

Insolvency (Scotland) Rules 1986 (SI 1986/1915) .....	10
0.1 Citation and commencement.....	10
0.3 Application.....	12
Part 1 Company Voluntary Arrangements.....	12
Chapter 1 Preliminary.....	12
1.1 Scope of this Part; interpretation .....	12
Chapter 2 Proposal by Directors .....	13
1.2 Preparation of proposal .....	13
1.3 Contents of proposal .....	13
1.4 Notice to intended nominee.....	15
1.5 Statement of affairs .....	15
1.6 Additional disclosure for assistance of nominee .....	16
1.7 Nominees report on the proposal .....	17
[1.8 Replacement of nominee].....	17
1.9 Summoning of meetings under section 3 .....	18
Chapter 3 Proposal by Administrator or Liquidator where he is the Nominee .....	18
1.10 Preparation of proposal .....	18
1.11 Summoning of meetings under section 3 .....	19
Chapter 4 Proposal by Administrator or Liquidator where Another Insolvency Practitioner is the Nominee .....	19
1.12 Preparation of proposal and notice to nominee .....	19
Chapter 5 Meetings .....	19
1.13 General.....	20
1.14 Summoning of meetings.....	20
[1.14A The Chairman at meetings] .....	20
1.15 Attendance by company officers.....	20
[1.15A Entitlement to vote (creditors)] .....	21
[1.15B Procedure for admission of creditors' claims for voting purposes] .....	21
[1.16 Adjournments] .....	22
1.17 Report of meetings .....	22
Chapter 6 Implementation of the Voluntary Arrangement.....	23
1.18 Resolutions to follow approval .....	23
[1.18A Notice of order made under section 4A(6)] .....	23
1.19 Hand-over of property, etc to supervisor .....	24
1.20 Revocation or suspension of the arrangement .....	24
1.21 Supervisor's accounts and reports .....	25
1.22 Fees, costs, charges and expenses .....	26
[1.23 Completion or termination of the arrangement] .....	27

1.24 ...	27
[Chapter 7 Obtaining a Moratorium, Proceedings During a Moratorium, Nominees, Consideration of Proposals where Moratorium Obtained .....	27
[Section A: Obtaining a Moratorium].....	27
[1.25 Preparation of proposal by directors and submission to nominee] .....	27
[1.26 Delivery of documents to the intended nominee etc] .....	28
[1.27 Statement of affairs] .....	28
[1.28 The nominee's statement] .....	29
[1.29 Documents submitted to the court to obtain moratorium] .....	29
[1.30 Notice and advertisement of beginning of a moratorium] .....	29
[1.31 Notice of extension of moratorium] .....	30
[1.32 Notice and advertisement of end of moratorium] .....	30
[1.33 Inspection of court file].....	30
[Section B: Proceedings During a Moratorium].....	31
[1.34 Disposal of charged property etc during a moratorium] .....	31
[Section C: Nominees].....	31
[1.35 Withdrawal of nominee's consent to act] .....	31
[1.36 Replacement of nominee by the court] .....	31
[1.37 Notification of appointment of a replacement nominee].....	32
[1.38 Applications to court under paragraph 26 or 27 of Schedule A1 to the Act] .....	32
[Section D: Consideration of Proposals where Moratorium Obtained].....	32
[1.39 General].....	32
[1.40 Summoning of meetings; procedure at meetings etc].....	32
[1.41 Entitlement to vote (creditors)] .....	33
[1.42 Procedure for admission of creditors claims for voting purposes] .....	33
[1.43 Requisite majorities (creditors)] .....	34
[1.44 Proceedings to obtain agreement on the proposal] .....	34
[1.45 Implementation of the arrangement].....	34
[Chapter 8 EC Regulation – Conversion of Voluntary Arrangement into Winding Up..	35
[1.46 Application for conversion into winding up].....	35
[1.47 Contents of affidavit].....	35
[1.48 Power of court] .....	36
[Chapter 9 EC Regulation – Member State Liquidator .....	36
[1.49 Notice to member State liquidator] .....	36
[Part 2 Administration Procedure.....	37
[Chapter 1 Preliminary.....	37

[2.1 Introductory and interpretation].....	37
[Chapter 2 Appointment of Administrator by Court .....	37
[2.2 Form of application] .....	37
[2.3 Service of petition] .....	38
[2.4 Application to appoint specified person as administrator by holder of qualifying floating charge] .....	39
[2.5 Application where company in liquidation] .....	39
[2.6 Expenses].....	40
[2.7 Administration orders where company in liquidation].....	40
[2.8 Notice of dismissal of application for an administration order].....	40
[Chapter 3 Appointment of Administrator by Holder of Floating Charge .....	40
[2.9 Notice of intention to appoint] .....	40
[2.9A ...] .....	41
[2.9B ...] .....	41
[2.10 Notice of appointment].....	41
[2.11 Notice to administrator].....	42
[2.12 Appointment taking place out of court business hours] .....	42
[Chapter 4 Appointment of Administrator by Company or Directors] .....	43
[2.13 Notice of intention to appoint] .....	43
[2.14 Timing of statutory declaration].....	43
[2.15 Resolution or decision to appoint].....	43
[2.16 Notice of appointment].....	43
[2.17 Appointment where no notice of intention to appoint has been given].....	44
[2.18 Notice to administrator].....	44
[Chapter 5 Process of Administration] .....	44
[2.19 Notification and advertisement of administrator's appointment].....	44
[2.20 Notice requiring statement of affairs] .....	45
[2.21 Statements of affairs and statements of concurrence].....	45
[2.22 Limited disclosure] .....	46
[2.23 Release from duty to submit statement of affairs; extension of time].....	47
[2.24 Expenses of statement of affairs] .....	47
[2.25 Administrator's proposals] .....	47
[Chapter 6 Meetings] .....	50
[2.26 General].....	50
[2.27 Meetings to consider administrator's proposals].....	51
[2.28 Correspondence instead of creditors' meetings].....	51
[2.29 Applicable law].....	52
[2.30 Entitlement to vote--member State liquidators].....	52
[2.31 Meeting requisitioned by creditors] .....	53
[2.32] .....	53
[2.33 Hire-purchase, conditional sale and hiring agreements].....	53
[2.34 Revision of the administrator's proposals] .....	53

[2.35 Notices to creditors] .....	54
[Chapter 7 The Creditors' Committee .....	55
[2.36 Application of provisions in Part 3 (Receivers)] .....	55
[Chapter 8 Functions and Remuneration of Administrator] .....	55
[2.37 Disposal of secured property, etc] .....	55
[2.38 Progress reports] .....	56
[2.39 Determination of outlays and remuneration] .....	57
[2.39A Appeal against fixing of remuneration] .....	59
[Chapter 8A Expenses of the Administration .....	60
[2.39B Expenses of the administration] .....	60
[Chapter 9 Distributions to Creditors] .....	61
[2.40] .....	61
[2.41] .....	61
[2.41A Payments of dividends] .....	62
[Chapter 10 Ending Administration] .....	62
[2.42 Final progress reports] .....	63
[2.43 Notice of automatic end of administration] .....	63
[2.44 Applications for extension of administration] .....	63
[2.45 Notice of end of administration] .....	63
[2.46 Application to court] .....	64
[2.47 Moving from administration to creditors' voluntary liquidation] .....	65
[2.48 Moving from administration to dissolution] .....	65
[Chapter 11 Replacing Administrator .....	65
[2.49 Grounds for resignation] .....	65
[2.50 Notice of intention to resign] .....	66
[2.51 Notice of resignation] .....	66
[2.52 Incapacity to Act, through death or otherwise] .....	67
[2.53 Application to replace] .....	67
[2.54] .....	67
[2.55 Joint or concurrent appointments] .....	68
[2.56 Application to court to remove administrator from office] .....	68
[Chapter 12 EC Regulation – Conversion of Administration to Winding Up] .....	68
[2.57 Application for conversion into winding up] .....	69
[2.58 Contents of affidavit] .....	69
[2.59 Power of court] .....	69
[Chapter 13 EC Regulation – Member State Liquidator .....	70
[2.60 Interpretation of creditor and notice to member State liquidator] .....	70
Part 3 Receivers .....	70

Chapter 1 Appointment.....	70
3.1 Acceptance of Appointment.....	70
Chapter 2 Statement of Affairs .....	71
3.2 Notice requiring statement of affairs .....	71
3.3 Expenses of statement of affairs .....	71
Chapter 3 The Creditors' Committee .....	71
3.4 Constitution of committee .....	71
3.5 Functions of the committee .....	72
3.6 Application of provisions relating to liquidation committee.....	72
3.7 Information from receiver.....	73
3.8 Members' dealings with the company.....	73
[3.8A Prescribed part].....	73
Chapter 4 Miscellaneous .....	73
3.9 Abstract of receipts and payments .....	73
3.10 Receiver deceased.....	74
3.11 Vacation of office .....	74
Chapter 5 VAT Bad Debt Relief.....	75
3.12 Issue of certificate of insolvency .....	75
3.13 Notice to creditors.....	75
3.14 Preservation of certificate with company's records.....	76
Part 4 Winding Up by the Court.....	76
Chapter 1 Provisional Liquidator .....	76
4.1 Appointment of provisional liquidator .....	76
4.2 Order of appointment.....	76
4.3 Caution .....	76
4.4 Failure to find or to maintain caution.....	77
4.5 Remuneration .....	77
4.6 Termination of appointment.....	77
Chapter 2 Statement of Affairs .....	78
4.7 Notice requiring statement of affairs .....	78
4.8 Form of the statement of affairs.....	78
4.9 Expenses of statement of affairs .....	78
Chapter 3 Information.....	79
4.10 Information to creditors and contributories .....	79
4.11 Information to registrar of companies .....	80
Chapter 4 Meetings of Creditors and Contributories .....	80
4.12 First meetings in the liquidation .....	80
4.13 Other meetings .....	81
4.14 Attendance at meetings of company's personnel .....	81

Chapter 5 Claims in Liquidation.....	82
4.15 Submission of claims.....	82
4.16 Application of the Bankruptcy Act.....	83
4.17 Claims in foreign currency .....	84
Chapter 6 The Liquidator.....	85
Section A: Appointment and Functions of Liquidator .....	85
4.18 Appointment of liquidator by the court .....	85
4.19 Appointment by creditors or contributories .....	86
4.20 Authentication of liquidator's appointment .....	86
4.21 Hand-over of assets to liquidator .....	86
[4.22 Taking possession and realisation of the company's assets] .....	87
Section B: Removal and Resignation: Vacation of Office .....	87
4.23 Summoning of meeting for removal of liquidator .....	87
4.24 Procedure on liquidator's removal .....	88
4.25 Release of liquidator on removal .....	88
4.26 Removal of liquidator by the court .....	89
4.27 Advertisement of removal.....	89
4.28 Resignation of liquidator .....	89
4.29 Action following acceptance of liquidator's resignation.....	90
4.30 Leave to resign granted by the court .....	91
Section C: Release on Completion of Winding Up .....	91
4.31 Final meeting .....	91
Section D: Outlays and Remuneration .....	92
4.32 Determination of amount of outlays and remuneration .....	92
4.33 Recourse of liquidator to meeting of creditors .....	92
4.34 Recourse to the court .....	92
4.35 Creditors' claim that remuneration is excessive.....	93
Section E: Supplementary Provisions.....	93
4.36 Liquidator deceased .....	93
4.37 Loss of qualification as insolvency practitioner .....	93
4.38 Power of court to set aside certain transactions .....	94
4.39 Rule against solicitation.....	94
Chapter 7 The Liquidation Committee .....	94
4.40 Preliminary .....	94
4.41 Membership of committee .....	95
4.42 Formalities of establishment.....	95
4.43 Committee established by contributories.....	96
4.44 Obligations of liquidator to committee.....	96
4.45 Meetings of the committee .....	97
4.46 The chairman at meetings .....	97
4.47 Quorum .....	98

