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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 1

#### THE SCHEME OF THIS PART OF THE RULES

#### **Voluntary winding up; winding up by the court**

**4.1.—**(1) In a members' voluntary winding up, the Rules in this Part do not apply, except as follows—

- (a) Chapters 9 (proof of debts in a liquidation), 10(secured creditors) and 18(special manager) apply wherever, and in the same way as, they apply in a creditors' voluntary winding up;
- (b) Section B of Chapter 8 (additional provisions concerning meetings in relation to Bank of England and Deposit Protection Board) applies in the winding up of recognised banks, etc., whether members' or creditors' voluntary or by the court;
- (c) Section F of Chapter 11 (the liquidator) applies only in a members' voluntary winding up, and not otherwise;
- (d) Section G of that Chapter (court's power to set aside certain transactions; rule against solicitation) applies in any winding up, whether members' or creditors' voluntary or by the court; and
- (e) Section B of Chapter 21 (liquidator's statements) applies in the same way as it applies in a creditors' voluntary winding up.

(2) Subject as follows, the Rules in this Part apply both in a creditors' voluntary winding up and in a winding up by the court; and for this purpose a winding up is treated as a creditors' voluntary if, and from the time when, the liquidator forms the opinion that the company will be unable to pay its debts in full, and determines accordingly to summon a creditors' meeting under section 95.

(3) The following Chapters, or Sections of Chapters, of this Part do not apply in a creditors' voluntary winding up—

Chapter 2—The statutory demand;

Chapter 3—Petition to winding-up order;

Chapter 4—Petition by contributories;

Chapter 5—Provisional liquidator;

Chapter 13—The liquidation committee where winding up follows immediately on administration;

Chapter 16—Settlement of list of contributories;

Chapter 17—Calls;

Chapter 19—Public examination of company officers and others; and

Chapter 21 (Section A)—Return of capital.

(4) Where at the head of any Rule, or at the end of any paragraph of a Rule, there appear the words “(NO CVL APPLICATION)”, this signifies that the Rule or, as the case may be, the paragraph does not apply in a creditors' voluntary winding up.

However, this does not affect the court's power to make orders under section 112 (exercise in relation to voluntary winding up of powers available in winding up by the court).

(5) Where to any Rule or paragraph there is given a number incorporating the letter “CVL”, that signifies that the Rule or (as the case may be) the paragraph applies in a creditors' voluntary winding up, and not in a winding up by the court.

### **Winding up by the court: the various forms of petition**

**4.2.**—(1) Insofar as the Rules in this Part apply to winding up by the court, they apply (subject as follows) whether the petition for winding up is presented under any of the several paragraphs of section 122(1), namely—

paragraph (a)—company special resolution for winding up by the court;

paragraph (b)—public company without certificate under section 117 of the Companies Act;

paragraph (c)—old public company;

paragraph (d)—company not commencing business after formation, or suspending business;

paragraph (e)—number of company's members reduced below 2;

paragraph (f)—company unable to pay its debts;

paragraph (g)—court's power under the “just and equitable” rule,

or under any enactment enabling the presentation of a winding-up petition.

(2) Except as provided by the following two paragraphs or by any particular Rule, the Rules apply whether the petition for winding up is presented by the company, the directors, one or more creditors, one or more contributories, the Secretary of State, the official receiver, or any person entitled under any enactment to present such a petition.

(3) Chapter 2 (statutory demand) has no application except in relation to an unpaid creditor of the company satisfying section 123(1)(a) (the first of the two cases specified, in relation to England and Wales, of the company being deemed unable to pay its debts within section 122(1)(f)) or section 222(1) (the equivalent provision in relation to unregistered companies).

(4) Chapter 3 (petition to winding-up order) has no application to a petition for winding up presented by one or more contributories; and in relation to a petition so presented Chapter 4 has effect.

### **Time-limits**

**4.3.** Where by any provision of the Act or the Rules about winding up, the time for doing anything is limited, the court may extend the time, either before or after it has expired, on such terms, if any, as it thinks fit.

## CHAPTER 2

### THE STATUTORY DEMAND (NO CVL APPLICATION)

#### Preliminary

**4.4.—**(1) This Chapter does not apply where a petition for the winding up of a company is presented under section 124 on or after the date on which the Rules come into force and the petition is based on failure to comply with a written demand served on the company before that date.

(2) A written demand served by a creditor on a company under section 123(1)(a) (registered companies) or 222(1)(a) (unregistered companies) is known in winding-up proceedings as “the statutory demand”.

(3) The statutory demand must be dated, and be signed either by the creditor himself or by a person stating himself to be authorised to make the demand on the creditor's behalf.

#### Form and content of statutory demand

**4.5.—**(1) The statutory demand must state the amount of the debt and the consideration for it (or, if there is no consideration, the way in which it arises).

(2) If the amount claimed in the demand includes—

- (a) any charge by way of interest not previously notified to the company as included in its liability, or
- (b) any other charge accruing from time to time,

the amount or rate of the charge must be separately identified, and the grounds on which payment of it is claimed must be stated.

In either case the amount claimed must be limited to that which has accrued due at the date of the demand.

#### Information to be given in statutory demand

**4.6.—**(1) The statutory demand must include an explanation to the company of the following matters—

- (a) the purpose of the demand, and the fact that, if the demand is not complied with, proceedings may be instituted for the winding up of the company;
- (b) the time within which it must be complied with, if that consequence is to be avoided; and
- (c) the methods of compliance which are open to the company.

(2) Information must be provided for the company as to how an officer or representative of it may enter into communication with one or more named individuals, with a view to securing or compounding for the debt to the creditor's satisfaction.

In the case of any individual so named in the demand, his address and telephone number (if any) must be given.

## CHAPTER 3

### PETITION TO WINDING-UP ORDER (NO CVL APPLICATION) (NO APPLICATION TO PETITION BY CONTRIBUTORIES)

#### Presentation and filing of petition

**4.7.—**(1) The petition, verified by affidavit in accordance with Rule 4.12 below, shall be filed in court.

- (2) No petition shall be filed unless there is produced with it the receipt for the deposit payable on presentation.
- (3) If the petitioner is other than the company itself, there shall be delivered with the petition—
- (a) one copy for service on the company, and
  - (b) one copy to be exhibited to the affidavit verifying service.
- (4) There shall in any case be delivered with the petition—
- (a) if the company is in course of being wound up voluntarily, and a liquidator has been appointed, one copy of the petition to be sent to him;
  - (b) if an administration order is in force in relation to the company, one copy to be sent to the administrator;
  - (c) if an administrative receiver has been appointed in relation to the company, one copy to be sent to him;
  - (d) if there is in force for the company a voluntary arrangement under Part I of the Act, one copy for the supervisor of the arrangement; and
  - (e) if the company is—
    - (i) a recognised bank or licensed institution within the meaning of the Banking Act 1979, or
    - (ii) an institution to which sections 16 and 18 of that Act apply as if it were licensed, and the petitioner is not the Bank of England, one copy to be sent to the Bank.
- (5) Each of the copies delivered shall have applied to it the seal of the court, and shall be issued to the petitioner.
- (6) The court shall fix a venue for the hearing of the petition; and this shall be endorsed on any copy issued to the petitioner under paragraph (5).

### **Service of petition**

**4.8.—**(1) The following paragraphs apply as regards service of the petition on the company (where the petitioner is other than the company itself); and references to the petition are to a copy of the petition bearing the seal of the court in which it is presented.

- (2) Subject as follows, the petition shall be served at the company's registered office, that is to say—
- (a) the place which is specified, in the company's statement delivered under section 10 of the Companies Act as the intended situation of its registered office on incorporation, or
  - (b) if notice has been given by the company to the registrar of companies under section 287 of that Act (change of registered office), the place specified in that notice or, as the case may be, in the last such notice.
- (3) Service of the petition at the registered office may be effected in any of the following ways—
- (a) it may be handed to a person who there and then acknowledges himself to be, or to the best of the server's knowledge, information and belief is, a director or other officer, or employee, of the company; or
  - (b) it may be handed to a person who there and then acknowledges himself to be authorised to accept service of documents on the company's behalf; or
  - (c) in the absence of any such person as is mentioned in sub-paragraph (a) or (b), it may be deposited at or about the registered office in such a way that it is likely to come to the notice of a person attending at the office.

(4) If for any reason service at the registered office is not practicable, or the company has no registered office, or it is an unregistered company, the petition may be served at the company's last known principal place of business in England and Wales, or at some place in England and Wales at which it has carried on business, by handing it to such a person as is mentioned in paragraph (3) (a) or (b) above.

(5) In the case of an overseas company, service may be effected in any manner provided for by section 695 of the Companies Act.

(6) If for any reason it is impracticable to effect service as provided by paragraphs (2) to (5), the petition may be served in such other manner as the court may direct.

(7) Application for leave of the court under paragraph (6) may be made ex parte, on affidavit stating what steps have been taken to comply with paragraphs (2) to (5), and the reasons why it is impracticable to effect service as there provided.

### **Proof of service**

**4.9.**—(1) Service of the petition shall be proved by affidavit, specifying the manner of service.

(2) The affidavit shall have exhibited to it—

(a) a sealed copy of the petition, and

(b) if substituted service has been ordered, a sealed copy of the order;

and it shall be filed in court immediately after service.

### **Other persons to receive copies of petition**

**4.10.**—(1) If to the petitioner's knowledge the company is in course of being wound up voluntarily, a copy of the petition shall be sent by him to the liquidator.

(2) If to the petitioner's knowledge an administrative receiver has been appointed in relation to the company, or an administration order is in force in relation to it, a copy of the petition shall be sent by him to the receiver or, as the case may be, the administrator.

(3) If to the petitioner's knowledge there is in force for the company a voluntary arrangement under Part I of the Act, a copy of the petition shall be sent by him to the supervisor of the voluntary arrangement.

(4) If the company is a recognised bank or a licensed institution within the meaning of the Banking Act 1979, or an institution to which sections 16 and 18 of that Act apply as if it were a licensed institution, a copy of the petition shall be sent by the petitioner to the Bank of England.

This does not apply if the petitioner is the Bank of England itself.

(5) A copy of the petition which is required by this Rule to be sent shall be despatched on the next business day after the day on which the petition is served on the company.

### **Advertisement of petition**

**4.11.**—(1) Unless the court otherwise directs, the petition shall be advertised once in the Gazette.

(2) The advertisement must be made to appear—

(a) if the petitioner is the company itself, not less than 7 business days before the day appointed for the hearing, and

(b) otherwise, not less than 7 business days after service of the petition on the company, nor less than 7 business days before the day so appointed.

(3) The court may, if compliance with paragraph (2) is not reasonably practicable, direct that advertisement of the petition be made to appear in a specified London morning newspaper, or other newspaper, instead of in the Gazette.

(4) The advertisement of the petition must state—

- (a) the name of the company and the address of its registered office, or—
  - (i) in the case of an unregistered company, the address of its principal place of business;
  - (ii) in the case of an overseas company, the address at which service of the petition was effected;
- (b) the name and address of the petitioner;
- (c) where the petitioner is the company itself, the address of its registered office or, in the case of an unregistered company, of its principal place of business;
- (d) the date on which the petition was presented;
- (e) the venue fixed for the hearing of the petition;
- (f) the name and address of the petitioner's solicitor (if any); and
- (g) that any person intending to appear at the hearing (whether to support or oppose the petition) must give notice of his intention in accordance with Rule 4.16.

(5) If the petition is not duly advertised in accordance with this Rule, the court may dismiss it.

#### **Verification of petition**

**4.12.**—(1) The petition shall be verified by an affidavit that the statements in the petition are true, or are true to the best of the deponent's knowledge, information and belief.

(2) If the petition is in respect of debts due to different creditors, the debts to each creditor must be separately verified.

(3) The petition shall be exhibited to the affidavit verifying it.

(4) The affidavit shall be made—

- (a) by the petitioner (or if there are two or more petitioners, any one of them), or
- (b) by some person such as a director, company secretary or similar company officer, or a solicitor, who has been concerned in the matters giving rise to the presentation of the petition, or
- (c) by some responsible person who is duly authorised to make the affidavit and has the requisite knowledge of those matters.

(5) Where the deponent is not the petitioner himself, or one of the petitioners, he must in the affidavit identify himself and state—

- (a) the capacity in which, and the authority by which, he makes it, and
- (b) the means of his knowledge of the matters sworn to in the affidavit.

(6) The affidavit is prima facie evidence of the statements in the petition to which it relates.

(7) An affidavit verifying more than one petition shall include in its title the names of the companies to which it relates and shall set out, in respect of each company, the statements relied on by the petitioner; and a clear and legible photocopy of the affidavit shall be filed with each petition which it verifies.

### **Persons entitled to copy of petition**

**4.13.** Every director, contributory or creditor of the company is entitled to be furnished by the solicitor for the petitioner (or by the petitioner himself, if acting in person) with a copy of the petition within 2 days after requiring it, on payment of the appropriate fee.

### **Certificate of compliance**

**4.14.—**(1) The petitioner or his solicitor shall, at least 5 days before the hearing of the petition, file in court a certificate of compliance with the Rules relating to service and advertisement.

(2) The certificate shall show—

- (a) the date of presentation of the petition,
- (b) the date fixed for the hearing, and
- (c) the date or dates on which the petition was served and advertised in compliance with the Rules.

A copy of the advertisement of the petition shall be filed in court with the certificate.

(3) Non-compliance with this Rule is a ground on which the court may, if it thinks fit, dismiss the petition.

### **Leave for petitioner to withdraw**

**4.15.** If at least 5 days before the hearing the petitioner, on an ex parte application, satisfies the court that—

- (a) the petition has not been advertised, and
- (b) no notices (whether in support or in opposition) have been received by him with reference to the petition, and
- (c) the company consents to an order being made under this Rule,

the court may order that the petitioner has leave to withdraw the petition on such terms as to costs as the parties may agree.

### **Notice of appearance**

**4.16.—**(1) Every person who intends to appear on the hearing of the petition shall give to the petitioner notice of his intention in accordance with this Rule.

(2) The notice shall specify—

- (a) the name and address of the person giving it, and any telephone number and reference which may be required for communication with him or with any other person (to be also specified in the notice) authorised to speak or act on his behalf;
- (b) whether his intention is to support or oppose the petition; and
- (c) the amount and nature of his debt.

(3) The notice shall be sent to the petitioner at the address shown for him in the court records, or in the advertisement of the petition required by Rule 4.11; or it may be sent to his solicitor.

(4) The notice shall be sent so as to reach the addressee not later than 16.00 hours on the business day before that which is appointed for the hearing (or, where the hearing has been adjourned, for the adjourned hearing).

(5) A person failing to comply with this Rule may appear on the hearing of the petition only with the leave of the court.

### **List of appearances**

**4.17.**—(1) The petitioner shall prepare for the court a list of the persons (if any) who have given notice under Rule 4.16, specifying their names and addresses and (if known to him) their respective solicitors.

(2) Against the name of each creditor in the list it shall be stated whether his intention is to support the petition, or to oppose it.

(3) On the day appointed for the hearing of the petition, a copy of the list shall be handed to the court before the commencement of the hearing.

(4) If any leave is given under Rule 4.16(5), the petitioner shall add to the list the same particulars in respect of the person to whom leave has been given.

### **Affidavit in opposition**

**4.18.**—(1) If the company intends to oppose the petition, its affidavit in opposition shall be filed in court not less than 7 days before the date fixed for the hearing.

(2) A copy of the affidavit shall be sent by the company to the petitioner, forthwith after filing.

### **Substitution of creditor or contributory for petitioner**

**4.19.**—(1) This Rule applies where a person petitions and is subsequently found not entitled to do so, or where the petitioner—

- (a) fails to advertise his petition within the time prescribed by the Rules or such extended time as the court may allow, or
- (b) consents to withdraw his petition, or to allow it to be dismissed, consents to an adjournment, or fails to appear in support of his petition when it is called on in court on the day originally fixed for the hearing, or on a day to which it is adjourned, or
- (c) appears, but does not apply for an order in the terms of the prayer of his petition.

(2) The court may, on such terms as it thinks just, substitute as petitioner any creditor or contributory who in its opinion would have a right to present a petition, and who is desirous of prosecuting it.

(3) An order of the court under this Rule may, where a petitioner fails to advertise his petition within the time prescribed by these Rules, or consents to withdraw his petition, be made at any time.

### **Notice and settling of winding-up order**

**4.20.**—(1) When a winding-up order has been made, the court shall forthwith give notice of the fact to the official receiver.

(2) The petitioner and every other person who has appeared on the hearing of the petition shall, not later than the business day following that on which the order is made, leave at the court all the documents required for enabling the order to be completed forthwith.

(3) It is not necessary for the court to appoint a venue for any person to attend to settle the order, unless in any particular case the special circumstances make an appointment necessary.

### **Transmission and advertisement of order**

**4.21.**—(1) When the winding-up order has been made, 3 copies of it, sealed with the seal of the court, shall be sent forthwith by the court to the official receiver.



(2) The official receiver shall cause a sealed copy of the order to be served on the company by prepaid letter addressed to it at its registered office (if any) or, if there is no registered office, at its principal or last known principal place of business.

Alternatively, the order may be served on such other person or persons, or in such other manner, as the court directs.

(3) The official receiver shall forward to the registrar of companies the copy of the order which by section 130(1) is directed to be so forwarded by the company.

(4) The official receiver shall forthwith—

- (a) cause the order to be gazetted, and
- (b) advertise the order in such local newspaper as the official receiver may select.

