

SCHEDULE 1

Amendments to the Insolvency Rules 1986

New Rule after Rule 2.67

77. After Rule 2.67 insert—

“2.67A Pre-administration costs

(1) Where the administrator has made a statement of pre-administration costs under Rule 2.33(2)(ka), the creditors’ committee may determine whether and to what extent the unpaid pre-administration costs set out in the statement are approved for payment.

(2) But if—

- (a) there is no creditors’ committee, or
- (b) there is but it does not make the necessary determination, or
- (c) it does do so but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient,

paragraph (3) applies.

(3) When this paragraph applies, determination of whether and to what extent the unpaid pre-administration costs are approved for payment shall be—

- (a) by resolution of a meeting of creditors other than in a case falling in subparagraph (b), or
- (b) in a case where the administrator has made a statement under paragraph 52(1)(b)—
 - (i) by the approval of each secured creditor of the company, or
 - (ii) if the administrator has made, or intends to make, a distribution to preferential creditors, by the approval of—
 - (aa) each secured creditor of the company, and
 - (bb) 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.

(4) The administrator must call a meeting of the creditors’ committee or of creditors if so requested for the purposes of paragraphs (1) to (3) by another insolvency practitioner who has charged fees or incurred expenses as pre-administration costs; and the administrator must give notice of the meeting within 28 days of receipt of the request.

(5) If—

- (a) there is no determination under paragraph (1) or (3), or
- (b) there is such a determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient,

the administrator (where the fees were charged or expenses incurred by the administrator) or other insolvency practitioner (where the fees were charged or expenses incurred by that practitioner) may apply to the court for a determination of whether and to what extent the unpaid pre-administration costs are approved for payment.

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(6) Paragraphs (2) to (4) of Rule 2.108 apply to an application under paragraph (5) of this Rule as they do to an application under paragraph (1) of that Rule (references to the administrator being read as references to the insolvency practitioner who has charged fees or incurred expenses as pre-administration costs).

(7) Where the administrator fails to call a meeting of the creditors' committee or of creditors in accordance with paragraph (4), the other insolvency practitioner may apply to the court for an order requiring the administrator to do so.”