in the administration and, after the preferential debts, shall be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

Supplementary provisions as to dividend

2.70.—(1) In the calculation and distribution of a dividend the administrator shall make provision for—

(a) any debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs;

(b) any debts which are the subject of claims which have not yet been determined; and

(c) disputed proofs and claims.

(2) A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—

(a) when he has proved that debt he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive; and

(b) any dividends payable under sub-paragraph (a) shall be paid before the money is applied to the payment of any such further dividend.

(3) No action lies against the administrator for a dividend; but if he refuses to pay a dividend the court may, if it thinks fit, order him to pay it and also to pay, out of his own money—

(a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838(**1**), from the time when it was withheld; and

(b) the costs of the proceedings in which the order to pay is made.

Division of unsold assets

2.71. The administrator may, with the permission of the creditors' committee, or if there is no creditors' committee, the creditors, divide in its existing form amongst the company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

SECTION B: MACHINERY OF PROVING A DEBT

Proving a debt

2.72.—(1) A person claiming to be a creditor of the company and wishing to recover his debt in whole or in part must (subject to any order of the court to the contrary) submit his claim in writing to the administrator.

(2) A creditor who claims is referred to as "proving" for his debt and a document by which he seeks to establish his claim is his "proof".

(3) Subject to the next paragraph, a proof must—

(a) be made out by, or under the direction of, the creditor and signed by him or a person authorised in that behalf; and

(b) state the following matters—

(i) the creditor's name and address;

(ii) the total amount of his claim as at the date on which the company entered administration, less any payments that have been made to him after that date in respect of his claim and any adjustment by way of set-off in accordance with Rule 2.85;

(iii) whether or not the claim includes outstanding uncapitalised interest;

(iv) whether or not the claim includes value added tax;

(v) whether the whole or any part of the debt falls within any, and if so, which categories of preferential debts under section 386;

(vi) particulars of how and when the debt was incurred by the company;

(vii) particulars of any security held, the date on which it was given and the value which the creditor puts on it;

(**1**) 1838 c. 110.

(viii) details of any reservation of title in respect of goods to which the debt refers; and

(ix) the name, address and authority of the person signing the proof (if other than the creditor himself).

(4) There shall be specified in the proof details of any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such document be attached to the proof or submitted with it.

(5) The administrator may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

Claim established by affidavit

2.73.—(1) The administrator may, if he thinks it necessary, require a claim of debt to be verified by means of an affidavit in Form 2.29B.

(2) An affidavit may be required notwithstanding that a proof of debt has already been lodged.

Costs of proving

2.74. Unless the court otherwise orders—

(a) every creditor bears the cost of proving his own debt, including costs incurred in providing documents or evidence under Rule 2.72(5); and

(b) costs incurred by the administrator in estimating the quantum of a debt under Rule 2.81 are payable out of the assets as an expense of the administration.

Administrator to allow inspection of proofs

2.75. The administrator shall, so long as proofs lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

(a) any creditor who has submitted a proof of debt (unless his proof has been wholly rejected for purposes of dividend or otherwise);

(b) any contributory of the company; and

(c) any person acting on behalf of either of the above.

New administrator appointed

2.76.—(1) If a new administrator is appointed in place of another, the former administrator shall transmit to him all proofs which he has received, together with an itemised list of them.

(2) The new administrator shall sign the list by way of receipt for the proofs, and return it to his predecessor.

Admission and rejection of proofs for dividend

2.77.—(1) A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount.

(2) If the administrator rejects a proof in whole or in part, he shall prepare a written statement of his reasons for doing so, and send it as soon as reasonably practicable to the creditor.

Appeal against decision on proof

2.78.—(1) If a creditor is dissatisfied with the administrator's decision with respect to his proof (including any decision on the question of preference), he may apply to the court for the decision to be reversed or varied. The application must be made within 21 days of his receiving the statement sent under Rule 2.77(2).

(2) Any other creditor may, if dissatisfied with the administrator's decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the administrator's decision.

(3) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to the creditor who lodged the proof in question (if it is not himself) and the administrator.

(4) The administrator shall, on receipt of the notice, file with the court the relevant proof, together (if appropriate) with a copy of the statement sent under Rule 2.77(2).

(5) After the application has been heard and determined, the proof shall, unless it has been wholly disallowed, be returned by the court to the administrator.

(6) The administrator is not personally liable for costs incurred by any person in respect of an application under this Rule unless the court otherwise orders.

Withdrawal or variation of proof

2.79. A creditor's proof may at any time, by agreement between himself and the administrator, be withdrawn or varied as to the amount claimed.

Expunging of proof by the court

2.80.—(1) The court may expunge a proof or reduce the amount claimed—

(a) on the administrator's application, where he thinks that the proof has been improperly admitted, or ought to be reduced; or

(b) on the application of a creditor, if the administrator declines to interfere in the matter.

(2) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant—

(a) in the case of an application by the administrator, to the creditor who made the proof; and

(b) in the case of an application by a creditor, to the administrator and to the creditor who made the proof (if not himself).

SECTION C: QUANTIFICATION OF CLAIMS

Estimate of quantum

2.81.—(1) The administrator shall estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value; and he may revise any estimate previously made, if he thinks fit by reference to any change

of circumstances or to information becoming available to him. He shall inform the creditor as to his estimate and any revision of it.

(2) Where the value of a debt is estimated under this Rule, the amount provable in the administration in the case of that debt is that of the estimate for the time being.

Negotiable instruments, etc

2.82. Unless the administrator allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or his authorised representative to be a true copy.

Secured creditors

2.83.—(1) If a secured creditor realises his security, he may prove for the balance of his debt, after deducting the amount realised.

(2) If a secured creditor voluntarily surrenders his security for the general benefit of creditors, he may prove for his whole debt, as if it were unsecured.

Discounts

2.84. There shall in every case be deducted from the claim all trade and other discounts which would have been available to the company but for its administration except any discount for immediate, early or cash settlement.

Mutual credit and set-off

2.85.—(1) This Rule applies—

(a) where the administrator, being authorised to make the distribution in question, has pursuant to Rule 2.95 given notice that he proposes to make it; and

(b) only for the purposes of determining the claims to be taken into account for the purposes of calculating that distribution.

(2) In this Rule "mutual dealings" means 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 administration.

(3) An account shall be taken as at the date of the notice referred to in paragraph (1)(a) 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) Sums due either to or from the company shall not be taken into account under paragraph (3) if—

(a) they became due after the company entered administration;

(b) the other party had notice at the time the sums became due that—

(i) an application for an administration order was pending; or

(ii) any person had given notice of intention to appoint an administrator;

(c) the administration was immediately preceded by a winding up and the sums became due during the winding up; or

(d) the administration was immediately preceded by a winding up and the other party had notice at the time the sums became due 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.

(5) Only the balance (if any) of the account is provable in the administration. Alternatively the amount shall be paid to the administrator as part of the assets.

Debt in foreign currency

2.86.—(1) For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the date when the company entered administration.

(2) "The official exchange rate" is the middle exchange rate on the London Foreign Exchange Market at the close of business, as published for the date in question. In the absence of any such published rate, it is such rate as the court determines.

Payments of a periodical nature

2.87.—(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date when the company entered administration.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day.

Interest

2.88.—(1) Where a debt proved in the administration 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 entered administration.

(2) In the following circumstances the creditor's claim may include interest on the debt for periods before the company entered administration, 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 entered administration.

(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 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 entering administration and for all the purposes of the Act 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 specified in section 17 of the Judgments Act 1838 on the date when the company entered administration.

(7) Subject to Rule 2.105(3), any surplus remaining after payment of the debts proved shall, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company entered administration.

(8) All interest payable under paragraph (7) ranks equally whether or not the debts on which it is payable rank equally.

(9) The rate of interest payable under paragraph (7) is whichever is the greater of the rate specified under paragraph (6) or the rate applicable to the debt apart from the administration.

Debt payable at future time

2.89. A creditor may prove for a debt of which payment was not yet due on the date when the company entered administration, subject to Rule 2.105 (adjustment of dividend where payment made before time).

Value of security

2.90.—(1) A secured creditor may, with the agreement of the administrator or the leave of the court, at any time alter the value which he has, in his proof of debt, put upon his security.

(2) However, if a secured creditor—

(a) being the applicant for an administration order or the appointor of the administrator, has in the application or the notice of appointment put a value on his security; or

(b) has voted in respect of the unsecured balance of his debt,

he may re-value his security only with permission of the court.

Surrender for non-disclosure

2.91.—(1) If a secured creditor omits to disclose his security in his proof of debt, he shall surrender his security for the general benefit of creditors, unless the court, on application by him, relieves him from the effect of this Rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof of debt to be amended, on such terms as may be just.

(3) Nothing in this Rule or the following two Rules may affect the rights in rem of creditors or third parties protected under Article 5 of the EC Regulation (third parties' rights in rem).

Redemption by administrator

2.92.—(1) The administrator may at any time give notice to a creditor whose debt is secured that he proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the administrator may allow) in which, if he so wishes, to exercise his right to revalue his security (with the permission of the court, where Rule 2.90(2) applies).

If the creditor re-values his security, the administrator may only redeem at the new value.

(3) If the administrator redeems the security, the cost of transferring it is payable out of the assets.

(4) A secured creditor may at any time, by a notice in writing, call on the administrator to elect whether he will or will not exercise his power to redeem the security at the value then placed on it; and the administrator then has 3 months in which to exercise the power or determine not to exercise it.

Test of security's value

2.93.—(1) Subject as follows, the administrator, if he is dissatisfied with the value which a secured creditor puts on his security (whether in his proof or by way of re-valuation under Rule 2.90), may require any property comprised in the security to be offered for sale.

(2) The terms of sale shall be such as may be agreed, or as the court may direct; and if the sale is by auction, the administrator on behalf of the company, and the creditor on his own behalf, may appear and bid.

Realisation of security by creditor

2.94. If a creditor who has valued his security subsequently realises it (whether or not at the instance of the administrator)—

(a) the net amount realised shall be substituted for the value previously put by the creditor on the security; and

(b) that amount shall be treated in all respects as an amended valuation made by him.

Notice of proposed distribution

2.95.—(1) Where an administrator is proposing to make a distribution to creditors he shall give 28 days' notice of that fact.

(2) The notice given pursuant to paragraph (1) shall—

(a) be sent to—

(i) all creditors whose addresses are known to the administrator; and

(ii) where a member State liquidator has been appointed in relation to the company, to the member State liquidator;

(b) state whether the distribution is to preferential creditors or preferential creditors and unsecured creditors; and

(c) where the administrator proposes to make a distribution to unsecured creditors, state the value of the prescribed part, except where the court has made an order under section 176A(5).

(3) Subject to paragraph (5), the administrator shall not declare a dividend unless he has by public advertisement invited creditors to prove their debts.

(4) A notice pursuant to paragraphs (1) or (3) shall—

(a) state that it is the intention of the administrator to make a distribution to creditors within the period of 2 months from the last date for proving;

(b) specify whether the proposed dividend is interim or final;

(c) specify a date up to which proofs may be lodged being a date which—

(i) is the same date for all creditors; and

(ii) is not less than 21 days from that of the notice.

(5) A notice pursuant to paragraph (1) where a dividend is to be declared for preferential creditors, need only be given to those creditors in whose case he has reason to believe that their debts are preferential and public advertisement of the intended dividend need only be given if the administrator thinks fit.

Admission or rejection of proofs

2.96.—(1) Unless he has already dealt with them, within 7 days of the last date for proving, the administrator shall—

(a) admit or reject proofs submitted to him; or

(b) make such provision in respect of them as he thinks fit.

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

(3) In the declaration of a dividend no payment shall be made more than once by virtue of the same debt.

(4) Subject to Rule 2.104, where—

(a) a creditor has proved; and

(b) a member State liquidator has proved in relation to the same debt,

payment shall only be made to the creditor.

Declaration of dividend

2.97.—(1) Subject to paragraph (2), within the 2 month period referred to in Rule 2.95(4)(a) the administrator shall proceed to declare the dividend to one or more classes of creditor of which he gave notice.

(2) Except with the permission of the court, the administrator shall not declare a dividend so long as there is pending any application to the court to reverse or vary a decision of his on a proof, or to expunge a proof or to reduce the amount claimed.