## CHAPTER 4

### PETITION BY CONTRIBUTORIES (NO CVL APPLICATION)

#### **Presentation and service of petition**

**4.22.**—(1) The petition shall specify the grounds on which it is presented and the nature of the relief which is sought by the petitioner, and shall be filed in court with one copy for service under this Rule.

(2) The court shall fix a hearing for a day (“the return day”) on which, unless the court otherwise directs, the petitioner and the company shall attend before the registrar in chambers for directions to be given in relation to the procedure on the petition.

(3) On fixing the return day, the court shall return to the petitioner a sealed copy of the petition for service, endorsed with the return day and time of hearing.

(4) The petitioner shall, at least 14 days before the return day, serve a sealed copy of the petition on the company.

#### **Return of petition**

**4.23.**—(1) On the return day, or at any time after it, the court shall give such directions as it thinks appropriate with respect to the following matters—

- (a) service of the petition, whether in connection with the venue for a further hearing, or for any other purpose;
- (b) whether particulars of claim and defence are to be delivered, and generally as to the procedure on the petition;
- (c) whether, and if so by what means, the petition is to be advertised;
- (d) the manner in which any evidence is to be adduced at any hearing before the judge and in particular (but without prejudice to the generality of the above) as to—
  - (i) the taking of evidence wholly or in part by affidavit or orally;
  - (ii) the cross-examination of any deponents to affidavits;
  - (iii) the matters to be dealt with in evidence;
- (e) any other matter affecting the procedure on the petition or in connection with the hearing and disposal of the petition.

(2) In giving directions under paragraph (1)(a), the court shall have regard to whether any of the persons specified in Rule 4.10 should be served with a copy of the petition.

### Application of Rules in Chapter 3

**4.24.** The following Rules in Chapter 3 apply, with the necessary modifications—

- Rule 4.16 (notice of appearance);
- Rule 4.17 (list of appearances);
- Rule 4.20 (notice and settling of winding-up order); and
- Rule 4.21 (transmission and advertisement of order).

## CHAPTER 5

### PROVISIONAL LIQUIDATOR (NO CVL APPLICATION)

#### Appointment of provisional liquidator

**4.25.—**(1) An application to the court for the appointment of a provisional liquidator under section 135 may be made by the petitioner, or by a creditor of the company, or by a contributory, or by the company itself, or by the Secretary of State, or by any person who under any enactment would be entitled to present a petition for the winding up of the company.

(2) The application must be supported by an affidavit stating—

- (a) the grounds on which it is proposed that a provisional liquidator should be appointed;
- (b) if some person other than the official receiver is proposed to be appointed, that the person has consented to act and, to the best of the applicant's belief, is qualified to act as an insolvency practitioner in relation to the company;
- (c) whether or not the official receiver has been informed of the application and, if so, has been furnished with a copy of it;
- (d) whether to the applicant's knowledge—
  - (i) there has been proposed or is in force for the company a voluntary arrangement under Part I of the Act, or
  - (ii) an administrator or administrative receiver is acting in relation to the company, or
  - (iii) a liquidator has been appointed for its voluntary winding up; and
- (e) the applicant's estimate of the value of the assets in respect of which the provisional liquidator is to be appointed.

(3) The applicant shall send copies of the application and of the affidavit in support to the official receiver, who may attend the hearing and make any representations which he thinks appropriate.

If for any reason it is not practicable to comply with this paragraph, the official receiver must be informed of the application in sufficient time for him to be able to attend.

(4) The court may on the application, if satisfied that sufficient grounds are shown for the appointment, make it on such terms as it thinks fit.

#### Order of appointment

**4.26.—**(1) The order appointing the provisional liquidator shall specify the functions to be carried out by him in relation to the company's affairs.

(2) The court shall, forthwith after the order is made, send sealed copies of the order as follows—

- (a) if the official receiver is appointed, two copies to him;
- (b) if a person other than the official receiver is appointed—
  - (i) two copies to that person, and
  - (ii) one copy to the official receiver;

(c) if there is an administrative receiver acting in relation to the company, one copy to him.

(3) Of the two copies of the order sent to the official receiver under paragraph (2)(a), or to another person under paragraph (2)(b)(i), one shall in each case be sent by the recipient to the company or, if a liquidator has been appointed for the company's voluntary winding up, to him.

### **Deposit**

**4.27.**—(1) Before an order appointing the official receiver as provisional liquidator is issued, the applicant for it shall deposit with him, or otherwise secure to his satisfaction, such sum as the court directs to cover the official receiver's remuneration and expenses.

(2) If the sum deposited or secured subsequently proves to be insufficient, the court may, on application by the official receiver, order that an additional sum be deposited or secured. If the order is not complied with within 2 days after service of it on the person to whom it is directed, the court may discharge the order appointing the provisional liquidator.

(3) If a winding-up order is made after a provisional liquidator has been appointed, any money deposited under this Rule shall (unless it is required by reason of insufficiency of assets for payment of remuneration and expenses of the provisional liquidator) be repaid to the person depositing it (or as that person may direct) out of the assets, in the prescribed order of priority.

### **Security**

**4.28.**—(1) The following applies where an insolvency practitioner is appointed to be provisional liquidator under section 135.

(2) The cost of providing the security required under the Act shall be paid in the first instance by the provisional liquidator; but—

- (a) if a winding-up order is not made, the person so appointed is entitled to be reimbursed out of the property of the company, and the court may make an order on the company accordingly, and
- (b) if a winding-up order is made, he is entitled to be reimbursed out of the assets in the prescribed order of priority.

### **Failure to give or keep up security**

**4.29.**—(1) If the provisional liquidator fails to give or keep up his security, the court may remove him, and make such order as it thinks fit as to costs.

(2) If an order is made under this Rule removing the provisional liquidator, or discharging the order appointing him, the court shall give directions as to whether any, and if so what, steps should be taken for the appointment of another person in his place.

### **Remuneration**

**4.30.**—(1) The remuneration of the provisional liquidator (other than the official receiver) shall be fixed by the court from time to time on his application.

(2) In fixing his remuneration, the court shall take into account—

- (a) the time properly given by him (as provisional liquidator) and his staff in attending to the company's affairs;
- (b) the complexity (or otherwise) of the case;
- (c) any respects in which, in connection with the company's affairs, there falls on the provisional liquidator any responsibility of an exceptional kind or degree;

- (d) the effectiveness with which the provisional liquidator appears to be carrying out, or to have carried out, his duties; and
  - (e) the value and nature of the property with which he has to deal.
- (3) The provisional liquidator's remuneration (whether the official receiver or another) shall be paid to him, and the amount of any expenses incurred by him reimbursed—
- (a) if a winding-up order is not made, out of the property of the company (and the court may make an order on the company accordingly), and
  - (b) if a winding-up order is made, out of the assets, in the prescribed order of priority,
- or, in either case (the relevant funds being insufficient), out of the deposit under Rule 4.27.
- (4) Where a person other than the official receiver has been appointed provisional liquidator, and the official receiver has taken any steps for the purpose of obtaining a statement of affairs or has performed any other duty under the Rules, he shall pay the official receiver such sum (if any) as the court may direct.

### **Termination of appointment**

- 4.31.**—(1) The appointment of the provisional liquidator may be terminated by the court on his application, or on that of any of the persons specified in Rule 4.25(1).
- (2) If the provisional liquidator's appointment terminates, in consequence of the dismissal of the winding-up petition or otherwise, the court may give such directions as it thinks fit with respect to the accounts of his administration or any other matters which it thinks appropriate.
- (3) The court may under paragraph (2)—
- (a) direct that any expenses properly incurred by the provisional liquidator during the period of his appointment, including any remuneration to which he is entitled, be paid out of the property of the company, and
  - (b) authorise him to retain out of that property such sums as are required for meeting those expenses.

Alternatively, the court may make such order as it thinks fit with respect to those matters.

## **CHAPTER 6**

### **STATEMENT OF AFFAIRS AND OTHER INFORMATION**

#### **Notice requiring statement of affairs**

##### **4.32. (NO CVL APPLICATION)**

- (1) The following applies where the official receiver determines to require a statement of the company's affairs to be made out and submitted to him in accordance with section 131.
- (2) He shall send notice to each of the persons whom he considers should be made responsible under that section, requiring them to prepare and submit the statement.
- (3) The persons to whom that notice is sent are referred to in this Chapter as “the deponents”.
- (4) The notice shall inform each of the deponents—
- (a) of the names and addresses of all others (if any) to whom the same notice has been sent;
  - (b) of the time within which the statement must be delivered;
  - (c) of the effect of section 131(7) (penalty for non-compliance); and
  - (d) of the application to him, and to each of the other deponents, of section 235 (duty to provide information, and to attend on the official receiver if required).

(5) The official receiver shall, on request, furnish a deponent with instructions for the preparation of the statement and with the forms required for that purpose.

### **Verification and filing**

#### **4.33. (NO CVL APPLICATION)**

(1) The statement of affairs shall be in Form 4.17, shall contain all the particulars required by that form and shall be verified by affidavit by the deponents (using the same form).

(2) The official receiver may require any of the persons mentioned in section 131(3) to submit an affidavit of concurrence, stating that he concurs in the statement of affairs.

(3) An affidavit of concurrence made under paragraph (2) may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the affidavit is not in agreement with the deponents, or he considers the statement to be erroneous or misleading, or he is without the direct knowledge necessary for concurring in the statement.

(4) The statement of affairs shall be delivered to the official receiver by the deponent making the affidavit of verification (or by one of them, if more than one), together with a copy of the verified statement.

(5) Every affidavit of concurrence shall be delivered to the official receiver by the person who makes it, together with a copy.

(6) The official receiver shall file the verified copy of the statement and the affidavits of concurrence (if any) in court.

(7) The affidavit may be sworn before an official receiver or a deputy official receiver, or before an officer of the Department or the court duly authorised in that behalf.

### **Statement of affairs**

**4.34-CVL.**—(1) This Rule applies with respect to the statement of affairs made out by the liquidator under section 95(3) or (as the case may be) by the directors under section 99(1).

(2) Where it is made out by the liquidator, the statement of affairs shall be delivered by him to the registrar of companies within 7 days after the creditors' meeting summoned under section 95(2).

(3) Where it is made out by the directors under section 99(1), the statement of affairs shall be delivered by them to the liquidator, when appointed; and he shall, within 7 days, deliver it to the registrar of companies.

### **Limited disclosure**

#### **4.35. (NO CVL APPLICATION)**

(1) Where the official receiver thinks that it would prejudice the conduct of the liquidation for the whole or part of the statement of affairs to be disclosed, he may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it.

(2) The court may on the application order that the statement or, as the case may be, the specified part of it be not filed, or that it is to be filed separately and not be open to inspection otherwise than with leave of the court.

### **Release from duty to submit statement of affairs; extension of time**

#### **4.36. (NO CVL APPLICATION)**

(1) The power of the official receiver under section 131(5) to give a release from the obligation imposed by that section, or to grant an extension of time, may be exercised at the official receiver's own discretion, or at the request of any deponent.

(2) A deponent may, if he requests a release or extension of time and it is refused by the official receiver, apply to the court for it.

(3) 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, and give notice to the deponent accordingly.

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

(5) The official receiver may appear and be heard on the application; and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the court's attention.

If such a report is filed, a copy of it shall be sent by the official receiver to the deponent, not later than 5 days before the hearing.

(6) Sealed copies of any order made on the application shall be sent by the court to the deponent and the official receiver.

(7) On any application under this Rule the applicant's costs shall be paid in any event by him and, unless the court otherwise orders, no allowance towards them shall be made out of the assets.

### **Expenses of statement of affairs**

#### **4.37. (NO CVL APPLICATION)**

(1) If any deponent cannot himself prepare a proper statement of affairs, the official receiver may, at the expense of the assets, employ some person or persons to assist in the preparation of the statement.

(2) At the request of any deponent, made on the grounds that he cannot himself prepare a proper statement, the official receiver may authorise an allowance, payable out of the assets, towards expenses to be incurred by the deponent in employing some person or persons to assist him in preparing it.

(3) Any such request by the deponent shall be accompanied by an estimate of the expenses involved; and the official receiver shall only authorise the employment of a named person or a named firm, being in either case approved by him.

(4) An authorisation given by the official receiver under this Rule shall be subject to such conditions (if any) as he thinks fit to impose with respect to the manner in which any person may obtain access to relevant books and papers.

(5) Nothing in this Rule relieves a deponent from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the official receiver or the liquidator.

(6) Any payment out of the assets under this Rule shall be made in the prescribed order of priority.

(7) Paragraphs (2) to (6) of this Rule may be applied, on application to the official receiver by any deponent, in relation to the making of an affidavit of concurrence.

### **Expenses of statement of affairs**

**4.38-CVL.**—(1) Payment may be made out of the company's assets, either before or after the commencement of the winding up, of any reasonable and necessary expenses of preparing the statement of affairs under section 99.

Any such payment is an expense of the liquidation.

(2) Where such a payment is made before the commencement of the winding up, the director presiding at the creditors' meeting held under section 98 shall inform the meeting of the amount of the payment and the identity of the person to whom it was made.

(3) The liquidator appointed under section 100 may make such a payment (subject to the next paragraph); but if there is a liquidation committee, he must give the committee at least 7 days' notice of his intention to make it.

(4) Such a payment shall not be made by the liquidator to himself, or to any associate of his, otherwise than with the approval of the liquidation committee, the creditors, or the court.

(5) This Rule is without prejudice to the powers of the court under Rule 4.219 (voluntary winding up superseded by winding up by the court).

### **Submission of accounts**

#### **4.39. (NO CVL APPLICATION)**

(1) Any of the persons specified in section 235(3) shall, at the request of the official receiver, furnish him with accounts of the company of such nature, as at such date, and for such period, as he may specify.

(2) The period specified may begin from a date up to 3 years preceding the date of the presentation of the winding-up petition, or from an earlier date to which audited accounts of the company were last prepared.

(3) The court may, on the official receiver's application, require accounts for any earlier period.

(4) Rule 4.37 applies (with the necessary modifications) in relation to accounts to be furnished under this Rule as it applies in relation to the statement of affairs.

(5) The accounts shall, if the official receiver so requires, be verified by affidavit and (whether or not so verified) delivered to him within 21 days of the request under paragraph (1), or such longer period as he may allow.

(6) Two copies of the accounts and (where required) the affidavit shall be delivered to the official receiver by whoever is required to furnish them; and the official receiver shall file one copy in court (with the affidavit, if any).

### **Submission of accounts**

**4.40-CVL.**—(1) Any of the persons specified in section 235(3) shall, at the request of the liquidator, furnish him with accounts of the company of such nature, as at such date, and for such period, as he may specify.

(2) The specified period for the accounts may begin from a date up to 3 years preceding the date of the resolution for winding up, or from an earlier date to which audited accounts of the company were last prepared.

(3) The accounts shall, if the liquidator so requires, be verified by affidavit and (whether or not so verified) delivered to him, with the affidavit if required, within 21 days from the request under paragraph (1), or such longer period as he may allow.

### **Expenses of preparing accounts**

**4.41-CVL.**—(1) Where a person is required under Rule 4.40-CVL to furnish accounts, the liquidator may, with the sanction of the liquidation committee (if there is one) and at the expense of the assets, employ some person or persons to assist in the preparation of the accounts.

(2) At the request of the person subject to the requirement, the liquidator may, with that sanction, authorise an allowance, payable out of the assets, towards expenses to be incurred by that person in employing others to assist him in preparing the accounts.

(3) Any such request shall be accompanied by an estimate of the expenses involved; and the liquidator shall only authorise the employment of a named person or a named firm, being in either case approved by him.

### **Further disclosure**

#### **4.42. (NO CVL APPLICATION)**

(1) The official receiver may at any time require the deponents, or any one or more of them, to submit (in writing) further information amplifying, modifying or explaining any matter contained in the statement of affairs, or in accounts submitted in pursuance of the Act or the Rules.

(2) The information shall, if the official receiver so directs, be verified by affidavit, and (whether or not so verified) delivered to him within 21 days of the requirement under paragraph (1), or such longer period as he may allow.

(3) Two copies of the documents containing the information and (where verification is directed) the affidavit shall be delivered by the deponent to the official receiver, who shall file one copy in court (with the affidavit, if any).

## **CHAPTER 7**

### **INFORMATION TO CREDITORS AND CONTRIBUTORIES**

#### **Reports by official receiver**

##### **4.43. (NO CVL APPLICATION)**

The official receiver shall, at least once after the making of the winding-up order, send a report to creditors and contributories with respect to the proceedings in the winding up, and the state of the company's affairs.

#### **Meaning of “creditors”**

**4.44.** Any reference in this Chapter to creditors is to creditors of the company who are known to the official receiver or (as the case may be) the liquidator or, where a statement of the company's affairs has been submitted, are identified in the statement.

#### **Report where statement of affairs lodged**

##### **4.45. (NO CVL APPLICATION)**

(1) Where a statement of affairs has been submitted and filed in court, the official receiver shall send out to creditors and contributories a report containing a summary of the statement and such observations (if any) as he thinks fit to make with respect to it, or to the affairs of the company in general.

(2) The official receiver need not comply with paragraph (1) if he has previously reported to creditors and contributories with respect to the company's affairs (so far as known to him) and he is of opinion that there are no additional matters which ought to be brought to their attention.



### **Statement of affairs dispensed with**

#### **4.46. (NO CVL APPLICATION)**

(1) This Rule applies where, in the company's case, release from the obligation to submit a statement of affairs has been granted by the official receiver or the court.

