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STATUTORY INSTRUMENTS

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**2016 No. 1024**

**The Insolvency (England and Wales) Rules 2016**

**PART 6**

**CREDITORS' VOLUNTARY WINDING UP**

**CHAPTER 4**

**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 creditors or by the company**

**6.20.**—(1) This rule applies where a person is appointed as liquidator by creditors or the company.

(2) The liquidator's appointment takes effect from the date of the passing of the resolution for the appointment.

(3) Their appointment must be certified by—

- (a) the convener or chair of the decision procedure or deemed consent procedure; or
- (b) in respect of an appointment by the company the chair of the company meeting or a director or the secretary of the company (in the case of a written resolution).

(4) The person who certifies the appointment must not do so unless and until the proposed liquidator ("the appointee") has provided that person with a statement of being an insolvency practitioner qualified under the Act to be the liquidator and of consenting to act.

(5) 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 of the meeting of the company or conclusion of the decision procedure or deemed consent procedure when the liquidator was appointed;
- (d) a statement that the appointee—
  - (i) has 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.

(6) 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.

(7) 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.

**Power to fill vacancy in office of liquidator**

**6.21.** Where a vacancy in the office of liquidator occurs in the manner mentioned in section 104 a decision procedure to fill the vacancy may be initiated by any creditor or, if there was more than one liquidator, by the continuing liquidator or liquidators.

**Appointment by the court (section 100(3) or 108)**

**6.22.—**(1) This rule applies where the liquidator is appointed by the court under section 100(3) or 108.

(2) The court's order must not be made unless and until the proposed liquidator has filed with the court a statement of being qualified under the Act to act as an insolvency practitioner in relation to the company and of consenting to act.

(3) 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) the date on which it is made;
- (d) identification details for the company;
- (e) the name and postal address of the applicant;
- (f) the capacity in which the applicant made the application;
- (g) identification details for the proposed liquidator; and
- (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.

(4) 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.

(5) The court must deliver a sealed copy of the order to the liquidator.

(6) Within 28 days from appointment, the liquidator must—

- (a) deliver a notice of the appointment to creditors of the company; or
- (b) advertise the appointment in accordance with any directions given by the court.

**Advertisement of appointment**

**6.23.—**(1) A liquidator appointed in a voluntary winding up in addition to delivering a notice of the appointment in accordance with section 109(1)(1) may advertise the notice in such other manner as the liquidator thinks fit.

(2) The notice must state—

- (a) that a liquidator has been appointed; and
- (b) the date of the appointment.

(3) The liquidator must initially bear the expense of giving notice under this rule but is entitled to be reimbursed for the expenditure as an expense of the winding up.

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(1) See Part 3 of Schedule 2 to [SI 1987/752](#) for the prescribed forms for the notice to the registrar of companies and the Gazette notice also required by that section.

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

**6.24.** 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 and replacement**

**6.25.—(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) or a change of personal circumstances; or
- (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 invite the creditors by a decision procedure, or by deemed consent, to consider whether a replacement should be appointed except where the resignation is under paragraph (1)(d).

(3) The notice of the decision procedure or of deemed consent must—

- (a) state the liquidator's intention to resign;
- (b) state that under rule 6.25(7) of these Rules the liquidator will be released 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; and
- (c) comply with rules 15.7 and 15.8 so far as are relevant.

(4) The notice may suggest the name of a replacement liquidator.

(5) The notice must be accompanied by a summary of the liquidator's receipts and payments.

(6) The decision date 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).

(7) 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 creditors**

**6.26.—(1)** Where the creditors decide that the liquidator be removed, the convener of the decision procedure or the chair of the meeting (as the case may be) must as soon as reasonably practicable deliver the certificate of the liquidator's removal to the removed liquidator.

(2) The removed liquidator must deliver a notice of the removal to the registrar of companies as soon as reasonably practicable.

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

**6.27.—(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 initiate a decision procedure of creditors 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—
- (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) The costs of the application are not payable as an expense of the winding up unless the court orders otherwise.
- (8) 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 postal address of the applicant;
  - (e) the capacity in which the applicant made the application;
  - (f) identification and contact details for the liquidator;
  - (g) an order either—
    - (i) that the liquidator is removed from office from the date of the order (unless the order specifies otherwise), or
    - (ii) that the liquidator must initiate a decision procedure of the company's creditors (specifying which procedure is to be used) on or before a date stated in the order for the purpose of considering the liquidator's removal from office; and
  - (h) the date of the order.
- (9) 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.
- (10) If the court appoints a new liquidator rule 6.22 applies.