Notice of declaration of a dividend

2.98.—(1) Where the administrator declares a dividend he shall give notice of that fact to all creditors who have proved their debts and, where a member State liquidator has been appointed in relation to the company, to the member State liquidator.

(2) The notice shall include the following particulars relating to the administration—

(a) amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;

(b) payments made by the administrator when acting as such;

(c) where the administrator proposed to make a distribution to unsecured creditors, the value of the prescribed part, except where the court has made an order under section 176A(5);

(d) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;

(e) the total amount of dividend and the rate of dividend;

(f) how he proposes to distribute the dividend; and

(g) whether, and if so when, any further dividend is expected to be declared.

Payments of dividends and related matters

2.99.—(1) The dividend may be distributed simultaneously with the notice declaring it.

(2) Payment of dividend may be made by post, or arrangements may be made with any creditor for it to be paid to him in another way, or held for his collection.

(3) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend shall be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.

Notice of no dividend, or no further dividend

2.100. If the administrator gives notice to creditors that he is unable to declare any dividend or (as the case may be) any further dividend, the notice shall contain a statement to the effect either—

(a) that no funds have been realised; or

(b) that the funds realised have already been distributed or used or allocated for defraying the expenses of administration.

Proof altered after payment of dividend

2.101.—(1) If after payment of dividend the amount claimed by a creditor in his proof is increased, the creditor is not entitled to disturb the distribution of the dividend; but he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive.

(2) Any dividend or dividends payable under paragraph (1) shall be paid before the money there referred to is applied to the payment of any such further dividend.

(3) If, after a creditor's proof has been admitted, the proof is withdrawn or expunged, or the amount is reduced, the creditor is liable to repay to the administrator any amount overpaid by way of dividend.

Secured creditors

2.102.—(1) The following applies where a creditor re-values his security at a time when a dividend has been declared.

(2) If the revaluation results in a reduction of his unsecured claim ranking for dividend, the creditor shall forthwith repay to the administrator, for the credit of the administration, any amount received by him as dividend in excess of that to which he would be entitled having regard to the revaluation of the security.

(3) If the revaluation results in an increase of his unsecured claim, the creditor is entitled to receive from the administrator, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which he has failed to receive, having regard to the revaluation of the security.

However, the creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the revaluation.

Disqualification from dividend

2.103. If a creditor contravenes any provision of the Act or the Rules relating to the valuation of securities, the court may, on the application of the administrator, order that the creditor be wholly or partly disqualified from participation in any dividend.

Assignment of right to dividend

2.104.—(1) If a person entitled to a dividend gives notice to the administrator that he wishes the dividend to be paid to another person, or that he has assigned his entitlement to another person, the administrator shall pay the dividend to that other accordingly.

(2) A notice given under this Rule must specify the name and address of the person to whom payment is to be made.

Debt payable at future time

2.105.—(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, he is entitled to dividend equally with other creditors, but subject as follows.

(2) For the purpose of dividend (and no other purpose), the amount of the creditor's admitted proof (or, if a distribution has previously been made to him, the amount remaining outstanding in respect of his admitted proof) shall be reduced by a percentage calculated as follows—

$$\frac{I \times M}{12}$$

where I is 5 per cent and M is the number of months (expressed, if need be, as or as including, fractions of months) between the declaration of dividend and the date when payment of the creditor's debt would otherwise be due.

(3) Other creditors are not entitled to interest out of surplus funds under Rule 2.88 until any creditor to whom paragraphs (1) and (2) apply has been paid the full amount of his debt.

CHAPTER 11

THE ADMINISTRATOR

Fixing of remuneration

2.106.—(1) The administrator 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 property with which he has to deal; or

(b) by reference to the time properly given by the insolvency practitioner (as administrator) and his staff in attending to matters arising in the administration.

(3) It is for the creditors' committee (if there is one) to determine whether the remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.

(4) In arriving at that determination, the committee shall have regard to the following matters—

(a) the complexity (or otherwise) of the case;

(b) any respects in which, in connection with the company's affairs, there falls on the administrator any responsibility of an exceptional kind or degree;

(c) the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties as such; and

(d) the value and nature of the property with which he has to deal.

(5) If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.

(6) If not fixed as above, the administrator's remuneration shall, on his application, be fixed by the court.

(7) Where there are joint administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred—

(a) to the court, for settlement by order; or

(b) to the creditors' committee or a meeting of creditors, for settlement by resolution.

(8) If the administrator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the company, profit costs shall not be paid unless this is authorised by the creditors' committee, the creditors or the court.

(9) For the purpose of this Rule and Rule 2.107, in a case where the administrator has made a statement under paragraph 52(1)(b), a resolution of the creditors shall be taken as passed if (and only if) passed with the approval of—

(a) each secured creditor of the company; or

(b) if the administrator has made or intends to make a distribution to preferential creditors—

(i) each secured creditor of the company; and

(ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

Recourse to meeting of creditors

2.107. If the administrator’s remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

Recourse to the court

2.108.—(1) If the administrator considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors, is insufficient, he may apply to the court for an order increasing its amount or rate.

(2) The administrator shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear, or be represented, and to be heard on the application.

(3) If there is no creditors' committee, the administrator’s notice of his application shall be sent to such one or more of the company’s creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

(4) The court may, if it appears to be a proper case, order the costs of the administrator’s application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the administration.

Creditors' claim that remuneration is excessive

2.109.—(1) Any creditor of the company may, with the concurrence of at least 25 per cent in value of the creditors (including himself), apply to the court for an order that the administrator’s remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

(2) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss it without a hearing but it shall not do so without giving the applicant at least 7 days' notice,

upon receipt of which the applicant may require the court to list the application for a without notice hearing. If the application is not dismissed, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly.

(3) The applicant shall, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

(4) If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

(5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the administration.

CHAPTER 12

ENDING ADMINISTRATION

Final progress reports

2.110.—(1) In this Chapter reference to a progress report is to a report in the form specified in Rule 2.47.

(2) The final progress report means a progress report which includes a summary of—

(a) the administrator's proposals;

(b) any major amendments to, or deviations from, those proposals;

(c) the steps taken during the administration; and

(d) the outcome.

Notice of automatic end of administration

2.111.—(1) Where the appointment of an administrator has ceased to have effect, and the administrator is not required by any other Rule to give notice of that fact, he shall, as soon as reasonably practicable, and in any event within 5 business days of the date when the appointment has ceased, file a notice of automatic end of administration in Form 2.30B with the court. The notice shall be accompanied by a final progress report.

(2) A copy of the notice and accompanying document shall be sent as soon as reasonably practicable to the registrar of companies, and to all persons who received a copy of the administrator's proposals.

(3) If the administrator makes default in complying with this Rule, he is liable to a fine and, for continued contravention, to a daily default fine.

Applications for extension of administration

2.112.—(1) An application to court for an extension of administration shall be accompanied by a progress report for the period since the last progress report (if any) or the date the company entered administration.

(2) When the administrator requests an extension of the period of the administration by consent of creditors, his request shall be accompanied by a progress report for the period since the last progress report (if any) or the date the company entered administration.

(3) The administrator shall use the notice of extension of period of administration in Form 2.31B in all circumstances where he is required to give such notice.

Notice of end of administration

2.113.—(1) Where an administrator who was appointed under paragraph 14 or 22 gives notice that the purpose of administration has been sufficiently achieved he shall use Form 2.32B. The notice shall be accompanied by a final progress report.

(2) The administrator shall send a copy of the notice to the registrar of companies.

(3) Two copies of the notice shall be filed with the court and shall contain a statement that a copy of the notice has been sent to the registrar of companies. The court shall endorse each copy with the date and time of filing. The appointment shall cease to have effect from that date and time.

(4) The court shall give a sealed copy of the notice to the administrator.

(5) The administrator shall, as soon as reasonably practicable, and within 5 business days, send a copy of the notice of end of administration (and the accompanying report) to every creditor of the company of whose claim and address he is aware, to all those persons who were notified of his appointment and to the company.

(6) The administrator shall be taken to have complied with the requirements of paragraph 80(5) if, within 5 business days of filing the notice of end of administration with the court, he publishes once in the same newspaper as he published his notice of appointment, and in the Gazette, a notice undertaking to provide a copy of the notice of end of administration to any creditor of the company.

(7) The notice must—

(a) state the full name of the company;

(b) state the name and address of the administrator;

(c) state the date that the administration ended; and

(d) specify an address to which the creditors can write for a copy of the notice of end of administration.

Application to court by administrator

2.114.—(1) An application to court under paragraph 79 for an order ending an administration shall have attached to it a progress report for the period since the last progress report (if any) or the date the company entered administration and a statement indicating what the administrator thinks should be the next steps for the company (if applicable).

(2) Where the administrator applies to the court because the creditors' meeting has required him to, he shall also attach a statement to the application in which he shall indicate (giving reasons) whether or not he agrees with the creditors' requirement to him to make the application.

(3) When the administrator applies other than at the request of a creditors' meeting, he shall—

(a) give notice in writing to the applicant for the administration order under which he was appointed, or the person by whom he was appointed and the creditors of his intention to apply to court at least 7 days before the date that he intends to makes his application; and

(b) attach to his application to court a statement that he has notified the creditors, and copies of any response from creditors to that notification.

(4) Where the administrator applies to court under paragraph 79 in conjunction with a petition under section 124 for an order to wind up the company, he shall, in addition to the

requirements of paragraph (3), notify the creditors whether he intends to seek appointment as liquidator.

Application to court by creditor

2.115.—(1) Where a creditor applies to the court to end the administration a copy of the application shall be served on the administrator and the person who either made the application for the administration order or made the appointment. Where the appointment was made under paragraph 14, a copy of the application shall be served on the holder of the floating charge by virtue of which the appointment was made.

(2) Service shall be effected not less than 5 business days before the date fixed for the hearing. The administrator, applicant or appointor, or holder of the floating charge by virtue of which the appointment was made may appear at the hearing of the application.

(3) Where the court makes an order to end the administration, the court shall send a copy of the order to the administrator.

Notification by administrator of court order

2.116. Where the court makes an order to end the administration, the administrator shall notify the registrar of companies in Form 2.33B, attaching a copy of the court order and a copy of his final progress report.

Moving from administration to creditors' voluntary liquidation

2.117.—(1) Where for the purposes of paragraph 83(3) the administrator sends a notice of moving from administration to creditors' voluntary liquidation to the registrar of companies, he shall do so in Form 2.34B and shall attach to that notice a final progress report which must include details of the assets to be dealt with in the liquidation.

(2) As soon as reasonably practicable the administrator shall send a copy of the notice and attached document to all those who received notice of the administrator's appointment.

(3) For the purposes of paragraph 83(7) a person shall be nominated as liquidator in accordance with the provisions of Rule 2.33(2)(m) or Rule 2.45(2)(g) and his appointment takes effect by the creditors' approval, with or without modification, of the administrator's proposals or revised proposals.

Moving from administration to dissolution

2.118.—(1) Where, for the purposes of paragraph 84(1), the administrator sends a notice of moving from administration to dissolution to the registrar of companies, he shall do so in Form 2.35B and shall attach to that notice a final progress report.

(2) As soon as reasonably practicable a copy of the notice and the attached document shall be sent to all those who received notice of the administrator's appointment.

(3) Where a court makes an order under paragraph 84(7) it shall, where the applicant is not the administrator, give a copy of the order to the administrator.

(4) The administrator shall use Form 2.36B to notify the registrar of companies in accordance with paragraph 84(8) of any order made by the court under paragraph 84(7).

CHAPTER 13

REPLACING ADMINISTRATOR

Grounds for resignation

2.119.—(1) The administrator may give notice of his resignation on grounds of ill health or because—

(a) he intends ceasing to be in practice as an insolvency practitioner; or

(b) there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by him of the duties of administrator.

(2) The administrator may, with the permission of the court, give notice of his resignation on grounds other than those specified in paragraph (1).

Notice of intention to resign

2.120.—(1) The administrator shall in all cases give at least 7 days' notice in Form 2.37B of his intention to resign, or to apply for the court's permission to do so, to the following persons—

(a) if there is a continuing administrator of the company, to him; and

(b) if there is a creditors' committee to it; but

(c) if there is no such administrator and no creditors' committee, to the company and its creditors.