4.48 Committee members' representatives .....	98
4.49 Resignation .....	99
4.50 Termination of membership .....	99
4.51 Removal .....	99
4.52 Vacancy (creditor members) .....	99
4.53 Vacancy (contributory members).....	100
4.54 Voting rights and resolutions .....	100
4.55 Resolutions by post .....	100
4.56 Liquidator's reports .....	101
4.57 Expenses of members, etc .....	101
4.58 Dealings by committee-members and others .....	101
4.59 Composition of committee when creditors paid in full .....	103
[4.59A Formal defects] .....	103

Chapter 8 The Liquidation Committee where Winding Up Follows Immediately on Administration.....	103
4.60 Preliminary .....	104
4.61 Continuation of creditors' committee .....	104
4.62 Membership of committee .....	104
4.63 Liquidator's certificate .....	104
4.64 Obligations of liquidator to committee.....	105
4.65 Application of Chapter 7 .....	105

Chapter 9 Distribution of Company's Assets by Liquidator .....	105
4.66 Order of priority in distribution .....	106
4.67 Order of priority of expenses of liquidation .....	107
4.68 Application of the Bankruptcy Act.....	108

Chapter 10 Special Manager .....	108
4.69 Appointment and Remuneration .....	108
4.70 Caution .....	109
4.71 Failure to find or to maintain caution.....	109
4.72 Accounting.....	110
4.73 Termination of appointment.....	110
4.74 Notice of order for public examination .....	110
4.75 Order on request by creditors or contributories .....	111

Chapter 12 Miscellaneous .....	111
4.76 Limitation .....	111
4.77 Dissolution after winding up.....	112

Chapter 13 Company with Prohibited Name .....	112
4.78 Preliminary .....	112
4.79 Application for leave under section 216(3) .....	112
[4.80 First excepted case] .....	112
[4.81 Second excepted case] .....	114

4.82 Third excepted case .....	114
[Chapter 14 EC Regulation – Member State Liquidator].....	114
[4.83 Interpretation of creditor and notice to member State liquidator] .....	114
[Chapter 15 EC Regulation – Creditors’ Voluntary Winding Up – Confirmation by the Court].....	115
[4.84 Application for confirmation] .....	115
[4.85 Notice to member State liquidator and creditors in member States].....	116
Part 5 Creditors’ Voluntary Winding Up .....	116
5 Application of Part 4 .....	117
Part 6 Members’ Voluntary Winding Up.....	117
6 Application of Part 4 .....	117
Part 7 Provisions of General Application .....	117
Chapter 1 Meetings .....	117
7.1 Scope of Chapter 1.....	117
7.2 Summoning of meetings.....	117
7.3 Notice of meeting.....	118
7.4 Additional notices in certain cases.....	119
7.5 Chairman of meetings .....	120
7.6 Meetings requisitioned.....	120
7.7 Quorum .....	121
7.8 Adjournment .....	122
7.9 Entitlement to vote (creditors).....	122
7.10 Entitlement to vote (members and contributories) .....	123
7.11 Chairman of meeting as proxy holder.....	123
7.12 Resolutions.....	124
7.13 Report of meeting .....	124
[Chapter 1A Prescribed Part.....	125
[7.13A Application under section 176A(5) to disapply section 176A].....	125
[7.13B Notice of order under section 176A(5)] .....	125
Chapter 2 Proxies and Company Representation .....	126
7.14 Definition of "proxy" .....	126
7.15 Form of proxy .....	126
7.16 Use of proxy at meeting.....	126
7.17 Retention of proxies.....	127
7.18 Right of inspection .....	127
7.19 Proxy-holder with financial interest.....	128
7.20 Representation of corporations.....	128
[7.20A Interpretation of creditor] .....	128
Chapter 3 Miscellaneous .....	129
7.21 Giving of notices, etc .....	129
7.22 Sending by post.....	129



7.23 Certificate of giving notice, etc.....	130
7.24 Validity of proceedings .....	130
7.25 Evidence of proceedings at meetings.....	130
7.26 Right to list of creditors and copy documents .....	130
7.27 Confidentiality of documents .....	131
7.28 Insolvency practitioner's caution .....	131
7.29 Punishment of offences .....	132
7.30 Forms for use in insolvency proceedings .....	133
7.31 Fees, expenses, etc .....	133
7.32 Power of court to cure defects in procedure .....	133
7.33 Sederunt book .....	133
[7.34 Disposal of company's books, papers and other records] .....	134
[7.35 Information about time spent on a case--administration and company voluntary arrangements] .....	136
[7.36 Information about time spent on a case].....	136
SCHEDULES .....	138
SCHEDULE 1 .....	138
MODIFICATIONS OF PART 4 IN RELATION TO CREDITORS' VOLUNTARY WINDING UP.....	138
 SCHEDULE 2.....	 145
APPLICATION OF PART 4 IN RELATION TO MEMBERS' VOLUNTARY WINDING UP.....	145
 SCHEDULE 3.....	 149
DEPOSIT PROTECTION BOARD'S VOTING RIGHTS .....	149
 SCHEDULE 4.....	 150
PUNISHMENT OF OFFENCES UNDER THE RULES.....	150
 SCHEDULE 5.....	 151
FORMS.....	151
 EXPLANATORY NOTE .....	 153

## **Insolvency (Scotland) Rules 1986 (SI 1986/1915)**

Made 10th November 1986  
Laid before Parliament 26th November 1986  
Coming into Operation 29th December 1986

The Secretary of State, in exercise of the powers conferred on him by section 411 of the Insolvency Act 1986 and of all other powers enabling him in that behalf, hereby makes the following Rules:--

### **0.1 Citation and commencement**

These Rules may be cited as the Insolvency (Scotland) Rules 1986 and shall come into operation on 29th December 1986.

### **0.2 Interpretation**

(1) In these Rules

"the Act" means the Insolvency Act 1986;

"the Companies Act" means the Companies Act 1985;

["the Banking Act" means the Banking Act 1987;]

"the Bankruptcy Act" means the Bankruptcy (Scotland) Act 1985;

"the Rules" means the Insolvency (Scotland) Rules 1986;

"accounting period" in relation to the winding up of a company, shall be construed in accordance with section 52(1) and (6) of the Bankruptcy Act as applied by Rule 4.68;

["authorised person" is a reference to a person who is authorised pursuant to section 389A of the Act to act as nominee or supervisor of a voluntary arrangement proposed or approved under Part I or Part VIII of the Act;]

"business day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain;

["centre of main interests" has the same meaning as in the EC Regulation;]

"company" means a company which the courts in Scotland have jurisdiction to wind up;

["EC Regulation" means Council Regulation (EC) No 1346/2000 of 29th May 2000 on insolvency proceedings;]

["establishment" has the meaning given by Article 2(h) of the EC Regulation;]

"insolvency proceedings" means any proceedings under the first group of Parts in the Act or under these Rules;

["main proceedings" means proceedings opened in accordance with Article 3(1) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation, and

(a) in relation to England and Wales and Scotland set out in Annex A to the EC Regulation under the heading "United Kingdom"; and

(b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State;]

["member State liquidator" means a person falling within the definition of liquidator in Article 2(b) of the EC Regulation appointed in proceedings to which it applies in a member State other than the United Kingdom;]

["prescribed part" has the same meaning as it does in section 176A(2)(a) of the Act;]

["proxy-holder" shall be construed in accordance with Rule 7.14;]

"receiver" means a receiver appointed under section 51 (Receivers (Scotland));

"responsible insolvency practitioner" means, in relation to any insolvency proceedings, the person acting as supervisor of a voluntary arrangement under Part I of the Act, or as administrator, receiver, liquidator or provisional liquidator;

["secondary proceedings" means proceedings opened in accordance with Articles 3(2) and 3(3) of the EC Regulation and falling within the definition of winding-up proceedings in Article 2(c) of the EC Regulation, and

(a) in relation to England and Wales and Scotland, set out in Annex B to the EC Regulation under the heading "United Kingdom"; and

(b) in relation to another member State, set out in Annex B to the EC Regulation under the heading relating to that member State;]

["territorial proceedings" means proceedings opened in accordance with Articles 3(2) and 3(4) of the EC Regulation and falling within the definition of insolvency proceedings in Article 2(a) of the EC Regulation, and

(a) in relation to England and Wales and Scotland, set out in Annex A to the EC Regulation under the heading "United Kingdom"; and

(b) in relation to another member State, set out in Annex A to the EC Regulation under the heading relating to that member State].

(2) In these Rules, unless the context otherwise requires, any reference--

(a) to a section is a reference to a section of the Act;

(b) to a Rule is a reference to a Rule of the Rules;

- (c) to a Part or a Schedule is a reference to a Part of, or Schedule to, the Rules;
- (d) to a Chapter is a reference to a Chapter of the Part in which that reference is made.

### **0.3 Application**

These Rules apply--

- (a) to receivers appointed, and
- (b) to all other insolvency proceedings which are commenced, on or after the date on which the Rules come into operation.

## **Part 1**

### **Company Voluntary Arrangements**

#### **Chapter 1 Preliminary**

### **1.1 Scope of this Part; interpretation**

(1) The Rules in this Part apply where, pursuant to Part I of the Act, it is intended to make and there is made a proposal to a company and to its creditors for a voluntary arrangement, that is to say, a composition in satisfaction of its debts or a scheme of arrangement of its affairs.

(2) In this Part--

[(a) Chapter 2 applies where the proposal for the voluntary arrangement is made by the directors of the company and

(i) the company is neither in liquidation nor is [in administration]; and

(ii) no steps have been taken to obtain a moratorium under Schedule A1 to the Act in connection with the proposal;]

(b) Chapter 3 applies where the company is in liquidation or [administration] and the proposal is made by the liquidator or (as the case may be) the administrator, he in either case being the nominee for the purposes of the proposal;

[(c) Chapter 4 applies in the same case as Chapter 3, but where the nominee is not the liquidator or administrator;

(d) Chapters [5, 6, and 8] apply in all the three cases mentioned in sub-paragraphs (a) to (c) above; and

(e) Chapter 7 applies where the proposal is made by the directors of an eligible company with a view to obtaining a moratorium.]

(3) In Chapters 3, 4 and 5 the liquidator or the administrator is referred to as the "responsible insolvency practitioner".

[(4) In this Part, a reference to an "eligible company" is to a company that is eligible for a moratorium in accordance with paragraph 2 of Schedule A1 to the Act.]

## **Chapter 2**

### **Proposal by Directors**

#### **1.2 Preparation of proposal**

The directors shall prepare for the intended nominee a proposal on which (with or without amendments to be made under Rule 1.3 below) to make his report to the court under section 2.

