
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 5

MEMBERS' VOLUNTARY WINDING UP

CHAPTER 1

Statutory declaration of solvency (section 89)

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Statutory declaration of solvency: requirements additional to those in section 89

[Note: the "official rate" referred to in paragraph (1)(b) is defined in section 251 as being the rate referred to in section 189(4).]

5.1.—(1) The statutory declaration of solvency required by section 89 must identify the company and state—

- (a) the name and a postal address for each director making the declaration (which may be the director's service address provided for by section 163 of the Companies Act);
- (b) either—
 - (i) that all of the directors, or
 - (ii) that a majority of the directors,

have made a full inquiry into the company's affairs and that, having done so, they have formed the opinion that the company will be able to pay its debts in full together with interest at the official rate within a specified period (which must not exceed 12 months) from the commencement of the winding up; and

- (c) that the declaration is accompanied by a statement of the company's assets and liabilities as at a date which is stated (being the latest practicable date before the making of the declaration as required by section 89(2)(b)).
- (2) The statement of the company's assets and liabilities must contain—
- (a) the date of the statement;
 - (b) a statement that the statement shows the assets of the company at estimated realisable values and liabilities of the company expected to rank as at the date referred to in subparagraph (1)(c);
 - (c) a summary of the assets of the company, setting out the estimated realisable value of—
 - (i) any assets subject to a fixed charge,
 - (ii) any assets subject to a floating charge,
 - (iii) any uncharged assets; and
 - (iv) the total value of all the assets available to preferential creditors;

- (d) the value of each of the following secured liabilities of the company expected to rank for payment—
 - (i) liabilities secured on specific assets, and
 - (ii) liabilities secured by floating charges;
- (e) a summary of the unsecured liabilities of the company expected to rank for payment;
- (f) the estimated costs of the winding up and other expenses;
- (g) the estimated amount of interest accruing until payment of debts in full; and
- (h) the estimated value of any surplus after paying debts in full together with interest at the official rate.

CHAPTER 2

The liquidator

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Appointment by the company

5.2.—(1) This rule applies where the liquidator is appointed by the company.

(2) The chair of the meeting, or a director or the secretary of the company in the case of a written resolution of a private company, must certify the appointment when the appointee has provided to the person certifying the appointment a statement to the effect that the appointee is an insolvency practitioner qualified under the Act to be the liquidator and consents to act.

(3) The certificate must be authenticated and dated by the person who certifies the appointment and must contain—

- (a) identification details for the company;
- (b) identification and contact details for the person appointed as liquidator;
- (c) the date the liquidator was appointed; and
- (d) a statement that the appointee—
 - (i) provided a statement of being qualified to act as an insolvency practitioner in relation to the company,
 - (ii) has consented to act, and
 - (iii) was appointed liquidator of the company.

(4) Where two or more liquidators are appointed the certificate must also specify (as required by section 231) whether any act required or authorised under any enactment to be done by the liquidator is to be done by all or any one or more of them.

(5) The person who certifies the appointment must deliver the certificate as soon as reasonably practicable to the liquidator, who must keep it as part of the records of the winding up.

(6) Not later than 28 days from the liquidator's appointment, the liquidator must deliver notice of the appointment to the creditors of the company.

Meetings in members' voluntary winding up of authorised deposit-takers

5.3.—(1) This rule applies to a meeting of the members of an authorised deposit-taker at which it is intended to propose a resolution for its winding up.

(2) Notice of such a meeting of the company must be delivered by the directors to the Financial Conduct Authority and to the scheme manager established under section 212(1) of the Financial Services and Markets Act 2000(1).

(3) The notice to the Financial Conduct Authority and the scheme manager must be the same as delivered to members of the company.

(4) The scheme manager is entitled to be represented at any meeting of which it is required by this rule to be given notice.

Appointment by the court (section 108)

5.4.—(1) This rule applies where the liquidator is appointed by the court under section 108.

(2) The order of the court must contain—

- (a) the name of the court (and hearing centre if applicable) in which the order is made;
- (b) the name and title of the judge making the order;
- (c) identification details for the company;
- (d) the name and address of the applicant;
- (e) the capacity in which the applicant made the application;
- (f) identification details for the proposed liquidator;
- (g) a statement that the appointee has filed with the court a statement to the effect that the appointee is an insolvency practitioner qualified to act as the liquidator and consents to act;
- (h) an order that the proposed liquidator, having filed a statement of being qualified to act as an insolvency practitioner in relation to the company and having consented to act, is appointed liquidator of the company from the date of the order, or such other date as the court orders; and
- (i) the date of the order.