(2) Where the administrator gives notice under paragraph (1), he shall also give notice to a member State liquidator, if such a person has been appointed in relation to the company.

(3) Where the administrator was appointed by the holder of a qualifying floating charge under paragraph 14, the notice of intention to resign shall also be sent to all holders of prior qualifying floating charges, and to the person who appointed the administrator. A copy of the notice shall also be sent to the holder of the floating charge by virtue of which the appointment was made.

(4) Where the administrator was appointed by the company or the directors of the company under paragraph 22, a copy of the notice of intention to resign shall also be sent to the appointor and all holders of a qualifying floating charge.

Notice of resignation

2.121.—(1) The notice of resignation shall be in Form 2.38B.

(2) Where the administrator was appointed under an administration order, the notice shall be filed with the court, and a copy sent to the registrar of companies. A copy of the notice of resignation shall be sent not more than 5 business days after it has been filed with the court to all those to whom notice of intention to resign was sent.

(3) Where the administrator was appointed by the holder of a qualifying floating charge under paragraph 14, a copy of the notice of resignation shall be filed with the court and sent to the registrar of companies, and anyone else who received a copy of the notice of intention to resign, within 5 business days of the notice of resignation being sent to the holder of the floating charge by virtue of which the appointment was made.

(4) Where the administrator was appointed by the company or the directors under paragraph 22, a copy of the notice of resignation shall be filed with the court and sent to the registrar of companies and to anyone else who received notice of intention to resign within

5 business days of the notice of resignation being sent to either the company or the directors that made the appointment.

Application to court to remove administrator from office

2.122.—(1) Any application under paragraph 88 shall state the grounds on which it is requested that the administrator should be removed from office.

(2) Service of the notice of the application shall be effected on the administrator, the person who made the application for the administration order or the person who appointed the administrator, the creditors' committee (if any), the joint administrator (if any), and where there is neither a creditors' committee or joint administrator, to the company and all the creditors, including any floating charge holders not less than 5 business days before the date fixed for the application to be heard. Where the appointment was made under paragraph 14, the notice shall be served on the holder of the floating charge by virtue of which the appointment was made.

(3) Where a court makes an order removing the administrator it shall give a copy of the order to the applicant who as soon as reasonably practicable shall send a copy to the administrator.

(4) The applicant shall also within 5 business days of the order being made send a copy of the order to all those to whom notice of the application was sent.

(5) A copy of the order shall also be sent to the registrar of companies in Form 2.39B within the same time period.

Notice of vacation of office when administrator ceases to be qualified to act

2.123. Where the administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the company gives notice in accordance with paragraph 89, he shall also give notice to the registrar of companies in Form 2.39B.

Administrator deceased

2.124.—(1) Subject as follows, where the administrator has died, it is the duty of his personal representatives to give notice of the fact to the court, specifying the date of the death. This does not apply if notice has been given under either paragraph (2) or (3) of this Rule.

(2) If the deceased administrator was a partner in a firm, notice may be given by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners.

(3) Notice of the death may be given by any person producing to the court the relevant death certificate or a copy of it.

(4) Where a person gives notice to the court under this Rule, he shall also give notice to the registrar of companies in Form 2.39B.

Application to replace

2.125.—(1) Where an application is made to court under paragraphs 91(1) or 95 to appoint a replacement administrator, the application shall be accompanied by a written statement in Form 2.2B by the person proposed to be the replacement administrator.

(2) Where the original administrator was appointed under an administration order, a copy of the application shall be served, in addition to those persons listed in paragraph 12(2) and Rule 2.6(3), on the person who made the application for the administration order.

(3) Where the application to court is made under paragraph 95, the application shall be accompanied by an affidavit setting out the applicant's belief as to the matters set out in that paragraph.

(4) Rule 2.8 shall apply to the service of an application under paragraphs 91(1) and 95 as it applies to service in accordance with Rule 2.6.

(5) Rules 2.9, 2.10, 2.12 and 2.14(1) and (2) apply to an application under paragraphs 91(1) and 95.

Notification and advertisement of appointment of replacement administrator

2.126. Where a replacement administrator is appointed, the same provisions apply in respect of giving notice of, and advertising, the replacement appointment as in the case of the appointment (subject to Rule 2.128), and all statements, consents etc as are required shall also be required in the case of the appointment of a replacement. All forms and notices shall clearly identify that the appointment is of a replacement administrator.

Notification and advertisement of appointment of joint administrator

2.127. Where, after an initial appointment has been made, an additional person or persons are to be appointed as joint administrator the same Rules shall apply in respect of giving notice of and advertising the appointment as in the case of the initial appointment, subject to Rule 2.128.

2.128. The replacement or additional administrator shall send notice of the appointment in Form 2.40B to the registrar of companies.

Administrator's duties on vacating office

2.129.—(1) Where the administrator ceases to be in office as such, in consequence of removal, resignation or cesser of qualification as an insolvency practitioner, he is under obligation as soon as reasonably practicable to deliver up to the person succeeding him as administrator the assets (after deduction of any expenses properly incurred and distributions made by him) and further to deliver up to that person—

(a) the records of the administration, including correspondence, proofs and other related papers appertaining to the administration while it was within his responsibility; and

(b) the company's books, papers and other records.

(2) If the administrator makes default in complying with this Rule, he is liable to a fine and, for continued contravention, to a daily default fine.

CHAPTER 14

EC REGULATION: CONVERSION OF ADMINISTRATION INTO WINDING UP

Application for conversion into winding up

2.130.—(1) Where a member State liquidator proposes to apply to the court for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of an administration into a winding up, an affidavit complying with Rule 2.131 must be prepared and sworn, and filed with the court in support of the application.

(2) An application under this Rule shall be by originating application.

(3) The application and the affidavit required under this Rule shall be served upon—

(a) the company; and

(b) the administrator.

Contents of affidavit

2.131.—(1) The affidavit shall state—

(a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;

(b) the deponent's belief that the conversion of the administration into a winding up would prove to be in the interests of the creditors in the main proceedings;

(c) the deponent's opinion as to whether the company ought to enter voluntary winding up or be wound up by the court; and

(d) all other matters that, in the opinion of the member State liquidator, would assist the court—

(i) in deciding whether to make such an order; and

(ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) An affidavit under this rule shall be sworn by, or on behalf of, the member State liquidator.

Power of court

2.132.—(1) On hearing the application for conversion into winding up the court may make such order as it thinks fit.

(2) If the court makes an order for conversion into winding up the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Without prejudice to the generality of paragraph (1), an order under that paragraph may provide that the company be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the order is made.

CHAPTER 15

EC REGULATION: MEMBER STATE LIQUIDATOR

Interpretation of creditor and notice to member State liquidator

2.133.—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

(2) For the purposes of the Rules referred to in paragraph (3) the member State liquidator is deemed to be a creditor.

(3) The Rules referred to in paragraph (2) are Rules 2.34 (notice of creditors' meeting), 2.35(4) (creditors' meeting), 2.37 (requisitioning of creditors' meeting), 2.38 (entitlement to vote), 2.39 (admission and rejection of claims), 2.40 (secured creditors), 2.41 (holders of negotiable instruments), 2.42 (hire-purchase, conditional sale and chattel leasing agreements), 2.46 (notice to creditors), 2.47 (reports to creditors), 2.48 (correspondence instead of creditors' meeting), 2.50(2) (creditors' committee), 2.57(1)(b) and (c) (termination of membership of creditors' committee), 2.59(3) (vacancies in creditors' committee), 2.108(3) (administrator's remuneration—recourse to court) and 2.109 (challenge to administrator's remuneration).

(4) Paragraphs (2) and (3) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditor's rights).

(5) Where the administrator is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court, the registrar of companies or the official receiver, the administrator shall give notice or provide copies, as the case may be, to the member State liquidator.

(6) Paragraph (5) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co-operate and communicate information).".

PART 3

AMENDMENTS TO PART 3 OF THE PRINCIPAL RULES

Amendment to Rule 3.8

10. After Rule 3.8(4) there is inserted—

"(5) The receiver's report under section 48(1) shall state, to the best of his knowledge and belief—

(a) an estimate of the value of the prescribed part (whether or not he proposes to make an application under section 176A(5) or whether section 176A(3) applies); and

(b) an estimate of the value of the company's net property.

(6) 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.

(7) The report shall also state whether, and if so why, the receiver proposes to make an application to court under section 176A(5).".

Amendment to Rule 3.38

11. After Rule 3.38 there is inserted—

"CHAPTER 7

SECTION 176A: THE PRESCRIBED PART

Report to creditors

3.39.—(1) This Rule applies where—

(a) a receiver (other than an administrative receiver) is appointed by the court or otherwise under a charge which as created was a floating charge; and

(b) section 176A applies.

(2) Within 3 months (or such longer period as the court may allow) of the date of his appointment the receiver shall send to creditors, details of whose names and addresses are available to him, notice of his appointment and a report which will include the following matters—

(a) to the best of the receiver's 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 section 176A(5) or section 176A(3) applies); and

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

(b) whether, and if so, why, he proposes to make an application to court under section 176A(5); and

(c) whether he proposes to present a petition for the winding up of the company.

(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.

(4) Where the receiver thinks that it is impracticable to send the report required under paragraph (2) or where full details of the unsecured creditors of the company are not available to him, he may, instead of sending a report as required by this Rule, publish a notice to the same effect in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the company's unsecured creditors.

Receiver to deal with prescribed part

3.40. Where Rule 3.39 applies—

(a) the receiver may present a petition for the winding up of the company if the ground of the petition is that in section 122(1)(f);

(b) where a liquidator or administrator has been appointed to the company, the receiver shall deliver up the sums representing the prescribed part to him;

(c) in any other case, the receiver shall apply to the court for directions as to the manner in which he is to discharge his duty under section 176A(2)(a) and shall act in accordance with such directions as are given by the court.".

PART 4

AMENDMENTS TO PART 4 OF THE PRINCIPAL RULES

Amendment to Rule 4.1

12. At end of paragraph (5) of Rule 4.1 there is inserted—

"(6) In a voluntary winding up which is commenced by the registration of a notice under paragraph 83(3) of Schedule B1 to the Act, the following provisions of this Part shall not apply—

Rules 4.34, 4.38, 4.49, 4.51, 4.53, 4.62, 4.101, 4.103, 4.106, 4.152, 4.153, 4.206-4.210.".

Amendments to Rule 4.7

13. In Rule 4.7—

(a) in paragraph (4)(b) for the words "if an administration order is in force in relation to the company" there are substituted "if the company is in administration" and after the words "one copy" there are inserted "of the administration order or notice of appointment";

(b) 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 are substituted "the court case number and the date that the company entered administration";

(c) in paragraph (7)(c)—

(i) for the words "section 18 requesting that the administration order be discharged" there are substituted "paragraph 79(2) of Schedule B1 to the Act requesting that the appointment of the administrator shall cease to have effect";

(ii) the words "and that the court make any such order consequential upon that discharge as it thinks fit" are omitted; and

(d) for paragraph (8) there is substituted—

"(8) Any petition filed in relation to a company in respect of which there is in force a voluntary arrangement under Part I of the Act or which is in administration shall be presented to the court to which the nominee's report under section 2 was submitted or the court having jurisdiction for the administration.".

Amendment to Rule 4.10

14. In paragraph (2) of Rule 4.10 for the words "an administration order is in force in relation to it" there are substituted "the company is in administration".

Amendment to Rule 4.43

15. After Rule 4.43(1) there is 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 section 176A(5) or section 176A(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 section 176A(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 4.49

16. After Rule 4.49 (which becomes paragraph (1) of Rule 4.49) there is 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 section 176A(5) or section 176A(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 section 176A(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 4.49A

17. After the words "formerly its administrator" there are inserted the words "or a person is appointed as liquidator upon the registration of a notice under paragraph 83(3) of Schedule B1 to the Act" and for the words "Rule 2.16" there are substituted the words "Rule 2.33".

