
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 7

WINDING UP BY THE COURT

CHAPTER 15

Litigation expenses and property subject to a floating charge

Requirement for approval or authorisation of litigation expenses

7.113.—(1) Subject to rules 7.114 to 7.116 either paragraphs (3) and (4) apply or paragraph (5) applies where, in the course of winding up a company, the liquidator—

- (a) ascertains that property is comprised in or subject to a floating charge;
- (b) has personally instituted or proposes to institute or continue legal proceedings or is in the process of defending or proposes to defend any legal proceeding brought or likely to be brought against the company; and
- (c) before or at any stage in those proceedings, is of the opinion that—
 - (i) the assets of the company available for payment of general creditors are or will be insufficient to pay litigation expenses, and
 - (ii) in order to pay litigation expenses the liquidator will have to have recourse to property comprised in or subject to a floating charge created by the company.

(2) As soon as reasonably practicable after the date on which the liquidator forms the opinion referred to in paragraph (1), the liquidator must identify the creditor who, in the liquidator's opinion at that time—

- (a) has a claim to property comprised in or subject to a floating charge created by the company; and
- (b) taking into account the value of that claim and any subsisting property then comprised in or secured by such a charge, appears to the liquidator to be the creditor most immediately likely of any persons having such claims to receive some payment in respect of a claim but whose claim would not be paid in full.

(3) The liquidator must request from the specified creditor the approval or authorisation of such amount for litigation expenses as the liquidator thinks fit.

(4) Where the liquidator identifies two or more specified creditors, the liquidator must seek from each of them approval or authorisation of such amount of litigation expenses as the liquidator thinks fit, apportioned between them (“the apportioned amount”) according to the value of the property to the extent covered by their charges.

(5) For so long as the conditions specified in paragraph (1) subsist, the liquidator may, in the course of a winding up, make such further requests to the specified creditor or creditors for approval or authorisation of such further amount for litigation expenses as the liquidator thinks fit to be paid out of property comprised in or subject to a floating charge created by the company, taking into

account any amount for litigation expenses previously approved or authorised and the value of the property comprised in or subject to the floating charge.