#### **1.3 Contents of proposal**

(1) The directors' proposal shall provide a short explanation why, in their opinion, a voluntary arrangement under Part I of the Act is desirable, and give reasons why the company's creditors may be expected to concur with such an arrangement.

(2) The following matters shall be stated, or otherwise dealt with, in the directors' proposal--

(a) the following matters, so far as within the directors' immediate knowledge--

(i) the company's assets, with an estimate of their respective values;

(ii) the extent (if any) to which the assets are subject to any security in favour of any creditors;

(iii) the extent (if any) to which particular assets of the company are to be excluded from the voluntary arrangement;

(b) particulars of any property other than assets of the company itself, which is proposed to be included in the arrangement, the source of such property and the terms on which it is to be made available for inclusion;

(c) the nature and amount of the company's liabilities (so far as within the directors' immediate knowledge), the manner in which they are proposed to be met, modified, postponed or otherwise dealt with by means of the arrangement and (in particular)--

(i) how it is proposed to deal with preferential creditors (defined in section 386) and creditors who are, or claim to be, secured;

(ii) how persons connected with the company (being creditors) are proposed to be treated under the arrangement; and

(iii) whether there are, to the directors' knowledge, any circumstances giving rise to the possibility, in the event that the company should go into liquidation, of claims under--

section 242 (gratuitous alienations),

section 243 (unfair preferences),

section 244 (extortionate credit transactions), or

section 245 (floating charges invalid);

and, where such circumstances are present, whether, and if so how, it is proposed under the voluntary arrangement to make provision for wholly or partly indemnifying the company in respect of such claims;

[(ca) to the best of the directors' knowledge and belief--

(i) an estimate of the value of the prescribed part, should the company go into liquidation if the proposal for the voluntary arrangement is not accepted, whether or not section 176A is to be disapplied, and

(ii) an estimate of the value of the company's net property on the date that the estimate is made,

provided that such estimates shall not be required to include any information the disclosure of which could seriously prejudice the commercial interests of the company, but if such information is excluded the estimates shall be accompanied by a statement to that effect;]

(d) whether any, and if so what, cautionary obligations (including guarantees) have been given of the company's debts by other persons, specifying which (if any) of the cautioners are persons connected with the company;

(e) the proposed duration of the voluntary arrangement.

(f) the proposed dates of distribution to creditors, with estimates of their amounts;

[(fa) how it is proposed to deal with the claim of any person who is bound by the arrangement by virtue of section 5(2)(b)(ii);]

(g) the amount proposed to be paid to the nominee (as such) by way of remuneration and expenses;

(h) the manner in which it is proposed that the supervisor of the arrangement should be remunerated and his expenses defrayed;

(i) whether, for the purposes of the arrangement, any cautionary obligations (including guarantees) are to be offered by directors, or other persons, and whether (if so) any security is to be given or sought;

- (j) the manner in which funds held for the purposes of the arrangement are to be banked, invested or otherwise dealt with pending distribution to creditors;
  - (k) the manner in which funds held for the purpose of payment to creditors, and not so paid on the termination of the arrangement, are to be dealt with;
  - (l) the manner in which the business of the company is being and is proposed to be conducted during the course of the arrangement;
  - (m) details of any further credit facilities which it is intended to arrange for the company and how the debts so arising are to be paid;
  - (n) the functions which are to be undertaken by the supervisor of the arrangement;
  - [(o) the name, address and qualification of the person proposed as supervisor of the voluntary arrangement, and confirmation that he is either qualified to act as an insolvency practitioner in relation to the company or is an authorised person in relation to the company][; and
  - (p) whether the EC Regulation will apply and, if so, whether the proceedings will be main proceedings or territorial proceedings].
- (3) With the agreement in writing of the nominee, the directors' proposal may be amended at any time up to delivery of the former's report to the court under section 2(2).

#### **1.4 Notice to intended nominee**

- (1) The directors shall give to the intended nominee written notice of their proposal.
- (2) The notice, accompanied by a copy of the proposal, shall be delivered either to the nominee himself, or to a person authorised to take delivery of documents on his behalf.
- (3) If the intended nominee agrees to act, he shall cause a copy of the notice to be endorsed to the effect that it has been received by him on a specified date; and the period of 28 days referred to in section 2(2) then runs from that date.
- (4) The copy of the notice so endorsed shall be returned by the nominee forthwith to the directors at an address specified by them in the notice for that purpose.

#### **1.5 Statement of affairs**

- (1) The directors shall, within 7 days after their proposal is delivered to the nominee, or within such longer time as he may allow, deliver to him a statement of the company's affairs.
- (2) The statement shall comprise the following particulars (supplementing or amplifying, so far as is necessary for clarifying the state of the company's affairs, those already given in the directors' proposal):--

- (a) a list of the company's assets, divided into such categories as are appropriate for easy identification, with estimated values assigned to each category;
  - (b) in the case of any property on which a claim against the company is wholly or partly secured, particulars of the claim and its amount and of how and when the security was created;
  - (c) the names and addresses of the company's preferential creditors (defined in section 386), with the amounts of their respective claims;
  - (d) the names and addresses of the company's unsecured creditors, with the amounts of their respective claims;
  - (e) particulars of any debts owed by or to the company to or by persons connected with it;
  - (f) the names and addresses of the company's members and details of their respective shareholdings; and
  - (g) such other particulars (if any) as the nominee may in writing require to be furnished for the purposes of making his report to the court on the directors proposal.
- (3) The statement of affairs shall be made up to a date not earlier than 2 weeks before the date of the notice given by the directors to the nominee under Rule 1.4. However, the nominee may allow an extension of that period to the nearest practicable date (not earlier than 2 months before the date of the notice under Rule 1.4); and if he does so, he shall give his reasons in his report to the court on the directors' proposal.
- (4) The statement shall be certified as correct, to the best of their knowledge and belief by two or more directors of the company or by the company secretary and at least one director (other than the secretary himself).

#### **1.6 Additional disclosure for assistance of nominee**

- (1) If it appears to the nominee that he cannot properly prepare his report on the basis of information in the directors' proposal and statement of affairs, he may call on the directors to provide him with--
- (a) further and better particulars as to the circumstances in which, and the reasons why, the company is insolvent or (as the case may be) threatened with insolvency;
  - (b) particulars of any previous proposals which have been made in respect of the company under Part I of the Act;
  - (c) any further information with respect to the company's affairs which the nominee thinks necessary for the purposes of his report.
- (2) The nominee may call on the directors to inform him, with respect to any person who is, or at any time in the 2 years preceding the notice under Rule 1.4 has been, a director or



officer of the company, whether and in what circumstances (in 2 years or previously) that person--

- (a) has been concerned in the affairs of any other company (whether or not incorporated in Scotland) which has become insolvent, or
- (b) has had his estate sequestrated, granted a trust deed for his creditors, been adjudged bankrupt or compounded or entered into an arrangement with his creditors.

(3) For the purpose of enabling the nominee to consider their proposal and his report on it, the directors must give him access to the company's accounts and records.

### **1.7 Nominees report on the proposal**

(1) With his report to the court under section 2 the nominee shall lodge--

- (a) a copy of the directors' proposal (with amendments, if any, authorised under Rule 1.3(3));
- (b) a copy or summary of the company's statement of affairs.

(2) If the nominee makes known his opinion [that the directors' proposal has a reasonable prospect of being approved and implemented and] that meetings of the company and its creditors should be summoned under section 3, his report shall have annexed to it his comments on the proposal. If his opinion is otherwise, he shall give his reasons for that opinion.

(3) The nominee shall send a copy of his report and of his comments (if any) to the company. Any director, member or creditor of the company is entitled, at all reasonable times on any business day, to inspect the report and comments.

### **[1.8 Replacement of nominee]**

[(1) Where a person other than the nominee intends to apply to the court under section 2(4) for the nominee to be replaced (except in any case where the nominee has died), he shall give to the nominee at least 7 days' notice of his application.

(2) Where the nominee intends to apply to the court under section 2(4) to be replaced, he shall give at least 7 days' notice of his application to the person intending to make the proposal.

(3) No appointment of a replacement nominee shall be made by the court unless there is lodged in court a statement by the replacement nominee--

- (a) indicating his consent to act; and

- (b) that he is qualified to act as an insolvency practitioner in relation to the company or is an authorised person in relation to the company.]

### **1.9 Summoning of meetings under section 3**

- (1) If in his report the nominee states that in his opinion meetings of the company and its creditors should be summoned to consider the directors' proposal, the date on which the meetings are to be held shall be not less than 14, nor more than 28 days from the date on which he lodged his report in court under section 2.
- (2) The notice summoning the meeting shall specify the court in which the nominee's report under section 2 has been lodged and with each notice there shall be sent--
- (a) a copy of the directors' proposal;
  - (b) a copy of the statement of affairs or, if the nominee thinks fit, a summary of it (the summary to include a list of creditors and the amount of their debts); and
  - (c) the nominee's comments on the proposal.

## **Chapter 3**

### **Proposal by Administrator or Liquidator where he is the Nominee**

#### **1.10 Preparation of proposal**

The responsible insolvency practitioner's proposal shall specify--

- (a) all such matters as under Rule 1.3 [(subject to paragraph (c) below)] in Chapter 2 the directors of the company would be required to include in a proposal by them [with, in addition, where the company is [in administration], the names and addresses of the company's preferential; creditors (defined in section 386) with the amounts of their respective claims,] and
- (b) such other matters (if any) as the insolvency practitioner considers appropriate for ensuring that members and creditors of the company are enabled to reach an informed decision on the proposal;
- [(c) the administrator or liquidator shall include, in place of the estimate referred to in Rule 1.3(2)(ca), a statement which contains--
  - (i) to the best of his knowledge and belief--
    - (aa) an estimate of the value of the prescribed part (whether or not he proposes to make an application under section 176A(5) or section 176A(3) applies), and
    - (bb) an estimate of the value of the company's net property,

provided that such estimates shall not be required to include any information the disclosure of which could seriously prejudice the commercial interests of the company, but if such information is excluded the estimates shall be accompanied by a statement to that effect, and

(ii) whether, and, if so, why, he proposes to make an application under section 176A(5)].

### **1.11 Summoning of meetings under section 3**

(1) The responsible insolvency practitioner shall give at least 14 days' notice of the meetings of the company and of its creditors under section 3(2).

(2) With each notice summoning the meeting, there shall be sent--

(a) a copy of the responsible insolvency practitioner's proposal; and

(b) a copy of the company's statement of affairs or, if he thinks fit, a summary of it (the summary to include a list of the creditors and the amount of their debts).

## **Chapter 4**

### **Proposal by Administrator or Liquidator where Another Insolvency Practitioner is the Nominee**

#### **1.12 Preparation of proposal and notice to nominee**

(1) The responsible insolvency practitioner shall give notice to the intended nominee, and prepare his proposal for a voluntary arrangement, in the same manner as is required of the directors in the case of a proposal by them, under Chapter 2.

(2) Rule 1.2 applies to the responsible insolvency practitioner as it applies to the directors; and Rule 1.4 applies as regards the action to be taken by the nominee.

(3) The content of the proposal shall be as required by [Rule 1.10], reading references to the directors as referring to the responsible insolvency practitioner.

(4) Rule 1.6 applies, in respect of the information to be provided to the nominee, reading references to the directors as referring to the responsible insolvency practitioner.

