

SCHEDULE 1

Amendments to the Insolvency Rules 1986

New Rules after Rule 2.109

94. After Rule 2.109 insert—

“2.109A Review of remuneration

(1) Where, after the basis of the administrator’s remuneration has been fixed, there is a material and substantial change in the circumstances which were taken into account in fixing it, the administrator may request that it be changed.

(2) The request must be made—

- (a) where the creditors’ committee fixed the basis, to the committee;
- (b) where the creditors fixed the basis, to the creditors;
- (c) where the court fixed the basis, by application to the court;

and Rules 2.106 to 2.109 apply as appropriate.

(3) Any change in the basis for remuneration applies from the date of the request under paragraph (2) and not for any earlier period.

2.109B Remuneration of new administrator

2.109B If a new administrator is appointed in place of another, any determination, resolution or court order in effect under the preceding provisions of this Chapter immediately before the former administrator ceased to hold office continues to apply in respect of the remuneration of the new administrator until a further determination, resolution or court order is made in accordance with those provisions.

2.109C Apportionment of set fee remuneration

(1) In a case in which the basis of the administrator’s remuneration is a set amount under Rule 2.106(2)(c) and the administrator (“the former administrator”) ceases (for whatever reason) to hold office before the time has elapsed or the work has been completed in respect of which the amount was set, application may be made for determination of what portion of the amount should be paid to the former administrator or the former administrator’s personal representative in respect of the time which has actually elapsed or the work which has actually been done.

(2) Application may be made—

- (a) by the former administrator or the former administrator’s personal representative within the period of 28 days beginning with the date upon which the former administrator ceased to hold office, or
- (b) by the administrator for the time being in office if the former administrator or the former administrator’s personal representative has not applied by the end of that period.

(3) Application must be made—

- (a) where the creditors’ committee fixed the basis, to the committee;
- (b) where the creditors fixed the basis, to the creditors for a resolution determining the portion;

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(c) where the court fixed the basis, to the court for an order determining the portion.

(4) The applicant must give a copy of the application to the administrator for the time being in office or to the former administrator or the former administrator's personal representative, as the case may be ("the recipient").

(5) The recipient may within 21 days of receipt of the copy of the application give notice of intent to make representations to the creditors' committee or the creditors or to appear or be represented before the court, as the case may be.

(6) No determination may be made upon the application until expiry of the 21 days referred to in paragraph (5) or, if the recipient does give notice of intent in accordance with that paragraph, until the recipient has been afforded the opportunity to make representations or to appear or be represented, as the case may be.

(7) If the former administrator or the former administrator's personal representative (whether or not the original applicant) considers that the portion determined upon application to the creditors' committee or the creditors is insufficient, that person may apply—

(a) in the case of a determination by the creditors' committee, to the creditors for a resolution increasing the portion;

(b) in the case of a resolution of the creditors (whether under paragraph (1) or under sub-paragraph (a)), to the court for an order increasing the portion;

and paragraphs (4) to (6) apply as appropriate.".