STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 6

CREDITORS' VOLUNTARY WINDING UP

CHAPTER 3

Nomination and appointment of liquidators and information to creditors

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

Application of the rules in this Chapter

6.10.—(1) The rules in this Chapter apply as follows.

(2) Rules 6.11 to 6.13 only apply to a conversion from a members' voluntary winding up to a creditors' voluntary winding up.

(3) Rule 6.16 only applies where the administrator becomes the liquidator in a voluntary winding up which follows an administration.

(4) Rules 6.14, 6.15 and 6.17 only apply to a creditors' voluntary winding up which has not been commenced by a conversion from a members' voluntary winding up or an administration.

(5) Rules 6.18 and 6.19 apply to all creditors' voluntary windings up.

Nomination of liquidator and information to creditors on conversion from members' voluntary winding up (section 96)

6.11.—(1) This rule applies in respect of the conversion of a members' voluntary winding up to a creditors' voluntary winding up under section 96(**1**).

(2) The liquidator must seek a nomination from the creditors for a liquidator in the creditors' voluntary winding up by—

(a) a decision procedure; or

(b) the deemed consent procedure.

(3) The liquidator must deliver to the creditors a copy of the statement of affairs required by section 95(1A) and Chapter 2 of this Part together with a notice which complies with rules 15.7 or 15.8 so far as are relevant.

(4) The notice must also contain—

(a) identification and contact details for the existing liquidator; and

(b) a statement that if no person is nominated by the creditors then the existing liquidator will be the liquidator in the creditors' voluntary winding up.

(**1**) Section 96 is substituted by paragraph 20(1) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(5) The decision date in the notice must be not later than 28 days from the date under section 95(1) that the liquidator formed the opinion that the company will be unable to pay its debts in full.

(6) Subject to paragraph (9), the creditors must be given at least 14 days' notice of the decision date.

(7) Paragraph (8) applies where—

(a) the liquidator has sought a decision from creditors on the nomination of a liquidator by the deemed consent procedure; but

(b) the level of objections to the proposed nomination have meant, under section 246ZF, that no nomination is deemed to have been made.

(8) Where this paragraph applies, the liquidator must seek a nomination from creditors by way of a decision procedure in accordance with this rule, the decision date to be as soon as reasonably practicable, but no more than 28 days from the date that the level of objections had the effect that no nomination was deemed to have been made.

(9) Where paragraph (8) applies, the creditors must be given at least seven days' notice of the decision date.

(10) Where the liquidator is required by rule 15.6 to summon a physical meeting as a result of requests from creditors received in response to a notice delivered under this rule, the physical meeting must be summoned to take place—

(a) within 28 days of the date on which the threshold for requiring a physical meeting was met; and

(b) with at least 14 days' notice.

Creditors' decision on appointment other than at a meeting (conversion from members' voluntary winding up)

6.12.—(1) This rule applies where the creditors' decision on the nomination of a liquidator in a conversion of a members' into a creditors' voluntary winding up is intended to be sought otherwise than through a meeting or through the deemed consent procedure, including where the conditions in rule 6.11(7) are met and the liquidator, under rule 6.11(8), goes on to seek a nomination from creditors by way of a decision procedure other than a meeting.

(2) Instead of delivering a notice of the decision procedure or deemed consent procedure under rule 6.11, the liquidator must deliver a notice to creditors inviting them to make proposals for the nomination of a liquidator.

(3) Such a notice must—

(a) identify any liquidator for whom a proposal which is in compliance with paragraph 4 has already been received;

(b) explain that the liquidator is not obliged to seek the creditors' views on any proposal that does not meet the requirements of paragraphs (4) and (5); and

(c) be accompanied by the statement of affairs unless that has previously been delivered to the creditor.

(4) Any proposal must state the name and contact details of the proposed liquidator, and contain a statement that the proposed liquidator is qualified to act as an insolvency practitioner in relation to the company and has consented to act as liquidator of the company.

(5) Any proposal must be received by the liquidator within five business days of the date of the notice under paragraph (2).

(6) Within two business days of the end of the period referred to in paragraph (5), the liquidator must deliver a notice to creditors of a decision procedure under rule 6.11.