(2) As soon as may be after the release has been granted, the official receiver shall send to creditors and contributories a report containing a summary of the company's affairs (so far as within his knowledge), and his observations (if any) with respect to it, or to the affairs of the company in general.

(3) The official receiver need not comply with paragraph (2) if he has previously reported to creditors and contributories with respect to the company's affairs (so far as known to him) and he is of opinion that there are no additional matters which ought to be brought to their attention.

### **General rule as to reporting**

#### **4.47. (NO CVL APPLICATION)**

(1) The court may, on the official receiver's application, relieve him of any duty imposed on him by this Chapter, or authorise him to carry out the duty in a way other than there required.

(2) In considering whether to act under this Rule, the court shall have regard to the cost of carrying out the duty, to the amount of the assets available, and to the extent of the interest of creditors or contributories, or any particular class of them.

### **Winding up stayed**

#### **4.48. (NO CVL APPLICATION)**

(1) If proceedings in the winding up are stayed by order of the court, any duty of the official receiver to send reports under the preceding Rules in this Chapter ceases.

(2) Where the court grants a stay, it may include in its order such requirements on the company as it thinks fit with a view to bringing the stay to the notice of creditors and contributories.

### **Information to creditors and contributories**

**4.49-CVL.** The liquidator shall, within 28 days of a meeting held under section 95 or 98, send to creditors and contributories of the company—

- (a) a copy or summary of the statement of affairs, and
- (b) a report of the proceedings at the meeting.

## **CHAPTER 8**

## **MEETINGS OF CREDITORS AND CONTRIBUTORIES**

### **SECTION A: RULES OF GENERAL APPLICATION**

### **First meetings**

#### **4.50. (NO CVL APPLICATION)**

(1) If under section 136(5) the official receiver decides to summon meetings of the company's creditors and contributories for the purpose of nominating a person to be liquidator in place of himself, he shall fix a venue for each meeting, in neither case more than 4 months from the date of the winding-up order.

(2) When for each meeting a venue has been fixed, notice of the meetings shall be given to the court and—

- (a) in the case of the creditors' meeting, to every creditor who is known to the official receiver or is identified in the company's statement of affairs; and
- (b) in the case of the contributories' meeting, to every person appearing (by the company's books or otherwise) to be a contributory of the company.

(3) Notice to the court shall be given forthwith, and the other notices shall be given at least 21 days before the date fixed for each meeting respectively.

(4) The notice to creditors shall specify a time and date, not more than 4 days before the date fixed for the meeting, by which they must lodge proofs and (if applicable) proxies, in order to be entitled to vote at the meeting; and the same applies in respect of contributories and their proxies.

(5) Notice of the meetings shall also be given by public advertisement.

(6) Where the official receiver receives a request by creditors under section 136(5)(c) for meetings of creditors and contributories to be summoned, and it appears to him that the request is properly made in accordance with the Act, he shall—

- (a) withdraw any notices previously given by him under section 136(5)(b) (that he has decided not to summon such meetings),
- (b) fix the venue of each meeting for not more than 3 months from his receipt of the creditors' request, and
- (c) act in accordance with paragraphs (2) to (5) above, as if he had decided under section 136 to summon the meetings.

(7) Meetings summoned by the official receiver under this Rule are known respectively as “the first meeting of creditors” and “the first meeting of contributories”, and jointly as “the first meetings in the liquidation”.

(8) Where the company is a recognised bank or licensed institution under the Banking Act 1979, or an institution to which sections 16 and 18 of that Act apply as if it were a licensed institution, additional notices are required by Rule 4.72.

### **First meeting of creditors**

**4.51-CVL.**—(1) This Rule applies in the case of a meeting of creditors summoned by the liquidator under section 95 (where, in what starts as a members' voluntary winding up, he forms the opinion that the company will be unable to pay its debts) or a meeting under section 98 (first meeting of creditors in a creditors' voluntary winding up).

(2) The notice summoning the meeting shall specify a venue for the meeting and the time (not earlier than 12.00 hours on the business day before the day fixed for the meeting) by which, and the place at which, creditors must lodge proofs and (if applicable) proxies.

(3) Where the company is a recognised bank or licensed institution under the Banking Act 1979, or an institution to which sections 16 and 18 of that Act apply as if it were a licensed institution, additional notices are required by Rule 4.72.

### **Business at first meetings in the liquidation**

#### **4.52. (NO CVL APPLICATION)**

(1) At the first meeting of creditors, no resolutions shall be taken other than the following—

- (a) a resolution to appoint a named insolvency practitioner to be liquidator, or two or more insolvency practitioners as joint liquidators;
- (b) a resolution to establish a liquidation committee;

- (c) (unless it has been resolved to establish a liquidation committee) a resolution specifying the terms on which the liquidator is to be remunerated, or to defer consideration of that matter;
  - (d) (if, and only if, two or more persons are appointed to act jointly as liquidator) a resolution specifying whether acts are to be done by both or all of them, or by only one;
  - (e) (where the meeting has been requisitioned under section 136), a resolution authorising payment out of the assets, as an expense of the liquidation, of the cost of summoning and holding the meeting and any meeting of contributories so requisitioned and held;
  - (f) a resolution to adjourn the meeting for not more than 3 weeks;
  - (g) any other resolution which the chairman thinks it right to allow for special reasons.
- (2) The same applies as regards the first meeting of contributories, but that meeting shall not pass any resolution to the effect of paragraph (1)(c) or (e).
- (3) At neither meeting shall any resolution be proposed which has for its object the appointment of the official receiver as liquidator.

### **Business at meeting under s. 95 or 98**

**4.53-CVL.** Rule 4.52(1), except sub-paragraph (e), applies to a creditors' meeting under section 95 or 98.

### **General power to call meetings**

**4.54.**—(1) The official receiver or the liquidator may at any time summon and conduct meetings of creditors or of contributories for the purpose of ascertaining their wishes in all matters relating to the liquidation; and in relation to any meeting summoned under the Act or the Rules, the person summoning it is referred to as “the convener”.

(2) When (in either case) a venue for the meeting has been fixed, notice of it shall be given by the convener—

- (a) in the case of a creditors' meeting, to every creditor who is known to him or is identified in the company's statement of affairs; and
- (b) in the case of a meeting of contributories, to every person appearing (by the company's books or otherwise) to be a contributory of the company.

(3) Notice of the meeting shall be given at least 21 days before the date fixed for it, and shall specify the purpose of the meeting.

(4) The notice shall specify a time and date, not more than 4 days before the date fixed for the meeting, by which, and the place at which, creditors must lodge proofs and proxies, in order to be entitled to vote at the meeting; and the same applies in respect of contributories and their proxies.

(NO CVL APPLICATION)

(5-CVL) The notice shall specify a time and date, not more than 4 days before that fixed for the meeting, by which, and the place at which, creditors (if not individuals attending in person) must lodge proxies, in order to be entitled to vote at the meeting.

(6) Additional notice of the meeting may be given by public advertisement if the convener thinks fit, and shall be so given if the court orders.

### **The chairman at meetings**

**4.55.** (NO CVL APPLICATION)

- (1) This Rule applies both to a meeting of creditors and to a meeting of contributories.

(2) Where the convener of the meeting is the official receiver, he, or a person nominated by him, shall be chairman.

A nomination under this paragraph shall be in writing, unless the nominee is another official receiver or a deputy official receiver.

(3) Where the convener is other than the official receiver, the chairman shall be he, or a person nominated in writing by him.

A person nominated under this paragraph must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the company, or
- (b) an employee of the liquidator or his firm who is experienced in insolvency matters.

### **The chairman at meetings**

**4.56-CVL.**—(1) This Rule applies both to a meeting of creditors (except a meeting under section 98) and to a meeting of contributories.

(2) The liquidator, or a person nominated by him in writing to act, shall be chairman of the meeting.

A person nominated under this paragraph must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the company, or
- (b) an employee of the liquidator or his firm who is experienced in insolvency matters.

### **Requisitioned meetings**

**4.57.**—(1) Any request by creditors to the liquidator (whether or not the official receiver) for a meeting of creditors or contributories, or meetings of both, to be summoned shall be accompanied by—

- (a) a list of the creditors concurring with the request and the amount of their respective claims in the winding up;
- (b) from each creditor concurring, written confirmation of his concurrence; and
- (c) a statement of the purpose of the proposed meeting.

Sub-paragraphs (a) and (b) do not apply if the requisitioning creditor's debt is alone sufficient, without the concurrence of other creditors.

(2) The liquidator shall, if he considers the request to be properly made in accordance with the Act, fix a venue for the meeting, not more than 35 days from his receipt of the request.

(3) The liquidator shall give 21 days' notice of the meeting, and the venue for it, to creditors.

(4) Paragraphs (1) to (3) above apply to the requisitioning by contributories of contributories' meetings, with the following modifications—

- (a) for the reference in paragraph (1)(a) to the creditors' respective claims substitute the contributories' respective values (being the amounts for which they may vote at any meeting); and
- (b) the persons to be given notice under paragraph (3) are those appearing (by the company's books or otherwise) to be contributories of the company.

(NO CVL APPLICATION)

### **Attendance at meetings of company's personnel**

**4.58.**—(1) This Rule applies to meetings of creditors and to meetings of contributories.

(2) Whenever a meeting is summoned, the convener shall give at least 21 days' notice to such of the company's personnel as he thinks should be told of, or be present at, the meeting.

“The company's personnel” means the persons referred to in paragraphs (a) to (d) of section 235(3) (present and past officers, employees, etc.).

(3) If the meeting is adjourned, the chairman of the meeting shall, unless for any reason he thinks it unnecessary or impracticable, give notice of the adjournment to such (if any) of the company's personnel as he considers appropriate, being persons who were not themselves present at the meeting.

(4) The convener may, if he thinks fit, give notice to any one or more of the company's personnel that he is, or they are, required to be present at the meeting, or to be in attendance.

(5) In the case of any meeting, any one or more of the company's personnel, and any other persons, may be admitted, but—

(a) they must have given reasonable notice of their wish to be present, and

(b) it is a matter for the chairman's discretion whether they are to be admitted or not, and his decision is final as to what (if any) intervention may be made by any of them.

(6) If it is desired to put questions to any one of the company's personnel who is not present, the chairman may adjourn the meeting with a view to obtaining his attendance.

(7) Where one of the company's personnel is present at a meeting, only such questions may be put to him as the chairman may in his discretion allow.

#### **Notice of meetings by advertisement only**

**4.59.**—(1) In the case of any meeting of creditors or contributories to be held under the Act or the Rules, the court may order that notice of the meeting be given by public advertisement, and not by individual notice to the persons concerned.

(2) In considering whether to act under this Rule, the court shall have regard to the cost of public advertisement, to the amount of the assets available, and to the extent of the interest of creditors or of contributories, or any particular class of either of them.

#### **Venue**

**4.60.**—(1) In fixing the venue for a meeting of creditors or contributories, the convener shall have regard to the convenience of the persons (other than whoever is to be chairman) who are invited to attend.

(2) Meetings shall in all cases be summoned for commencement between the hours of 10.00 and 16.00 hours on a business day, unless the court otherwise directs.

(3) With every notice summoning a meeting of creditors or contributories there shall be sent out forms of proxy.

#### **Expenses of summoning meetings**

**4.61.**—(1) Subject as follows, the expenses of summoning and holding a meeting of creditors or contributories at the instance of any person other than the official receiver or the liquidator shall be paid by that person, who shall deposit with the liquidator security for their payment.

(2) The sum to be deposited shall be such as the official receiver or liquidator (as the case may be) determines to be appropriate; and neither shall act without the deposit having been made.

(3) Where a meeting of creditors is so summoned, it may vote that the expenses of summoning and holding it, and of summoning and holding any meeting of contributories requisitioned at the same time, shall be payable out of the assets, as an expense of the liquidation.

(4) Where a meeting of contributories is summoned on the requisition of contributories, it may vote that the expenses of summoning and holding it shall be payable out of the assets, but subject to the right of creditors to be paid in full, with interest.

(5) To the extent that any deposit made under this Rule is not required for the payment of expenses of summoning and holding a meeting, it shall be repaid to the person who made it.

### **Expenses of meeting under s. 98**

**4.62-CVL.**—(1) Payment may be made out of the company's assets, either before or after the commencement of the winding up, of any reasonable and necessary expenses incurred in connection with the summoning, advertisement and holding of a creditors' meeting under section 98.

Any such payment is an expense of the liquidation.

(2) Where such payments are made before the commencement of the winding up, the director presiding at the creditors' meeting shall inform the meeting of their amount and the identity of the persons to whom they were made.

(3) The liquidator appointed under section 100 may make such a payment (subject to the next paragraph); but if there is a liquidation committee, he must give the committee at least 7 days' notice of his intention to make the payment.

(4) Such a payment shall not be made by the liquidator to himself, or to any associate of his, otherwise than with the approval of the liquidation committee, the creditors, or the court.

(5) This Rule is without prejudice to the powers of the court under Rule 4.219 (voluntary winding up superseded by winding up by the court).

### **Resolutions**

**4.63.**—(1) At a meeting of creditors or contributories, a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of the resolution.

The value of contributories is determined by reference to the number of votes conferred on each contributory by the company's articles.

(2) In the case of a resolution for the appointment of a liquidator—

- (a) if on any vote there are two nominees for appointment, 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 chairman of the meeting shall 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.

(3) The chairman may at any time put to the meeting a resolution for the joint appointment of any two or more nominees.

(4) Where a resolution is proposed which affects a person in respect of his remuneration or conduct as liquidator, or as proposed or former liquidator, the vote of that person, and of any partner or employee of his, shall not be reckoned in the majority required for passing the resolution.

This paragraph applies with respect to a vote given by a person either as creditor or contributory or as proxy for a creditor or a contributory (but subject to Rule 8.6 in Part 8 of the Rules).

### **Chairman of meeting as proxy-holder**

**4.64.** Where the chairman at a meeting of creditors or contributories holds a proxy which requires him to vote for a particular resolution, and no other person proposes that resolution—

- (a) he shall himself propose it, unless he considers that there is good reason for not doing so, and
- (b) if he does not propose it, he shall forthwith after the meeting notify his principal of the reason why not.

### **Suspension and adjournment**

**4.65.**—(1) This Rule applies to meetings of creditors and to meetings of contributories.

(2) Once only in the course of any meeting, the chairman may, in his discretion and without an adjournment, declare the meeting suspended for any period up to one hour.

(3) The chairman at any meeting may in his discretion, and shall if the meeting so resolves, adjourn it to such time and place as seems to him to be appropriate in the circumstances.

This is subject to Rule 4.113(3) in a case where the liquidator or his nominee is chairman, and a resolution has been proposed for the liquidator's removal.

(4) If within a period of 30 minutes from the time appointed for the commencement of a meeting a quorum is not present, then by virtue of this Rule the meeting stands adjourned to such time and place as may be appointed by the chairman.

(5) An adjournment under this Rule shall not be for a period of more than 21 days; and Rule 4.60(1) and (2) applies.

(6) If there is no person present to act as chairman, some other person present (being entitled to vote) may make the appointment under paragraph (4), with the agreement of others present (being persons so entitled).

Failing agreement, the adjournment shall be to the same time and place in the next following week or, if that is not a business day, to the business day immediately following.

(7) Where a meeting is adjourned under this Rule, proofs and proxies may be used if lodged at any time up to midday on the business day immediately before the adjourned meeting.

### **Quorum**

**4.66.**—(1) A meeting is not competent to act, in the absence of a quorum, for any purpose except—

- (a) the election of a chairman,
- (b) in the case of a creditors' meeting, the admission by the chairman of proofs for the purpose of entitlement of creditors to vote, and
- (c) the adjournment of the meeting.

(NO CVL APPLICATION)

(2-CVL) A meeting is not competent to act, in the absence of a quorum, for any purpose except the election of a chairman, or the adjournment of the meeting.

(3) Subject to paragraph (4), a quorum is—

- (a) in the case of a creditors' meeting, at least 3 creditors entitled to vote, or all the creditors so entitled, if their number does not exceed 3;
- (b) in the case of a meeting of contributories, at least 2 contributories so entitled, or all the contributories, if their number does not exceed 2.

The references to creditors and contributories are to those present in person or by proxy, or duly represented under section 375 of the Companies Act.

- (4) One person present constitutes a quorum if—
- (a) he is himself a creditor or representative under section 375 of the Companies Act or (as the case may be) a contributory with entitlement to vote and he holds a number of proxies sufficient to ensure that, with his own vote, paragraph (3) is complied with, or
  - (b) being the chairman or any other person, he holds that number of proxies.

#### **Entitlement to vote (creditors)**

**4.67.**—(1) Subject as follows in this Rule and the next, at a meeting of creditors a person is entitled to vote as a creditor only if—

- (a) there has been duly lodged (in a winding up by the court by the time and date stated in the notice of the meeting) a proof of the debt claimed to be due to him from the company, and the claim has been admitted under Rule 4.70 for the purpose of entitlement to vote, and
- (b) there has been lodged, by the time and date stated in the notice of the meeting, any proxy requisite for that entitlement.

(2) The court may, in exceptional circumstances, by order declare the creditors, or any class of them, entitled to vote at creditors' meetings, without being required to prove their debts.

Where a creditor is so entitled, the court may, on the application of the liquidator, make such consequential orders as it thinks fit (as for example an order treating a creditor as having proved his debt for the purpose of permitting payment of dividend).

(3) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits his proof for that purpose.

(4) A secured creditor is entitled to vote only in respect of the balance (if any) of his debt after deducting the value of his security as estimated by him.

(5) A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing—

- (a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands, and
- (b) to estimate the value of the security and (for the purpose of entitlement to vote, but not for dividend) to deduct it from his proof.

