
STATUTORY INSTRUMENTS

2002 No. 1307

The Insolvency (Amendment) Rules 2002

Amendments to the Insolvency Rules 1986 in relation to Companies Winding up

- 6.—(1) In Rule 4.7 (documents delivered with petition filed in court)—
- (a) at the end of paragraph (4)(d) omit “and”, and
 - (b) after paragraph (4)(d) insert—
 - “(da) if a member State liquidator has been appointed in main proceedings in relation to the company, one copy to be sent to him; and”.
- (2) After Rule 4.10(3) (persons entitled to receive winding up petition) insert—
- “(3A) If to the petitioner’s knowledge, there is a member State liquidator appointed in main proceedings in relation to the company, a copy of the petition shall be sent by him to that person.
- This does not apply if the petitioner referred to in this paragraph is a member State liquidator.”.
- (3) After Rule 4.19(2) (substitution of petitioner) insert—
- “(2A) Where a member State liquidator has been appointed in main proceedings in relation to the company, without prejudice to paragraph (2), the court may, on such terms as it thinks just, substitute the member State liquidator as petitioner, where he is desirous of prosecuting the petition.”.
- (4) After Rule 4.22(4) (petition by contributory) insert—
- “(5) Where a member State liquidator has been appointed in main proceedings in relation to the company, the petitioner shall send a copy of the petition to him.#”.
- (5) For Rule 4.25(1) (application for appointment of provisional liquidator) substitute—
- “(1) An application to the court for the appointment of a provisional liquidator under section 135 may be made by—
 - (a) the petitioner;
 - (b) a creditor of the company;
 - (c) a contributory;
 - (d) the company;
 - (e) the Secretary of State;
 - (f) a temporary administrator;
 - (g) a member State liquidator appointed in main proceedings; or
 - (h) any person who under any enactment would be entitled to present a petition for the winding up of the company.”.
- (6) In Rule 4.67 (entitlement to vote at creditors' meeting)—
- (a) in paragraph (1)(a) for “claimed to be due to him from the company” substitute—

- “(i) claimed to be due to him from the company, or
- (ii) in relation to a member State liquidator, is claimed to be due to creditors in proceedings in relation to which he holds office”, and
- (b) after paragraph (5) insert—
 - “(6) No vote shall be cast by virtue of a debt more than once on any resolution put to the meeting.
 - (7) Where—
 - (a) a creditor is entitled to vote under this Rule and Rule 4.70 (admission of proof),
 - (b) has lodged his claim in one or more sets of other proceedings, and
 - (c) votes (either in person or by proxy) on a resolution put to the meeting, only the creditor’s vote shall be counted.
 - (8) Where—
 - (a) a creditor has lodged his claim in more than one set of other proceedings, and
 - (b) more than one member State liquidator seeks to vote by virtue of that claim,the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.
 - (9) For the purposes of paragraphs (7) and (8), “other proceedings” means main proceedings, secondary proceedings or territorial proceedings in another member State.”
- (7) In Rule 4.75(1) (contents of proof)—
 - (a) at the end of sub-paragraph (g) omit “and”; and
 - (b) after sub-paragraph (g) insert—
 - “(ga) details of any reservation of title in respect of goods to which the debt refers; and”.
- (8) After Rule 4.96(2) (surrender of security for non-disclosure) insert—
 - “(3) Nothing in this Rule or the following two Rules may affect the rights in rem of creditors or third parties protected under Article 5 of the EC Regulation (third parties' rights in rem).”.
- (9) After Rule 4.230 (leave to act as director—third excepted case) insert—

“CHAPTER 23

EC REGULATION—MEMBER STATE LIQUIDATOR

Interpretation of creditor and notice to member State liquidator

4.231.—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

(2) For the purposes of the Rules referred to in paragraph (3) the member State liquidator is deemed to be a creditor.

(3) The Rules referred to in paragraph (2) are Rules 4.43(1) (official receiver’s report), 4.45(1) (report on statement of affairs), 4.46(2) (report where no statement of affairs), 4.47(2) (general rule on reporting), 4.48(2) (winding up stayed), 4.49 (information to creditors), 4.50(2) (notice of meetings), 4.51(2) (notice of creditors' meeting—CVL), 4.54 (power to call meetings), 4.57(1) (requisitioned meetings), 4.57(3), 4.67 (entitlement to vote (creditors)),

4.68 (chairman’s discretion to allow vote—CVL), 4.70 (admission and rejection of proof (creditors’ meeting)), 4.73 (meaning of “prove”), 4.74 (supply of forms), 4.75 (contents of proof), 4.76 (particulars of creditor’s claim), 4.77 (claim established by affidavit), 4.78 (cost of proving), 4.79 (inspection of proofs), 4.82 (admission and rejection of proofs for dividend), 4.83(1) (appeal against decision in relation to proof), 4.83(2), 4.84 (withdrawal or variation of proof), 4.85(1) (expunging of proof), 4.86 (estimate of quantum), 4.87 (negotiable instruments, etc.), 4.88 (secured creditors), 4.89 (discounts), 4.90 (mutual credit and set-off), 4.91 (debt in foreign currency), 4.92 (payment of a periodical nature), 4.93 (interest), 4.94 (debt payable at future time), 4.101A (power to fill vacancy in office of liquidator), 4.102(5) (appointment by court), 4.103(4) (appointment by court), 4.113(1) (meeting of creditors to remove liquidator), 4.114(1) (meeting of creditors to remove liquidator), 4.115 (regulation of meetings), 4.124(1) (release of official receiver), 4.125(1) (final meeting), 4.126(1) (final meeting), 4.131(1) (challenge to liquidator’s remuneration), 4.152(1) (liquidation committee), 4.152(3) (eligibility for liquidation committee), 4.163(3) (vacancy on liquidation committee), 4.175(1) (liquidation committee), 4.180 (notice of dividend) and 4.212(2) (notice of public examination hearing).

(4) Paragraphs (2) and (3) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditor’s rights).

(5) Where the liquidator is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court, the registrar of companies or the official receiver, the liquidator shall give notice or provide copies, as the case may be, to the member State liquidator.

(6) Paragraph (5) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to cooperate and communicate information).”.