Amendment to Rule 4.73

18. After paragraph (7) of Rule 4.73 there is 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.".

Amendment to Rule 4.90

19. In Rule 4.90 for paragraph (3) there is substituted—

"(3) Sums due from the company to another party shall not be taken into account under paragraph (2) if—

(a) that other party had notice at the time they became due that a meeting of creditors had been summoned under section 98 or (as the case may be) a petition for the winding up of the company was pending;

(b) the liquidation was immediately preceded by an administration and the sums became due during the administration; or

(c) the liquidation was immediately preceded by an administration and the other party had notice at the time that the sums became due that—

(i) an application for an administration order was pending; or

(ii) any person had given notice of intention to appoint an administrator.".

Amendment to Rule 4.91

20. In paragraph (2) for the words "middle market rate at the Bank of England" there are substituted "middle exchange rate on the London Foreign Exchange Market at the close of business".

Amendment to Rule 4.105

21. After the words "the court's order" there are inserted the words "or a copy of the notice registered in accordance with paragraph 83(3) of Schedule B1 to the Act".

Amendment to Rule 4.124

22. After Rule 4.124(2) there is 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 section 176A (prescribed part).".

Amendment to Rule 4.125

23. After Rule 4.125(2) there is 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 section 176A (prescribed part).".

Amendments to Rule 4.126

24. In Rule 4.126—

(a) in paragraph (2) after "the account required under the section" insert "or paragraph (4) of this Rule"; and

(b) after paragraph (3) there is inserted—

"(4) The account of the winding up required under section 106 shall also include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A (prescribed part).".

Amendment to Rule 4.173

25. In paragraph (1)(a) of Rule 4.173 for the words "immediately upon the discharge of an administration order under Part II of the Act" there are substituted the words "by the court upon an application under paragraph 79 of Schedule B1 to the Act".

Amendments to Rule 4.174

26. In Rule 4.174—

(a) in paragraph (1) for the words "section 26" there are substituted the words "paragraph 57 of Schedule B1 to the Act"; and

(b) in paragraph (2) for the words "section 26" there are substituted the words "paragraph 57 of Schedule B1 to the Act".

Amendment to Rule 4.175

27. In paragraph (1) of Rule 4.175 for the words "section 26" there are substituted the words "paragraph 57 of Schedule B1 to the Act".

PART 5

AMENDMENTS TO PART 5 OF THE PRINCIPAL RULES

Amendments to Rule 5.1

28. In Rule 5.1—

(a) in paragraph (1) after the words "the Act" there is inserted ", except in relation to voluntary arrangements under section 263A, in relation to which only Chapters 7, 10, 11 and 12 of this Part shall apply,";

(b) for paragraph (2) there is substituted—

"(2) In this Part, in respect of voluntary arrangements other than voluntary arrangements under section 263A—

(a) Chapter 2 applies in all cases;

(b) Chapter 3 applies in cases where an application for an interim order is made;

(c) Chapter 4 applies in cases where no application for an interim order is or is to be made;

(d) except where otherwise stated, Chapters 5 and 6 apply in all cases;

(e) Chapter 8 applies where a bankrupt makes an application under section 261(2)(a); and

(f) Chapter 9 applies where the official receiver makes an application under section 261(2)(b).

(3) In this Part, in respect of voluntary arrangements under section 263A—

(a) Chapter 7 applies in all cases; and

(b) Chapter 10 applies where the official receiver makes an application under section 263D(3).

(4) In this Part, Chapters 11 and 12 apply in all cases.".

Amendments to Rule 5.7

29. In paragraph (1) of Rule 5.7—

(a) after sub-paragraph (d) the word "and" is omitted;

(b) at the end of sub-paragraph (e) for the full-stop there is substituted a semi-colon and after that semi-colon there is inserted the word "and"; and

(c) after sub-paragraph (e) there is inserted—

"(f) that the debtor has not submitted to the official receiver either the document referred to at section 263B(1)(a) or the statement referred to at section 263B(1)(b).".

Omission of Rule 5.28

30. Rule 5.28 is omitted.

Substitution of Chapter 7 of Part 5

31. For Chapter 7 of Part 5 of the Rules there is substituted—

"CHAPTER 7

FAST-TRACK VOLUNTARY ARRANGEMENT

Application of Chapter

5.35. The Rules in this Chapter apply in relation to an individual debtor who intends to submit a proposal for a voluntary arrangement with his creditors to the official receiver in accordance with the provisions of section 263B.

Interpretation

5.36. In this Chapter—

"voluntary arrangement" means an individual voluntary arrangement under section 263A;

"proposal" means the document setting out the terms of the voluntary arrangement which the debtor is proposing.

Contents of proposal

5.37.—(1) The debtor's proposal submitted under section 263B(1) shall—

(a) be accompanied by any fee payable to the official receiver for acting as nominee; and

(b) contain—

(i) a statement that the debtor is eligible to propose a voluntary arrangement;

(ii) a short explanation why, in his opinion, a voluntary arrangement is desirable, and give reasons why his creditors may be expected to concur with such an arrangement; and

(iii) a statement that the debtor is aware that he commits an offence under section 262A if, for the purpose of obtaining the approval of his creditors to his proposal, he makes any false representation, or fraudulently does, or omits to do, anything.

(2) The following matters shall be stated, or otherwise dealt with, in the proposal—

(a) the following matters, so far as within the debtor's immediate knowledge—

(i) his assets, with an estimate of their respective values;

(ii) the extent (if any) to which the assets are charged in favour of creditors; and

(iii) the extent (if any) to which particular assets are to be excluded from the voluntary arrangement;

(b) particulars of any property, other than assets of the debtor himself, which is proposed to be included in the voluntary arrangement, the source of such property and the terms on which it is to be made available for inclusion;

(c) the nature and amount of the debtor's liabilities (so far as within his immediate knowledge), the manner in which they are proposed to be met, modified, postponed or otherwise dealt with by means of the voluntary arrangement and (in particular)—

(i) how it is proposed to deal with preferential creditors (defined in section 258(7)) and creditors who are, or claim to be, secured;

(ii) how associates of the debtor (being creditors of his) are proposed to be treated under the voluntary arrangement; and

(iii) whether, to the debtor's knowledge, claims have been made under section 339 (transactions at an undervalue), section 340 (preferences), section 343 (extortionate credit transactions), or whether there are circumstances giving rise to the possibility of such claims,

and, where any such circumstances are present, whether, and if so how, it is proposed under the voluntary arrangement to make provision for wholly or partly indemnifying the insolvent estate in respect of such claims;

(d) whether any, and if so what, guarantees have been given of the debtor's debts by other persons, specifying which (if any) of the guarantors are associates of his;

(e) the proposed duration of the voluntary arrangement;

(f) the proposed dates of distributions to creditors, with estimates of their amounts;

(g) how it is proposed to deal with the claims of any person who is bound by the arrangement by virtue of section 263D(2)(c);

(h) an estimate of the fees and expenses that will be incurred in connection with the approval and implementation of the voluntary arrangement;

(j) whether, for the purposes of the voluntary arrangement, any guarantees are to be offered by any persons other than the debtor, and whether (if so) any security is to be given or sought;

(k) the manner in which funds held for the purpose of payment to creditors, and not so paid on the termination of the voluntary arrangement, are to be dealt with;

(l) the functions which are to be undertaken by the supervisor of the voluntary arrangement;

(m) an address of the official receiver to which correspondence with the official receiver is to be sent;

(n) the names and addresses of all the debtor's creditors so far as within his immediate knowledge; and

(o) whether the EC Regulation will apply and, if so, whether the proceedings will be main proceedings or territorial proceedings,

and the proposal shall be signed and dated by the debtor.

(3) The official receiver shall on request supply to the debtor the address referred to in paragraph (2)(m).

Requirement for the official receiver's decision

5.38.—(1) Where the official receiver receives a proposal for a voluntary arrangement in accordance with Rule 5.37 he shall, within 28 days of its receipt, serve a notice on the debtor stating that—

(a) he agrees to act as nominee in relation to the proposal;

(b) he declines to act as nominee in relation to the proposal and specifying reasons for his decision; or

(c) on the basis of the information supplied to him he is unable to reach a decision as to whether to act and specifying what further information he requires.

(2) Where the debtor, pursuant to a request under paragraph (1)(c), supplies the information requested, the official receiver shall, within 28 days of the receipt of the information, serve a notice on the debtor in accordance with paragraph (1).

Arrangements for approval of fast-track voluntary arrangement

5.39.—(1) As soon as reasonably practicable after the official receiver agrees to act as nominee, he shall send to the creditors and any trustee who is not the official receiver—

(a) a copy of the proposal; and

(b) a notice inviting creditors to vote to approve or reject the debtor's proposal and stating that—

(i) if a majority in excess of three-quarters in value of creditors who vote approve the proposal, the official receiver will, as soon as reasonably practicable, report to the court that the proposal has been approved;

(ii) under section 263F—

(aa) the debtor, a person who was entitled to participate in the arrangements made under section 263B(2), any trustee who is not the official receiver, or the official receiver, has 28 days from the date the official receiver reports to the court under section 263C that the proposal has been approved to apply to the court to have the proposal set aside on the grounds set out in section 263F(1);

(bb) a creditor, who was not made aware of the arrangements under section 263B(2) at the time when they were made, has 28 days from the date on which he becomes aware of the voluntary arrangement, to apply to have the proposal set aside on the grounds set out in section 263F(1); and

(iii) creditors cannot propose modifications to the debtor's proposal; and

(c) for the creditors, a copy of Form 5.6 for their use.

(2) The notice shall include a date specified by the official receiver as the final date on which he will accept votes from creditors, being a date not less than 14 days and not more than 28 days from the date of the notice.

Approval by creditors

5.40.—(1) All creditors who wish to vote shall give notice in Form 5.6 to the official receiver of their decision whether to accept or reject the debtor's proposal. Such notification shall be sent to the official receiver at the address specified in the notice.

(2) Votes may be signed by a representative of a creditor.

(3) Votes from a representative of a creditor shall be accompanied by written authority for that representation signed and dated by the creditor.

Entitlement to vote

5.41.—(1) Subject as follows, any creditor who is sent a notice by the official receiver is entitled to vote for the approval or rejection of the proposal.

(2) A creditor's entitlement to vote is calculated by reference to the amount of the creditor's debt at the date of the bankruptcy order.

(3) A creditor may vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained, and for the purposes of voting (but not otherwise) his debt shall be valued at £1 unless the official receiver agrees to put a higher value on it.

Procedure for admission of creditors' claims for voting purposes

5.42.—(1) The official receiver has the power to admit or reject a creditor's claim for the purpose of his entitlement to vote, and the power is exercisable with respect to the whole or part of the claim.

(2) The official receiver's decision on entitlement to vote is subject to appeal to the court by any creditor or the debtor.

(3) If on appeal the official receiver's decision is reversed or varied, or votes are declared invalid, the court may order another vote to be held, or make such order as it thinks just.

The court's power to make an order under this paragraph is exercisable only if it considers that the circumstances giving rise to the appeal are such as give rise to unfair prejudice or material irregularity.

(4) An application to the court by way of appeal against the official receiver's decision shall not be made after the end of the period of 28 days beginning with the day on which the report required by section 263C is made to the court.

(5) The official receiver is not personally liable for any costs incurred by any person in respect of an appeal under this Rule.

Requisite majorities

5.43.—(1) A proposal is approved by the creditors if a majority in excess of three-quarters in value of the creditors who vote approve the proposal.

(2) In the following cases there is to be left out of account a creditor's vote in respect of any claim or part of a claim—

(a) where the claim or part is secured;

(b) where the claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing—

(i) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the debtor, and against whom a bankruptcy order has not been made (or in the case of a company, which has not gone into liquidation), as a security in his hands; and

(ii) to estimate the value of the security and (for the purpose of entitlement to vote, but not of any distribution under the arrangement) to deduct it from his claim.

Notification to the court

5.44. The official receiver shall, in his report to court for the purposes of section 263C, include a statement whether, in his opinion—

(a) the EC Regulation applies to the voluntary arrangement; and

(b) if so, whether the proceedings are main proceedings or territorial proceedings.

Notice of appointment as supervisor etc

5.45.—(1) Where the official receiver is appointed to act as supervisor of a voluntary arrangement, he shall, as soon as reasonably practicable, give written notice of his appointment to the Secretary of State, and all creditors of whom he is aware, and the trustee (if any) who is not the official receiver.