#### **Chairman's discretion to allow vote**

**4.68-CVL.** At a creditors' meeting, the chairman may allow a creditor to vote, notwithstanding that he has failed to comply with Rule 4.67(1)(a), if satisfied that the failure was due to circumstances beyond the creditor's control.

#### **Entitlement to vote (contributories)**

**4.69.** At a meeting of contributories, voting rights are as at a general meeting of the company, subject to any provision in the articles affecting entitlement to vote, either generally or at a time when the company is in liquidation.



### **Admission and rejection of proof (creditors' meeting)**

**4.70.**—(1) At any creditors' meeting the chairman has power to admit or reject a creditor's proof for the purpose of his entitlement to vote; and the power is exercisable with respect to the whole or any part of the proof.

(2) The chairman's decision under this Rule, or in respect of any matter arising under Rule 4.67, is subject to appeal to the court by any creditor or contributory.

(3) If the chairman is in doubt whether a proof should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the proof is sustained.

(4) If on an appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks just.

(5) Neither the official receiver, nor any person nominated by him to be chairman, is personally liable for costs incurred by any person in respect of an application under this Rule; and the chairman (if other than the official receiver or a person so nominated) is not so liable unless the court makes an order to that effect.

(NO CVL APPLICATION)

(6-CVL) The liquidator or his nominee as chairman is not personally liable for costs incurred by any person in respect of an application under this Rule, unless the court makes an order to that effect.

### **Record of proceedings**

**4.71.**—(1) At any meeting, the chairman shall cause minutes of the proceedings to be kept. The minutes shall be signed by him, and retained as part of the records of the liquidation.

(2) The chairman shall also cause to be made up and kept a list of all the creditors or, as the case may be, contributories who attended the meeting.

(3) The minutes of the meeting shall include a record of every resolution passed.

(4) It is the chairman's duty to see to it that particulars of all such resolutions, certified by him, are filed in court not more than 21 days after the date of the meeting.

(NO CVL APPLICATION)

## **SECTION B: WINDING UP OF RECOGNISED BANKS, ETC**

### **Additional provisions as regards certain meetings**

**4.72.**—(1) This Rule applies where a company goes, or proposes to go, into liquidation and it is—

- (a) a recognised bank or licensed institution within the meaning of the Banking Act 1979, or
- (b) an institution to which sections 16 and 18 of that Act apply as if it were a licensed institution.

(2) Notice of any meeting of the company at which it is intended to propose a resolution for its winding up shall be given by the directors to the Bank of England and to the Deposit Protection Board.

(3) Notice to the Bank and the Board shall be the same as given to members of the company.

(4) Where a creditors' meeting is summoned by the liquidator under section 95 or, in a creditors' voluntary winding up, is summoned under section 98, the same notice of the meeting must be given to the Bank and the Board as is given to creditors under Rule 4.51-CVL.

(5) Where the company is being wound up by the court, notice of the first meetings of creditors and contributories shall be given to the Bank and the Board by the official receiver.

(6) Where in the winding up (whether voluntary or by the court) a meeting of creditors or contributories or of the company is summoned for the purpose of—

- (a) receiving the liquidator's resignation, or
- (b) removing the liquidator, or
- (c) appointing a new liquidator,

the person summoning the meeting and giving notice of it shall also give notice to the Bank and the Board.

(7) The Board is entitled to be represented at any meeting of which it is required by this Rule to be given notice; and Schedule 1 to the Rules has effect with respect to the voting rights of the Board at such a meeting.

## CHAPTER 9

### PROOF OF DEBTS IN A LIQUIDATION

#### *SECTION A: PROCEDURE FOR PROVING*

#### **Meaning of “prove”**

**4.73.**—(1) Where a company is being wound up by the court, a person claiming to be a creditor of the company and wishing to recover his debt in whole or in part must (subject to any order of the court under Rule 4.67(2)) submit his claim in writing to the liquidator. (NO CVL APPLICATION)

(2-CVL) In a voluntary winding up (whether members' or creditors') the liquidator may require a person claiming to be a creditor of the company and wishing to recover his debt in whole or in part, to submit the claim in writing to him.

(3) A creditor who claims (whether or not in writing) is referred to as “proving” for his debt; and a document by which he seeks to establish his claim is his “proof”.

(4) Subject to the next paragraph, a proof must be in the form known as “proof of debt” (whether the form prescribed by the Rules, or a substantially similar form), which shall be made out by or under the directions of the creditor, and signed by him or a person authorised in that behalf. (NO CVL APPLICATION)

(5) Where a debt is due to a Minister of the Crown or a Government Department, the proof need not be in that form, provided that there are shown all such particulars of the debt as are required in the form used by other creditors, and as are relevant in the circumstances. (NO CVL APPLICATION)

(6-CVL) The creditor's proof may be in any form.

(7) In certain circumstances, specified below in this Chapter, the proof must be in the form of an affidavit.

#### **Supply of forms**

**4.74.** (NO CVL APPLICATION)

(1) Forms of proof shall be sent out by the liquidator to every creditor of the company who is known to him, or is identified in the company's statement of affairs.

(2) The forms shall accompany (whichever is first)—

- (a) the notice to creditors under section 136(5)(b) (official receiver's decision not to call meetings of creditors and contributories), or

- (b) the first notice calling a meeting of creditors, or
- (c) where a liquidator is appointed by the court, the notice of his appointment sent by him to creditors.

(3) Where, with the leave of the court under Rule 4.102(5), the liquidator advertises his appointment, he shall send proofs to the creditors within 4 months after the date of the winding-up order.

(4) The above paragraphs of this Rule are subject to any order of the court dispensing with the requirement to send out forms of proof, or altering the time at which the forms are to be sent.

### **Contents of proof**

#### **4.75. (NO CVL APPLICATION)**

(1) The following matters shall be stated in a creditor's proof of debt—

- (a) the creditor's name and address;
- (b) the total amount of his claim as at the date on which the company went into liquidation;
- (c) whether or not that amount includes outstanding uncapitalised interest;
- (d) whether or not the claim includes value added tax;
- (e) whether the whole or any part of the debt falls within any (and if so which) of the categories of preferential debts under section 386 of, and Schedule 6 to, the Act (as read with Schedule 3 to the Social Security Pensions Act 1975);
- (f) particulars of how and when the debt was incurred by the company;
- (g) particulars of any security held, the date when it was given and the value which the creditor puts upon it; and
- (h) the name, address and authority of the person signing the proof (if other than the creditor himself).

(2) There shall be specified in the proof any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such documents be attached to the proof or submitted with it.

(3) The liquidator, or the chairman or convener of any meeting, may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

### **Particulars of creditor's claim**

**4.76-CVL.** The liquidator, or the convener or chairman of any meeting, may, if he thinks it necessary for the purpose of clarifying or substantiating the whole or any part of a creditor's claim made in his proof, call for details of any matter specified in paragraphs (a) to (h) of Rule 4.75(1), or for the production to him of such documentary or other evidence as he may require.

### **Claim established by affidavit**

**4.77.—(1)** The liquidator may, if he thinks it necessary, require a claim of debt to be verified by means of an affidavit, for which purpose there shall be used the form known as “affidavit of debt”, or a substantially similar form.

(2) An affidavit may be required notwithstanding that a proof of debt has already been lodged.

(3) The affidavit may be sworn before an official receiver or deputy official receiver, or before an officer of the Department or of the court duly authorised in that behalf. (NO CVL APPLICATION)

### **Cost of proving**

**4.78.**—(1) Subject as follows, every creditor bears the cost of proving his own debt, including such as may be incurred in providing documents or evidence under Rule 4.75(3) or 4.76-CVL.

(2) Costs incurred by the liquidator in estimating the quantum of a debt under Rule 4.86 (debts not bearing a certain value) are payable out of the assets, as an expense of the liquidation.

(3) Paragraphs (1) and (2) apply unless the court otherwise orders.

### **Liquidator to allow inspection of proofs**

**4.79.** The liquidator shall, so long as proofs lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

- (a) any creditor who has submitted his proof of debt (unless his proof has been wholly rejected for purposes of dividend or otherwise);
- (b) any contributory of the company;
- (c) any person acting on behalf of either of the above.

### **Transmission of proofs to liquidator**

#### **4.80. (NO CVL APPLICATION)**

(1) Where a liquidator is appointed, the official receiver shall forthwith transmit to him all the proofs which he has so far received, together with an itemised list of them.

(2) The liquidator shall sign the list by way of receipt for the proofs, and return it to the official receiver.

(3) From then on, all proofs of debt shall be sent to the liquidator, and retained by him.

### **New liquidator appointed**

**4.81.**—(1) If a new liquidator is appointed in place of another, the former liquidator shall transmit to him all proofs which he has received, together with an itemised list of them.

(2) The new liquidator shall sign the list by way of receipt for the proofs, and return it to his predecessor.

### **Admission and rejection of proofs for dividend**

**4.82.**—(1) A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount.

(2) If the liquidator rejects a proof in whole or in part, he shall prepare a written statement of his reasons for doing so, and send it forthwith to the creditor.

### **Appeal against decision on proof**

**4.83.**—(1) If a creditor is dissatisfied with the liquidator's decision with respect to his proof (including any decision on the question of preference), he may apply to the court for the decision to be reversed or varied.

The application must be made within 21 days of his receiving the statement sent under Rule 4.82(2).

(2) A contributory or any other creditor may, if dissatisfied with the liquidator's decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the liquidator's decision.

(3) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to the creditor who lodged the proof in question (if it is not himself) and to the liquidator.

(4) The liquidator shall, on receipt of the notice, file in court the relevant proof, together (if appropriate) with a copy of the statement sent under Rule 4.82(2).

(5) After the application has been heard and determined, the proof shall, unless it has been wholly disallowed, be returned by the court to the liquidator.

(6) The official receiver is not personally liable for costs incurred by any person in respect of an application under this Rule; and the liquidator (if other than the official receiver) is not so liable unless the court makes an order to that effect.

### **Withdrawal or variation of proof**

**4.84.** A creditor's proof may at any time, by agreement between himself and the liquidator, be withdrawn or varied as to the amount claimed.

### **Expunging of proof by the court**

**4.85.—**(1) The court may expunge a proof or reduce the amount claimed—

- (a) on the liquidator's application, where he thinks that the proof has been improperly admitted, or ought to be reduced; or
- (b) on the application of a creditor, if the liquidator declines to interfere in the matter.

(2) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant—

- (a) in the case of an application by the liquidator, to the creditor who made the proof, and
- (b) in the case of an application by a creditor, to the liquidator and to the creditor who made the proof (if not himself).

## **SECTION B: QUANTIFICATION OF CLAIM**

### **Estimate of quantum**

**4.86.—**(1) The liquidator shall estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value; and he may revise any estimate previously made, if he thinks fit by reference to any change of circumstances or to information becoming available to him.

He shall inform the creditor as to his estimate and any revision of it.

(2) Where the value of a debt is estimated under this Rule, or by the court under section 168(3) or (5), the amount provable in the winding up in the case of that debt is that of the estimate for the time being.

### **Negotiable instruments, etc**

**4.87.** Unless the liquidator allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or his authorised representative to be a true copy.

### **Secured creditors**

**4.88.**—(1) If a secured creditor realises his security, he may prove for the balance of his debt, after deducting the amount realised.

(2) If a secured creditor voluntarily surrenders his security for the general benefit of creditors, he may prove for his whole debt, as if it were unsecured.

### **Discounts**

**4.89.** There shall in every case be deducted from the claim all trade and other discounts which would have been available to the company but for its liquidation, except any discount for immediate, early or cash settlement.

### **Mutual credit and set-off**

**4.90.**—(1) This Rule applies where, before the company goes into liquidation there have been mutual credits, mutual debts or other mutual dealings between the company and any creditor of the company proving or claiming to prove for a debt in the liquidation.

(2) An account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sums due from one party shall be set off against the sums due from the other.

(3) Sums due from the company to another party shall not be included in the account taken under paragraph (2) if that other party had notice at the time they became due that a meeting of creditors had been summoned under section 98 or (as the case may be) a petition for the winding up of the company was pending.

(4) Only the balance (if any) of the account is provable in the liquidation. Alternatively (as the case may be) the amount shall be paid to the liquidator as part of the assets.

### **Debt in foreign currency**

**4.91.**—(1) For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the date when the company went into liquidation.

(2) “The official exchange rate” is the middle market rate at the Bank of England, as published for the date in question. In the absence of any such published rate, it is such rate as the court determines.

### **Payments of a periodical nature**

**4.92.**—(1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date when the company went into liquidation.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day.

### **Interest**

**4.93.**—(1) Where a debt proved in the liquidation bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the company went into liquidation.

(2) In the following circumstances the creditor's claim may include interest on the debt for periods before the company went into liquidation, although not previously reserved or agreed.

(3) If the debt is due by virtue of a written instrument, and payable at a certain time, interest may be claimed for the period from that time to the date when the company went into liquidation.

(4) If the debt is due otherwise, interest may only be claimed if, before that date, a demand for payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment.

(5) Interest under paragraph (4) may only be claimed for the period from the date of the demand to that of the company's going into liquidation.

(6) The rate of interest to be claimed under paragraph (3) or (4) of this Rule is the rate specified in section 17 of the Judgments Act 1838 on the date when the company went into liquidation, except that, where the case falls within paragraph (4), the rate is that specified in the notice there referred to, not exceeding the rate under the Judgments Act mentioned above.

### **Debt payable at future time**

**4.94.** A creditor may prove for a debt of which payment was not yet due on the date when the company went into liquidation, but subject to Rule 11.13 in Part 11 of the Rules (adjustment of dividend where payment made before time).

## **CHAPTER 10**

### **SECURED CREDITORS**

### **Value of security**

**4.95.—**(1) A secured creditor may, with the agreement of the liquidator or the leave of the court, at any time alter the value which he has, in his proof of debt, put upon his security.

(2) However, if a secured creditor—

- (a) being the petitioner, has in the petition put a value on his security, or
- (b) has voted in respect of the unsecured balance of his debt,

he may re-value his security only with leave of the court. (NO CVL APPLICATION)

### **Surrender for non-disclosure**

**4.96.—**(1) If a secured creditor omits to disclose his security in his proof of debt, he shall surrender his security for the general benefit of creditors, unless the court, on application by him, relieves him for the effect of this Rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof of debt to be amended, on such terms as may be just.

### **Redemption by liquidator**

**4.97.—**(1) The liquidator may at any time give notice to a creditor whose debt is secured that he proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the liquidator may allow) in which, if he so wishes, to exercise his right to revalue his security (with the leave of the court, where Rule 4.95(2) applies).

If the creditor re-values his security, the liquidator may only redeem at the new value.

(3) If the liquidator redeems the security, the cost of transferring it is payable out of the assets.

(4) A secured creditor may at any time, by a notice in writing, call on the liquidator to elect whether he will or will not exercise his power to redeem the security at the value then placed on it; and the liquidator then has 6 months in which to exercise the power or determine not to exercise it.

### **Test of security's value**

**4.98.**—(1) Subject as follows, the liquidator, if he is dissatisfied with the value which a secured creditor puts on his security (whether in his proof or by way of re-valuation under Rule 4.97), may require any property comprised in the security to be offered for sale.

(2) The terms of sale shall be such as may be agreed, or as the court may direct; and if the sale is by auction, the liquidator on behalf of the company, and the creditor on his own behalf, may appear and bid.

### **Realisation of security by creditor**

**4.99.** If a creditor who has valued his security subsequently realises it (whether or not at the instance of the liquidator)—

- (a) the net amount realised shall be substituted for the value previously put by the creditor on the security, and
- (b) that amount shall be treated in all respects as an amended valuation made by him.

## **CHAPTER 11**

### **THE LIQUIDATOR**

#### ***SECTION A: APPOINTMENT AND ASSOCIATED FORMALITIES***

### **Appointment by creditors or contributories**

#### **4.100. (NO CVL APPLICATION)**

(1) This Rule applies where a person is appointed as liquidator either by a meeting of creditors or by a meeting of contributories.

(2) 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) Where the chairman of the meeting is not the official receiver, he shall send the certificate to him.

(4) The official receiver shall in any case file a copy of the certificate in court; and the liquidator's appointment is effective as from the date on which the official receiver files the copy certificate in court, that date to be endorsed on the copy certificate.

(5) The certificate, so endorsed, shall be sent by the official receiver to the liquidator.

### **Appointment by creditors or by the company**

**4.101-CVL.**—(1) This Rule applies where a person is appointed as liquidator either by a meeting of creditors or 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; the liquidator's appointment is effective from the date of the certificate.

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

(4) Paragraphs (2) and (3) need not be complied with in the case of a liquidator appointed by a company meeting and replaced by another liquidator appointed on the same day by a creditors' meeting.



## **Appointment by the court**

### **4.102. (NO CVL APPLICATION)**

(1) This Rule applies where the liquidator is appointed by the court under section 139(4) (different persons nominated by creditors and contributories) or section 140 (liquidation following administration or voluntary arrangement).

(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 2 copies of the order to the official receiver. One of the copies shall be sealed, and this shall be sent to the person appointed as liquidator.

(4) The liquidator's appointment takes effect from the date of the order.

(5) The liquidator shall, within 28 days of his appointment, give notice of it to all creditors and contributories of the company of whom he is aware in that period. Alternatively, if the court allows, he may advertise his appointment in accordance with the court's directions.

