
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 6

CREDITORS' VOLUNTARY WINDING UP

CHAPTER 7

Litigation expenses and property subject to a floating charge

Interpretation

6.44.—(1) In this Chapter—

“approval” and “authorisation” respectively mean—

- (a) where yet to be incurred, the approval; and
 - (b) where already incurred, the authorisation;
- of expenses specified in section 176ZA(3)(1);

“the creditor” means—

- (a) a preferential creditor of the company; or
- (b) a holder of a debenture secured by, or a holder of, a floating charge created by the company;

“legal proceedings” means—

- (a) proceedings under sections 212, 213, 214(2), 238, 239, 244 and 423 and any arbitration or other dispute resolution proceedings invoked for purposes corresponding to those to which the sections relate and any other proceedings, including arbitration or other dispute resolution procedures, which a liquidator has power to bring in the liquidator's own name for the purpose of preserving, realising, or getting in any of the assets of the company;
- (b) legal actions and proceedings, arbitration or any other dispute resolution procedures which a liquidator has power to bring or defend in the name of the company; and
- (c) negotiations intended to lead or leading to a settlement or compromise of any action, proceeding or procedure to which sub-paragraphs (a) or (b) relate;

“litigation expenses” means expenses of a winding up which—

- (a) are properly chargeable or incurred in the preparation or conduct of any legal proceedings; and
- (b) as expenses in the winding up, exceed, or in the opinion of the liquidator are likely to exceed (and only in so far as they exceed or are likely to exceed), in the aggregate £5,000; and

(1) Section 176ZA was inserted by section 1282 of the Companies Act 2006 (c.46).

(2) Section 214(2)(b) and (3) are amended and (6A) is inserted by section 117(3) of the Small Business, Enterprise and Employment Act 2015 (c.26).

“specified creditor” means a creditor identified under rule 6.45(2).

(2) Litigation expenses will not have the priority provided by section 176ZA over any claims to property comprised in or subject to a floating charge created by the company and must not be paid out of any such property unless and until approved or authorised in accordance with rules 6.45 to 6.48.