(5) With the proposal the responsible insolvency practitioner shall provide a copy of the company's statement of affairs.

(6) Rules 1.7 to 1.9 apply as regards a proposal under this Chapter as they apply to a proposal under Chapter 2.

## **Chapter 5 Meetings**

### **1.13 General**

The provisions of Chapter 1 of Part 7 (Meetings) shall apply with regard to the meetings of the company and of the creditors which are summoned under section 3, subject to Rules 1.9, 1.11 and 1.12(6) and the provisions in this Chapter.

### **1.14 Summoning of meetings**

(1) In fixing the date, time and place for the creditors' meeting and the company meeting, the person summoning the meetings ("the convenor") shall have regard primarily to the convenience of the creditors.

[(2) The meetings may be held on the same day or on different days. If held on the same day, the meetings shall be held in the same place, but in either case the creditors' meeting shall be fixed for a time in advance of the company meeting.

(3) Where the meetings are not held on the same day, they shall be held within 7 days of each other.]

#### **[1.14A The Chairman at meetings]**

[(1) Subject as follows, at both the creditors' meeting and the company meeting, and at any combined meeting, the convenor shall be chairman.

(2) If for any reason he is unable to attend, he may nominate another person to act as chairman in his place; but a person so nominated must be--

- (a) a person qualified to act as an insolvency practitioner in relation to the company;
- (b) an authorised person in relation to the company; or
- (c) an employee of the convenor or his firm who is experienced in insolvency matters.]

### **1.15 Attendance by company officers**

(1) At least 14 days' notice to attend the meetings shall be given by the convenor to--

- (a) all directors of the company, and
- (b) any persons in whose case the convenor thinks that their presence is required as being officers of the company or as having been directors or officers of it at any time in the 2 years immediately preceding the date of the notice.

(2) The chairman may, if he thinks fit, exclude any present or former director or officer from attendance at a meeting, either completely or for any part of it; and this applies whether or not a notice under this Rule has been sent to the person excluded.

#### **[1.15A Entitlement to vote (creditors)]**

[(1) Subject as follows, every creditor who has notice of the creditors' meeting is entitled to vote at the meeting or any adjournment of it.

(2) Votes are calculated according to the amount of the creditor's debt as at the date of the meeting or, where the company is being wound up or is subject to an administration order, the date of its going into liquidation or (as the case may be) of the administration order.

(3) A creditor may vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained and for the purposes of voting (but not otherwise) his debt shall be valued at £1 unless the chairman agrees to put a higher value on it.]

#### **[1.15B Procedure for admission of creditors' claims for voting purposes]**

[(1) Subject as follows, at any creditors' meeting the chairman shall ascertain the entitlement of persons wishing to vote and shall admit or reject their claims accordingly.

(2) The chairman may admit or reject a claim in whole or in part.

(3) The chairman's decision on any matter under this Rule or under paragraph (3) of Rule 1.15A is subject to appeal to the court by any creditor or member of the company.

(4) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

(5) If on an appeal the chairman's decision is reversed or varied, or votes are declared invalid, the court may order another meeting to be summoned, or make such order as it thinks just.

The court's power to make an order under this paragraph is exercisable only if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity.

(6) An application to the court by way of appeal against the chairman's decision shall not be made after the end of the period of 28 days beginning with the first day on which the report required by section 4(6) has been made to the court.

(7) The chairman is not personally liable for any expenses incurred by any person in respect of an appeal under this Rule.]

### **[1.16 Adjournments]**

- [(1) If the chairman thinks fit, the creditors' meeting and the company meeting may be held together.
- (2) The chairman may, and shall if it is so resolved at the meeting in question, adjourn that meeting for not more than 14 days.
- (3) If there are subsequently further adjournments, the final adjournment shall not be to a day later than 14 days after the date on which the meeting in question was originally held.
- (4) In the case of a proposal by the directors, if the meetings are adjourned under paragraph (2), notice of the fact shall be given by the nominee forthwith to the court.
- (5) If following the final adjournment of the creditors' meeting the proposal (with or without modifications) has not been approved by the creditors it is deemed rejected.]

### **1.17 Report of meetings**

- (1) A report of the meetings shall be prepared by the person who was chairman of them.
- (2) The report shall--
  - [(a) state whether the proposal for a voluntary arrangement was approved by the creditors of the company alone or by both the creditors and members of the company and in either case whether such approval was with any modifications];
  - (b) set out the resolutions which were taken at each meeting, and the decision on each one;
  - (c) list the creditors and members of the company (with their respective values) who were present or represented at the meeting, and how they voted on each resolution; .  
..
  - [(ca) state whether, in the opinion of the supervisor--
    - (i) the EC Regulation applies to the voluntary arrangement; and
    - (ii) if so, whether the proceedings are main proceedings or territorial proceedings; and]
  - (d) Include such further information (if any) as the chairman thinks it appropriate make known to the court.
- (3) A copy of the chairman's report shall, within 4 days of the meetings being held, be lodged in court.
- (4) In respect of each of the meetings the persons to whom notice of the result of the meetings is to be sent under section 4(6) are all those who were sent notice of the meet-

ing. The notice shall be sent immediately after a copy of the chairman's report is lodged in court under paragraph (3).

(5) [If the decision approving the voluntary arrangement has effect under section 4A] (whether or not in the form proposed) the chairman shall forthwith send a copy of the report to the registrar of companies.

## **Chapter 6**

### **Implementation of the Voluntary Arrangement**

#### **1.18 Resolutions to follow approval**

[(1) If the voluntary arrangement is approved (with or without modifications) by the creditors' meeting, a resolution may be taken by the creditors, where two or more supervisors are appointed, on the question whether acts to be done in connection with the arrangement may be done by any one or more of them, or must be done by all of them.]

(2) . . .

(3) If at either meeting a resolution is moved for the appointment of some person other than the nominee to be supervisor of the arrangement, there must be produced to the chairman, at or before the meeting--

- (a) that person's written consent to act (unless the person is present and then and there signifies his consent), and
- (b) his written confirmation that he is qualified to act as an insolvency practitioner in relation to the company [or is an authorised person in relation to the company].

#### **[1.18A Notice of order made under section 4A(6)]**

[(1) This Rule applies where the court makes an order under section 4A(6).

(2) The member of the company who applied for the order shall serve certified copies of it on--

- (a) the supervisor of the voluntary arrangement; and
- (b) the directors of the company.

(3) Service on the directors may be effected by service of a single copy on the company at its registered office.

(4) The directors or (as the case may be) the supervisor shall forthwith after receiving a copy of the court's order, give notice of it to all persons who were sent notice of the creditors' or company meetings or who, not having been sent such notice, are affected by the order.

(5) The person on whose application the order of the court was made shall, within 7 days of the order, deliver a certified copy interlocutor to the registrar of companies.]

### **1.19 Hand-over of property, etc to supervisor**

(1) [Where the decision approving the voluntary arrangement has effect under section 4A], the directors or, where--

- (a) the company is in liquidation or is [in administration], and
- (b) a person other than the responsible insolvency practitioner is appointed as supervisor of the voluntary arrangement,

the responsible insolvency practitioner, shall forthwith do all that is required for putting the supervisor into possession of the assets included in the arrangement.

(2) Where paragraph (1)(a) and (b) applies, the supervisor shall, on taking possession of the assets, discharge any balance due to the responsible insolvency practitioner by way of remuneration or on account of--

- (a) fees, costs, charges and expenses properly incurred and payable under the Act or the Rules, and
- (b) any advances made in respect of the company, together with interest on such advances at the official rate (within the meaning of Rule 4.66(2)(b)) ruling at the date on which the company went into liquidation or (as the case may be) [entered administration].

(3) Alternatively, the supervisor shall, before taking possession, give the responsible insolvency practitioner a written undertaking to discharge any such balance out of the first realisation of assets.

(4) The sums due to the responsible insolvency practitioner as above shall be paid out of the assets included in the arrangement in priority to all other sums payable out of those assets, subject only to the deduction from realisations by the supervisor of the proper costs and expenses of such realisations.

(5) The supervisor shall from time to time out of the realisation of assets discharge all cautionary obligations (including guarantees) properly given by the responsible insolvency practitioner for the benefit of the company and shall pay all the responsible insolvency practitioner's expenses.

### **1.20 Revocation or suspension of the arrangement**

(1) This Rule applies where the court makes an order of revocation or suspension under section 6.



- (2) The person who applied for the order shall serve copies of it--
  - (a) on the supervisor of the voluntary arrangement, and
  - (b) on the directors of the company or the administrator or liquidator (according to who made the proposal for the arrangement).

Service on the directors may be effected by service of a single copy of the order on the company at its registered office.

- (3) If the order includes a direction given by the court, under section 6(4)(b), for any further meetings to be summoned, notice shall also be given by the person who applied for the order to whoever is, in accordance with the direction, required to summon the meetings.

- (4) The directors or (as the case may be) the administrator or liquidator shall--
  - (a) forthwith after receiving a copy of the court's order, give notice of it to all persons who were sent notice of the creditors' and the company meetings or who, not having been sent that notice, appear to be affected by the order; and
  - (b) within 7 days of their receiving a copy of the order (or within such longer period as the court may allow), give notice to the court whether it is intended to make a revised proposal to the company and its creditors, or to invite re-consideration of the original proposal.

- (5) The person on whose application the order of revocation or suspension was made shall, within 7 days after the making of the order, deliver a copy of the order to the registrar of companies.

## **1.21 Supervisor's accounts and reports**

- (1) Where the voluntary arrangement authorises or requires the supervisor--
  - (a) to carry on the business of the company, or to trade on its behalf or in its name, or
  - (b) to realise assets of the company, or
  - (c) otherwise to administer or dispose of any of its funds,

he shall keep accounts and records of his acts and dealings in and in connection with the arrangement, including in particular records of all receipts and payments of money.

- (2) The supervisor shall, not less often than once in every 12 months beginning with the date of his appointment, prepare an abstract of such receipts and payments and send copies of it, accompanied by his comments on the progress and efficacy of the arrangement, to--

- (a) the court,
- (b) the registrar of companies,
- (c) the company,
- (d) all those of the company's creditors who are bound by the arrangement,
- (e) subject to paragraph (5) below, the members of the company who are so bound, and
- (f) where the company is not in liquidation, the company's auditors for the time being.

If in any period of 12 months he has made no payments and had no receipts, he shall at the end of that period send a statement to that effect to all those specified in subparagraphs (a) to (f) above.

(3) An abstract provided under paragraph (2) shall relate to a period beginning with the date of the supervisor's appointment or (as the case may be) the day following the end of the last period for which an abstract was prepared under this Rule; and copies of the abstract shall be sent out, as required by paragraph (2), within the two months following the end of the period to which the abstract relates.

(4) If the supervisor is not authorised as mentioned in paragraph (1), he shall, not less often than once in every 12 months beginning with the date of his appointment, send to all those specified in paragraphs 2(a) to (f) a report on the progress and efficacy of the voluntary arrangement.

(5) The court may, on application by the supervisor,--

- (a) dispense with the sending under this Rule of abstracts or reports to members of the company, either altogether or on the basis that the availability of the abstract or report to members on request is to be advertised by the supervisor in a specified manner;
- (b) vary the dates on which the obligation to send abstracts or reports arises.