(6) In his notice or advertisement under this Rule the liquidator shall—

- (a) state whether he proposes to summon meetings of creditors and contributories for the purpose of establishing a liquidation committee, or proposes to summon only a meeting of creditors for that purpose, and
- (b) if he does not propose to summon any such meeting, set out the powers of the creditors under the Act to require him to summon one.

## **Appointment by the court**

**4.103-CVL.—**(1) This Rule applies where the liquidator is appointed by the court under section 100(3) or 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. Alternatively, if the court allows, he may advertise his appointment in accordance with the court's directions.

## **Appointment by Secretary of State**

### **4.104. (NO CVL APPLICATION)**

(1) This Rule applies where the official receiver applies to the Secretary of State to appoint a liquidator in place of himself, or refers to the Secretary of State the need for an appointment.

(2) If the Secretary of State makes an appointment, he shall send two copies of the certificate of appointment to the official receiver, who shall transmit one such copy to the person appointed, and file the other in court.

(3) The certificate shall specify the date from which the liquidator's appointment is to be effective.

## **Authentication of liquidator's appointment**

**4.105.** A copy of the certificate of the liquidator's appointment or (as the case may be) a sealed copy of the court's order, 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.

### **Appointment to be advertised and registered**

**4.106.**—(1) Subject as follows, where the liquidator is appointed by a creditors' or contributories' meeting, or by a meeting of the company, he shall, on receiving his certificate of appointment, give notice of his appointment in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the company's creditors and contributories.

(2-CVL) Paragraph (1) need not be complied with in the case of a liquidator appointed by a company meeting and replaced by another liquidator appointed on the same day by a creditors' meeting.

(3) The expense of giving notice under this Rule shall be borne in the first instance by the liquidator; but he is entitled to be reimbursed out of the assets, as an expense of the liquidation.

The same applies also in the case of the notice or advertisement required where the appointment is made by the court or the Secretary of State.

(4) In the case of a winding up by the court, the liquidator shall also forthwith notify his appointment to the registrar of companies.

This applies however the liquidator is appointed.

### **Hand-over of assets to liquidator**

#### **4.107. (NO CVL APPLICATION)**

(1) This Rule applies only where the liquidator is appointed in succession to the official receiver acting as liquidator.

(2) When the liquidator's appointment takes effect, the official receiver shall forthwith do all that is required for putting him into possession of the assets.

(3) On taking possession of the assets, the liquidator shall discharge any balance due to the official receiver on account of—

- (a) expenses properly incurred by him and payable under the Act or the Rules, and
- (b) any advances made by him in respect of the assets, together with interest on such advances at the rate specified in section 17 of the Judgments Act 1838 at the date of the winding-up order.

(4) Alternatively, the liquidator may (before taking office) give to the official receiver a written undertaking to discharge any such balance out of the first realisation of assets.

(5) The official receiver has a charge on the assets in respect of any sums due to him under paragraph (3). But, where the liquidator has realised assets with a view to making those payments, the official receiver's charge does not extend in respect of sums deductible by the liquidator from the proceeds of realisation, as being expenses properly incurred therein.

(6) The liquidator shall from time to time out of the realisation of assets discharge all guarantees properly given by the official receiver for the benefit of the estate, and shall pay all the official receiver's expenses.

(7) The official receiver shall give to the liquidator all such information relating to the affairs of the company and the course of the winding up as he (the official receiver) considers to be reasonably required for the effective discharge by the liquidator of his duties as such.

(8) The liquidator shall also be furnished with a copy of any report made by the official receiver under Chapter 7 of this Part of the Rules.

## **SECTION B: RESIGNATION AND REMOVAL; VACATION OF OFFICE**

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

**4.108.**—(1) Before resigning his office, the liquidator must call a meeting of creditors 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, and shall draw the attention of creditors to Rule 4.121 or, as the case may be, Rule 4.122-CVL with respect to the liquidator's release.

(2) A copy of the notice shall at the same time also be sent to the official receiver. (NO CVL APPLICATION)

(3) The notice to creditors 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.

(4) 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.

(5) 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 and that of the other or others, it is no longer expedient that there should continue to be the present number of joint liquidators.

### **Action following acceptance of resignation**

**4.109.** (NO CVL APPLICATION)

(1) This Rule applies where a meeting is summoned to receive the liquidator's resignation.

(2) If the chairman of the meeting is other than the official receiver, and there is passed at the meeting any of the following resolutions—

- (a) that the liquidator's resignation be accepted,
- (b) that a new liquidator be appointed,
- (c) that the resigning liquidator be not given his release,

the chairman shall, within 3 days, send to the official receiver a copy of the resolution.

If it has been resolved to accept the liquidator's resignation, the chairman shall send to the official receiver a certificate to that effect.

(3) If the creditors have resolved to appoint a new liquidator, the certificate of his appointment shall also be sent to the official receiver within that time; and Rule 4.100 shall be complied with in respect of it.

(4) If the liquidator's resignation is accepted, the notice of it required by section 172(6) shall be given by him forthwith after the meeting; and he shall send a copy of the notice to the official receiver.

The notice shall be accompanied by a copy of the account sent to creditors under Rule 4.108(3).

(5) The official receiver shall file a copy of the notice in court.

(6) The liquidator's resignation is effective as from the date on which the official receiver files the copy notice in court, that date to be endorsed on the copy notice.

### **Action following acceptance of resignation**

**4.110-CVL.**—(1) This Rule applies where a meeting is summoned to receive the liquidator's resignation.

(2) If his resignation is accepted, the notice of it required by section 171(5) shall be given by him forthwith after the meeting.

(3) Where a new liquidator is appointed in place of the one who has resigned, the certificate of his appointment shall be delivered forthwith by the chairman of the meeting to the new liquidator.

### **Leave to resign granted by the court**

**4.111.**—(1) If at a creditors' meeting summoned to accept the liquidator's resignation it is resolved that it be not accepted, the court may, on the liquidator's application, make an order giving him leave to resign.

(2) The court's order may include such provision as it thinks fit with respect to matters arising in connection with the resignation, and shall determine the date from which the liquidator's release is effective.

(3) The court shall send two sealed copies of the order to the liquidator, who shall send one of the copies forthwith to the official receiver. (NO CVL APPLICATION)

(4-CVL) The court shall send two sealed copies of the order to the liquidator, who shall forthwith send one of them to the registrar of companies.

(5) On sending notice of his resignation to the court, the liquidator shall send a copy of it to the official receiver. (NO CVL APPLICATION)

### **Advertisement of resignation**

**4.112.** 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 and (if it be the case) that he has been given his release.

### **Meeting of creditors to remove liquidator**

**4.113.** (NO CVL APPLICATION)

(1) Where a meeting of creditors is summoned for the purpose of removing the liquidator, the notice summoning it shall indicate that this is the purpose, or one of the purposes, of the meeting; and the notice shall draw the attention of creditors to section 174(4) with respect to the liquidator's release.

(2) A copy of the notice shall at the same time also be sent to the official receiver.

(3) At the meeting, a person other than the liquidator or his nominee may be elected to act as chairman; but if the liquidator or his nominee is chairman and a resolution has been proposed for the liquidator's removal, the chairman shall not adjourn the meeting without the consent of at least one-half (in value) of the creditors present (in person or by proxy) and entitled to vote.

(4) Where the chairman of the meeting is other than the official receiver, and there is passed at the meeting any of the following resolutions—

- (a) that the liquidator be removed,
- (b) that a new liquidator be appointed,

(c) that the removed liquidator be not given his release,  
the chairman shall, within 3 days, send to the official receiver a copy of the resolution.

If it has been resolved to remove the liquidator, the chairman shall send to the official receiver a certificate to that effect.

(5) If the creditors have resolved to appoint a new liquidator, the certificate of his appointment shall also be sent to the official receiver within that time; and Rule 4.100 above shall be complied with in respect of it.

### **Meeting of creditors to remove liquidator**

**4.114-CVL.**—(1) A meeting held under section 171(2)(b) for the removal of the liquidator shall be summoned by him if requested by 25 per cent. in value of the company's creditors, excluding those who are connected with it.

(2) The notice summoning the meeting shall indicate that the removal of the liquidator is the purpose, or one of the purposes, of the meeting; and the notice shall draw the attention of creditors to section 173(2) with respect to the liquidator's release.

(3) At the meeting, a person other than the liquidator or his nominee may be elected to act as chairman; but if the liquidator or his nominee is chairman and a resolution has been proposed for the liquidator's removal, the chairman shall not adjourn the meeting without the consent of at least one-half (in value) of the creditors present (in person or by proxy) and entitled to vote.

### **Court's power to regulate meetings under Rules 4.113, 4.114-CVL**

**4.115.** Where a meeting under Rule 4.113 or 4.114-CVL is to be held, or is proposed to be summoned, the court may, on the application of any creditor, give directions as to the mode of summoning it, the sending out and return of forms of proxy, the conduct of the meeting, and any other matter which appears to the court to require regulation or control under this Rule.

### **Procedure on removal**

#### **4.116. (NO CVL APPLICATION)**

(1) Where the creditors have resolved that the liquidator be removed, the official receiver shall file in court the certificate of removal.

(2) The resolution is effective as from the date on which the official receiver files the certificate of removal in court, and that date shall be endorsed on the certificate.

(3) A copy of the certificate, so endorsed, shall be sent by the official receiver to the liquidator who has been removed and, if a new liquidator has been appointed, to him.

(4) The official receiver shall not file the certificate in court unless and until the Secretary of State has certified to him that the removed liquidator has reconciled his account with that held by the Secretary of State in respect of the winding up.

### **Procedure on removal**

**4.117-CVL.** Where the creditors have resolved that the liquidator be removed, the chairman of the creditors' meeting shall forthwith—

- (a) if at the meeting another liquidator was not appointed, send the certificate of the liquidator's removal to the registrar of companies, and
- (b) otherwise, deliver the certificate to the new liquidator, who shall send it to the registrar.

## **Advertisement of removal**

**4.118.** Where a new liquidator is appointed in place of one removed, the former shall, in giving notice of his appointment, state that his predecessor has been removed and (if it be the case) that he has been given his release.

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

### **4.119. (NO CVL APPLICATION)**

(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 meeting of creditors 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 and the official receiver 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.

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

(6) Where the court removes the liquidator—

- (a) it shall send copies of the order of removal to him and to the official receiver;
- (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 4.102 applies.

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

**4.120-CVL.—**(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 creditors' 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.

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

(6) 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 4.103-CVL applies.

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

##### **4.121. (NO CVL APPLICATION)**

(1) Where the liquidator's resignation is accepted by a meeting of creditors which has not resolved against his release, he has his release from when his resignation is effective under Rule 4.109.

(2) Where the liquidator is removed by a meeting of creditors which has not resolved against his release, the fact of his release shall be stated in the certificate of removal.

(3) Where—

- (a) the liquidator resigns, and the creditors' meeting called to receive his resignation has resolved against his release, or

- (b) he is removed by a creditors' meeting which has so resolved, or 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 official receiver, to be filed in court.

(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.

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

**4.122-CVL.**—(1) Where the liquidator's resignation is accepted by a meeting of creditors which has not resolved against his release, he has his release from when he gives notice of his resignation to the registrar of companies.

(2) Where the liquidator is removed by a creditors' meeting which has not resolved against his release, the fact of his release shall be stated in the certificate of removal.

(3) Where—

- (a) the liquidator resigns, and the creditors' meeting called to receive his resignation has resolved against his release, or

- (b) he is removed by a creditors' meeting which has so resolved, or 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.

#### **Removal of liquidator by Secretary of State**

##### **4.123. (NO CVL APPLICATION)**

(1) If the Secretary of State decides to remove the liquidator, he shall before doing so notify the liquidator and the official receiver of his decision and the grounds of it, and specify a period within which the liquidator may make representations against implementation of the decision.

(2) If the Secretary of State directs the removal of the liquidator, he shall forthwith—

- (a) file notice of his decision in court, and

- (b) send notice to the liquidator and the official receiver.

- (3) If the liquidator is removed by direction of the Secretary of State—
- (a) Rule 4.121 applies as regards the liquidator obtaining his release, as if he had been removed by the court, and
  - (b) the court may make any such order in his case as it would have power to make if he had been so removed.

#### *SECTION C: RELEASE ON COMPLETION OF ADMINISTRATION*

##### **Release of official receiver**

###### **4.124. (NO CVL APPLICATION)**

(1) The official receiver shall, before giving notice to the Secretary of State under section 174(3) (that the winding up is for practical purposes complete), send out notice of his intention to do so to all creditors who have proved their debts.

(2) The notice shall in each case be accompanied by a summary of the official receiver's receipts and payments as liquidator.

(3) The Secretary of State, when he has determined the date from which the official receiver is to have his release, shall give notice to the court that he has done so. The notice shall be accompanied by the summary referred to in paragraph (2).

##### **Final meeting**

###### **4.125. (NO CVL APPLICATION)**

(1) Where the liquidator is other than the official receiver, he shall give at least 28 days' notice of the final meeting of creditors to be held under section 146. The notice shall be sent to all creditors who have proved their debts; and the liquidator shall cause it to be gazetted at least one month before the meeting is to be held.

(2) The liquidator's report laid before the meeting under that section shall contain 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) At the final meeting, the creditors may question the liquidator with respect to any matter contained in his report, and may resolve against him having his release.

(4) The liquidator shall give notice to the court that the final meeting has been held; and the notice shall state whether or not he has been given his release, and be accompanied by a copy of the report laid before the final meeting. A copy of the notice shall be sent by the liquidator to the official receiver.

(5) If there is no quorum present at the final meeting, the liquidator shall report to the court that a final meeting was summoned in accordance with the Rules, but there was no quorum present; and the final meeting is then deemed to have been held, and the creditors not to have resolved against the liquidator having his release.

(6) If the creditors at the final meeting have not so resolved, the liquidator is released when the notice under paragraph (4) is filed in court. If they have so resolved, the liquidator must obtain his release from the Secretary of State and Rule 4.121 applies accordingly.



## **Final meeting**

**4.126-CVL.**—(1) The liquidator shall give at least 28 days' notice of the final meeting of creditors to be held under section 106. The notice shall be sent to all creditors who have proved their debts.

(2) At the final meeting, the creditors may question the liquidator with respect to any matter contained in the account required under the section, and may resolve against the liquidator having his release.

(3) Where the creditors have so resolved, he must obtain his release from the Secretary of State; and Rule 4.122-CVL applies accordingly.

## *SECTION D: REMUNERATION*

### **Fixing of remuneration**

**4.127.**—(1) The liquidator is entitled to receive remuneration for his services as such.

(2) The remuneration shall be fixed either—

- (a) as a percentage of the value of the assets which are realised or distributed, or of the one value and the other in combination, or
- (b) by reference to the time properly given by the insolvency practitioner (as liquidator) and his staff in attending to matters arising in the winding up.

(3) Where the liquidator is other than the official receiver, it is for the liquidation committee (if there is one) to determine whether the remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.

(4) In arriving at that determination, the committee shall have regard to the following matters—

- (a) the complexity (or otherwise) of the case,
- (b) any respects in which, in connection with the winding up, there falls on the insolvency practitioner (as liquidator) any responsibility of an exceptional kind or degree,
- (c) the effectiveness with which the insolvency practitioner appears to be carrying out, or to have carried out, his duties as liquidator, and
- (d) the value and nature of the assets with which the liquidator has to deal.

(5) If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the liquidation committee.

(6) If not fixed as above, the liquidator's remuneration shall be in accordance with the scale laid down for the official receiver by general regulations.

### **Other matters affecting remuneration**

**4.128.**—(1) Where the liquidator sells assets on behalf of a secured creditor, he is entitled to take for himself, out of the proceeds of sale, a sum by way of remuneration equivalent to that which is chargeable in corresponding circumstances by the official receiver under general regulations.

(2) Where there are joint liquidators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred—

- (a) to the court, for settlement by order, or
- (b) to the liquidation committee or a meeting of creditors, for settlement by resolution.

(3) If the liquidator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the company, profit costs shall not be paid unless this is authorised by the liquidation committee, the creditors or the court.

### **Recourse of liquidator to meeting of creditors**

**4.129.** If the liquidator's remuneration has been fixed by the liquidation committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

### **Recourse to the court**

**4.130.—**(1) If the liquidator considers that the remuneration fixed for him by the liquidation committee, or by resolution of the creditors, or as under Rule 4.127(6), is insufficient, he may apply to the court for an order increasing its amount or rate.

(2) The liquidator shall give at least 14 days' notice of his application to the members of the liquidation committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

(3) If there is no liquidation committee, the liquidator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

(4) The court may, if it appears to be a proper case, order the costs of the liquidator's application, including the costs of any member of the liquidation committee appearing on it, or any creditor so appearing, to be paid out of the assets.

### **Creditors' claim that remuneration is excessive**

**4.131.—**(1) Any creditor of the company may, with the concurrence of at least 25 per cent. in value of the creditors (including himself), apply to the court for an order that the liquidator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

(2) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application; 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, and give notice to the applicant accordingly.

(3) 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 the applicant intends to adduce in support of it.

(4) If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

(5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable out of the assets.

## **SECTION E: SUPPLEMENTARY PROVISIONS**

### **Liquidator deceased**

**4.132.** (NO CVL APPLICATION)

(1) Subject as follows, where the liquidator (other than the official receiver) has died, it is the duty of his personal representatives to give notice of the fact to the official receiver, specifying the date of the death.

This does not apply if notice has been given under any of the following paragraphs of this Rule.

(2) If the deceased liquidator was a partner in a firm, notice may be given to the official receiver by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners.

(3) Notice of the death may be given by any person producing to the official receiver the relevant death certificate or a copy of it.