(2) If the official receiver vacates office as supervisor he shall give written notice of that fact to the Secretary of State.

Revocation of the fast-track voluntary arrangement

5.46.—(1) This Rule applies where the court makes an order of revocation under section 263F.

(2) Where the person who applied for the order is—

(a) the debtor, he shall serve a sealed copy of the order on the supervisor and any trustee of his estate who is not the official receiver;

(b) the supervisor, he shall serve a sealed copy of the order on the debtor, and any trustee who is not the official receiver;

(c) a trustee who is not the official receiver, he shall serve a sealed copy of the order on the debtor and the supervisor; and

(d) a creditor, he shall serve a sealed copy of the order on the debtor, the supervisor and any trustee who is not the official receiver.

(3) The supervisor shall, as soon as reasonably practicable after receiving a copy of the order, give notice of it, to all persons who were sent a copy of the debtor's proposal under Rule 5.39 and all other persons who are affected by the order.

(4) The person on whose application the order was made shall, within 7 days after the making of the order, give written notice of it to the Secretary of State.

Supervisor's accounts and reports

5.47.—(1) The supervisor shall keep accounts and records of his acts and dealings in and in connection with the arrangement, including in particular records of all receipts and payments of money.

(2) The supervisor shall, not less often than once in every 12 months beginning with the date of his appointment—

(a) prepare a report on the progress of the voluntary arrangement, including a summary of receipts and payments; and

(b) send copies of it to—

(i) the debtor; and

(ii) all of the debtor's creditors of whom he is aware,

and if in any period of 12 months he has made no payments and had no receipts, he shall at the end of that period send a statement to that effect to those specified in sub-paragraphs (a) and (b) above.

(3) A report provided under paragraph (2) shall relate to a period beginning with the date of the supervisor's appointment or (as the case may be) the day following the end of the last period for which a report was prepared under this Rule; and copies of the report shall be sent, as required by paragraph (2), within the 2 months following the end of the period to which the report relates.

Fees, costs and expenses in respect of the performance of the functions of the official receiver

5.48. The fees, costs and expenses in respect of the performance by the official receiver of his functions in relation to the bankruptcy and those of the trustee who is not the official receiver (including those in connection with the employment of agents) shall be a first charge on any sums realised under the terms of the voluntary arrangement, and those of the official receiver in relation to the voluntary arrangement, shall be a second charge.

Employment of agents by the supervisor

5.49. The supervisor may employ agents in connection with the realisation of any assets subject to the terms of the voluntary arrangement.

Completion or termination of the fast-track voluntary arrangement

5.50.—(1) Not more than 28 days after the final completion or termination of the voluntary arrangement, the supervisor shall send to all creditors of the debtor who are bound by the arrangement, and to the debtor, a notice that the voluntary arrangement has been fully implemented, (or as the case may be) terminated.

(2) With the notice there shall be sent to each of those persons a copy of a report by the supervisor summarising all receipts and payments made by him in pursuance of the voluntary arrangement, and explaining any difference in the actual implementation of it compared with the proposal as approved by the creditors.

(3) The supervisor shall, within the 28 days mentioned above, send to the Secretary of State a copy of the notice under paragraph (1), together with a copy of the report under paragraph (2), and he shall not vacate office until after such copies have been sent.

(4) The court may, on application by the supervisor, extend the period of 28 days under paragraphs (1) and (3).

CHAPTER 8

APPLICATION BY A BANKRUPT TO ANNULA BANKRUPTCY ORDER UNDER SECTION 261(2)(a)

Application of this Chapter

5.51. The following Rules apply where a bankrupt applies for an annulment of a bankruptcy order under section 261(2)(a).

Application to court

5.52.—(1) An application to the court to annul a bankruptcy order under section 261(2)(a) shall specify the section under which it is made.

(2) The application shall be supported by an affidavit stating—

(a) that the voluntary arrangement has been approved at a meeting of creditors;

(b) the date of the approval by the creditors; and

(c) that the 28 day period in section 262(3)(a) for applications to be made under section 262(1) has expired and no applications or appeal remain to be disposed of.

(3) The application and supporting affidavit shall be filed in court; and the court shall give to the bankrupt notice of the venue fixed for the hearing.

(4) The bankrupt shall give notice of the venue, accompanied by copies of the application and affidavit to the official receiver, any trustee who is not the official receiver, and the supervisor of the voluntary arrangement not less than 7 days before the date of the hearing.

(5) The official receiver, the supervisor of the voluntary arrangement and any trustee who is not the official receiver may attend the hearing or be represented and call to the attention of the court any matters which seem to him to be relevant.

(6) Where the court annuls a bankruptcy order, it shall send sealed copies of the order of annulment in Form 5.7 to the bankrupt, the official receiver, the supervisor of the voluntary arrangement and any trustee who is not the official receiver.

Notice to creditors

5.53.—(1) Where the official receiver has notified creditors of the debtor's bankruptcy, and the bankruptcy order is annulled, he shall, as soon as reasonably practicable, notify them of the annulment.

(2) Expenses incurred by the official receiver in giving notice under this Rule are a charge in his favour on the property of the former bankrupt, whether or not actually in his hands.

(3) Where any property is in the hands of a trustee or any person other than the former bankrupt himself, the official receiver's charge is valid subject only to any costs that may be incurred by the trustee or that other person in effecting realisation of the property for the purpose of satisfying the charge.

CHAPTER 9

APPLICATION BY OFFICIAL RECEIVER TO ANNUL A BANKRUPTCY ORDER UNDER SECTION 261(2)(b)

Application of this Chapter

5.54. The following Rules apply where the official receiver applies for an annulment of a bankruptcy order under section 261(2)(b).

Application to court

5.55.—(1) An application to the court to annul a bankruptcy order under section 261(2)(b) shall specify the section under which it is made.

(2) An application under section 261(2)(b) shall not be made before the expiry of 14 days from the date that the time period in section 262(3)(a) for applications under section 262(1) has expired.

(3) The application shall be supported by a report stating the grounds on which it is made. It shall also state that—

(a) the time period for application in paragraph (2) above has expired; and

(b) the official receiver is not aware that any application or appeal remains to be disposed of.

(4) The application and the report shall be filed in court and the court shall give to the official receiver notice of the venue fixed for the hearing.

(5) The official receiver shall give notice of the venue, accompanied by copies of the application and the report to the bankrupt not less than 7 days before the date of the hearing.

(6) Where the court annuls a bankruptcy order, it shall send sealed copies of the order of annulment in Form 5.7 to the official receiver, any trustee who is not the official receiver, the supervisor of the voluntary arrangement and the bankrupt.

Notice to creditors

5.56.—(1) Where the bankruptcy order is annulled, the official receiver shall notify all creditors of whom he is aware of the annulment.

(2) Expenses incurred by the official receiver in giving notice under this Rule are a charge in his favour on the property of the former bankrupt, whether or not actually in his hands.

(3) Where any property is in the hands of a trustee or any person other than the former bankrupt himself, the official receiver's charge is valid subject only to any costs that may be incurred by the trustee or that other person in effecting realisation of the property for the purpose of satisfying the charge.

CHAPTER 10

APPLICATION BY OFFICIAL RECEIVER TO ANNULA BANKRUPTCY ORDER UNDER SECTION 263D(3)

Application of this Chapter

5.57. The following Rules apply where the official receiver applies for an annulment of a bankruptcy order under section 263D(3).

Application to court

5.58.—(1) An application to the court to annul a bankruptcy order under section 263D(3) shall specify the section under which it is made.

(2) An application under section 263D(3) shall be made within 21 days of the expiry of the relevant period set out in section 263D(4).

(3) The application shall be supported by a report stating the grounds on which it is made and a statement by the official receiver that he is not aware that any application or appeal under section 263F remains to be disposed of.

(4) The report shall be accompanied by a copy of the proposal for the voluntary arrangement and a copy of the report under section 263C.

(5) The application, together with the report and the documents in support, shall be filed in court and the court shall give to the official receiver notice of the venue fixed for the hearing.

(6) The official receiver shall give notice of the venue, accompanied by copies of the application and the report, to the bankrupt not less than 7 days before the date of the hearing.

(7) Where the court annuls a bankruptcy order, it shall send sealed copies of the order of annulment in Form 5.8 to the official receiver and the bankrupt.

Notice to creditors

5.59.—(1) Where the official receiver has notified creditors of the debtor's bankruptcy, and the bankruptcy order is annulled, he shall, as soon as reasonably practicable, notify them of the annulment.

(2) Expenses incurred by the official receiver in giving notice under this Rule are a charge in his favour on the property of the former bankrupt, whether or not actually in his hands.

(3) Where any property is in the hands of a trustee or any person other than the former bankrupt himself, the official receiver's charge is valid subject only to any costs that may be incurred by the trustee or that other person in effecting realisation of the property for the purpose of satisfying the charge.

CHAPTER 11

OTHER MATTERS ARISING ON ANNULMENTS UNDER SECTIONS 261(2)(a), 261(2)(b) OR 263D(3)

5.60.—(1) In an order under section 261(2)(a), 261(2)(b) or 263D(3) the court shall include provision permitting vacation of the registration of the bankruptcy petition as a pending action, and of the bankruptcy order, in the register of writs and orders affecting land.

(2) The court shall as soon as reasonably practicable give notice of the making of the order to the Secretary of State.

(3) The former bankrupt may, in writing, require the Secretary of State to give notice of the making of the order—

(a) in the Gazette;

(b) in any newspaper in which the bankruptcy order was advertised; or

(c) in both.

(4) The Secretary of State shall notify the former bankrupt forthwith as to the cost of the advertisement, and is under no obligation to advertise until the sum has been paid.

(5) Where the former bankrupt has died, or is a person incapable of managing his affairs (within the meaning of Chapter 7 in Part 7 of the Rules), the references to him in paragraphs (3) and (4) are to be read as referring to his personal representative or, as the case may be, a person appointed by the court to represent or act for him.

Trustee's final account

5.61.—(1) Where a bankruptcy order is annulled under section 261(2)(a), 261(2)(b) or 263D(3), this does not of itself release the trustee from any duty or obligation, imposed on him by or under the Act or the Rules, to account for all his transactions in connection with the former bankrupt's estate.

(2) The trustee shall submit a copy of his final account to the Secretary of State as soon as reasonably practicable after the court's order annulling the bankruptcy order; and he shall file a copy of the final account in court.

(3) The final account must include a summary of the trustee's receipts and payments in the administration, and contain a statement to the effect that he has reconciled his account with that held by the Secretary of State in respect of the bankruptcy.

(4) The trustee is released from such time as the court may determine, having regard to whether paragraph (2) of this Rule has been complied with.

CHAPTER 12

EC REGULATION: CONVERSION OF VOLUNTARY ARRANGEMENT INTO BANKRUPTCY

Application for conversion of voluntary arrangement into bankruptcy

5.62.—(1) Where a member State liquidator proposes to apply to the court for conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of a voluntary arrangement into a bankruptcy, an affidavit complying with Rule 5.63 must be prepared and sworn, and filed in court in support of the application.

(2) The application and the affidavit required under this Rule shall be served upon—

(a) the debtor; and

(b) the supervisor.

Contents of affidavit

5.63.—(1) The affidavit shall state—

(a) that the main proceedings have been opened in relation to the debtor in a member State other than the United Kingdom;

(b) the deponent's belief that the conversion of the voluntary arrangement into a bankruptcy would prove to be in the interests of the creditors in the main proceedings; and

(c) all other matters that, in the opinion of the member State liquidator, would assist the court—

(i) in deciding whether to make an order under Rule 5.64; and

(ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) An affidavit under this Rule shall be sworn by, or on behalf of, the member State liquidator.

Power of court

5.64.—(1) On hearing an application for conversion of a voluntary arrangement into a bankruptcy, the court may make such order as it thinks fit.

(2) If the court makes an order for conversion of a voluntary arrangement into a bankruptcy under paragraph (1), the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Where the court makes an order for conversion of a voluntary arrangement into a bankruptcy under paragraph (1), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the bankrupt's estate.