(3) Where two or more liquidators are appointed the order must also specify (as required by section 231) whether any act required or authorised under any enactment to be done by the liquidator is to be done by all or any one or more of them.

(4) The court must deliver a sealed copy of the order to the liquidator, whose appointment takes effect from the date of the order or from such other date as the court orders.

(5) Not later than 28 days from the liquidator's appointment, the liquidator must deliver notice of the appointment to the creditors of the company.

Cost of liquidator's security (section 390(3))

5.5. The cost of the liquidator's security required by section 390(3) for the proper performance of the liquidator's functions is an expense of the winding up.

Liquidator's resignation

5.6.—(1) A liquidator may resign only—

- (a) on grounds of ill health;
- (b) because of the intention to cease to practise as an insolvency practitioner;
- (c) because the further discharge of the duties of liquidator is prevented or made impractical by—

- (i) a conflict of interest, or
- (ii) a change of personal circumstances;
- (d) where two or more persons are acting as liquidator jointly and it is the opinion of both or all of them that it is no longer expedient that there should continue to be that number of joint liquidators.
- (2) Before resigning, the liquidator must deliver a notice to the members of the company—
 - (a) stating the liquidator's intention to resign; and
 - (b) calling a meeting for the members to consider whether a replacement should be appointed;except where the resignation is under sub-paragraph (1)(d).
- (3) The notice must be accompanied by a summary of the liquidator's receipts and payments.
- (4) The notice may suggest the name of a replacement liquidator.
- (5) The date of the meeting must be not more than five business days before the date on which the liquidator intends to give notice of resignation to the registrar of companies under section 171(5).
- (6) The resigning liquidator's release is effective 21 days after the date of delivery of the notice of resignation to the registrar of companies under section 171(5), unless the court orders otherwise.

Removal of liquidator by the court

- 5.7.—**(1) This rule applies where an application is made to the court for the removal of the liquidator, or for an order directing the liquidator to summon a company meeting for the purpose of removing the liquidator.
- (2) On receipt of an application, the court may, if it is satisfied that no sufficient cause is shown for it, dismiss it without giving notice to any party other than the applicant.
 - (3) Unless the application is dismissed, the court must fix a venue for it to be heard.
 - (4) The applicant must, at least 14 days before any hearing, deliver to the liquidator a notice stating the venue with a copy of the application and of any evidence on which the applicant intends to rely.
 - (5) A respondent may apply for security for the costs of the application and the court may make such an order if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order.
 - (6) The liquidator may do either or both of the following at such a hearing—
 - (a) file a report of any matters which the liquidator thinks ought to be drawn to the court's attention; or
 - (b) appear and be heard on the application.
 - (7) On a successful application the court's order must contain the following—
 - (a) the name of the court (and hearing centre if applicable) in which the order is made;
 - (b) the name and title of the judge making the order;
 - (c) identification details for the company;
 - (d) the name and address of the applicant;
 - (e) the capacity in which the applicant made the application;
 - (f) identification and contact details for the liquidator (or former liquidator);
 - (g) an order either—
 - (i) that the liquidator is removed from office, or

(ii) that the liquidator must summon a meeting of the company's creditors on or before a date which is stated in the order for the purpose of considering the liquidator's removal from office; and

(h) the date of the order.

(8) The order of the court may include such provision as the court thinks just relating to matters arising in connection with the removal.

(9) The costs of the application are not payable as an expense of the winding up unless the court orders otherwise.

(10) Where the court removes the liquidator—

(a) it must deliver the sealed order of removal to the former liquidator; and

(b) the former liquidator must deliver a copy of the order to the registrar of companies as soon as reasonably practicable.

(11) If the court appoints a new liquidator, rule 5.4 applies.

Removal of liquidator by company meeting

5.8. A liquidator removed by a meeting of the company must as soon as reasonably practicable deliver notice of the removal to the registrar of companies.

Delivery of proposed final account to members (section 94)

5.9.—(1) The liquidator must deliver a notice to the members accompanied by the proposed final account required by section 94(1)(2) and rule 18.14 giving them a minimum of eight weeks' notice of a specified date on which the liquidator intends to deliver the final account as required by section 94(2).

(2) The notice must inform the members that when the company's affairs are fully wound up—

(a) the liquidator will make up the final account and deliver it to the members; and

(b) when the final account is delivered to the registrar of companies the liquidator will be released under section 171(6)(3).