(4) The official receiver shall give notice to the court, for the purpose of fixing the date of the deceased liquidator's release.

### **Liquidator deceased**

**4.133-CVL.**—(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 registrar of companies and to the liquidation committee (if any) or a member of that committee.

(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**

#### **4.134. (NO CVL APPLICATION)**

(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 official receiver, who shall give notice to the Secretary of State.

The official receiver shall file in court a copy of his notice under this paragraph.

(3) Rule 4.121 applies as regards the liquidator obtaining his release, as if he had been removed by the court.

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

**4.135-CVL.**—(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 4.122-CVL 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**

**4.136-CVL.** Where the liquidator vacates office in consequence of the court making a winding-up order against the company, Rule 4.122-CVL applies as regards his obtaining his release, as if he had been removed by the court.

### **Notice to official receiver of intention to vacate office**

#### **4.137. (NO CVL APPLICATION)**

(1) Where the liquidator intends to vacate office, whether by resignation or otherwise, and there remain any unrealised assets, he shall give notice of his intention to the official receiver, informing him of the nature, value and whereabouts of the assets in question.

(2) Where there is to be a creditors' meeting to receive the liquidator's resignation, or otherwise in respect of his vacation of office, the notice to the official receiver must be given at least 21 days before the meeting.

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

**4.138.**—(1) 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.

(2) When the winding up is for practical purposes complete, the liquidator shall forthwith file in court all proofs remaining with him in the proceedings. (NO CVL APPLICATION)

## ***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.

#### *SECTION G: RULES APPLYING IN EVERY WINDING UP, WHETHER VOLUNTARY OR BY THE COURT*

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

**4.149.**—(1) If in the administration of the estate the liquidator enters into any transaction with a person who is an associate of his, the court may, on the application of any person interested, 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 with respect to a liquidator's dealings with trust property, or the fiduciary obligations of any person.

##### **Rule against solicitation**

**4.150.**—(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 his appointment, it may order that no remuneration out of the assets be allowed 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 the Rules relating to the liquidator's remuneration.

## CHAPTER 12

### THE LIQUIDATION COMMITTEE

##### **Preliminary**

##### **4.151. (NO CVL APPLICATION)**

For the purposes of this Chapter—

- (a) an “insolvent winding up” is where the company is being wound up on grounds which include inability to pay its debts, and
- (b) a “solvent winding up” is where the company is being wound up on grounds which do not include that one.

##### **Membership of committee**

**4.152.**—(1) Subject to Rule 4.154 below, the liquidation committee shall consist as follows—

- (a) in any case of at least 3, and not more than 5, creditors of the company elected by the meeting of creditors held under section 141 of the Act, and

- (b) also, in the case of a solvent winding up, where the contributories' meeting held under that section so decides, of up to 3 contributories, elected by that meeting.

(NO CVL APPLICATION)

(2-CVL) The committee must have at least 3 members before it can be established.

(3) Any creditor of the company (other than one whose debt is fully secured) is eligible to be a member of the committee, so long as—

- (a) he has lodged a proof of his debt, and
- (b) his proof has neither been wholly disallowed for voting purposes, nor wholly rejected for purposes of distribution or dividend.

(4) No person can be a member as both a creditor and a contributory.

(5) A body corporate may be a member of the committee, but it cannot act as such otherwise than by a representative appointed under Rule 4.159.

(6) Members of the committee elected or appointed to represent the creditors are called “creditor members”; and those elected or appointed to represent the contributories are called “contributory members”.

(7) Where a representative of the Deposit Protection Board exercises the right (under section 28 of the Banking Act 1979) to be a member of the committee, he is to be regarded as an additional creditor member.

### **Formalities of establishment**

**4.153.**—(1) The liquidation committee does not come into being, and accordingly cannot act, until the liquidator has issued a certificate of its due constitution.

(2) If the chairman of the meeting which resolves to establish the committee is not the liquidator, he shall forthwith give notice of the resolution to the liquidator (or, as the case may be, the person appointed as liquidator by that same meeting), and inform him of the names and addresses of the persons elected to be members of the committee.

(3) No person may act as a member of the committee unless and until he has agreed to do so; and the liquidator's certificate of the committee's due constitution shall not issue before the minimum number of persons (in accordance with Rule 4.152) who are to be members of it have agreed to act.

(4) As and when the others (if any) agree to act, the liquidator shall issue an amended certificate.

(5) The certificate, and any amended certificate, shall be filed in court by the liquidator.

(NO CVL APPLICATION)

(6-CVL) The certificate, and any amended certificate, shall be sent by the liquidator to the registrar of companies.

(7) If after the first establishment of the committee there is any change in its membership, the liquidator shall report the change to the court. (NO CVL APPLICATION)

(8-CVL) If after the first establishment of the committee there is any change in its membership, the liquidator shall report the change to the registrar of companies.

### **Committee established by contributories**

**4.154.** (NO CVL APPLICATION)

(1) The following applies where the creditors' meeting under section 141 does not decide that a liquidation committee should be established, or decides that a committee should not be established.



(2) The meeting of contributories under that section may appoint one of their number to make application to the court for an order to the liquidator that a further creditors' meeting be summoned for the purpose of establishing a liquidation committee; and—

- (a) the court may, if it thinks that there are special circumstances to justify it, make that order, and
- (b) the creditors' meeting summoned by the liquidator in compliance with the order is deemed to have been summoned under section 141.

(3) If the creditors' meeting so summoned does not establish a liquidation committee, a meeting of contributories may do so.

(4) The committee shall then consist of at least 3, and not more than 5, contributories elected by that meeting; and Rule 4.153 applies, substituting references to contributories for references to creditors.

### **Obligations of liquidator to committee**

**4.155.**—(1) Subject as follows, it is the duty of the liquidator to report to the members of the liquidation committee all such matters as appear to him to be, or as they have indicated to him as being, of concern to them with respect to the winding up.

(2) In the case of matters so indicated to him by the committee, the liquidator need not comply with any request for information where it appears to him that—

- (a) the request is frivolous or unreasonable, or
- (b) the cost of complying would be excessive, having regard to the relative importance of the information, or
- (c) there are not sufficient assets to enable him to comply.

(3) Where the committee has come into being more than 28 days after the appointment of the liquidator, he shall report to them, in summary form, what actions he has taken since his appointment, and shall answer all such questions as they may put to him regarding his conduct of the winding up hitherto.

(4) A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report to him by the liquidator, otherwise than in summary form, of any matters previously arising.

(5) Nothing in this Rule disentitles the committee, or any member of it, from having access to the liquidator's records of the liquidation, or from seeking an explanation of any matter within the committee's responsibility.

### **Meetings of the committee**

**4.156.**—(1) Subject as follows, meetings of the liquidation committee shall be held when and where determined by the liquidator.

(2) The liquidator shall call a first meeting of the committee to take place within 3 months of his appointment or of the committee's establishment (whichever is the later); and thereafter he shall call a meeting—

- (a) if so requested by a creditor member of the committee or his representative (the meeting then to be held within 21 days of the request being received by the liquidator), and
- (b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

(3) The liquidator shall give 7 days' written notice of the venue of a meeting to every member of the committee (or his representative, if designated for that purpose), unless in any case the requirement of the notice has been waived by or on behalf of any member.

Waiver may be signified either at or before the meeting.

### **The chairman at meetings**

**4.157.**—(1) The chairman at any meeting of the liquidation committee shall be the liquidator, or a person nominated by him to act.

(2) A person so nominated must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the company, or
- (b) an employee of the liquidator or his firm who is experienced in insolvency matters.

### **Quorum**

**4.158.**—(1) A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least 2 creditor members are present or represented.

(NO CVL APPLICATION)

(2-CVL) A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least 2 members are present or represented.

### **Committee-members' representatives**

**4.159.**—(1) A member of the liquidation committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.

(2) A person acting as a committee-member's representative must hold a letter of authority entitling him so to act (either generally or specially) and signed by or on behalf of the committee-member.

(3) The chairman at any meeting of the committee may call on a person claiming to act as a committee-member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

(4) No member may be represented by a body corporate, or by a person who is an undischarged bankrupt or is subject to a composition or arrangement with his creditors.

(5) No person shall—

- (a) on the same committee, act at one and the same time as representative of more than one committee-member, or
- (b) act both as a member of the committee and as representative of another member.

(6) Where a member's representative signs any document on the member's behalf, the fact that he so signs must be stated below his signature.

### **Resignation**

**4.160.** A member of the liquidation committee may resign by notice in writing delivered to the liquidator.

### **Termination of membership**

**4.161.**—(1) A person's membership of the liquidation committee is automatically terminated if—

- (a) he becomes bankrupt or compounds or arranges with his creditors, or

(b) at 3 consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this Rule is not to apply in his case).

(2) However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.

(3) The membership of a creditor member is also automatically terminated if he ceases to be, or is found never to have been, a creditor.

### **Removal**

**4.162.**—(1) A creditor member of the committee may be removed by resolution at a meeting of creditors; and a contributory member may be removed by a resolution of a meeting of contributories.

(2) In either case, 14 days' notice must be given of the intention to move the resolution.

### **Vacancy (creditor members)**

**4.163.**—(1) The following applies if there is a vacancy among the creditor members of the committee.

(2) The vacancy need not be filled if the liquidator and a majority of the remaining creditor members so agree, provided that the total number of members does not fall below the minimum required by Rule 4.152.

(3) The liquidator may appoint any creditor (being qualified under the Rules to be a member of the committee) to fill the vacancy, if a majority of the other creditor members agree to the appointment, and the creditor concerned consents to act.

(4) Alternatively, a meeting of creditors may resolve that a creditor be appointed (with his consent) to fill the vacancy. In this case, at least 14 days' notice must have been given of the resolution to make such an appointment (whether or not of a person named in the notice).

(5) Where the vacancy is filled by an appointment made by a creditors' meeting at which the liquidator is not present, the chairman of the meeting shall report to the liquidator the appointment which has been made.

### **Vacancy (contributory members)**

**4.164.**—(1) The following applies if there is a vacancy among the contributory members of the committee.

(2) The vacancy need not be filled if the liquidator and a majority of the remaining contributory members so agree, provided that, in the case of a committee of contributory members only, the total number of members does not fall below the minimum required by Rule 4.154(4) or, as the case may be, 4.171(5).

(3) The liquidator may appoint any contributory member (being qualified under the Rules to be a member of the committee) to fill the vacancy, if a majority of the other contributory members agree to the appointment, and the contributory concerned consents to act.

(4) Alternatively, a meeting of contributories may resolve that a contributory be appointed (with his consent) to fill the vacancy. In this case, at least 14 days' notice must have been given of the resolution to make such an appointment (whether or not of a person named in the notice).

(5-CVL) Where the contributories make an appointment under paragraph (4), the creditor members of the committee may, if they think fit, resolve that the person appointed ought not to be a member of the committee; and—

(a) that person is not then, unless the court otherwise directs, qualified to act as a member of the committee, and

(b) on any application to the court for a direction under this paragraph the court may, if it thinks fit, appoint another person (being a contributory) to fill the vacancy on the committee.

(6) Where the vacancy is filled by an appointment made by a contributories' meeting at which the liquidator is not present, the chairman of the meeting shall report to the liquidator the appointment which has been made.

### **Voting rights and resolutions**

#### **4.165. (NO CVL APPLICATION)**

(1) At any meeting of the committee, each member of it (whether present himself, or by his representative) has one vote; and a resolution is passed when a majority of the creditor members present or represented have voted in favour of it.

(2) Subject to the next paragraph, the votes of contributory members do not count towards the number required for passing a resolution, but the way in which they vote on any resolution shall be recorded.

(3) Paragraph (2) does not apply where, by virtue of Rule 4.154 or 4.171, the only members of the committee are contributories. In that case the committee is to be treated for voting purposes as if all its members were creditors.

(4) Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting. The record shall be signed by the chairman and kept with the records of the liquidation.

### **Voting rights and resolutions**

**4.166-CVL.**—(1) At any meeting of the committee, each member of it (whether present himself, or by his representative) has one vote; and a resolution is passed when a majority of the members present or represented have voted in favour of it.

(2) Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting. The record shall be signed by the chairman and kept with the records of the liquidation.

### **Resolutions by post**

**4.167.**—(1) In accordance with this Rule, the liquidator may seek to obtain the agreement of members of the liquidation committee to a resolution by sending to every member (or his representative designated for the purpose) a copy of the proposed resolution.

(2) Where the liquidator makes use of the procedure allowed by this Rule, he shall send out to members of the committee or their representatives (as the case may be) a statement incorporating the resolution to which their agreement is sought, each resolution (if more than one) being set out in a separate document.

(3) Any creditor member of the committee may, within 7 business days from the date of the liquidator sending out a resolution, require him to summon a meeting of the committee to consider the matters raised by the resolution. (NO CVL APPLICATION)

(4-CVL) Any member of the committee may, within 7 business days from the date of the liquidator sending out a resolution, require him to summon a meeting of the committee to consider the matters raised by the resolution.

(5) In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the liquidator is notified in writing by a majority of the creditor members that they concur with it. (NO CVL APPLICATION)

(6-CVL) In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the liquidator is notified in writing by a majority of the members that they concur with it.

(7) A copy of every resolution passed under this Rule, and a note that the committee's concurrence was obtained, shall be kept with the records of the liquidation.

### **Liquidator's reports**

**4.168.**—(1) The liquidator shall, as and when directed by the liquidation committee (but not more often than once in any period of 2 months), send a written report to every member of the committee setting out the position generally as regards the progress of the winding up and matters arising in connection with it, to which he (the liquidator) considers the committee's attention should be drawn.

(2) In the absence of such directions by the committee, the liquidator shall send such a report not less often than once in every period of 6 months.

(3) The obligations of the liquidator under this Rule are without prejudice to those imposed by Rule 4.155.

### **Expenses of members, etc**

**4.169.** The liquidator shall defray out of the assets, in the prescribed order of priority, any reasonable travelling expenses directly incurred by members of the liquidation committee or their representatives in respect of their attendance at the committee's meetings, or otherwise on the committee's business.

### **Dealings by committee-members and others**

**4.170.**—(1) This Rule applies to—

- (a) any member of the liquidation committee,
- (b) any committee-member's representative,
- (c) any person who is an associate of a member of the committee or a committee-member's representative, and
- (d) any person who has been a member of the committee at any time in the last 12 months.

(2) Subject as follows, a person to whom this Rule applies shall not enter into any transaction whereby he—

- (a) receives out of the company's assets any payment for services given or goods supplied in connection with the administration, or
- (b) obtains any profit from the administration, or
- (c) acquires any asset forming part of the estate.

(3) Such a transaction may be entered into by a person to whom this Rule applies—

- (a) with the prior leave of the court, or
- (b) if he does so as a matter of urgency, or by way of performance of a contract in force before the date on which the company went into liquidation, and obtains the court's leave for the transaction, having applied for it without undue delay, or
- (c) with the prior sanction of the liquidation committee, where it is satisfied (after full disclosure of the circumstances) that the person will be giving full value in the transaction.

(4) Where in the committee a resolution is proposed that sanction be accorded for a transaction to be entered into which, without that sanction or the leave of the court, would be in contravention

of this Rule, no member of the committee, and no representative of a member, shall vote if he is to participate directly or indirectly in the transaction.

(5) The court may, on the application of any person interested—

- (a) set aside a transaction on the ground that it has been entered into in contravention of this Rule, and
- (b) make with respect to it such other order as it thinks fit, including (subject to the following paragraph) an order requiring a person to whom this Rule applies to account for any profit obtained from the transaction and compensate the estate for any resultant loss.

(6) In the case of a person to whom this Rule applies as an associate of a member of the committee or of a committee-member's representative, the court shall not make any order under paragraph (5), if satisfied that he entered into the relevant transaction without having any reason to suppose that in doing so he would contravene this Rule.

(7) The costs of an application to the court for leave under this Rule are not payable out of the assets, unless the court so orders.

#### **Composition of committee when creditors paid in full**

**4.171.**—(1) This Rule applies if the liquidator issues a certificate that the creditors have been paid in full, with interest in accordance with section 189.

(2) The liquidator shall forthwith file the certificate in court. (NO CVL APPLICATION)

(3-CVL) The liquidator shall forthwith send a copy of the certificate to the registrar of companies.

(4) The creditor members of the liquidation committee cease to be members of the committee.

(5) The committee continues in being unless and until abolished by decision of a meeting of contributories, and (subject to the next paragraph) so long as it consists of at least 3 contributory members.

(6) The committee does not cease to exist on account of the number of contributory members falling below 3, unless and until 28 days have elapsed since the issue of the liquidator's certificate under paragraph (1).

But at any time when the committee consists of less than 3 contributory members, it is suspended and cannot act.

(7) Contributories may be co-opted by the liquidator, or appointed by a contributories' meeting, to be members of the committee; but the maximum number of members is 5.

(8) The foregoing Rules in this Chapter continue to apply to the liquidation committee (with any necessary modifications) as if all the members of the committee were creditor members.

#### **Committee's functions vested in Secretary of State**

**4.172.** (NO CVL APPLICATION)

(1) At any time when the functions of the liquidation committee are vested in the Secretary of State under section 141(4) or (5), requirements of the Act or the Rules about notices to be given, or reports to be made, to the committee by the liquidator do not apply, otherwise than as enabling the committee to require a report as to any matter.

(2) Where the committee's functions are so vested under section 141(5), they may be exercised by the official receiver.