Information to creditors and contributories (conversion of members' voluntary winding up into creditors' voluntary winding up)

6.13.—(1) The liquidator must deliver to the creditors and contributories within 28 days of the conversion of a members' voluntary winding up into a creditors' voluntary winding up under section 96 a notice which must contain—

(a) the date the winding up became a creditors' voluntary winding up;

(b) a report of the decision procedure or deemed consent procedure which took place under rule 6.10; and

(c) the information required by paragraph (3).

(2) The notice must be accompanied by a copy of the statement of affairs or a summary except where the notice is being delivered to a creditor to whom a copy of the statement of affairs has previously been delivered under section 95(1A)(**2**).

(3) The required information is an estimate to the best of the liquidator's knowledge and belief of—

(a) the value of the prescribed part (whether or not the liquidator might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts); and

(b) the value of the company's net property (as defined by section 176A(6)).

(4) The liquidator may exclude from an estimate under paragraph (3) information the disclosure of which could seriously prejudice the commercial interests of the company.

(5) If the exclusion of such information affects the calculation of an estimate, the report must say so.

(6) If the liquidator proposes to make an application to court under section 176A(5) the report must say so and give the reason for the application.

Information to creditors and appointment of liquidator

6.14.—(1) This rule applies in respect of the appointment of a liquidator under section 100.

(2) The directors of the company must deliver to the creditors a notice seeking their decision on the nomination of a liquidator by—

(a) the deemed consent procedure; or

(b) a virtual meeting.

(3) The decision date for the decision of the creditors on the nomination of a liquidator must be not earlier than three business days after the notice under paragraph (2) is delivered but not later than 14 days after the resolution is passed to wind up the company.

(4) Where the directors have sought a decision from the creditors through the deemed consent procedure under paragraph (2)(a) but, pursuant to section 246ZF(5)(a) (deemed consent procedure), more than the specified number of creditors object so that the decision cannot be treated as having been made, the directors must then seek a decision from the creditors on the nomination of a liquidator by holding a physical meeting under rule 15.6 (physical meetings) as if a physical meeting had been required under section 246ZE(4) (decisions by creditors and contributories: general).

(5) Where paragraph (4) applies, the meeting must not be held earlier than three business days after the notice under rule 15.6(3) is delivered or later than 14 days after the level of objections reach that described in paragraph (4).

(**2**) 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).

(6) A request for a physical meeting under section 246ZE must be made in accordance with rule 15.6 except that—

(a) such a request may be made at any time between the delivery of the notice under paragraph (2) and the decision date under paragraph (3); and

(b) the decision date where this paragraph applies must be not earlier than three business days after the notice under rule 15.6(3) is delivered and not later than 14 days after the level of requests reach that described in section 246ZE.

(7) The directors must deliver to the creditors a copy of the statement of affairs required under section 99 of the Act not later than on the business day before the decision date.

(8) A notice delivered under paragraph (2), in addition to the information required by rules 15.7 (deemed consent) and 15.8 (notices to creditors of decision procedure), must contain—

(a) the date the resolution to wind up is to be considered or was passed;

(b) identification and contact details of any liquidator nominated by the company;

(c) a statement of either—

(i) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who during the period before the decision date, will furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require, or

(ii) a place in the relevant locality where, on the two business days falling next before the decision date, a list of the names and addresses of the company's creditors will be available for inspection free of charge; and

(d) where the notice is sent to creditors in advance of the copy of the statement of affairs, a statement that the directors, before the decision date and before the end of the period of seven days beginning with the day after the day on which the company passed a resolution for winding up, are required by section 99 of the Insolvency Act 1986—

(i) to make out a statement in the prescribed form as to the affairs of the company, and

(ii) send the statement to the company's creditors.

(9) Where the company's principal place of business in England or Wales was situated in different localities at different times during the relevant period, the duty imposed by sub-paragraph (8)(c)(ii) above applies separately in relation to each of those localities.

(10) Where the company had no place of business in England or Wales during the relevant period, the reference in paragraph (9) to the company's principal place of business in England or Wales are replaced by references to its registered office.

(11) In paragraph (9), "the relevant period" means the period of six months immediately preceding the day on which the notices referred to in paragraph (2) were delivered.

(12) Where a virtual or physical meeting is held under this rule and a liquidator has already been nominated by the company, the liquidator or an appointed person must attend any meeting held under this rule and report on any exercise of the liquidator's powers under section 112, 165 or 166 of the Act(**3**).