Notices to be given to member State liquidator

5.65.—(1) This Rule applies where a member State liquidator has been appointed in relation to the debtor.

(2) Where the supervisor is obliged to give notice to, or provide a copy of a document (including an order of the court) to, the court or the official receiver, the supervisor shall give notice or provide copies, as appropriate, to the member State liquidator.".

PART 6

AMENDMENTS TO PART 6 OF THE PRINCIPAL RULES

Amendment to Rule 6.9

32. In paragraph (4A) of Rule 6.9 after the words "section 256" there is inserted "or section 256A or 263C".

Amendment to Rule 6.40

33. In paragraph (3A) of Rule 6.40 after the words "section 256" there is inserted "or section 256A or 263C".

Revocation of Rules 6.48 to 6.50

34. Rules 6.48 (certificate of summary administration), 6.49 (duty of official receiver in summary administration) and 6.50 (revocation of certificate of summary administration) are revoked.

Amendment to Rule 6.83

35. After Rule 6.83(3) there is inserted—

"(4) This Rule shall not apply to voluntary arrangements under section 263A.".

Revocation of Rule 6.97

36. Rule 6.97(2)(c) is revoked.

Amendment to Rule 6.111

37. In paragraph (2) for the words "middle market rate at the Bank of England" there are substituted "middle exchange rate on the London Foreign Exchange Market at the close of business".

Amendment to Rule 6.121

38. In Rule 6.121(1) "(3)," is omitted.

Insertion of new Chapter 16A of Part 6 of the principal Rules

39. After Chapter 16 of Part 6 of the principal Rules there is inserted—

"CHAPTER 16A

INCOME PAYMENTS AGREEMENTS

Approval of income payments agreements

6.193A.—(1) An income payments agreement can only be entered into prior to the discharge of the bankrupt.

(2) Where an income payments agreement is to be entered into between the official receiver or trustee and the bankrupt under section 310A(1), the official receiver or trustee shall provide an income payments agreement to the bankrupt for his approval.

(3) Within 14 days or such longer period as may be specified by the official receiver or trustee (whichever is appropriate) from the date on which the income payments agreement was sent, the bankrupt shall—

(a) if he decides to approve the draft income payments agreement, sign the agreement and return it to the official receiver or trustee (whichever is appropriate); or

(b) if he decides not to approve the agreement, notify the official receiver or trustee (whichever is appropriate) in writing of his decision.

Acceptance of income payments agreements

6.193B.—(1) On receipt by the official receiver or trustee of the signed income payments agreement, the official receiver or trustee shall sign and date it.

(2) When the official receiver or the trustee signs and dates the income payments agreement, it shall come into force. A copy shall be sent to the bankrupt.

(3) Where the agreement provides for payments by a third person to the official receiver or trustee who is not the official receiver in accordance with section 310A(1)(b), a notice of the agreement shall be sent by the official receiver or trustee to that person.

(4) The notice shall contain—

(a) the full name and address of the bankrupt;

(b) a statement that an income payments agreement has been made, the date of it, and that it provides for the payment by the third person of sums owed to the bankrupt (or a part thereof) to be paid to the official receiver or trustee;

(c) the full name and address of the third person;

(d) a statement of the amount of money to be paid to the official receiver or trustee from the bankrupt's income, the period over which the payments are to be made, and the intervals at which the sums are to be paid; and

(e) the full name and address of the official receiver or trustee and the address or details of where the sums are to be paid.

(5) When making any payment to the official receiver or the trustee a person who has received notice of an income payments agreement with reference to income otherwise payable by him to the bankrupt may deduct the appropriate fee towards the clerical and

administrative costs of compliance with the income payments agreement. He shall give to the bankrupt a written statement of any amount deducted by him under this paragraph.

Variation of income payments agreements

6.193C.—(1) Where an application is made to court for variation of an income payments agreement, the application shall be accompanied by a copy of the agreement.

(2) Where the bankrupt applies to the court for variation of an income payments agreement under section 310A(6)(b), he shall send a copy of the application and notice of the venue to the official receiver or trustee (whichever is appropriate) at least 28 days before the date fixed for the hearing.

(3) When the official receiver or trustee applies to the court for variation of an income payments agreement under section 310A(6)(b), he shall send a copy of the application and notice of the venue to the bankrupt at least 28 days before the date fixed for the hearing.

(4) The court may order in Form 6.81 the variation of an income payments agreement under section 310A.

(5) Where the court orders an income payments agreement under section 310A(1)(a) to be varied, so as to take the form of an agreement under section 310A(1)(b) as an agreement providing that a third person is to make payments to the trustee or the official receiver, the official receiver or trustee shall send a notice in accordance with Rule 6.193B(3).

(6) When making any payment to the official receiver or the trustee a person who has received notice of an income payments agreement with reference to income otherwise payable by him to the bankrupt may deduct the appropriate fee towards the clerical and administrative costs of compliance with the income payments agreement. He shall give to the bankrupt a written statement of any amount deducted by him under this paragraph.".

Amendment to Chapter 20 of Part 6 of the principal Rules

40. After the heading "Chapter 20" in Part 6 of the principal Rules there is inserted—

"**6.202A.** In this Chapter a reference to a bankrupt includes a reference to a person in respect of whom a bankruptcy restrictions order is in force.".

Amendment to Rule 6.205

41. In Rule 6.205(2)(a) after the words "income payments order" there is inserted "or an income payments agreement".

Amendment to Rule 6.206

42. In Rule 6.206 after paragraph (5) there is inserted—

"(6) In this Chapter, where the applicant is not the bankrupt all notices, documents and affidavits required to be given, sent or delivered to another party by the applicant shall also be given, sent or delivered to the bankrupt.".

Revocation of Rule 6.212A

43. Rule 6.212A is revoked.

Amendment to Rule 6.213

44. In Rule 6.213(1) the words "261 or" are omitted.

Amendment to Rule 6.214

45. In Rule 6.214(1) the words "261 or" are omitted.

Insertion of new Chapter 21A of Part 6 of the principal Rules

46. After Rule 6.214 there is inserted—

"CHAPTER 21A

NOTICE UNDER SECTION 279(2)

Notice under section 279(2) that an investigation of the conduct and affairs of a bankrupt is unnecessary or concluded

6.214A.—(1) Where the official receiver intends to file a notice that an investigation of the conduct and affairs of a bankrupt is unnecessary or concluded under section 279(2), he shall give notice in writing to all creditors of which he is aware and any trustee of his intention to file such a notice.

(2) Where a creditor or a trustee receives written notice of the official receiver's intention to file a notice under section 279(2) and he has any objection to the official receiver filing such a notice, he may, within 28 days of the date of such written notice, inform the official receiver in writing of his objection and give reasons for that objection.

(3) The official receiver shall not file a notice under section 279(2) until the period allowed for creditors or a trustee to object under paragraph (2) has expired.

(4) Where the official receiver receives no objection from either a creditor or a trustee he may file a notice under section 279(2) in Form 6.82 with the court and send a copy to the bankrupt.

(5) Where the official receiver receives an objection under this Rule and he rejects that objection, he shall not file the notice under section 279(2) until he has—

(a) given notice of the rejection (and his reasons) to the complainant; and

(b) the period of time for an appeal by the complainant under Rule 7.50(2) has expired,

or an appeal under that Rule has been determined by the court.".

Amendment to Rule 6.215

47. For Rule 6.215 there is substituted—

"**Application for suspension of discharge**

6.215.—(1) The following applies where the official receiver or any trustee who is not the official receiver applies to the court for an order under section 279(3) (suspension of automatic discharge), but not where the official receiver makes that application, pursuant to Rule 6.176(4), on the adjournment of the bankrupt's public examination.

(2) The official receiver or any trustee who is not the official receiver shall, with his application, file evidence in support setting out the reasons why it appears to him that such an order should be made.

(3) The court shall fix a venue for the hearing of the application, and give notice of it to the official receiver, the trustee who is not the official receiver, and the bankrupt.

(4) Copies of the official receiver's report under this Rule shall be sent by him to the bankrupt and any trustee who is not the official receiver, so as to reach them at least 21 days before the date fixed for the hearing.

(5) Copies of the trustee's evidence in support under this Rule shall be sent by him to the official receiver and the bankrupt, so as to reach them at least 21 days before the date fixed for the hearing.

(6) The bankrupt may, not later than 7 days before the date of the hearing, file in court a notice specifying any statements in the official receiver's or trustee's evidence in support which he intends to deny or dispute.

(7) If the bankrupt files a notice under paragraph (6), he shall send copies of it, not less than 4 days before the date of the hearing, to the official receiver and any trustee who is not the official receiver.

(8) If the court makes an order suspending the bankrupt's discharge, copies of the order shall be sent by the court to the official receiver, any trustee who is not the official receiver and the bankrupt.".

Amendment to Rule 6.216

48. For Rule 6.216 there is substituted—

"**Lifting of suspension of discharge**

6.216.—(1) Where the court has made an order under section 279(3) that the period specified in section 279(1) shall cease to run, the bankrupt may apply to it for the order to be discharged.

(2) The court shall fix a venue for the hearing of the application; and the bankrupt shall, not less than 28 days before the date fixed for the hearing, give notice of the venue to the official receiver and any trustee who is not the official receiver, accompanied in each case by a copy of the application.

(3) The official receiver and the trustee may appear and be heard on the bankrupt's application; and, whether or not they appear, the official receiver and trustee may file in court evidence in support of any matters which either of them considers ought to be drawn to the court's attention.

(4) If the court made an order under section 279(3)(b), the court may request a report from the official receiver or the trustee as to whether the conditions specified in the order have or have not been fulfilled.

(5) If a report is filed under paragraph (3) or (4), copies of it shall be sent by the official receiver or trustee to the bankrupt and to either the official receiver or trustee (depending on which has filed the report), not later than 14 days before the hearing.

(6) The bankrupt may, not later than 7 days before the date of the hearing, file in court a notice specifying any statements in the official receiver's or trustee's report which he intends to deny or dispute.

If he files a notice under this paragraph, he shall send copies of it, not less than 4 days before the date of the hearing, to the official receiver and the trustee.

(7) If on the bankrupt's application the court discharges the order under section 279(3) (being satisfied that the period specified in section 279(1) should begin to run again), it shall issue to the bankrupt a certificate that it has done so, with effect from a specified date and shall send copies of the certificate to the official receiver and the trustee.".

Amendment to Rule 6.223

49. In Rule 6.223 there is inserted after "1988" the words "or under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002(**2**).".

Revocation of Chapter 22A

50. Chapter 22A of the principal Rules is revoked.

Amendment to Rule 6.237

51. For Rule 6.237 there is substituted—

"**Bankrupt's Home—Notification of property falling within section 283A**

6.237.—(1) Where it appears to a trustee that section 283A(1) applies, the trustee shall give notice in Form 6.83 as soon as reasonably practicable to—

(a) the bankrupt;

(b) the bankrupt's spouse (in a case falling within section 283A(1)(b)); and

(c) a former spouse of the bankrupt (in a case falling within section 283A(1)(c)).

(2) A notice under paragraph (1) shall contain—

(a) the name of the bankrupt;

(b) the address of the dwelling-house; and

(c) if the dwelling-house is registered land, the title number.

(3) A trustee shall not give notice under paragraph (1) any later than 14 days before the expiry of the three year period under section 283A(2) or 283A(5).

Application in respect of the vesting of an interest in a dwelling-house (registered land)

6.237A.—(1) Paragraph (2) applies where—

(a) property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of bankruptcy was the sole or principal residence of—

(i) the bankrupt;

(ii) the bankrupt's spouse; or

(iii) a former spouse of the bankrupt; and

(b) the dwelling-house is registered land; and

(c) an entry has been made, or entries have been made, in the individual register or registers of the dwelling-house relating to the bankrupt's bankruptcy or the individual register or registers has or have been altered to reflect the vesting of the bankrupt's interest in a trustee in bankruptcy.

(2) Where an interest of a kind mentioned in paragraph (1) ceases to be comprised in the bankrupt's estate and vests in the bankrupt under either section 283A(2) or 283A(4) of the Act, or under section 261(8) of the Enterprise Act 2002(**3**), the trustee shall, within 7 days of the vesting, make such application or applications to the Chief Land Registrar as

(**2**) 2002 c. 29.
(**3**) 2002 c. 40.

shall be necessary to show in the individual register or registers of the dwelling-house that the interest has vested in the bankrupt.