## CHAPTER 13

### THE LIQUIDATION COMMITTEE WHERE WINDING UP FOLLOWS IMMEDIATELY ON ADMINISTRATION (NO CVL APPLICATION)

#### **Preliminary**

**4.173.**—(1) The Rules in this Chapter apply where—

- (a) the winding-up order has been made immediately upon the discharge of an administration order under Part II of the Act, and
- (b) the court makes an order under section 140(1) of the Act appointing as liquidator the person who was previously the administrator.

(2) In this Chapter, “insolvent winding up”, “solvent winding up”, “creditor member” and “contributory member” mean the same as in Chapter 12.

#### **Continuation of creditors' committee**

**4.174.**—(1) If under section 26 a creditors' committee has been established for the purposes of the administration, then (subject as follows in this Chapter) that committee continues in being as the liquidation committee for the purposes of the winding up, and—

- (a) it is deemed to be a committee established as such under section 141, and
- (b) no action shall be taken under subsection (1) to (3) of that section to establish any other.

(2) This Rule does not apply if, at the time when the court's order under section 140(1) is made, the committee under section 26 consists of less than 3 members; and a creditor who was, immediately before that date, a member of it, ceases to be a member on the making of the order if his debt is fully secured.

#### **Membership of committee**

**4.175.**—(1) Subject as follows, the liquidation committee shall consist of at least 3, and not more than 5, creditors of the company, elected by the creditors' meeting held under section 26 or (in order to make up numbers or fill vacancies) by a creditors' meeting summoned by the liquidator after the company goes into liquidation.

(2) In the case of a solvent winding up, the liquidator shall, on not less than 21 days' notice, summon a meeting of contributories, in order to elect (if it so wishes) contributory members of the liquidation committee, up to 3 in number.

#### **Liquidator's certificate**

**4.176.**—(1) The liquidator shall issue a certificate of the liquidation committee's continuance, specifying the person who are, or are to be, members of it.

(2) It shall be stated in the certificate whether or not the liquidator has summoned a meeting of contributories under Rule 4.175(2), and whether (if so) the meeting has elected contributories to be members of the committee.

(3) Pending the issue of the liquidator's certificate, the committee is suspended and cannot act.

(4) No person may act, or continue to act, as a member of the committee unless and until he has agreed to do so; and the liquidator's certificate shall not issue until at least the minimum number of persons required under Rule 4.175 to form a committee have signified their agreement.

(5) As and when the others signify their agreement, the liquidator shall issue an amended certificate.

(6) The liquidator's certificate (or, as the case may be, the amended certificate) shall be filed by him in court.

(7) If subsequently there is any change in the committee's membership, the liquidator shall report the change to the court.

### **Obligations of liquidator to committee**

**4.177.**—(1) As soon as may be after the issue of the liquidator's certificate under Rule 4.176, the liquidator shall report to the liquidation committee what actions he has taken since the date on which the company went into liquidation.

(2) A person who becomes a member of the committee after that date is not entitled to require a report to him by the liquidator, otherwise than in a summary form, of any matters previously arising.

(3) Nothing in this Rule disentitles the committee, or any member of it, from having access to the records of the liquidation (whether relating to the period when he was administrator, or to any subsequent period), or from seeking an explanation of any matter within the committee's responsibility.

### **Application of Chapter 12**

**4.178.** Except as provided above in this Chapter, Rules 4.155 to 4.172 in Chapter 12 apply to the liquidation committee following the issue of the liquidator's certificate under Rule 4.176, as if it had been established under section 141.

## **CHAPTER 14**

### **COLLECTION AND DISTRIBUTION OF COMPANY'S ASSETS BY LIQUIDATOR**

#### **General duties of liquidator**

**4.179. (NO CVL APPLICATION)**

(1) The duties imposed on the court by the Act with regard to the collection of the company's assets and their application in discharge of its liabilities are discharged by the liquidator as an officer of the court subject to its control.

(2) In the discharge of his duties the liquidator, for the purposes of acquiring and retaining possession of the company's property, has the same powers as a receiver appointed by the High Court, and the court may on his application enforce such acquisition or retention accordingly.

#### **Manner of distributing assets**

**4.180.**—(1) Whenever the liquidator has sufficient funds in hand for the purpose he shall, subject to the retention of such sums as may be necessary for the expenses of the winding up, declare and distribute dividends among the creditors in respect of the debts which they have respectively proved.

(2) The liquidator shall give notice of his intention to declare and distribute a dividend.

(3) Where the liquidator has declared a dividend, he shall give notice of it to the creditors, stating how the dividend is proposed to be distributed. The notice shall contain such particulars with respect to the company, and to its assets and affairs, as will enable the creditors to comprehend the calculation of the amount of the dividend and the manner of its distribution.

#### **Debts of insolvent company to rank equally**

**4.181. (NO CVL APPLICATION)**



Debts other than preferential debts rank equally between themselves in the winding up and, after the preferential debts, shall be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

### **Supplementary provisions as to dividend**

**4.182.**—(1) In the calculation and distribution of a dividend the liquidator shall make provision—

- (a) for any debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs,
- (b) for any debts which are the subject of claims which have not yet been determined, and
- (c) for disputed proofs and claims.

(2) A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—

- (a) when he has proved that debt he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive, and
- (b) any dividend or dividends payable under sub-paragraph (a) shall be paid before that money is applied to the payment of any such further dividend.

(3) No action lies against the liquidator for a dividend; but if he refuses to pay a dividend the court may, if it thinks fit, order him to pay it and also to pay, out of his own money—

- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838, from the time when it was withheld, and
- (b) the costs of the proceedings in which the order to pay is made.

### **Division of unsold assets**

**4.183.** Without prejudice to provisions of the Act about disclaimer, the liquidator may, with the permission of the liquidation committee, divide in its existing form amongst the company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

### **General powers of liquidator**

**4.184.**—(1) Any permission given by the liquidation committee or the court under section 167(1) (a), or under the Rules, shall not be a general permission but shall relate to a particular proposed exercise of the liquidator's power in question; and a person dealing with the liquidator in good faith and for value is not concerned to enquire whether any such permission has been given.

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

### **Enforced delivery up of company's property**

**4.185.** (NO CVL APPLICATION)

(1) The powers conferred on the court by section 234 (enforced delivery of company property) are exercisable by the liquidator or, where a provisional liquidator has been appointed, by him.

(2) Any person on whom a requirement under section 234(2) is imposed by the liquidator or provisional liquidator shall, without avoidable delay, comply with it.

### **Final distribution**

**4.186.**—(1) When the liquidator has realised all the company's assets or so much of them as can, in his opinion, be realised without needlessly protracting the liquidation, he shall give notice, under Part 11 of the Rules, either—

- (a) of his intention to declare a final dividend, or
- (b) that no dividend, or further dividend, will be declared.

(2) The notice shall contain all such particulars as are required by Part 11 of the Rules and shall require claims against the assets to be established by a date specified in the notice.

(3) After that date, the liquidator shall—

- (a) defray any outstanding expenses of the winding up out of the assets, and
- (b) if he intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.

(4) The court may, on the application of any person, postpone the date specified in the notice.

## **CHAPTER 15**

### **DISCLAIMER**

#### **Liquidator's notice of disclaimer**

**4.187.**—(1) Where the liquidator disclaims property under section 178, the notice of disclaimer shall contain such particulars of the property disclaimed as enable it to be easily identified.

(2) The notice shall be signed by the liquidator and filed in court, with a copy. The court shall secure that both the notice and the copy are sealed and endorsed with the date of filing.

(3) The copy notice, so sealed and endorsed, shall be returned by the court to the liquidator as follows—

- (a) if the notice has been delivered at the offices of the court by the liquidator in person, it shall be handed to him,
- (b) if it has been delivered by some person acting on the liquidator's behalf, it shall be handed to that person, for immediate transmission to the liquidator, and
- (c) otherwise, it shall be sent to the liquidator by first class post.

The court shall cause to be endorsed on the original notice, or otherwise recorded on the file, the manner in which the copy notice was returned to the liquidator.

(4) For the purposes of section 178, the date of the prescribed notice is that which is endorsed on it, and on the copy, in accordance with this Rule.

#### **Communication of disclaimer to persons interested**

**4.188.**—(1) Within 7 days after the day on which the copy of the notice of disclaimer is returned to him under Rule 4.187, the liquidator shall send or give copies of the notice (showing the date endorsed as required by that Rule) to the persons mentioned in paragraphs (2) to (4) below.

(2) Where the property disclaimed is of a leasehold nature, he shall send or give a copy to every person who (to his knowledge) claims under the company as underlessee or mortgagee.

(3) He shall in any case send or give a copy of the notice to every person who (to his knowledge)—

- (a) claims an interest in the disclaimed property, or

(b) is under any liability in respect of the property, not being a liability discharged by the disclaimer.

(4) If the disclaimer is of an unprofitable contract, he shall send or give copies of the notice to all such persons as, to his knowledge, are parties to the contract or have interests under it.

(5) If subsequently it comes to the liquidator's knowledge, in the case of any person, that he has such an interest in the disclaimed property as would have entitled him to receive a copy of the notice of disclaimer in pursuance of paragraphs (2) to (4), the liquidator shall then forthwith send or give to that person a copy of the notice.

But compliance with this paragraph is not required if—

- (a) the liquidator is satisfied that the person has already been made aware of the disclaimer and its date, or
- (b) the court, on the liquidator's application, orders that compliance is not required in that particular case.

#### **Additional notices**

**4.189.** The liquidator disclaiming property may, without prejudice to his obligations under sections 178 to 180 and Rules 4.187 and 4.188, at any time give notice of the disclaimer to any persons who in his opinion ought, in the public interest or otherwise, to be informed of it.

#### **Duty to keep court informed**

**4.190.** The liquidator shall notify the court from time to time as to the persons to whom he has sent or given copies of the notice of disclaimer under the two preceding Rules, giving their names and addresses, and the nature of their respective interests.

#### **Application by interested party under s.178(5)**

**4.191.** Where, in the case of any property, application is made to the liquidator by an interested party under section 178(5) (request for decision whether the property is to be disclaimed or not), the application—

- (a) shall be delivered to the liquidator personally or by registered post, and
- (b) shall be made in the form known as “notice to elect”, or a substantially similar form.

#### **Interest in property to be declared on request**

**4.192.—(1)** If, in the case of property which the liquidator has the right to disclaim, it appears to him that there is some person who claims, or may claim, to have an interest in the property, he may give notice to that person calling on him to declare within 14 days whether he claims any such interest and, if so, the nature and extent of it.

(2) Failing compliance with the notice, the liquidator is entitled to assume that the person concerned has no such interest in the property as will prevent or impede its disclaimer.

#### **Disclaimer presumed valid and effective**

**4.193.** Any disclaimer of property by the liquidator is presumed valid and effective, unless it is proved that he has been in breach of his duty with respect to the giving of notice of disclaimer, or otherwise under sections 178 to 180, or under this Chapter of the Rules.

### **Application for exercise of court's powers under s. 181**

**4.194.**—(1) This Rule applies with respect to an application by any person under section 181 for an order of the court to vest or deliver disclaimed property.

(2) The application must be made within 3 months of the applicant becoming aware of the disclaimer, or of his receiving a copy of the liquidator's notice of disclaimer sent under Rule 4.188, whichever is the earlier.

(3) The applicant shall with his application file in court an affidavit—

- (a) stating whether he applies under paragraph (a) of section 181(2) (claim of interest in the property) or under paragraph (b) (liability not discharged);
- (b) specifying the date on which he received a copy of the liquidator's notice of disclaimer, or otherwise became aware of the disclaimer; and
- (c) specifying the grounds of his application and the order which he desires the court to make under section 181.

(4) The court shall fix a venue for the hearing of the application; and the applicant shall, not later than 7 days before the date fixed, give to the liquidator notice of the venue, accompanied by copies of the application and the affidavit under paragraph (3).

(5) On the hearing of the application, the court may give directions as to other persons (if any) who should be sent or given notice of the application and the grounds on which it is made.

(6) Sealed copies of any order made on the application shall be sent by the court to the applicant and the liquidator.

(7) In a case where the property disclaimed is of a leasehold nature, and section 179 applies to suspend the effect of the disclaimer, there shall be included in the court's order a direction giving effect to the disclaimer.

This paragraph does not apply if, at the time when the order is issued, other applications under section 181 are pending in respect of the same property.

## **CHAPTER 16**

### **SETTLEMENT OF LIST OF CONTRIBUTORIES (NO CVL APPLICATION)**

#### **Preliminary**

**4.195.** The duties of the court with regard to the settling of the list of contributories are, by virtue of the Rules, delegated to the liquidator.

#### **Duty of liquidator to settle list**

**4.196.**—(1) Subject as follows, the liquidator shall, as soon as may be after his appointment, exercise the court's power to settle a list of the company's contributories for the purposes of section 148 and, with the court's approval, rectify the register of members.

(2) The liquidator's duties under this Rule are performed by him as an officer of the court subject to the court's control.

#### **Form of list**

**4.197.**—(1) The list shall identify—

- (a) the several classes of the company's shares (if more than one), and

- (b) the several classes of contributories, distinguishing between those who are contributories in their own right and those who are so as representatives of, or liable for the debts of, others.
- (2) In the case of each contributory there shall in the list be stated—
  - (a) his address,
  - (b) the number and class of shares, or the extent of any other interest to be attributed to him, and
  - (c) if the shares are not fully paid up, the amounts which have been called up and paid in respect of them (and the equivalent, if any, where his interest is other than shares).

#### **Procedure for settling list**

**4.198.**—(1) Having settled the list, the liquidator shall forthwith give notice, to every person included in the list, that he has done so.

- (2) The notice given to each person shall state—
  - (a) in what character, and for what number of shares or what interest, he is included in the list,
  - (b) what amounts have been called up and paid up in respect of the shares or interest, and
  - (c) that in relation to any shares or interest not fully paid up, his inclusion in the list may result in the unpaid capital being called.

(3) The notice shall inform any person to whom it is given that, if he objects to any entry in, or omission from, the list, he should so inform the liquidator in writing within 21 days from the date of the notice.

(4) On receipt of any such objection, the liquidator shall within 14 days give notice to the objector either—

- (a) that he has amended the list (specifying the amendment), or
- (b) that he considers the objection to be not well-founded and declines to amend the list.

The notice shall in either case inform the objector of the effect of Rule 4.199.

#### **Application to court for variation of the list**

**4.199.**—(1) If a person objects to any entry in, or exclusion from, the list of contributories as settled by the liquidator and, notwithstanding notice by the liquidator declining to amend the list, maintains his objection, he may apply to the court for an order removing the entry to which he objects or (as the case may be) otherwise amending the list.

(2) The application must be made within 21 days of the service on the applicant of the liquidator's notice under Rule 4.198(4).

#### **Variation of, or addition to, the list**

**4.200.** The liquidator may from time to time vary or add to the list of contributories as previously settled by him, but subject in all respects to the preceding Rules in this Chapter.

#### **Costs not to fall on official receiver**

**4.201.** The official receiver is not personally liable for any costs incurred by a person in respect of an application to set aside or vary his act or decision in settling the list of contributories, or varying or adding to the list; and the liquidator (if other than the official receiver) is not so liable unless the court makes an order to that effect.

## CHAPTER 17

### CALLS (NO CVL APPLICATION)

#### **Calls by liquidator**

**4.202.** Subject as follows, the powers conferred by the Act with respect to the making of calls on contributories are exercisable by the liquidator as an officer of the court subject to the court's control.

#### **Control by liquidation committee**

**4.203.**—(1) Where the liquidator proposes to make a call, and there is a liquidation committee, he may summon a meeting of the committee for the purpose of obtaining its sanction.

(2) At least 7 days' notice of the meeting shall be given by the liquidator to each member of the committee.

(3) The notice shall contain a statement of the proposed amount of the call, and the purpose for which it is intended to be made.

#### **Application to court for leave to make a call**

**4.204.**—(1) For the purpose of obtaining the leave of the court for the making of a call on any contributories of the company, the liquidator shall apply ex parte, supporting his application by affidavit.

(2) There shall in the application be stated the amount of the proposed call, and the contributories on whom it is to be made.

(3) The court may direct that notice of the order be given to the contributories concerned, or to other contributories, or may direct that the notice be publicly advertised.

#### **Making and enforcement of the call**

**4.205.**—(1) Notice of the call shall be given to each of the contributories concerned, and shall specify—

- (a) the amount or balance due from him in respect of it, and
- (b) whether the call is made with the sanction of the court or the liquidation committee.

(2) Payment of the amount due from any contributory may be enforced by order of the court.

## CHAPTER 18

### SPECIAL MANAGER

#### **Appointment and remuneration**

**4.206.**—(1) An application made by the liquidator under section 177 for the appointment of a person to be special manager shall be supported by a report setting out the reasons for the application. The report shall include the applicant's estimate of the value of the assets in respect of which the special manager is to be appointed.

(2) This Chapter applies also with respect to an application by the provisional liquidator, where one has been appointed, and references to the liquidator are to be read accordingly as including the provisional liquidator. (NO CVL APPLICATION)

(3) The court's order appointing the special manager shall specify the duration of his appointment, which may be for a period of time, or until the occurrence of a specified event. Alternatively, the order may specify that the duration of the appointment is to be subject to a further order of the court.

- (4) The appointment of a special manager may be renewed by order of the court.
- (5) The special manager's remuneration shall be fixed from time to time by the court.
- (6) The acts of the special manager are valid notwithstanding any defect in his appointment or qualifications.

## **Security**

**4.207.**—(1) The appointment of the special manager does not take effect until the person appointed has given (or, being allowed by the court to do so, undertaken to give) security to the person who applies for him to be appointed.