### **Final account prior to dissolution (section 106)**

**6.28.**—(1) The final account which the liquidator is required to make up under section 106(1)(2) and deliver to members and creditors must comply with the requirements of rule 18.14.

(2) When the account is delivered to the creditors it must be accompanied by a notice which states—

- (a) that the company's affairs are fully wound up;
- (b) that the creditors have the right to request information from the liquidator under rule 18.9;

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(2) New section 106 substituted by paragraph 29 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

- (c) that the creditors have the right to challenge the liquidator's remuneration and expenses under rule 18.34;
  - (d) that a creditor may object to the release of the liquidator by giving notice in writing to the liquidator before the end of the prescribed period;
  - (e) that the prescribed period is the period ending at the later of—
    - (i) eight weeks after delivery of the notice, or
    - (ii) if any request for information under rule 18.9 or any application to court under that rule or rule 18.34 is made, when that request or application is finally determined;
  - (f) that the liquidator will vacate office under section 171 on delivering to the registrar of companies the final account and notice saying whether any creditor has objected to release; and
  - (g) that the liquidator will be released under section 173(3) at the same time as vacating office unless any of the company's creditors objected to the liquidator's release.
- (3) The copy of the account which the liquidator delivers to the registrar of companies under section 106(3) must be accompanied by a notice containing the statement required by section 106(3)(a) of whether any creditors have objected to the liquidator's release.
- (4) Where a creditor has objected to the liquidator's release rule 6.33 applies to an application by the liquidator to the Secretary of State for release.
- (5) The liquidator is not obliged to prepare or deliver any progress report which may become due under these Rules in the period between the date to which the final account is made up and the date when the account is delivered to the registrar of companies under section 106(3)(a).

### **Deceased liquidator**

- 6.29.**—(1) If the liquidator dies a notice of the fact and date of death must be delivered as soon as reasonably practicable—
- (a) where there is a liquidation committee, to the members of that committee; and
  - (b) to the registrar of companies.
- (2) The notice must be delivered by one of the following—
- (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 a 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**

- 6.30.**—(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—

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(3) Section 173(2)(d) is amended and a new (2)(a), (b) and (e) and (2A) are inserted by paragraph 44 of Schedule 9 to the Small Business, Enterprise and Employment act 2015 (c.26).

- (a) the liquidator who has vacated office;
  - (b) a continuing joint liquidator;
  - (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.

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

**6.31.** Where the liquidator vacates office in consequence of the court making a winding-up order against the company, rule 6.33 applies in relation to the application to the Secretary of State for release of the liquidator.

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

**6.32.** A liquidator who ceases to be in office in consequence of removal, resignation or ceasing to be qualified 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; and
- (c) the company's records.

### **Application by former liquidator for release (section 173(2)(b))**

**6.33.—(1)** An application to the Secretary of State by a former liquidator for release under section 173(2)(b) must contain—

- (a) identification and contact details for the former liquidator;
- (b) identification details for the company;
- (c) details of the circumstances under which the liquidator has ceased to act as liquidator;
- (d) a statement that the former liquidator of the company is applying to the Secretary of State for a certificate of release as liquidator as a result of the circumstances specified in the application.

(2) The application must be authenticated and dated by the former liquidator.

(3) When the Secretary of State releases the former liquidator, the Secretary of State must certify the release and deliver the certificate to the former liquidator whose release is effective from the date of the certificate or such other date as the certificate specifies.

(4) The Secretary of State must deliver a notice of the release to the registrar of companies.

### **Power of court to set aside certain transactions**

**6.34.—(1)** If in dealing with the insolvent 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**

**6.35.**—(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.

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

#### **Permission for exercise of powers by liquidator**

**6.36.**—(1) Where these Rules require permission for the liquidator to exercise a power any permission given must not be a general permission but must relate to a particular proposed exercise of the liquidator's power.

(2) A person dealing with the liquidator in good faith and for value is not concerned to enquire whether any such permission has been given.

(3) Where the liquidator has done anything without such permission, the court or the liquidation committee may, for the purpose of enabling the liquidator to meet the liquidator's expenses out of the assets, ratify what the liquidator has done; but neither may do so unless satisfied that the liquidator has acted in a case of urgency and has sought ratification without undue delay.

(4) In this rule "permission" includes "sanction".