## **1.22 Fees, costs, charges and expenses**

The fees, costs, charges and expenses that may be incurred for any of the of a voluntary arrangement are--

- (a) any disbursements made by the nominee prior to the [decision approving the arrangement taking effect under section 4A], and any remuneration for his services as is agreed between himself and the company (or, as the case may be, the administrator or liquidator);
- (b) any fees, costs, charges or expenses which--
  - (i) are sanctioned by the terms of the arrangement, or

- (ii) would be payable, or correspond to those which would be payable, in an administration or winding up.

### **[1.23 Completion or termination of the arrangement]**

[(1) Not more than 28 days after the final completion or termination of the voluntary arrangement, the supervisor shall send to creditors and members of the company who are bound by it a notice that the voluntary arrangement has been fully implemented or (as the case may be) has terminated.

(2) With the notice there shall be sent to each creditor and member a copy of a report by the supervisor summarising all receipts and payments made by him in pursuance of the arrangement, and explaining in relation to implementation of the arrangement any departure from the proposals as they originally took effect, or (in the case of termination of the arrangement) explaining the reasons why the arrangement has terminated.

[(2A) In the report under paragraph (2), the supervisor shall include a statement as to the amount paid, if any, to unsecured creditors by virtue of the application of section 176A (prescribed part).]

(3) The supervisor shall, within the 28 days mentioned above, send to the registrar of companies and to the court a copy of the notice to creditors and members under paragraph (1), together with a copy of the report under paragraph (2), and the supervisor shall not vacate office until after such copies have been sent.]

### **1.24 ...**

...

## **[Chapter 7 Obtaining a Moratorium Proceedings During a Moratorium Nominees Consideration of Proposals where Moratorium Obtained]**

### **[Section A: Obtaining a Moratorium]**

### **[1.25 Preparation of proposal by directors and submission to nominee]**

[(1) The document containing the proposal referred to in paragraph 6(1)(a) of Schedule A1 to the Act shall--

- (a) be prepared by the directors;

(b) comply with the requirements of paragraphs (1) and (2) of Rule 1.3 (save that the reference to preferential creditors shall be to preferential creditors within the meaning of paragraph 31(8) of Schedule A1 to the Act); and

(c) state the address to which notice of the consent of the nominee to act and the documents referred to in Rule 1.28 shall be sent.

(2) With the agreement in writing of the nominee, the directors may amend the proposal at any time before submission to them by the nominee of the statement required by paragraph 6(2) of Schedule A1 to the Act.]

#### **[1.26 Delivery of documents to the intended nominee etc]**

[(1) The documents required to be delivered to the nominee pursuant to paragraph 6(1) of Schedule A1 to the Act shall be delivered to the nominee himself or to a person authorised to take delivery of documents on his behalf.

(2) On receipt of the documents, the nominee shall forthwith issue an acknowledgement of receipt of the documents to the directors which shall indicate the date on which the documents were received.]

#### **[1.27 Statement of affairs]**

[(1) The statement of the company's affairs required to be delivered to the nominee pursuant to paragraph 6(1)(b) of Schedule A1 to the Act shall be delivered to the nominee no later than 7 days after the delivery to him of the document setting out the terms of the proposed voluntary arrangement or such longer time as he may allow.

(2) The statement of affairs shall comprise the same particulars as required by Rule 1.5(2) (supplementing or amplifying, so far as is necessary for clarifying the state of the company's affairs, those already given in the directors' proposal).

(3) The statement of affairs shall be made up to a date not earlier than 2 weeks before the date of the delivery of the document containing the proposal for the voluntary arrangement to the nominee under Rule 1.26(1).

However, the nominee may allow an extension of that period to the nearest practicable date (not earlier than 2 months before the date of delivery of the documents referred to in Rule 1.26(1)) and if he does so, he shall give a statement of his reasons in writing to the directors.

(4) The statement of affairs shall be certified as correct, to the best of their knowledge and belief, by two or more directors of the company, or by the company secretary and at least one director (other than the secretary himself).]

### **[1.28 The nominee's statement]**

[(1) The nominee shall submit to the directors the statement required by paragraph 6(2) of Schedule A1 to the Act within 28 days of the submission to him of the document setting out the terms of the proposed voluntary arrangement.

(2) The statement shall have annexed to it--

(a) the nominee's comments on the proposal, unless the statement contains an opinion in the negative on any of the matters referred to in paragraph 6(2)(a) and (b) of Schedule A1 to the Act, in which case he shall instead give his reasons for that opinion, and

(b) where he is willing to act in relation to the proposed arrangement, a statement of his consent to act.]

### **[1.29 Documents submitted to the court to obtain moratorium]**

[(1) Where pursuant to paragraph 7 of Schedule A1 to the Act the directors lodge the document and statements referred to in that paragraph in court those documents shall be delivered together with 4 copies of a schedule listing them within 3 working days of the date of the submission to them of the nominee's statement under paragraph 6(2) of Schedule A1 to the Act.

(2) When the directors lodge the document and statements referred to in paragraph (1), they shall also lodge--

(a) a copy of any statement of reasons made by the nominee pursuant to Rule 1.27(3); and

(b) a copy of the nominee's comments on the proposal submitted to them pursuant to Rule 1.28(2).

(3) The copies of the schedule shall be endorsed by the court with the date on which the documents were lodged in court and 3 copies of the schedule certified by the court shall be returned by the court to the person who lodged the documents in court.

(4) The statement of affairs required to be lodged under paragraph 7(1)(b) of Schedule A1 to the Act shall comprise the same particulars as required by Rule 1.5(2).]

### **[1.30 Notice and advertisement of beginning of a moratorium]**

[(1) After receiving the copies of the schedule endorsed by the court under Rule 1.29(3), the directors shall forthwith serve two of them on the nominee and one on the company.

(2) Forthwith after receiving the copies of the schedule pursuant to paragraph (1) the nominee shall advertise the coming into force of the moratorium once in the Edinburgh Gazette, and once in such newspaper as he thinks most appropriate for ensuring that its coming into force comes to the notice of the company's creditors.

(3) The nominee shall forthwith notify the registrar of companies, the keeper of the register of inhibitions and adjudications, the company and any petitioning creditor of the company of whose claim he is aware of the coming into force of the moratorium and such notification shall specify the date on which the moratorium came into force.

(4) The nominee shall give notice of the coming into force of the moratorium specifying the date on which it came into force to any messenger-at-arms or sheriff officer who, to his knowledge, is instructed to execute diligence or other legal process against the company or its property.]

### **[1.31 Notice of extension of moratorium]**

[(1) The nominee shall forthwith notify the registrar of companies, the keeper of the register of inhibitions and adjudications and the court of a decision taking effect pursuant to paragraph 36 of Schedule A1 to the Act to extend or further extend the moratorium and such notice shall specify the new expiry date of the moratorium.

(2) Where an order is made by the court extending or further extending or renewing or continuing a moratorium, the nominee shall forthwith after receiving a copy of the same give notice to the registrar of companies and the keeper of the register of inhibitions and adjudications and together with the notice shall send a certified copy interlocutor to the registrar of companies.]

### **[1.32 Notice and advertisement of end of moratorium]**

[(1) After the moratorium comes to an end, the nominee shall forthwith advertise its coming to an end once in the Edinburgh Gazette, and once in such newspaper as he thinks most appropriate for ensuring that its coming to an end comes to the notice of the company's creditors, and such notice shall specify the date on which the moratorium came to an end.

(2) The nominee shall forthwith give notice of the ending of the moratorium to the registrar of companies, the court, the keeper of the register of inhibitions and adjudications, the company and any creditor of the company of whose claim he is aware and such notice shall specify the date on which the moratorium came to an end.]

### **[1.33 Inspection of court file]**

[Any director, member or creditor of the company is entitled, at all reasonable times on any business day, to inspect the court file.]

## **[Section B: Proceedings During a Moratorium]**

### **[1.34 Disposal of charged property etc during a moratorium]**

[(1) This Rule applies in any case where the company makes an application to the court under paragraph 20 of Schedule A1 to the Act for leave to dispose of property of the company which is subject to a security, or goods in possession of the company under an agreement to which that paragraph relates.

(2) The court shall fix a venue for the hearing of the application and the company shall forthwith give notice of the venue to the person who is the holder of the security or, as the case may be, the owner under the agreement.

(3) If an order is made, the company shall forthwith give notice of it to that person or owner.

(4) The court shall send two certified copies of the order to the company, who shall send one of them to that person or owner.]

## **[Section C: Nominees]**

### **[1.35 Withdrawal of nominee's consent to act]**

[Where the nominee withdraws his consent to act, he shall, pursuant to paragraph 25(5) of Schedule A1 to the Act, forthwith give notice of his withdrawal and the reason for withdrawing his consent to act to--

- (a) the registrar of companies;
- (b) the court;
- (c) the company; and
- (d) any creditor of the company of whose claim he is aware.]

### **[1.36 Replacement of nominee by the court]**

[(1) Where the directors intend to make an application to the court under paragraph 28 of Schedule A1 to the Act for the nominee to be replaced, they shall give to the nominee at least 7 days' notice of their application.

(2) Where the nominee intends to make an application to the court under that paragraph to be replaced, he shall give to the directors at least 7 days' notice of his application.

(3) No appointment of a replacement nominee shall be made by the court unless there is lodged in court a statement by the replacement nominee indicating his consent to act.]

#### **[1.37 Notification of appointment of a replacement nominee]**

[Where a person is appointed as a replacement nominee he shall forthwith give notice of his appointment to--

- (a) the registrar of companies;
- (b) the court (in any case where he was not appointed by the court); and
- (c) the person whom he has replaced as nominee.]

#### **[1.38 Applications to court under paragraph 26 or 27 of Schedule A1 to the Act]**

[Where any person intends to make an application to the court pursuant to paragraph 26 or 27 of Schedule A1 to the Act, he shall give to the nominee at least 7 days' notice of his application.]

### **[Section D: Consideration of Proposals where Moratorium Obtained]**

#### **[1.39 General]**

[(1) The provisions of Chapter 1 of Part 7 (Meetings) shall apply with regard to the meetings of the company and of the creditors which are summoned pursuant to paragraph 29(1) of Schedule A1 to the Act, subject to the provisions in this section of this Chapter.

(2) The provisions of Rules 1.14, 1.14A and 1.15 shall apply with regard to meetings as mentioned in paragraph (1) above as they apply to meetings of the company and of creditors which are summoned under section 3.]

#### **[1.40 Summoning of meetings; procedure at meetings etc]**

[(1) Where the nominee summons meetings of creditors and the company pursuant to paragraph 29(1) of Schedule A1 to the Act, each of those meetings shall be summoned for a date that is not more than 28 days from the date on which the moratorium came into force.

(2) Notices calling the creditors' meetings shall be sent by the nominee to all creditors specified in the statement of affairs and any other creditors of the company of whose address he is aware at least 14 days before the day fixed for the meeting.



(3) Notices calling the company meeting shall be sent by the nominee to all persons who are, to the best of the nominee's belief, members of the company at least 14 days before the day fixed for the meeting.