(2) It is not necessary that security shall be given for each separate company liquidation; but it may be given either specially for a particular liquidation, or generally for any liquidation in relation to which the special manager may be employed as such.

(3) The amount of the security shall be not less than the value of the assets in respect of which he is appointed, as estimated by the applicant in his report under Rule 4.206.

(4) When the special manager has given security to the person applying for his appointment, that person shall file in court a certificate as to the adequacy of the security.

(5) The cost of providing the security shall be paid in the first instance by the special manager; but—

- (a) where a winding-up order is not made, he is entitled to be reimbursed out of the property of the company, and the court may make an order on the company accordingly, and
- (b) where a winding-up order is made, he is entitled to be reimbursed out of the assets in the prescribed order of priority.

(NO CVL APPLICATION)

(6-CVL) The cost of providing the security shall be paid in the first instance by the special manager; but he is entitled to be reimbursed out of the assets, in the prescribed order of priority.

## **Failure to give or keep up security**

**4.208.**—(1) If the special manager fails to give the required security within the time stated for that purpose by the order appointing him, or any extension of that time that may be allowed, the liquidator shall report the failure to the court, which may thereupon discharge the order appointing the special manager.

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

(3) If an order is made under this Rule removing the special manager, or discharging the order appointing him, the court shall give directions as to whether any, and if so what, steps should be taken for the appointment of another special manager in his place.

## **Accounting**

**4.209.**—(1) The special manager shall produce accounts, containing details of his receipts and payments, for the approval of the liquidator.

(2) The accounts shall be in respect of 3-month periods for the duration of the special manager's appointment (or for a lesser period, if his appointment terminates less than 3 months from its date, or from the date to which the last accounts were made up).

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

### **Termination of appointment**

**4.210.**—(1) The special manager's appointment terminates if the winding-up petition is dismissed or if, a provisional liquidator having been appointed, the latter is discharged without a winding-up order having been made. (NO CVL APPLICATION)

(2) If the liquidator is of opinion that the employment of the special manager is no longer necessary or profitable for the company, he shall apply to the court for directions, and the court may order the special manager's appointment to be terminated.

(3) The liquidator shall make the same application if a resolution of the creditors is passed, requesting that the appointment be terminated.

## **CHAPTER 19**

### **PUBLIC EXAMINATION OF COMPANY OFFICERS AND OTHERS**

#### **Order for public examination**

**4.211.**—(1) If the official receiver applies to the court under section 133 for the public examination of any person, a copy of the court's order shall, forthwith after its making, be served on that person.

(2) Where the application relates to a person falling within section 133(1)(c) (promoters, past managers, etc.), it shall be accompanied by a report by the official receiver indicating—

- (a) the grounds on which the person is supposed to fall within that paragraph, and
- (b) whether, in the official receiver's opinion, it is likely that service of the order on the person can be effected by post at a known address.

(3) If in his report the official receiver gives it as his opinion that, in a case to which paragraph (2) applies, there is no reasonable certainty that service by post will be effective, the court may direct that the order be served by some means other than, or in addition to, post.

(4) In a case to which paragraphs (2) and (3) apply, the court shall rescind the order if satisfied by the person to whom it is directed that he does not fall within section 133(1)(c).

#### **Notice of hearing**

**4.212.**—(1) The court's order shall appoint a venue for the examination of the person to whom it is directed ("the examinee"), and direct his attendance thereat.

(2) The official receiver shall give at least 14 days' notice of the hearing—

- (a) if a liquidator has been nominated or appointed, to him;
- (b) if a special manager has been appointed, to him; and
- (c) subject to any contrary direction of the court, to every creditor and contributory of the company who is known to the official receiver or is identified in the company's statement of affairs.

(3) The official receiver may, if he thinks fit, cause notice of the order to be given, by advertisement in one or more newspapers, at least 14 days before the date fixed for the hearing; but, unless the court otherwise directs, there shall be no such advertisement before at least 7 days have elapsed since the examinee was served with the order.

#### **Order on request by creditors or contributories**

**4.213.**—(1) A request to the official receiver by creditors or contributories under section 133(2) shall be made in writing and be accompanied by—



- (a) a list of the creditors concurring with the request and the amounts of their respective claims in the liquidation or (as the case may be) of the contributories so concurring, with their respective values, and
- (b) from each creditor or contributory concurring, written confirmation of his concurrence.

This paragraph does not apply if the requisitioning creditor's debt or, as the case may be, requisitioning contributory's shareholding is alone sufficient, without the concurrence of others.

(2) The request must specify the name of the proposed examinee, the relationship which he has, or has had, to the company and the reasons why his examination is requested.

(3) Before an application to the court is made on the request, the requisitionists shall deposit with the official receiver such sum as the latter may determine to be appropriate by way of security for the expenses of the hearing of a public examination, if ordered.

(4) Subject as follows, the official receiver shall, within 28 days of receiving the request, make the application to the court required by section 133(2).

(5) If the official receiver is of opinion that the request is an unreasonable one in the circumstances, he may apply to the court for an order relieving him from the obligation to make the application otherwise required by that subsection.

(6) If the court so orders, and the application for the order was made ex parte, notice of the order shall be given forthwith by the official receiver to the requisitionists. If the application for an order is dismissed, the official receiver's application under section 133(2) shall be made forthwith on conclusion of the hearing of the application first mentioned.

### **Witness unfit for examination**

**4.214.**—(1) Where the examinee is suffering from any mental disorder or physical affliction or disability rendering him unfit to undergo or attend for public examination, the court may, on application in that behalf, either stay the order for his public examination or direct that it shall be conducted in such manner and at such place as it thinks fit.

(2) Application under this Rule shall be made—

- (a) by a person who has been appointed by a court in the United Kingdom or elsewhere to manage the affairs of, or to represent, the examinee, or
- (b) by a relative or friend of the examinee whom the court considers to be a proper person to make the application, or
- (c) by the official receiver.

(3) Where the application is made by a person other than the official receiver, then—

- (a) it shall, unless the examinee is a patient within the meaning of the Mental Health Act 1983, be supported by the affidavit of a registered medical practitioner as to the examinee's mental and physical condition;
- (b) at least 7 days' notice of the application shall be given to the official receiver and the liquidator (if other than the official receiver); and
- (c) before any order is made on the application, the applicant shall deposit with the official receiver such sum as the latter certifies to be necessary for the additional expenses of any examination that may be ordered on the application.

An order made on the application may provide that the expenses of the examination are to be payable, as to a specified proportion, out of the deposit under sub-paragraph (c), instead of out of the assets.

(4) Where the application is made by the official receiver it may be made ex parte, and may be supported by evidence in the form of a report by the official receiver to the court.

### **Procedure at hearing**

**4.215.**—(1) The examinee shall at the hearing be examined on oath; and he shall answer all such questions as the court may put, or allow to be put, to him.

(2) Any of the persons allowed by section 133(4) to question the examinee may, with the approval of the court (made known either at the hearing or in advance of it), appear by solicitor or counsel; or he may in writing authorise another person to question the examinee on his behalf.

(3) The examinee may at his own expense employ a solicitor with or without counsel, who may put to him such questions as the court may allow for the purpose of enabling him to explain or qualify any answers given by him, and may make representations on his behalf.

(4) There shall be made in writing such record of the examination as the court thinks proper. The record shall be read over either to or by the examinee, signed by him, and verified by affidavit at a venue fixed by the court.

(5) The written record may, in any proceedings (whether under the Act or otherwise) be used as evidence against the examinee of any statement made by him in the course of his public examination.

(6) If criminal proceedings have been instituted against the examinee, and the court is of opinion that the continuance of the hearing would be calculated to prejudice a fair trial of those proceedings, the hearing may be adjourned.

### **Adjournment**

**4.216.**—(1) The public examination may be adjourned by the court from time to time, either to a fixed date or generally.

(2) Where the examination has been adjourned generally, the court may at any time on the application of the official receiver or of the examinee—

- (a) fix a venue for the resumption of the examination, and
- (b) give directions as to the manner in which, and the time within which, notice of the resumed public examination is to be given to persons entitled to take part in it.

(3) Where application under paragraph (2) is made by the examinee, the court may grant it on terms that the expenses of giving the notices required by that paragraph shall be paid by him and that, before a venue for the resumed public examination is fixed, he shall deposit with the official receiver such sum as the latter considers necessary to cover those expenses.

### **Expenses of examination**

**4.217.**—(1) Where a public examination of the examinee has been ordered by the court on a creditors' or contributories' requisition under Rule 4.213, the court may order that the expenses of the examination are to be paid, as to be specified proportion, out of the deposit under Rule 4.213(3), instead of out of the assets.

(2) In no case do the costs and expenses of a public examination fall on the official receiver personally.

## **CHAPTER 20**

### **ORDER OF PAYMENT OF COSTS, ETC., OUT OF ASSETS**

#### **General rule as to priority**

**4.218.**—(1) The expenses of the liquidation are payable out of the assets in the following order of priority—

- (a) expenses properly chargeable or incurred by the official receiver or the liquidator in preserving, realising or getting in any of the assets of the company;
- (b) any other expenses incurred or disbursements made by the official receiver or under his authority, including those incurred or made in carrying on the business of the company;
- (c)
  - (i) the fee payable under any order made under section 414 for the performance by the official receiver of his general duties as official receiver;
  - (ii) any repayable deposit lodged by the petitioner under any such order as security for the fee mentioned in sub-paragraph (i);
- (d) any other fees payable under any order made under section 414, including those payable to the official receiver, and any remuneration payable to him under general regulations;
- (e) the cost of any security provided by a provisional liquidator, liquidator or special manager in accordance with the Act or the Rules;
- (f) the remuneration of the provisional liquidator (if any);
- (g) any deposit lodged on an application for the appointment of a provisional liquidator;
- (h) the costs of the petitioner, and of any person appearing on the petition whose costs are allowed by the court;
- (j) the remuneration of the special manager (if any);
- (k) any amount payable to a person employed or authorised, under Chapter 6 of this Part of the Rules, to assist in the preparation of a statement of affairs or of accounts;
- (l) any allowance made, by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs, or for an extension of time for submitting such a statement;
- (m) any necessary disbursements by the liquidator in the course of his administration (including any expenses incurred by members of the liquidation committee or their representatives and allowed by the liquidator under Rule 4.169, but not including any payment of capital gains tax in circumstances referred to in sub-paragraph (p) below);
- (n) the remuneration or emoluments of any person who has been employed by the liquidator to perform any services for the company, as required or authorised by or under the Act or the Rules;
- (o) the remuneration of the liquidator, up to any amount not exceeding that which is payable to the official receiver under general regulations;
- (p) the amount of any capital gains tax on chargeable gains accruing on the realisation of any asset of the company (without regard to whether the realisation is effected by the liquidator, a secured creditor, or a receiver or manager appointed to deal with a security);
- (q) the balance, after payment of any sums due under sub-paragraph (o) above, of any remuneration due to the liquidator.

(2) The costs of employing a shorthand writer, if appointed by an order of the court made at the instance of the official receiver in connection with an examination, rank in priority with those specified in paragraph (1)(a). The costs of employing a shorthand writer so appointed in any other case rank after the allowance mentioned in paragraph (1)(l) and before the disbursements mentioned in paragraph (1)(m).

(3) Any expenses incurred in holding an examination under Rule 4.214 (examinee unfit), where the application for it is made by the official receiver, rank in priority with those specified in paragraph (1)(a).

### **Winding up commencing as voluntary**

**4.219.** In a winding up by the court which follows immediately on a voluntary winding up (whether members' voluntary or creditors' voluntary), such remuneration of the voluntary liquidator and costs and expenses of the voluntary liquidation as the court may allow are to rank in priority with the expenses specified in Rule 4.218(1)(a).

### **Saving for powers of the court**

**4.220.—(1)** In a winding up by the court, the priorities laid down by Rules 4.218 and 4.219 are subject to the power of the court to make orders under section 156, where the assets are insufficient to satisfy the liabilities.

(2) Nothing in those Rules applies to or affects the power of any court, in proceedings by or against the company, to order costs to be paid by the company, or the liquidator; nor do they affect the rights of any person to whom such costs are ordered to be paid.

## **CHAPTER 21**

### **MISCELLANEOUS RULES**

#### ***SECTION A: RETURN OF CAPITAL (NO CVL APPLICATION)***

### **Application to court for order authorising return**

**4.221.—(1)** This Rule applies where the liquidator intends to apply to the court for an order authorising a return of capital.

(2) The application shall be accompanied by a list of the persons to whom the return is to be made.

(3) The list shall include the same details of those persons as appears in the settled list of contributories, with any necessary alterations to take account of matters after settlement of the list, and the amount to be paid to each person.

(4) Where the court makes an order authorising the return, it shall send a sealed copy of the order to the liquidator.

### **Procedure for return**

**4.222.—(1)** The liquidator shall inform each person to whom a return is made of the rate of return per share, and whether it is expected that any further return will be made.

(2) Any payments made by the liquidator by way of the return may be sent by post, unless for any reason another method of making the payment has been agreed with the payee.

#### ***SECTION B: CONCLUSION OF WINDING UP***

### **Statements to registrar of companies under s.192**

**4.223-CVL.—(1)** The statement which section 192 requires the liquidator to send to the registrar of companies, if the winding up is not concluded within one year from its commencement, shall be sent not more than 30 days after the expiration of that year, and thereafter not less often than 6-monthly until the winding up is concluded.

(2) For this purpose the winding up is concluded at the date of the dissolution of the company, except that if at that date any assets or funds of the company remain unclaimed or undistributed in the hands or under the control of the liquidator or any former liquidator, the winding up is not concluded until those assets or funds have either been distributed or paid into the Insolvency Services Account.

(3) Subject as above, the liquidator's final statement shall be sent forthwith after the conclusion of the winding up.

(4) Every statement sent to the registrar of companies under section 192 shall be in duplicate.

### *SECTION C: DISSOLUTION AFTER WINDING UP*

#### **Secretary of State's directions under ss.203, 205**

**4.224.**—(1) Where the Secretary of State gives a direction under—

- (a) section 203 (where official receiver applies to registrar of companies for a company's early dissolution), or
- (b) section 205 (application by interested person for postponement of dissolution),

he shall send two copies of the direction to the applicant for it.

(2) Of those copies one shall be sent by the applicant to the registrar of companies, to comply with section 203(5) or, as the case may be, 205(6).

#### **Procedure following appeal under s.203(4) or 205(4)**

**4.225.** Following an appeal under section 203(4) or 205(4) (against a decision of the Secretary of State under the applicable section) the court shall send two sealed copies of its order to the person in whose favour the appeal was determined; and that party shall send one of the copies to the registrar of companies to comply with section 203(5) or, as the case may be, 205(6).

## **CHAPTER 22**

### **LEAVE TO ACT AS DIRECTOR, ETC., OF COMPANY WITH PROHIBITED NAME (SECTION 216 OF THE ACT)**

#### **Preliminary**

**4.226.** The Rules in this Chapter—

- (a) relate to the leave required under section 216 (restriction on reuse of name of company in insolvent liquidation) for a person to act as mentioned in section 216(3) in relation to a company with a prohibited name, and
- (b) prescribe the cases excepted from that provision, that is to say, those in which a person to whom the section applies may so act without that leave.

#### **Application for leave under s.216(3)**

**4.227.** When considering an application for leave under section 216, the court may call on the liquidator, or any former liquidator, of the liquidating company for a report of the circumstances in which that company became insolvent, and the extent (if any) of the applicant's apparent responsibility for its doing so.

#### **First excepted case**

**4.228.**—(1) Where a company (“the successor company”) acquires the whole, or substantially the whole, of the business of an insolvent company, under arrangements made by an insolvency practitioner acting as its liquidator, administrator or administrative receiver, or as supervisor of a voluntary arrangement under Part I of the Act, the successor company may for the purposes of section 216 give notice under this Rule to the insolvent company's creditors.

(2) To be effective, the notice must be given within 28 days from the completion of the arrangements, to all creditors of the insolvent company of whose addresses the successor company is aware in that period; and it must specify—

- (a) the name and registered number of the insolvent company and the circumstances in which its business has been acquired by the successor company,
- (b) the name which the successor company has assumed, or proposes to assume for the purpose of carrying on the business, if that name is or will be a prohibited name under section 216, and
- (c) any change of name which it has made, or proposes to make, for that purpose under section 28 of the Companies Act.

(3) The notice may name a person to whom section 216 may apply as having been a director or shadow director of the insolvent company, and give particulars as to the nature and duration of that directorship, with a view to his being a director of the successor company or being otherwise associated with its management.

(4) If the successor company has effectively given notice under this Rule to the insolvent company's creditors, a person who is so named in the notice may act in relation to the successor company in any of the ways mentioned in section 216(3), notwithstanding that he has not the leave of the court under that section.

### **Second excepted case**

**4.229.**—(1) In the circumstances specified below, a person to whom section 216 applies as having been a director or shadow director of the liquidating company may act in any of the ways mentioned in section 216(3), notwithstanding that he has not the leave of the court under that section.

(2) Those circumstances are that—

- (a) he applies to the court for leave, not later than 7 days from the date on which the company went into liquidation, and
- (b) leave is granted by the court not later than 6 weeks from that date.

### **Third excepted case**

**4.230.** The court's leave under section 216(3) is not required where the company there referred to, though known by a prohibited name within the meaning of the section—

- (a) has been known by that name for the whole of the period of 12 months ending with the day before the liquidating company went into liquidation, and
- (b) has not at any time in those 12 months been dormant within the meaning of section 252(5) of the Companies Act.