(3) The affairs of the company are not fully wound up until the latest of—

(a) the period referred to in paragraph (1) having expired without the liquidator receiving any request for information under rule 18.9 or the filing of any application to court under that rule or under rule 18.34 (application to court on the grounds that the liquidator's remuneration or expenses are excessive);

(b) any request for information under rule 18.9 having been finally determined (including any applications to court under that rule); or

(c) any application to the court under rule 18.34 having been finally determined.

(4) However the liquidator may conclude that the company's affairs are fully wound up before the period referred to in paragraph (1) has expired if every member confirms in writing to the liquidator that they do not intend to make any such request or application.

Final account prior to dissolution (section 94)

5.10.—(1) The contents of the final account which the liquidator is required to make up under section 94 must comply with the requirements of rule 18.14.

(2) A new section 94 is inserted by paragraph 18 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(3) A new section 171(6) is inserted by paragraph 42(4) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015.

(2) When the account is delivered to the members under section 94(2) it must be accompanied by a notice which states that—

- (a) the company's affairs are fully wound up;
- (b) the liquidator having delivered copies of the account to the members must, within 14 days of the date on which the account is made up, deliver a copy of the account to the registrar of companies; and
- (c) the liquidator will vacate office and be released under section 171 on delivering the final account to the registrar of companies.

(3) The copy of the account which the liquidator must deliver to the registrar of companies under section 94(3) must be accompanied by a notice stating that the liquidator has delivered the final account of the winding up to the members in accordance with section 94(2).

Deceased liquidator

5.11.—(1) If the liquidator dies a notice of the fact and date of death must be delivered as soon as reasonably practicable to—

- (a) one of the company's directors; and
- (b) the registrar of companies.

(2) One of the following must deliver the notice—

- (a) a surviving joint liquidator;
- (b) a member of the deceased liquidator's firm (if the deceased was a member or employee of a firm);
- (c) an officer of the deceased liquidator's company (if the deceased was an officer or employee of a company); or
- (d) a personal representative of the deceased liquidator.

(3) If such notice has not been delivered within the 21 days following the liquidator's death then any other person may deliver the notice.

Loss of qualification as insolvency practitioner

5.12.—(1) This rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company.

(2) A notice of the fact must be delivered as soon as reasonably practicable to the registrar of companies and the Secretary of State by one of the following—

- (a) the liquidator who has vacated office;
- (b) a continuing joint liquidator; or
- (c) the recognised professional body which was the source of the vacating liquidator's authorisation to act in relation to the company.

(3) Each notice must be authenticated and dated by the person delivering the notice.

Liquidator's duties on vacating office

5.13. A liquidator who ceases to be in office as a result of removal, resignation or ceasing to be qualified to act as an insolvency practitioner in relation to the company, must as soon as reasonably practicable deliver to the succeeding liquidator—

- (a) the assets (after deduction of any expenses properly incurred, and distributions made, by the former liquidator);

- (b) the records of the winding up, including correspondence, proofs and other documents relating to the winding up; and
- (c) the company's documents and other records.

Application by former liquidator to the Secretary of State for release (section 173(2)(b)) (4)

- 5.14.**—(1) This rule applies to a liquidator who—
- (a) is removed by the court;
 - (b) vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company; or
 - (c) vacates office in consequence of the court making a winding-up order against the company.
- (2) Where the former liquidator applies to the Secretary of State for release the application must contain—
- (a) identification details for the former liquidator;
 - (b) identification details for the company;
 - (c) the circumstances under which the former liquidator ceased to act as liquidator; and
 - (d) a statement that the former liquidator is applying to the Secretary of State for release.
- (3) The application must be authenticated and dated by the former liquidator.
- (4) When the Secretary of State gives a release, the Secretary of State must deliver—
- (a) a certificate of the release to the former liquidator; and
 - (b) a notice of the release to the registrar of companies.
- (5) Release is effective from the date of the certificate or such other date as the certificate specifies.

Power of court to set aside certain transactions entered into by liquidator

- 5.15.**—(1) If in dealing with the estate the liquidator enters into any transaction with a person who is an associate of the liquidator, the court may, on the application of any interested person, set the transaction aside and order the liquidator to compensate the company for any loss suffered in consequence of it.
- (2) This does not apply if either—
- (a) the transaction was entered into with the prior consent of the court; or
 - (b) it is shown to the court's satisfaction that the transaction was for value, and that it was entered into by the liquidator without knowing, or having any reason to suppose, that the person concerned was an associate.
- (3) Nothing in this rule is to be taken as prejudicing the operation of any rule of law or equity relating to a liquidator's dealings with trust property, or the fiduciary obligations of any person.