(13) A director who is in default in seeking a decision on the nomination of a liquidator in accordance with this rule is guilty of an offence and is liable to a fine.

(**3**) In section 165, a new subsection (2) is inserted by section 120(2) of the Small Business, Enterprise and Employment Act 2015 (c.26); section 166 is amended, subsection (4) is omitted and a new subsection (5) is inserted by paragraph 40 of Schedule 9 to the same Act.

Information to creditors and contributories

6.15.—(1) The liquidator must deliver to the creditors and contributories within 28 days of the appointment of the liquidator under section 100 a notice which must—

(a) be accompanied by a statement of affairs or a summary where the notice is delivered to any contributory or creditor to whom the notice under rule 6.14 was not delivered;

(b) a report on the decision procedure or deemed consent procedure under rule 6.14; and

(c) be accompanied by the information required by paragraph (2).

(2) The required information is an estimate to the best of the liquidator's knowledge and belief of—

(a) the value of the prescribed part (whether or not the liquidator might be required under section 176A to make the prescribed part available for the satisfaction of unsecured debts); and

(b) the value of the company's net property (as defined by section 176A(6)).

(3) The liquidator may exclude from an estimate under paragraph (2) information the disclosure of which could seriously prejudice the commercial interests of the company.

(4) If the exclusion of such information affects the calculation of an estimate, the report must say so.

(5) If the liquidator proposes to make an application to court under section 176A(5) the report must say so and give the reason for the application.

Further information where administrator becomes liquidator (paragraph 83(3) of Schedule B1)

6.16.—(1) This rule applies where an administrator becomes liquidator on the registration of a notice under paragraph 83(3) of Schedule B1, and becomes aware of creditors not formerly known to that person as administrator.

(2) The liquidator must deliver to those creditors a copy of any statement delivered by the administrator to creditors in accordance with paragraph 49(4)(**4**) of Schedule B1 and rule 3.35.

Report by director etc.

6.17.—(1) Where the statement of affairs sent to creditors under section 99(1) does not, or will not, state the company's affairs at the decision date for the creditors' nomination of a liquidator, the directors of the company must cause a report (written or oral) to be made to the creditors in accordance with this rule on any material transactions relating to the company occurring between the date of the making of the statement and the decision date.

(2) In the case of a decision being taken through a meeting, the report must be made at the meeting by the director chairing the meeting or by another person with knowledge of the relevant matters.

(3) Where the deemed consent procedure is used, the report must be delivered to creditors as soon as reasonably practicable after the material transaction takes place in the same manner as the deemed consent procedure.

(4) Where the decision date is within the period of three business days from the delivery of a report under paragraph (3), this rule extends the decision date until the end of that period notwithstanding the requirement in rule 6.14(3) relating to the timing of the decision date.

(**4**) Paragraph 49(4) is amended by paragraph 10(2) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(5) On delivery of a report under paragraph (3), the directors must notify the creditors of the effects of paragraph (4).

(6) A report under this rule must be recorded in the record of the decision under rule 15.40.

Decisions on nomination

6.18.—(1) In the case of a decision on the nomination of a liquidator—

(a) if on any vote there are two nominees, the person who obtains the most support is appointed;

(b) if there are three or more nominees, and one of them has a clear majority over both or all the others together, that one is appointed; and

(c) in any other case, the convener or chair must continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time) until a clear majority is obtained for any one nominee.

(2) In the case of a decision being made at a meeting, the chair may at any time put to the meeting a resolution for the joint nomination of any two or more nominees.

Invitation to creditors to form a liquidation committee

6.19.—(1) Where any decision is sought from the company's creditors—

(a) in a creditors' voluntary winding up; or

(b) where a members' voluntary winding up is converting in a creditors' voluntary winding up;

the convener of the decision must at the same time deliver to the creditors a notice inviting them to decide whether a liquidation committee should be established if sufficient creditors are willing to be members of the committee.

(2) The notice must also invite nominations for membership of the committee, such nominations to be received by a date specified in the notice.

(3) The notice must state that nominations—

(a) must be delivered to the convener by the specified date; and

(b) can only be accepted if the convener is satisfied as to the creditor's eligibility under rule 17.4.