(3) An application under paragraph (2) shall be made in accordance with the Land Registration Act 2002(**4**) and shall be accompanied by—

(a) evidence of the trustee's appointment (where not previously provided to the Chief Land Registrar); and

(b) a certificate from the trustee stating that the interest has vested in the bankrupt under section 283A(2) or 283A(4) of the Act or section 261(8) of the Enterprise Act 2002 (whichever is appropriate).

(4) As soon as reasonably practicable after making an application under paragraph (2), the trustee shall notify the bankrupt and if the dwelling-house was the sole or principal residence of his spouse or former spouse, such person, that the application has been made.

(5) The trustee shall notify every person who (to his knowledge) either claims an interest in the dwelling-house, or is under any liability in respect of the dwelling-house that an application has been made.

Vesting of bankrupt's interest (unregistered land)

6.237B.—(1) Where an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

(a) the bankrupt;

(b) the bankrupt's spouse; or

(c) a former spouse of the bankrupt,

ceases to be comprised in the bankrupt's estate and vests in the bankrupt under either section 283A(2) or 283A(4) of the Act or section 261(8) of the Enterprise Act 2002 and the dwelling-house is unregistered land, the trustee shall issue the bankrupt with a certificate as to the vesting in Form 6.84 as soon as reasonably practicable.

(2) A certificate issued under paragraph (1) shall be conclusive proof that the interest mentioned in paragraph (1) has vested in the bankrupt.

(3) As soon as reasonably practicable after issuing the certificate under paragraph (1) the trustee shall, if the dwelling-house was the sole or principal residence of the bankrupt's spouse or former spouse, notify such person, that the application has been made.

(4) The trustee shall notify every person who (to his knowledge) either claims an interest in the dwelling-house, or is under any liability in respect of the dwelling-house that an application has been made.

6.237C. The court may substitute for the period of three years mentioned in section 283A(2) such longer period as the court thinks just and reasonable in all the circumstances of the case.

Charging Order

6.237D.—(1) This Rule applies where the trustee applies to the court under section 313 for an order imposing a charge on property consisting of an interest in a dwelling-house.

(2) The respondents to the application shall be—

(a) any spouse or former spouse of the bankrupt having or claiming to have an interest in the property;

(**4**) 2002 c. 9.

(b) any other person appearing to have an interest in the property; and

(c) such other persons as the court may direct.

(3) The trustee shall make a report to the court, containing the following particulars—

(a) the extent of the bankrupt's interest in the property which is the subject of the application;

(b) the amount which, at the date of the application, remains owing to unsecured creditors of the bankrupt; and

(c) an estimate of the cost of realising the interest.

(4) The terms of the charge to be imposed shall be agreed between the trustee and the bankrupt or, failing agreement, shall be settled by the court.

(5) The rate of interest applicable under section 313(2) is the rate specified in section 17 of the Judgments Act 1838(**5**) on the day on which the charge is imposed, and the rate so applicable shall be stated in the court's order imposing the charge.

(6) The court's order shall also—

(a) describe the property to be charged;

(b) state whether the title to the property is registered and, if it is, specify the title number;

(c) set out the extent of the bankrupt's interest in the property which has vested in the trustee;

(d) indicate, by reference to any, or the total, amount which is payable otherwise than to the bankrupt out of the estate and of interest on that amount, how the amount of the charge to be imposed is to be ascertained;

(e) set out the conditions (if any) imposed by the court under section 3(1) of the Charging Orders Act 1979(**6**); and

(f) identify the date any property charged under section 313 shall cease to be comprised in the bankrupt's estate and shall, subject to the charge (and any prior charge), vest in the bankrupt.

(7) Unless the court is of the opinion that a different date is appropriate, the date referred to in paragraph (6)(f) shall be that of the registration of the charge in accordance with section 3(2) of the Charging Orders Act 1979.

(8) Where the court order is capable of giving rise to an application or applications under the Land Charges Act 1972(**7**) or the Land Registration Act 2002, the trustee shall, as soon as reasonably practicable after the making of the court order or at the appropriate time, make the appropriate application or applications to the Chief Land Registrar.

(9) In paragraph (8) an "appropriate application" is—

(a) an application under section 6(1)(a) of the Land Charges Act 1972 (application for registration in the register of writs and orders affecting land); or

(b) an application under the Land Registration Act 2002 for an entry in the register in respect of the charge imposed by the order; and such application under that Act as shall be necessary to show in the individual register or registers of the dwelling-house that the interest has vested in the bankrupt.

(**5**) 1838 c. 110.
(**6**) 1979 c. 53.
(**7**) 1972 c. 61.

Interpretation

6.237E.—(1) In Rules 6.237 and 6.237A, "registered land" has the same meaning as in section 132(1) of the Land Registration Act 2002.

(2) In Rules 6.237A and 6.237D, "individual register" has the same meaning as in the Land Registration Rules 2003(**8**).".

Insertion of new Chapters 28, 29 and 30 of Part 6 of the principal Rules

52. After Chapter 27 of Part 6 of the principal Rules there is inserted—

"CHAPTER 28

BANKRUPTCY RESTRICTIONS ORDER

6.240. In this and the following two Chapters, "Secretary of State" includes the official receiver acting in accordance with paragraph 1(2)(b) of Schedule 4A to the Act.

Application for bankruptcy restrictions order

6.241.—(1) Where the Secretary of State applies to the court for a bankruptcy restrictions order under paragraph 1 of Schedule 4A to the Act, the application shall be supported by a report by the Secretary of State.

(2) The report shall include—

(a) a statement of the conduct by reference to which it is alleged that it is appropriate for a bankruptcy restrictions order to be made; and

(b) the evidence on which the Secretary of State relies in support of the application.

(3) Any evidence in support of an application for a bankruptcy restrictions order provided by persons other than the Secretary of State shall be by way of affidavit.

(4) The date for the hearing shall be no earlier than 8 weeks from the date when the court fixes the venue for the hearing.

(5) For the purposes of hearing an application under this Rule by a registrar, Rule 7.6(1) shall not apply and the application shall be heard in public.

Service on the defendant

6.242.—(1) The Secretary of State shall serve notice of the application and the venue fixed by the court on the bankrupt not more than 14 days after the application is made at court.

(2) Service shall be accompanied by a copy of the application, together with copies of the report by the Secretary of State, any other evidence filed with the court in support of the application, and an acknowledgement of service.

(3) The defendant shall file in court an acknowledgement of service of the application indicating whether or not he contests the application not more than 14 days after service on him of the application.

(4) Where the defendant has failed to file an acknowledgement of service and the time period for doing so has expired, the defendant may attend the hearing of the application but may not take part in the hearing unless the court gives permission.

(**8**) S.I. 2003/1417.

The bankrupt's evidence

6.243.—(1) If the bankrupt wishes to oppose the application, he shall within 28 days of the service of the application and evidence of the Secretary of State, file in court any evidence which he wishes the court to take into consideration, and shall serve a copy of such evidence upon the Secretary of State within 3 days of filing it at court.

(2) The Secretary of State shall, within 14 days from receiving the copy of the bankrupt's evidence, file in court any further evidence in reply he wishes the court to take into consideration and shall as soon as reasonably practicable serve a copy of that evidence upon the bankrupt.

Making a bankruptcy restrictions order

6.244.—(1) The court may make a bankruptcy restrictions order against the bankrupt, whether or not the latter appears, and whether or not he has filed evidence in accordance with Rule 6.243.

(2) Where the court makes a bankruptcy restrictions order, it shall send two sealed copies to the Secretary of State.

(3) As soon as reasonably practicable after receipt of the sealed copy of the order, the Secretary of State shall send a sealed copy of the order to the bankrupt.

CHAPTER 29

INTERIM BANKRUPTCY RESTRICTIONS ORDER

Application for interim bankruptcy restrictions order

6.245.—(1) Where the Secretary of State applies for an interim bankruptcy restrictions order under paragraph 5 of Schedule 4A to the Act, the court shall fix a venue for the hearing.

(2) Notice of an application for an interim bankruptcy restrictions order shall be given to the bankrupt at least 2 business days before the date set for the hearing unless the court directs otherwise.

(3) For the purposes of hearing an application under this Rule by a registrar, Rule 7.6(1) shall not apply and the application shall be heard in public.

The case against the defendant

6.246.—(1) The Secretary of State shall file a report in court as evidence in support of any application for an interim bankruptcy restrictions order.

(2) The report shall include evidence of the bankrupt's conduct which is alleged to constitute the grounds for the making of an interim bankruptcy restrictions order and evidence of matters which relate to the public interest in making the order.

(3) Any evidence by persons other than the Secretary of State in support of an application for an interim bankruptcy restrictions order shall be by way of affidavit.

Making an interim bankruptcy restrictions order

6.247.—(1) The bankrupt may file in court any evidence which he wishes the court to take into consideration and may appear at the hearing for an interim bankruptcy restrictions order.

(2) The court may make an interim bankruptcy restrictions order against the bankrupt, whether or not the latter appears, and whether or not he has filed evidence.

(3) Where the court makes an interim bankruptcy restrictions order, it shall send two sealed copies of the order shall be sent, as soon as reasonably practicable, to the Secretary of State.

(4) As soon as reasonably practicable after receipt of the sealed copies of the order, the Secretary of State shall send a copy of the order to the bankrupt.

Application to set aside an interim bankruptcy restrictions order

6.248.—(1) A bankrupt may apply to the court to set aside an interim bankruptcy restrictions order.

(2) An application by the bankrupt to set aside an interim bankruptcy restrictions order shall be supported by an affidavit stating the grounds on which the application is made.

(3) Where a bankrupt applies to set aside an interim bankruptcy restrictions order under paragraph (1), he shall send to the Secretary of State, not less than 7 days before the hearing—

(a) notice of his application;

(b) notice of the venue;

(c) a copy of his application; and

(d) a copy of the supporting affidavit.

(4) The Secretary of State may attend the hearing and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(5) Where the court sets aside an interim bankruptcy restrictions order two sealed copies of the order shall be sent, as soon as reasonably practicable, to the Secretary of State by the court.

(6) As soon as reasonably practicable after receipt of the sealed copies of the order, the Secretary of State shall send a sealed copy of the order to the bankrupt.

CHAPTER 30

BANKRUPTCY RESTRICTIONS UNDERTAKING

Acceptance of the bankruptcy restrictions undertaking

6.249. A bankruptcy restrictions undertaking signed by the bankrupt shall be deemed to have been accepted by the Secretary of State for the purposes of paragraph 9 of Schedule 4A of the Act when the undertaking is signed by the Secretary of State.

Notification to the court

6.250. As soon as reasonably practicable after a bankruptcy restrictions undertaking has been accepted by the Secretary of State, a copy shall be sent to the bankrupt and filed in court and sent to the official receiver if he is not the applicant.

Application under paragraph 9(3) of Schedule 4A to the Act to annul a bankruptcy restrictions undertaking

6.251.—(1) An application under paragraphs 9(3)(a) or (b) of Schedule 4A to the Act shall be supported by an affidavit stating the grounds on which it is made.

(2) The bankrupt shall give notice of the application and the venue, together with a copy of the affidavit supporting his application to the Secretary of State at least 28 days before the date fixed for the hearing.

(3) The Secretary of State may attend the hearing and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(4) The court shall send a sealed copy of any order annulling or varying the bankruptcy restrictions undertaking to the Secretary of State and the bankrupt.".

PART 7

NEW PART 6A FOR INSERTION INTO THE PRINCIPAL RULES

53. After Part 6 of the principal Rules there is inserted—

"PART 6A

CHAPTER 1

GENERAL

The individual insolvency register; the bankruptcy restrictions register

6A.1.—(1) The Secretary of State shall create and maintain a register of matters relating to bankruptcies and individual voluntary arrangements in accordance with the provisions of this Part (referred to in this Part as "the individual insolvency register").

(2) The register referred to in paragraph 12 of Schedule 4A to the Act (referred to in this Part as "the bankruptcy restrictions register") shall be maintained in accordance with the provisions of this Part.