Rule against improper solicitation by or on behalf of the liquidator

- 5.16.**—(1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the liquidator in obtaining proxies or procuring the liquidator's appointment, it may order that no remuneration be allowed as an expense of the winding up to any person by whom, or on whose behalf, the solicitation was exercised.

(4) A new section 173(2)(b) is inserted by paragraph 44(2) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(2) An order of the court under this Rule overrides any resolution of the members, or any other provision of these Rules relating to the liquidator's remuneration.

CHAPTER 3

Special manager

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Application for and appointment of special manager (section 177)

5.17.—(1) An application by the liquidator under section 177 for the appointment of a special manager must be supported by a report setting out the reasons for the application.

(2) The report must include the applicant's estimate of the value of the business or property in relation to which the special manager is to be appointed.

(3) The court's order appointing a special manager must have the title "Order of Appointment of Special Manager" and must contain—

- (a) the name of the court (and hearing centre if applicable) in which the order is made;
- (b) the name and title of the judge making the order;
- (c) identification details for the proceedings;
- (d) the name and address of the applicant;
- (e) the name and address of the proposed special manager;
- (f) an order that the proposed special manager is appointed as special manager of the company;
- (g) details of the special manager's responsibility over the company's business or property;
- (h) the powers to be entrusted to the special manager under section 177(4);
- (i) the time allowed for the special manager to give the required security for the appointment;
- (j) the duration of the special manager's appointment, being one of the following—
 - (i) for a fixed period stated in the order;
 - (ii) until the occurrence of a specified event; or
 - (iii) until the court makes a further order;
- (k) the order that the special manager's remuneration will be fixed from time to time by the court; and
- (l) the date of the order and the date on which it takes effect if different.

(4) The appointment of the special manager may be renewed by order of the court.

(5) The acts of the special manager are valid notwithstanding any defect in the special manager's appointment or qualifications.

Security

5.18.—(1) The appointment of the special manager does not take effect until the person appointed has given (or, if the court allows, undertaken to give) security to the liquidator for the appointment.

(2) A person appointed as special manager may give security either specifically for a particular winding up, or generally for any winding up in relation to which that person may be appointed as special manager.

(3) The amount of the security must be not less than the value of the business or property in relation to which the special manager is appointed, as estimated in the liquidator's report which accompanied the application for appointment.

(4) When the special manager has given security to the liquidator, the liquidator must file with the court a certificate as to the adequacy of the security.

(5) The cost of providing the security must be paid in the first instance by the special manager, but the special manager is entitled to be reimbursed as an expense of the winding up.

Failure to give or keep up security

5.19.—(1) If the special manager fails to give the required security within the time stated in the order of appointment, or any extension of that time that may be allowed, the liquidator must report the failure to the court, which may discharge the order appointing the special manager.

(2) If the special manager fails to keep up the security, the liquidator must report the failure to the court, which may remove the special manager, and make such order as it thinks just as to costs.

(3) If the court discharges the order appointing the special manager, or makes an order removing the special manager, the court must give directions as to whether any, and if so what, steps should be taken for the appointment of another special manager.

Accounting

5.20.—(1) The special manager must produce accounts, containing details of the special manager's receipts and payments, for the approval of the liquidator.

(2) The accounts must be for—

- (a) each three month period for the duration of the special manager's appointment; and
- (b) any shorter period ending with the termination of the special manager's appointment.

(3) When the accounts have been approved, the special manager's receipts and payments must be added to those of the liquidator.

Termination of appointment

5.21.—(1) If the liquidator thinks that the appointment of the special manager is no longer necessary or beneficial for the company, the liquidator must apply to the court for directions, and the court may order the special manager's appointment to be terminated.

(2) The liquidator must also make such an application if the members pass a resolution requesting that the appointment be terminated.

CHAPTER 4

Conversion to creditors' voluntary winding up

Statement of affairs (section 95(3))

5.22. The rules in Chapter 2 of Part 6 apply to the statement of affairs made out by the liquidator under section 95(1A)(5) where the liquidator is of the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration under section 89.

(5) Section 95(1A) is inserted by paragraph 19(2) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26) which also omitted subsections (2) to (3) and (5) to (7).

Status: *This is the original version (as it was originally made).*