(4) Each notice sent under this Rule shall specify the court in which the documents relating to the obtaining of the moratorium were lodged and state the effect of paragraphs (1), (2) and (3) of Rule 1.43 (requisite majorities (creditors)); and with each notice there shall be sent--

- (a) a copy of the directors' proposal;
- (b) a copy of the statement of the company's affairs or, if the nominee thinks fit, a summary of it (the summary to include a list of creditors and the amount of their debts); and
- (c) the nominee's comments on the proposal.]

#### **[1.41 Entitlement to vote (creditors)]**

[(1) Subject as follows, every creditor who has notice of the creditors' meeting is entitled to vote at the meeting or any adjournment of it.

(2) Votes are calculated according to the amount of the creditor's debt as at the beginning of the moratorium, after deducting any amounts paid in respect of that debt after that date.

(3) A creditor may vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained and for the purposes of voting (but not otherwise) his debt shall be valued at £1 unless the chairman agrees to put a higher value on it.]

#### **[1.42 Procedure for admission of creditors claims for voting purposes]**

[(1) Subject as follows, at any creditors' meeting the chairman shall ascertain the entitlement of persons wishing to vote and shall admit or reject their claims accordingly.

(2) The chairman may admit or reject a claim in whole or in part.

(3) The chairman's decision on any matter under this Rule or under paragraph (3) of Rule 1.41 is subject to appeal to the court by any creditor or member of the company.

(4) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

(5) If on an appeal the chairman's decision is reversed or varied, or votes are declared invalid, the court may order another meeting to be summoned, or make such order as it thinks just.

The court's power to make an order under this paragraph is exercisable only if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity.

(6) An application to the court by way of appeal against the chairman's decision shall not be made after the end of the period of 28 days beginning with the first day on which the report required by paragraph 30(3) of Schedule A1 to the Act has been made to the court.

(7) The chairman is not personally liable for any expenses incurred by any person in respect of an appeal under this Rule.]

#### **[1.43 Requisite majorities (creditors)]**

[(1) Subject as follows, at the creditors' meeting for any resolution to pass approving any proposal or modification there must be a majority in excess of three-quarters in value of the creditors present in person or by proxy and voting on the resolution.

(2) The same applies in respect of any other resolution proposed at the meeting, but substituting one-half for three-quarters.

(3) At a meeting of the creditors for any resolution to pass extending (or further extending) a moratorium, or to bring a moratorium to an end before the end of the period of any extension, there must be a majority in excess of three-quarters in value of the creditors present in person or by proxy and voting on the resolution. For this purpose a secured creditor is entitled to vote in respect of the amount of his claim without deducting the value of his security.]

#### **[1.44 Proceedings to obtain agreement on the proposal]**

[(1) If the chairman thinks fit, the creditors' meeting and the company meeting may be held together.

(2) The chairman may, and shall if it is so resolved at the meeting in question, adjourn that meeting, but any adjournment shall not be to a day which is more than 14 days after the date on which the moratorium (including any extension) ends.

(3) If the meetings are adjourned under paragraph (2), notice of the fact shall be given by the nominee forthwith to the court.

(4) If following the final adjournment of the creditors' meeting the proposal (with or without modifications) has not been approved by the creditors, it is deemed rejected.]

#### **[1.45 Implementation of the arrangement]**

- [(1) Where a decision approving the arrangement has effect under paragraph 36 of Schedule A1 to the Act, the directors shall forthwith do all that is required for putting the supervisor into possession of the assets included in the arrangement.
- (2) Subject to paragraph (3), Rules 1.17, 1.18, 1.18A and 1.20 to 1.23 apply.
- (3) The provisions referred to in paragraph (2) are modified as follows--
  - (a) in paragraph (4) of Rule 1.17 the reference to section 4(6) is to be read as a reference to paragraph 30(3) of Schedule A1 to the Act;
  - (b) in paragraph (5) of Rule 1.17 the reference to section 4A is to be read as a reference to paragraph 36 of Schedule A1 to the Act;
  - (c) in paragraph (1) of Rule 1.18A the reference to section 4A(6) is to be read as a reference to paragraph 36(5) of Schedule A1 to the Act;
  - (d) in paragraph (1) of Rule 1.20 the reference to section 6 is to be read as a reference to paragraph 38 of Schedule A1 to the Act and the references in paragraphs (2) and (4) to the administrator or liquidator shall be ignored;
  - (e) in paragraph (3) of Rule 1.20 the reference to section 6(4)(b) is to be read as a reference to paragraph 38 (4)(b) of Schedule A1 to the Act; and
  - (f) in sub-paragraph (a) of paragraph (1) of Rule 1.22 the reference to section 4A is to be read as a reference to paragraph 36 of Schedule A1 to the Act.]

## [Chapter 8 EC Regulation--Conversion of Voluntary Arrangement into Winding Up]

### [1.46 Application for conversion into winding up]

- [(1) Where a member State liquidator proposes to apply to the court for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of a voluntary arrangement into a winding up, an affidavit complying with Rule 1.47 must be prepared and sworn, and lodged in court in support of the application.
- (2) The application and the affidavit required under this Rule shall be served upon--
  - (a) the company; and
  - (b) the supervisor.]

### [1.47 Contents of affidavit]

- [(1) The affidavit shall state--
  - (a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;

- (b) the deponent's belief that the conversion of the voluntary arrangement into a winding up would prove to be in the interests of the creditors in the main proceedings;
- (c) the deponent's opinion as to whether the company ought to enter voluntary winding up or be wound up by the court; and
- (d) all other matters that, in the opinion of the member State liquidator, would assist the court--
  - (i) in deciding whether to make such an order, and
  - (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) An affidavit under this Rule shall be sworn by, or on behalf of, the member State liquidator.]

#### **[1.48 Power of court]**

- [(1) On hearing the application for conversion into winding up, the court may make such order as it thinks fit.
- (2) If the court makes an order for conversion into winding up, the order may contain all such consequential provisions as the court deems necessary or desirable.
- (3) Without prejudice to the generality of paragraph (1), an order under that paragraph may provide that the company be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the order is made.
- (4) Where the court makes an order for conversion into winding up under paragraph (1), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the company's assets.]

### **[Chapter 9 EC Regulation--Member State Liquidator]**

#### **[1.49 Notice to member State liquidator]**

- [(1) This Rule applies where a member State liquidator has been appointed in relation to the company.
- (2) Where the supervisor is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the registrar of companies, the supervisor shall give notice or provide a copy, as appropriate, to the member State liquidator.
- (3) Paragraph (2) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co operate and communicate information).]

**[Part 2  
Administration Procedure]**

**[Chapter 1  
Preliminary]**

**[2.1 Introductory and interpretation]**

[(1) In this Part--

- (a) Chapter 2 applies in relation to the appointment of an administrator by the court;
- (b) Chapter 3 applies in relation to the appointment of an administrator by the holder of a qualifying floating charge under paragraph 14;
- (c) Chapter 4 applies in relation to the appointment of an administrator by the company or the directors under paragraph 22;
- (d) The following Chapters apply in all the cases mentioned in sub paragraphs (a) to (c) above:
  - Chapter 5: Process of administration;
  - Chapter 6: Meetings;
  - Chapter 7: The creditors' committee;
  - Chapter 8: Functions and remuneration of administrator;
  - [--Chapter 8A: Expenses of the administration;]
  - Chapter 9: Distributions to creditors;
  - Chapter 10: Ending administration;
  - Chapter 11: Replacing administrator;
  - Chapter 12: EC Regulation--conversion of administration to winding up;
  - Chapter 13: EC Regulation--member State liquidator.

(2) In this Part of these Rules a reference to a numbered paragraph shall, unless the context otherwise requires, be to the paragraph so numbered in Schedule B1 to the Act.]

**[Chapter 2  
Appointment of Administrator by Court]**

**[2.2 Form of application]**

[(1) Where an application is made by way of petition for an administration order to be made in relation to a company, there shall be lodged together with the petition a Statement of the Proposed Administrator

(2) In this Part, references to a Statement of the Proposed Administrator are to a statement by each of the persons proposed to be administrator of a company, in the form required by Rule 7.30 and Schedule 5, stating--

- (a) that he consents to accept appointment as administrator of that company;
- (b) details of any prior professional relationship that he has had with that company; and
- (c) his opinion that it is reasonably likely that the purpose of administration will be achieved.

(3) The petition shall state whether, in the opinion of the petitioner, (i) the EC Regulation will apply and (ii) if so, whether the proceedings will be [main, secondary or territorial proceedings].]

### **[2.3 Service of petition]**

[(1) Notice of a petition under paragraph 12 shall be given by the petitioner to any holder of a qualifying floating charge, and to the following persons

- (a) an administrative receiver, if appointed;
- (b) a member State liquidator, if one has been appointed in main proceedings in relation to the company;
- (c) if a petition for the winding up of the company has been presented but no order for winding up has yet been made, the petitioner under that petition;
- (d) a provisional liquidator, if appointed;
- (e) the person proposed in the petition to be the administrator;
- (f) the registrar of companies;
- (g) the Keeper of the Register of Inhibitions and Adjudications for recording in that register;
- (h) the company, if the application is made by anyone other than the company; and
- (i) the supervisor of a voluntary arrangement under Part I of the Act, if such has been appointed.

(2) Notice of the petition shall also be given to the persons upon whom the court orders that the petition be served.]

**[2.4 Application to appoint specified person as administrator by holder of qualifying floating charge]**

[(1) This Rule applies where the holder of a qualifying floating charge, who has been given notice of an administration application, applies under paragraph 36(1)(b) to have a specified person appointed as administrator in place of the person proposed in the application.

(2) An application under paragraph 36(1)(b) shall include averments as to the basis upon which the applicant is entitled to make an appointment under paragraph 14, and shall be accompanied by--

- (a) the written consent, in accordance with Rule 2.10(5), of all holders of a prior qualifying floating charge;
- (b) the Statement of the Proposed Administrator
- (c) a copy of the instrument or instruments by which the relevant floating charge was created, including any relevant instrument of alteration; and
- (d) such other documents as the applicant considers might assist the court in determining the application.

(3) If an administration order is made appointing the specified person, the expenses of the original petitioner and of the applicant under this Rule shall, unless the court orders otherwise, be paid as an expense of the administration.]

**[2.5 Application where company in liquidation]**

[(1) Where an administration application is made under paragraph 37 or 38, the petition shall contain, in addition to those averments required in an application under paragraph 12, averments in relation to--

- (a) the full details of the existing insolvency proceedings, including the name and address of the liquidator, the date he was appointed and by whom; and
- (b) the reasons why administration has subsequently been considered appropriate,

and shall be accompanied by a copy of the order or certificate by which the liquidator was appointed and by such other documents as the petitioner considers might assist the court in determining the application.

(2) Where an administration application is made under paragraph 37, the petition shall contain, in addition to the averments required by paragraph (1) above, averments as to the basis upon which the petitioner is qualified to make an appointment under paragraph 14, and shall be accompanied by a copy of the instrument or instruments by which the relevant floating charge was created, including any relevant instrument of alteration, and by such

other documents as the petitioner considers might assist the court in determining the application.]

## **[2.6 Expenses]**

[If the court makes an administration order, the expenses of the petitioner, and of any other party whose expenses are allowed by the court, shall be regarded as expenses of the administration.]