(3) In this Part the "registers" means the registers referred to in paragraphs (1) and (2).

(4) The registers shall be open to public inspection on any business day between the hours of 9.00 am and 5.00 pm.

(5) Where an obligation to enter information onto, or delete information from, the registers arises under this Part, that obligation shall be performed as soon as is reasonably practicable after it arises.

CHAPTER 2

INDIVIDUAL INSOLVENCY REGISTER

Entry of information onto the individual insolvency register—individual voluntary arrangements

6A.2.—(1) The Secretary of State shall enter onto the individual insolvency register—

(a) as regards any voluntary arrangement other than a voluntary arrangement under section 263A any information—

(i) that was required to be held on the register of individual voluntary arrangements maintained by the Secretary of State immediately prior to the coming into force of this Rule and which relates to a voluntary arrangement which has not been completed or has not terminated on or before the date on which this Rule comes into force; or

(ii) that is sent to him in pursuance of Rule 5.29 or Rule 5.34; and

(b) as regards any voluntary arrangement under section 263A of which notice is given to him pursuant to Rule 5.45—

(i) the name and address of the debtor;

(ii) the date on which the arrangement was approved by the creditors; and

(iii) the court in which the official receiver's report has been filed.

(2) This Rule is subject to Rule 6A.3.

Deletion of information from the individual insolvency register—individual voluntary arrangements

6A.3. The Secretary of State shall delete from the individual insolvency register all information concerning an individual voluntary arrangement where—

(a) he receives notice under Rule 5.30(5) or Rule 5.46(4) of the making of a revocation order in respect of the arrangement; or

(b) he receives notice under Rule 5.34(3) or Rule 5.50(3) of the full implementation or termination of the arrangement.

Entry of information onto the individual insolvency register—bankruptcy orders

6A.4.—(1) The Secretary of State shall enter onto the individual insolvency register any information that was required to be held on the register of bankruptcy orders maintained by the Secretary of State immediately prior to the coming into force of this Rule and which relates to a bankrupt who—

(a) has not received his discharge on or before the date that this Rule comes into force; or

(b) was discharged in the period of 3 months immediately preceding the coming into force of this Rule.

(2) Where the official receiver receives pursuant to Rule 6.34 or Rule 6.46 a copy of a bankruptcy order from the court, he shall cause to be entered onto the individual insolvency register—

(a) the matters listed in Rules 6.7 and 6.38 with respect to the debtor as they are stated in the bankruptcy petition;

(b) the date of the making of the bankruptcy order;

(c) the name of the court that made the order; and

(d) the court reference number as stated on the order.

(3) The official receiver shall cause to be entered onto the individual insolvency register as soon as reasonably practicable after receipt by him, the following information—

(a) the name, gender, occupation (if any) and date of birth of the bankrupt;

(b) the bankrupt's last known address;

(c) the date of any bankruptcy order (or if more than one the latest of them) made in the period of 6 years immediately prior to the date of the latest bankruptcy order made against the bankrupt (excluding for these purposes any order that was annulled);

(d) any name by which the bankrupt was known, not being the name in which he was adjudged bankrupt;

(e) the address of any business carried on by the bankrupt and the name in which that business was carried on if carried on in a name other than the name in which the bankrupt was adjudged bankrupt;

(f) the name and address of any insolvency practitioner appointed to act as trustee in bankruptcy;

(g) the address at which the official receiver may be contacted; and

(h) the automatic discharge date under section 279.

(4) Where pursuant to Rule 6.176(5) or Rule 6.215(8) the official receiver receives a copy of an order suspending the bankrupt's discharge he shall cause to be entered onto the individual insolvency register—

(a) the fact that such an order has been made; and

(b) the period for which the discharge has been suspended or that the relevant period has ceased to run until the fulfilment of conditions specified in the order.

(5) Where pursuant to Rule 6.216(7) a copy of a certificate certifying the discharge of an order under section 279(3) is received by the official receiver, he shall cause to be entered onto the individual insolvency register—

(a) that the court has discharged the order made under section 279(3); and

(b) the new date of discharge of the bankrupt,

but where the order discharging the order under section 279(3) is subsequently rescinded by the court, the official receiver shall cause the register to be amended accordingly.

(6) Where a bankrupt is discharged from bankruptcy under section 279(1) or section 279(2), the official receiver shall cause the fact and date of such discharge to be entered in the individual insolvency register.

(7) This Rule is subject to Rule 6A.5.

Deletion of information from the individual insolvency register—bankruptcy orders

6A.5. Subject to paragraph (2), the Secretary of State shall delete from the individual insolvency register all information concerning a bankruptcy where—

(a) the bankruptcy order has been annulled pursuant to section 261(2)(a), 261(2)(b), 263D(3) or section 282(1)(b);

(b) the bankrupt has been discharged from the bankruptcy and a period of 3 months has elapsed from the date of discharge;

(c) the bankruptcy order is annulled pursuant to section 282(1)(a) and he has received notice of the annulment under Rule 6.213(2); or

(d) the bankruptcy order is rescinded by the court under section 375 and the Secretary of State has received a copy of the order made by the court.

CHAPTER 3

BANKRUPTCY RESTRICTIONS REGISTER

Bankruptcy restrictions orders and undertakings—entry of information onto the bankruptcy restrictions register

6A.6.—(1) Where an interim bankruptcy restrictions order or a bankruptcy restrictions order is made against a bankrupt, the Secretary of State shall enter onto the bankruptcy restrictions register—

(a) the name of the bankrupt;

(b) a statement that an interim bankruptcy restrictions order or, as the case may be, a bankruptcy restrictions order has been made against him;

(c) the date of the making of the order, the court and the court reference number; and

(d) the duration of the order.

(2) Where a bankruptcy restrictions undertaking is given by a bankrupt, the Secretary of State shall enter onto the bankruptcy restrictions register—

(a) the name of the bankrupt;

(b) a statement that a bankruptcy restrictions undertaking has been given;

(c) the date of the acceptance of the bankruptcy restrictions undertaking by the Secretary of State; and

(d) the duration of the bankruptcy restrictions undertaking.

(3) This Rule is subject to Rule 6A.7.

Deletion of information from the bankruptcy restrictions register—bankruptcy restrictions orders and undertakings

6A.7. In any case where an interim bankruptcy restrictions order or a bankruptcy restrictions order is made or a bankruptcy restrictions undertaking has been accepted, the Secretary of State shall remove from the bankruptcy restrictions register all information regarding that order or, as the case may be, undertaking after—

(a) receipt of notification that the order or, as the case may be, the undertaking has ceased to have effect; or

(b) the expiry of the order or, as the case may be, undertaking.

CHAPTER 4

RECTIFICATION OF REGISTERS

Rectification of the registers

6A.8.—(1) Where the Secretary of State becomes aware that there is any inaccuracy in any information maintained on the registers he shall rectify the inaccuracy as soon as reasonably practicable.

(2) Where the Secretary of State receives notice of the date of the death of a bankrupt in respect of whom information is held on the register, he shall cause the fact and date of the bankrupt's death to be entered onto the individual insolvency register and bankruptcy restrictions register.".

PART 8

AMENDMENTS TO PART 7 OF THE PRINCIPAL RULES

Amendments to Rule 7.1

54. In Rule 7.1 the words "a petition for" are omitted and in (a) there are inserted the words "an application for" before "an administration", in (b) there are inserted the words "a petition for" before the words "a winding up" and in (c) there are inserted the words "a petition for" before the words "a bankruptcy".

Amendment to Rule 7.3

55. After Rule 7.3 there is inserted—

"**Application under section 176A(5) to disapply section 176A**

7.3A.—(1) An application under section 176A(5) shall be accompanied by an affidavit prepared and sworn by the liquidator, administrator or receiver.

(2) The affidavit shall state—

(a) the type of insolvency proceedings in which the application arises;

(b) a summary of the financial position of the company;

(c) the information substantiating the applicant's view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits; and

(d) whether any other insolvency practitioner is acting in relation to the company and if so his address.".

Amendment to Rule 7.4

56. After Rule 7.4 there is inserted—

"**Notice of application under section 176A(5)**

7.4A. An application under section 176A(5) may be made without the application being served upon or notice being given to any other party, save that notice of the application shall be given to any other insolvency practitioner who acts as such in relation to the company including any member State liquidator.".

Amendments to Rule 7.20

57. In Rule 7.20—

(a) in paragraph (1)(a) for "section 22," there is substituted "paragraph 47 of Schedule B1 to the Act or section"; and

(b) in paragraph (2)(a) for "section 22" there is substituted "paragraph 47 of Schedule B1 to the Act".

Amendment to Rule 7.50

58. At the end of Rule 7.50 (which becomes paragraph (1)) there is inserted the following paragraph—

"(2) In respect of a decision under Rule 6.214A(5)(b), an appeal shall be brought within 14 days of the notification of the decision.".

Amendment to Rule 7.57

59. In Rule 7.57(6) the number "2.12" is deleted.

Amendment to Rule 7.62

60. In Rule 7.62 at the end of paragraph (7) there is inserted—

"(8) This Rule shall also apply where a company has moved to a voluntary liquidation in accordance with paragraph 83 of Schedule B1 to the Act.".

PART 9

AMENDMENTS TO PART 12 OF THE PRINCIPAL RULES

Amendments to Rule 12.2

61. In Rule 12.2—

(a) after the words "winding up" where they first appear, there is inserted ", administration" and after the words "winding up" where they appear for the second time, there is inserted "or the administration"; and

(b) there is inserted as paragraph (2), and Rule 12.2 shall become Rule 12.2(1), the following—

"(2) The costs associated with the prescribed part shall be paid out of the prescribed part.".

Amendments to Rule 12.3

62. In Rule 12.3—

(a) in paragraph (1) for the words "in both winding up and bankruptcy" there is substituted "in administration, winding up and bankruptcy";

(b) in sub-paragraph (b) of paragraph (2) before the words "winding up" there is inserted "administration," and at the end after "1988" there is inserted the words "or under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002(**9**)";

(c) in paragraph (2A) after "section 189(2)" there is inserted ", Rule 2.88";

(d) in sub-paragraph (a) of paragraph (2A) before the words "a winding up" there is inserted "an administration,"; and

(e) in sub-paragraph (c) of paragraph (2A) before the words "a winding up" where they occur for the first time there is inserted "an administration or" and after the word "bankruptcy" there is inserted ", an administration".

Amendment to Rule 12.21

63. After Rule 12.21 there is inserted—

"**Notice of order under section 176A(5)**

12.22.—(1) Where the court makes an order under section 176A(5), it shall as soon as reasonably practicable send two sealed copies of the order to the applicant and a sealed copy to any other insolvency practitioner who holds office in relation to the company.

(2) Where the court has made an order under section 176A(5), the liquidator, administrator or receiver, as the case may be, shall, as soon as reasonably practicable, send a sealed copy of the order to the company.

(3) Where the court has made an order under section 176A(5), the liquidator, administrator or receiver, as the case may be, shall as soon as reasonably practicable, give notice to each creditor of whose claim and address he is aware.

(4) Paragraph (3) shall not apply where the court directs otherwise.

(**9**) 2002 c. 29.

(5) The court may direct that the requirement in paragraph (3) is complied with by the liquidator, administrator or receiver, as the case may be, publishing a notice in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the company's unsecured creditors stating that the court has made an order disapplying the requirement to set aside the prescribed part.

(6) The liquidator, administrator or receiver shall send a copy of the order to the registrar of companies as soon as reasonably practicable after the making of the order.".

PART 10

AMENDMENTS TO PART 13 OF THE PRINCIPAL RULES

Amendment to Rule 13.11

64. In Rule 13.11 in (a) after the words in brackets there is inserted "or Rule 6.193C(4) (payor under income payments agreement entitled to clerical etc costs)".

Amendment to Rule 13.12

65. In Rule 13.12 there is inserted after paragraph (4)—

"(5) This Rule shall apply where a company is in administration and shall be read as if references to winding-up were a reference to administration.".

Amendments to Rule 13.13

66. In Rule 13.13—

(a) in paragraph (3) after "File in court" there is inserted "and file with the court"; and

(b) after paragraph (14) there is inserted—

"(15) "Prescribed part" has the same meaning as it does in section 176A(2)(a).".