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STATUTORY INSTRUMENTS

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**1986 No. 1925**

The Insolvency Rules 1986

THE FIRST GROUP OF PARTS

PART 4

COMPANIES WINDING UP

CHAPTER 11

THE LIQUIDATOR

*SECTION F: THE LIQUIDATOR IN A MEMBERS' VOLUNTARY WINDING UP*

**Appointment by the company**

**4.139.**—(1) This Rule applies where the liquidator is appointed by a meeting of the company.

(2) Subject as follows, the chairman of the meeting shall certify the appointment, but not unless and until the person appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.

(3) The chairman shall send the certificate forthwith to the liquidator, who shall keep it as part of the records of the liquidation.

(4) Not later than 28 days from his appointment, the liquidator shall give notice of it to all creditors of the company of whom he is aware in that period.

**Appointment by the court**

**4.140.**—(1) This Rule applies where the liquidator is appointed by the court under section 108.

(2) The court's order shall not issue unless and until the person appointed has filed in court a statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.

(3) Thereafter, the court shall send a sealed copy of the order to the liquidator, whose appointment takes effect from the date of the order.

(4) Not later than 28 days from his appointment, the liquidator shall give notice of it to all creditors of the company of whom he is aware in that period.

**Authentication of liquidator's appointment**

**4.141.** A copy of the certificate of the liquidator's appointment or (as the case may be) a sealed copy of the court's order appointing him may in any proceedings be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of liquidator in the company's winding up.

### **Company meeting to receive liquidator's resignation**

**4.142.**—(1) Before resigning his office, the liquidator must call a meeting of the company for the purpose of receiving his resignation. The notice summoning the meeting shall indicate that this is the purpose, or one of the purposes, of it.

(2) The notice under paragraph (1) must be accompanied by an account of the liquidator's administration of the winding up, including—

- (a) a summary of his receipts and payments, and
- (b) a statement by him that he has reconciled his account with that which is held by the Secretary of State in respect of the winding up.

(3) Subject as follows, the liquidator may only proceed under this Rule 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 liquidator.

(4) Where two or more persons are acting as liquidator jointly, any one of them may proceed under this Rule (without prejudice to the continuation in office of the other or others) on the ground that, in his opinion or that of the other or others, it is no longer expedient that there should continue to be the present number of joint liquidators.

(5) The notice of the liquidator's resignation required by section 171(5) shall be given by him forthwith after the meeting.

(6) Where a new liquidator is appointed in place of one who has resigned, the former shall, in giving notice of his appointment, state that his predecessor has resigned.

### **Removal of liquidator by the court**

**4.143.**—(1) This Rule applies where 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 him.

(2) The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do so unless the applicant has had an opportunity to attend the court for an ex parte hearing, of which he has been given at least 7 days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard.

(3) The court may require the applicant to make a deposit or give security for the costs to be incurred by the liquidator on the application.

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

Subject to any contrary order of the court, the costs of the application are not payable out of the assets.

- (5) Where the court removes the liquidator—
- (a) it shall send 2 copies of the order of removal to him, one to be sent by him forthwith to the registrar of companies, with notice of his ceasing to act;
  - (b) the order may include such provision as the court thinks fit with respect to matters arising in connection with the removal; and
  - (c) if the court appoints a new liquidator, Rule 4.140 applies.

### **Release of resigning or removed liquidator**

**4.144.**—(1) Where the liquidator resigns, he has his release from the date on which he gives notice of his resignation to the registrar of companies.

(2) Where the liquidator is removed by a meeting of the company, he shall forthwith give notice to the registrar of companies of his ceasing to act.

(3) Where the liquidator is removed by the court, he must apply to the Secretary of State for his release.

(4) When the Secretary of State gives the release, he shall certify it accordingly, and send the certificate to the registrar of companies.

(5) A copy of the certificate shall be sent by the Secretary of State to the former liquidator, whose release is effective from the date of the certificate.

### **Liquidator deceased**

**4.145.**—(1) Subject as follows, where the liquidator has died, it is the duty of his personal representatives to give notice of the fact, and of the date of death, to the company's directors, or any one of them, and to the registrar of companies.

(2) In the alternative, notice of the death may be given—

(a) if the deceased liquidator was a partner in a firm, by a partner qualified to act as an insolvency practitioner or who is a member of any body approved by the Secretary of State for the authorisation of insolvency practitioners, or

(b) by any person, if he delivers with the notice a copy of the relevant death certificate.

### **Loss of qualification as insolvency practitioner**

**4.146.**—(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) He shall forthwith give notice of his doing so to the registrar of companies and the Secretary of State.

(3) Rule 4.144 applies as regards the liquidator obtaining his release, as if he had been removed by the court.

### **Vacation of office on making of winding-up order**

**4.147.** Where the liquidator vacates office in consequence of the court making a winding-up order against the company, Rule 4.144 applies as regards his obtaining his release, as if he had been removed by the court.

### **Liquidator's duties on vacating office**

**4.148.** Where the liquidator ceases to be in office as such, in consequence of removal, resignation or cesser of qualification as an insolvency practitioner, he is under obligation forthwith to deliver up to the person succeeding him as liquidator 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 liquidation, 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.