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STATUTORY INSTRUMENTS

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**2016 No. 1024**

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

**PART 6**

**CREDITORS' VOLUNTARY WINDING UP**

**CHAPTER 6**

Priority of payment of costs and expenses, etc.

**General rule as to priority**

**6.42.**—(1) All fees, costs, charges and other expenses incurred in the course of the winding up are to be treated as expenses of the winding up.

(2) The expenses of the winding up are payable out of—

(a) assets of the company available for the payment of general creditors, including—

(i) proceeds of any legal action which the liquidator has power to bring in the liquidator's own name or in the name of the company,

(ii) proceeds arising from any award made under any arbitration or other dispute resolution procedure which the liquidator has power to bring in the liquidator's own name or in the name of the company,

(iii) any payments made under any compromise or other agreement intended to avoid legal action or recourse to arbitration or to any other dispute resolution procedure, and

(iv) payments made as a result of an assignment or a settlement of any such action, arbitration or other dispute resolution procedure in lieu of or before any judgment being given or award being made; and

(b) subject as provided in rules 6.44 to 6.48, property comprised in or subject to a floating charge created by the company.

(3) The expenses associated with the prescribed part must be paid out of the prescribed part.

(4) Subject as provided in rules 6.44 to 6.48, the expenses are payable in the following order of priority—

(a) expenses which are properly chargeable or incurred by the liquidator in preserving, realising or getting in any of the assets of the company or otherwise in the preparation, conduct or assignment of any legal proceedings, arbitration or other dispute resolution procedures, which the liquidator has power to bring in the liquidator's own name or bring or defend in the name of the company or in the preparation or conduct of any negotiations intended to lead or leading to a settlement or compromise of any legal action or dispute to which the proceedings or procedures relate;

(b) the cost of any security provided by the liquidator or special manager under the Act or these Rules;

- (c) the remuneration of the special manager (if any);
- (d) any amount payable to a person employed or authorised, under Chapter 2 of this Part, to assist in the preparation of a statement of affairs or of accounts;
- (e) the costs of employing a shorthand writer on the application of the liquidator;
- (f) any necessary disbursements by the liquidator in the course of the administration of the winding up (including any expenses incurred by members of the liquidation committee or their representatives and allowed by the liquidator under rule 17.24, but not including any payment of corporation tax in circumstances referred to in sub-paragraph (i));
- (g) 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 these Rules;
- (h) the remuneration of the liquidator, up to an amount not exceeding that which is payable under Schedule 11 (determination of insolvency office-holder's remuneration);
- (i) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company (irrespective of the person by whom the realisation is effected);
- (j) the balance, after payment of any sums due under sub-paragraph (h) above, of any remuneration due to the liquidator; and
- (k) any other expenses properly chargeable by the liquidator in carrying out the liquidator's functions in the winding up.

#### **Saving for powers of the court**

**6.43.** Nothing in these Rules—

- (a) applies to or affects the powers of any court, in proceedings by or against the company, to order costs to be paid by the company, or the liquidator; or
- (b) affects the rights of any person to whom such costs are ordered to be paid.