## **[2.7 Administration orders where company in liquidation]**

[Where the court makes an administration order in relation to a company which is in liquidation, the administration order shall contain consequential provisions, including--

- (a) in the case of a liquidator in a voluntary winding up, his removal from office;
- (b) provisions concerning the release of the liquidator, including his entitlement to recover expenses and to be paid his remuneration;
- (c) provision for payment of the costs of the petitioning creditor in the winding-up;
- (d) provisions regarding any indemnity given to the liquidator;
- (e) provisions regarding the handling or realisation of any of the company's assets under the control of the liquidator; and
- (f) such other provisions as the court shall think fit.]

## **[2.8 Notice of dismissal of application for an administration order]**

[If the court dismisses the petition under paragraph 13(1)(b), the petitioner shall as soon as reasonably practicable send notice of the court's order dismissing the petition to all those to whom the petition was notified under Rule 2.3.]

# **[Chapter 3 Appointment of Administrator by Holder of Floating Charge]**

## **[2.9 Notice of intention to appoint]**

[For the purposes of paragraph 44(2), a notice of intention to appoint shall be in the form required by Rule 7.30 and Schedule 5, and shall be lodged in court at the same time as it is sent in accordance with paragraph 15(1) to the holder of any prior qualifying floating charge]



**[2.9A ...]**

[. . .]

**[2.9B ...]**

[. . .]

**[2.10 Notice of appointment]**

(1) The notice of appointment under paragraph 14 shall be in the form required by Rule 7.30 and Schedule 5

(2) Subject to Rule 2.12, there shall be lodged together with the notice of appointment--

(a) the Statement of the Proposed Administrator; and

(b) either--

(i) evidence that the person making the appointment has fulfilled the requirements of paragraph 15(1)(a); or

(ii) copies of the written consent of all those required to give consent in accordance with paragraph 15(1)(b).

(3) The statutory declaration required by paragraph 18(2) shall be made no earlier than 5 days before the notice of appointment is lodged.

(4) The holder of a prior floating charge may indicate his consent by completing the section provided on the form of notice of intention to appoint and returning to the person making the appointment a copy of that form.

(5) Where the holder of a prior floating charge does not choose to use the form of notice of intention to appoint to indicate his consent or no such form has been sent to him, his written consent shall include--

(a) details of the name, registered address and registered number of the company in respect of which the appointment is proposed to be made;

(b) details of the charge held including the date it was registered and, where applicable, any financial limit and any deeds of priority;

(c) the name and address of the floating charge holder consenting to the proposed appointment;

(d) the name and address of the holder of the qualifying floating charge who is proposing to make the appointment;

- (e) the date that notice of intention to appoint was given;
- (f) the name of the proposed administrator; and
- (g) a statement of consent to the proposed appointment.

(6) Where the holder of a qualifying floating charge receives notice of an administration application and makes an appointment under paragraph 14, he shall as soon as reasonably practicable send a copy of the notice of appointment to the petitioner and to the court in which the petition has been lodged.]

### **[2.11 Notice to administrator]**

[The person making the appointment shall, as soon as reasonably practicable, send to the administrator a copy of the notice of appointment, certified by the clerk of court and endorsed with the date and time of presentation of the principal notice.]

### **[2.12 Appointment taking place out of court business hours]**

[(1) The holder of a qualifying floating charge may lodge a notice of appointment under paragraph 14 in court in accordance with this Rule when (and only when) the court is not open for public business.

(2) A notice of appointment lodged under this Rule shall be in the form required by Rule 7.30 and Schedule 5

(3) The person making the appointment shall lodge the notice by sending it by fax to the court, and shall ensure that a fax transmission report is produced by the sending machine which records the date and time of the fax transmission.

(4) The person making the appointment shall send to the administrator, as soon as reasonably practicable, a copy of the notice of appointment and of the fax transmission report.

(5) The appointment shall take effect from the date and time of the fax transmission.

(6) The person making the appointment shall lodge in court, on the next day that the court is open for public business, the principal notice of appointment together with the documents required by Rule 2.10(2) and--

- (a) the fax transmission report showing the date and time at which the notice was sent; and

- (b) a statement of the full reasons for the out of hours lodging of the notice of appointment, including why it would have been damaging to the company or its creditors not to have so acted.

(7) The administrator's appointment shall cease to have effect if the requirements of paragraph (6) of this Rule are not met within the time set out in that paragraph.

(8) Where any question arises in respect of the date and time that the notice of appointment was lodged in court it shall be a presumption capable of rebuttal that the date and time shown on the fax transmission report is the date and time at which the notice was so lodged.]

#### **[Chapter 4 Appointment of Administrator by Company or Directors]**

##### **[2.13 Notice of intention to appoint]**

[(1) A notice of intention to appoint given under paragraph 26 shall be in the form required by Rule 7.30 and Schedule 5 and shall be given by the company or the directors, as the case may be, to any holder of a qualifying floating charge.

(2) A copy of the notice of intention to appoint shall at the same time be sent--

(a) to the supervisor of any voluntary arrangement under Part I of the Act; and

(b) where the notice is given by the directors (other than as agents of the company), to the company.]

##### **[2.14 Timing of statutory declaration]**

[The statutory declaration required by paragraph 27(2) shall be made not more than 5 business days before the notice is lodged in court.]

##### **[2.15 Resolution or decision to appoint]**

[The person making the appointment shall lodge together with the notice of intention to appoint either a copy of the resolution of the company to appoint an administrator (where the company proposes to make the appointment) or a record of the decision of the directors (where the directors propose to make the appointment).]

##### **[2.16 Notice of appointment]**

[(1) The notice of appointment referred to in paragraph 29 shall be in the form required by Rule 7.30 and Schedule 5.

(2) The statutory declaration required by paragraph 29(2) shall be made no earlier than 5 days before the notice is lodged.

(3) There shall be lodged together with the notice of appointment the Statement of the Proposed Administrator and, unless the period of notice set out in paragraph 26(1) has expired, the written consent of all those persons to whom notice was given in accordance with that paragraph.]

#### **[2.17 Appointment where no notice of intention to appoint has been given]**

[Where a notice of intention to appoint an administrator has not been given, there shall be lodged together with the notice of appointment either a copy of the resolution of the company to appoint an administrator (where the company proposes to make the appointment) or a record of the decision of the directors (where the directors propose to make the appointment).]

#### **[2.18 Notice to administrator]**

[The person making the appointment shall, as soon as reasonably practicable, send to the administrator a copy of the notice of appointment, certified by the clerk of court and endorsed with the date and time of presentation of the principal notice.]

### **[Chapter 5 Process of Administration]**

#### **[2.19 Notification and advertisement of administrator's appointment]**

[(1) As soon as is reasonably practicable, the administrator shall advertise his appointment once in the Edinburgh Gazette and once in a newspaper circulating in the area where the company has its principal place of business or in such newspaper as he thinks appropriate for ensuring that the order comes to the notice of the company's creditors.

(2) The administrator shall at the same time give notice of his appointment to the following persons--

- (a) a receiver, if appointed;
- (b) a petitioner in a petition for the winding up of the company, if that petition is pending;
- (c) any provisional liquidator of the company, if appointed;
- (d) any supervisor of a voluntary arrangement under Part 1 of the Act; and
- (e) the Keeper of the Register of Inhibitions and Adjudications for recording in that register.

(3) Where, by virtue of a provision of Schedule B1 to the Act or of these Rules, the administrator is required to send a notice of his appointment to any person, he shall satisfy that requirement by sending to that person a notice in the form required by Rule 7.30 and Schedule 5.]

## **[2.20 Notice requiring statement of affairs]**

[(1) In this Chapter "relevant person" has the meaning given to it in paragraph 47(3).

(2) Subject to Rule 2.21, the administrator shall send to each relevant person upon whom he decides to make a requirement under paragraph 47 a notice in the form required by Rule 7.30 and Schedule 5 requiring him to provide a statement of the company's affairs

(3) The notice shall inform each of the relevant persons--

- (a) of the names and addresses of all others (if any) to whom the same notice has been sent;
- (b) of the time within which the statement must be delivered;
- (c) of the effect of paragraph 48(4) (penalty for non-compliance); and
- (d) of the application to him, and to each other relevant person, of section 235 (duty to provide information, and to attend on the administrator, if required).

(4) The administrator shall furnish each relevant person upon whom he decides to make a requirement under paragraph 47 with the forms required for the preparation of the statement of affairs.]

## **Chapter 6**

...

## **[2.21 Statements of affairs and statements of concurrence]**

[(1) The statement of the company's affairs shall be in the form required by Rule 7.30 and Schedule 5

(2) Where more than one relevant person is required to submit a statement of affairs the administrator may require one or more such persons to submit, in place of a statement of affairs, a statement of concurrence in the form required by Rule 7.30 and Schedule 5; and where the administrator does so, he shall inform the person making the statement of affairs of that fact

(3) The person making the statutory declaration in support of a statement of affairs shall send the statement, together with one copy thereof, to the administrator, and a copy of the statement to each of those persons whom the administrator has required to submit a statement of concurrence.

(4) A person required to submit a statement of concurrence shall deliver to the administrator the statement of concurrence, together with one copy thereof, before the end of the period of 5 business days (or such other period as the administrator may agree) beginning with the day on which the statement of affairs being concurred with is received by him.

(5) A statement of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the statement of concurrence is not in agreement with the statement of affairs, he considers that statement to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.

(6) Subject to Rule 2.22, the administrator shall, as soon as is reasonably practicable, file a copy of the statement of affairs and any statement of concurrence with the registrar of companies

(7) Subject to Rule 2.22, the administrator shall insert any statement of affairs submitted to him, together with any statement of concurrence, in the sederunt book.]

## [Chapter 7 ...]

### [2.22 Limited disclosure]

[(1) Where the administrator thinks that it would prejudice the conduct of the administration for the whole or part of the statement of the company's affairs to be disclosed, he may apply to the court for an order of limited disclosure in respect of the statement, or any specified part of it.

(2) The court may order that the statement or, as the case may be, the specified part of it, shall not be filed with the registrar of companies or entered in the sederunt book.

(3) The administrator shall as soon as reasonably practicable file a copy of that order with the registrar of companies, and shall place a copy of the order in the sederunt book.

(4) If a creditor seeks disclosure of the statement of affairs or a specified part of it in relation to which an order has been made under this Rule, he may apply to the court for an order that the administrator disclose it or a specified part of it.

(5) The court may attach to an order for disclosure any conditions as to confidentiality, duration and scope of the order in any material change of circumstances, and other matters as it sees fit.

(6) If there is a material change in circumstances rendering the limit on disclosure unnecessary, the administrator shall, as soon as reasonably practicable after the change, apply to the court for the order to be discharged or varied; and upon the discharge or variation of the order the administrator shall, as soon as reasonably practicable--

(a) file a copy of the full statement of affairs (or so much of the statement of affairs as is no longer subject to the order) with the registrar of companies;

(b) where he has previously sent a copy of his proposals to the creditors in accordance with paragraph 49, provide the creditors with a copy of the full statement of affairs (or so much of the statement as is no longer subject to the order) or a summary thereof; and

(c) place a copy of the full statement of affairs (or so much of the statement as is no longer subject to the order) in the sederunt book.]

### **[2.23 Release from duty to submit statement of affairs; extension of time]**

[(1) The power of the administrator under paragraph 48(2) to revoke a requirement under paragraph 47(1), or to grant an extension of time, may be exercised at the administrator's own instance, or at the request of any relevant person.

(2) A relevant person whose request under this Rule has been refused by the administrator may apply to the court for a release or extension of time.

(3) An applicant under this Rule shall bear his own expenses in the application and, unless the court otherwise orders, no allowance towards such expenses shall be made out of the assets of the company.]

### **[2.24 Expenses of statement of affairs]**

[(1) A relevant person who provides to the administrator a statement of the company's affairs or statement of concurrence shall be allowed, and paid by the administrator out of his receipts, any expenses incurred by the relevant person in so doing which the administrator considers reasonable.

(2) Any decision by the administrator under this Rule is subject to appeal to the court.

(3) Nothing in this Rule relieves a relevant person from any obligation to provide a statement of affairs or statement of concurrence, or to provide information to the administrator.]

## **[Chapter 8 ...]**

### **[2.25 Administrator's proposals]**

[(1) The statement required to be made by the administrator under paragraph 49 shall include, in addition to the matters set out in that paragraph--

(a) details of the court which granted the administration order or in which the notice of appointment was lodged, and the relevant court reference number (if any);

- (b) the full name, registered address, registered number and any other trading names of the company;
- (c) details relating to his appointment as administrator, including the date of appointment and the person making the application or appointment, and, where there are joint administrators, a statement of the matters referred to in paragraph 100(2);
- (d) the names of the directors and secretary of the company and details of any shareholdings which they have in the company;
- (e) an account of the circumstances giving rise to the appointment of the administrator;
- (f) if a statement of the company's affairs has been submitted, a copy or summary of it, with the administrator's comments, if any;
- (g) if an order limiting the disclosure of the statement of affairs has been made, a statement of that fact, as well as--
  - (i) details of who provided the statement of affairs;
  - (ii) the date of the order of limited disclosure; and
  - (iii) the details or a summary of the details that are not subject to that order;
- (h) if a full statement of affairs is not provided, the names and addresses of the creditors, and details of the debts owed to, and security held by, each of them;
- (i) if no statement of affairs has been submitted--
  - (i) details of the financial position of the company at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the company entered administration);
  - (ii) the names and addresses of the creditors, and details of the debts owed to, and security held by, each of them; and
  - (iii) an explanation as to why there is no statement of affairs;
- (j) the basis upon which it is proposed that the administrator's remuneration should be fixed;
- (k) except where the administrator proposes a voluntary arrangement in relation to the company--
  - (i) to the best of the administrator's knowledge and belief--
    - (aa) an estimate of the value of the prescribed part (whether or not he proposes to make an application to the court under section 176A(5) and whether or not section 176A(3) applies); and
    - (bb) an estimate of the value of the company's net property,



- provided that such estimates shall not be required to include any information the disclosure of which could serious prejudice the commercial interests of the company, but if such information is excluded the estimates shall be accompanied by a statement to that effect; and
- (ii) whether and, if so, why the administrator proposes to make an application to the court under section 176A(5);
- (l) how it is envisaged the purpose of the administration will be achieved and how it is proposed that the administration shall end;
  - (m) where a creditors' voluntary liquidation is proposed--
    - (i) details of the proposed liquidator; and
    - (ii) a statement that, in accordance with paragraph 83(7) and Rule 2.47, creditors may nominate another person to act as liquidator;
  - (n) where it is proposed to make distributions to creditors in accordance with Chapter 9, the classes of creditors to whom it is proposed that distributions be made and whether or not the administrator intends to make an application to the court under paragraph 65(3);
  - (o) where the administrator has decided not to call a meeting of creditors, his reasons;
  - (p) the manner in which the affairs and business of the company--
    - (i) have, since the date of the administrator's appointment, been managed and financed; and
    - (ii) will, if the administrator's proposals are approved, continue to be managed and financed;
  - (q) whether--
    - (i) the EC Regulation applies; and
    - (ii) if so, whether the proceedings are [main, secondary or territorial proceedings]; and
  - (r) such other information (if any) as the administrator thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.
- (2) A copy of the administrator's statement of his proposals shall be sent to the registrar of companies together with a notice in the form required by Rule 7.30 and Schedule 5
  - (3) Where the statement of proposals states that the administrator thinks--
    - (a) that the company has sufficient property to enable each creditor of the company to be paid in full;

- (b) that the company has insufficient property to make a distribution to unsecured creditors other than by virtue of section 176A(2)(a); or
- (c) that neither of the objectives specified in paragraph 3(1)(a) and (b) can be achieved,

and no meeting has been requisitioned under paragraph 52(2), the administrator's proposals shall be deemed to have been approved by the creditors upon the expiry of the period set out in Rule 2.31.

(4) The administrator shall give notice to the creditors of any order varying the period referred to in paragraph 49(5) (which sets out the period during which the administrator shall send out a copy of his statement of proposals).

(5) Where the administrator intends to apply to the court (or to lodge a notice under paragraph 80(2)) for the administration to cease at a time before he has sent a statement of his proposals to creditors in accordance with paragraph 49, he shall, at least 10 days before he makes such an application or lodges such a notice, send to all creditors of the company (so far as he is aware of their addresses) a report containing the information required by paragraph (1)(a) to (q) of this Rule.

(6) Where the administrator wishes to publish a notice under paragraph 49(6) he shall publish the notice once in the Edinburgh Gazette and once in the newspaper in which the administrator's appointment was advertised. The notice shall--

- (a) state the full name of the company;
- (b) state the full name and address of the administrator;
- (c) give details of the administrator's appointment; and
- (d) specify an address to which any member of the company may apply in writing for a copy of the statement of proposals to be provided free of charge.

(7) A notice under paragraph 49(6) must be published as soon as reasonably practicable after the administrator sends his statement of proposals to the company's creditors and in any case no later than 8 weeks (or such other period as may be agreed by the creditors or ordered by the court) from the date upon which the company entered administration.]

## **[Chapter 6 Meetings]**

### **[2.26 General]**

[The provisions of Chapter 1 of Part 7 (Meetings) shall apply with regard to meetings of the company's creditors or members which are summoned by the administrator, subject to the provisions in this chapter.]

### **[2.27 Meetings to consider administrator's proposals]**

[(1) The administrator may, upon giving at least 14 days' notice, require the attendance at a creditors' meeting of any directors or officers of the company (including persons who have been directors or officers in the past) whose presence at the meeting is, in the administrator's opinion, appropriate.

(2) If at the meeting there is not the requisite majority for approval of the administrator's proposals (with modifications, if any), the chairman may, and shall if a resolution is passed to that effect, adjourn the meeting once only and for not more than 14 days.

(3) The administrator shall give notice to the creditors of any order varying the period referred to in paragraph 51(2) (which sets out the period during which the administrator must set the date for an initial creditors' meeting).

(4) Rule 7.8 (adjournment), with the exception of Rule 7.8(6), shall not apply in relation to initial creditors' meetings in administration.]

### **[2.28 Correspondence instead of creditors' meetings]**

[(1) This Rule applies where an administrator proposes to conduct the business of a creditors' meeting by correspondence in accordance with paragraph 58.

(2) Notice of the business to be conducted shall be given to all who are entitled to be notified of a creditors' meeting by virtue of paragraph 51.

(3) The administrator may seek to obtain the agreement of the creditors to a resolution by sending to every creditor a copy of the proposed resolution.

(4) The administrator shall send to the creditors a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent.

(5) The administrator shall set a closing date for receipt of votes and comments. The closing date shall be set at the discretion of the administrator, but shall not be less than 14 days from the date of issue of the notice under paragraph (1) of this Rule.

(6) In order to be considered, votes and comments must be received by the administrator by the closing date and must be accompanied by the statement of claim and account or voucher referred to in Rule 4.15 as applied by this Part.

(7) For the conduct of business to proceed, the administrator must receive at least one response which satisfies the requirements of paragraph (6) of this Rule.

(8) If no responses are received by the closing date then the administrator shall summon a creditors' meeting.

(9) Any single creditor, or a group of creditors, of the company whose debt(s) amount to at least 10% of the total debts of the company may, within 5 business days from the date of the administrator sending out a resolution or proposals, require him to summon a creditors' meeting to consider the matters raised therein.

(10) If the administrator's proposals or revised proposals are rejected by the creditors pursuant to this Rule, the administrator may summon a creditors' meeting.

(11) A reference in this Part to anything done at a creditors' meeting includes a reference to anything done in the course of correspondence in accordance with this Rule; and Rule 2.35 shall apply to the business of a creditors' meeting conducted by correspondence as it applies to a creditors' meeting.]

## **[2.29 Applicable law]**

[(1) This Rule applies where the laws of a member State and not the law of Scotland applies in relation to the conduct of the meeting.

(2) Where this Rule applies, subject as above, the meeting shall be summoned and conducted in accordance with the constitution of the company and the laws of the member State referred to in paragraph (1) of this Rule shall apply to the conduct of the meeting.]

## **[2.30 Entitlement to vote--member State liquidators]**

[(1) Where--

- (a) a creditor is entitled to vote at a creditors' meeting;
- (b) has lodged his claim in one or more sets of other proceedings;
- (c) votes (either in person or by proxy) on a resolution put to the meeting; and
- (d) a member State liquidator casts a vote in respect of the same claim,

only the creditor's vote shall be counted.

(2) 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.

(3) For the purposes of this Rule, "other proceedings" means [main, secondary or territorial proceedings] in another member State.]

### **[2.31 Meeting requisitioned by creditors]**

[The request for an initial creditors' meeting under paragraph 52(2) must be made within 12 days of the date upon which the administrator sends out his statement of proposals.]

### **[2.32]**

[(1) Rule 7.6(2)(a) does not apply if the requisitioning creditor's debt alone is sufficient to meet the requirement of paragraph 52(2)(a) or, as the case may be, paragraph 56(1)(a), without the concurrence of other creditors.

(2) In its application to initial creditors' meetings in administration, for the period of 35 days referred to in Rule 7.6(3) there is substituted a period of 28 days.]

### **[2.33 Hire-purchase, conditional sale and hiring agreements]**

[(1) Subject as follows, an owner of goods under a hire-purchase agreement or under an agreement for the hire of goods for more than 3 months, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to him by the company on the date that the company entered administration.

(2) In calculating the amount of any debt for this purpose, no account shall be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the making of an administration application, a notice of intention to appoint an administrator or any matter arising as a consequence, or of the company entering administration.]

### **[2.34 Revision of the administrator's proposals]**

[(1) A statement of revised proposals under paragraph 54 shall include

- (a) details of the court which granted the administration order or in which the notice of appointment was lodged and the relevant court reference number (if any);
- (b) the full name, registered address, registered number and any other trading names of the company;
- (c) details relating to the appointment of the administrator, including the date of appointment and the person making the administration application or appointment;
- (d) the names of the directors and secretary of the company and details of any shareholdings which they have in the company;

- (e) a summary of the initial proposals and the reason or reasons for proposing a revision;
  - (f) details of the proposed revision including details of the administrator's assessment of the likely impact of the proposed revision upon creditors generally or upon each class of creditors (as the case may be);
  - (g) where it is proposed, by virtue of the revision, to make distributions to creditors in accordance with Chapter 9, the classes of creditors to whom it is proposed that distributions be made and whether or not the administrator intends to make an application to the court under paragraph 65(3);
  - (h) where the revision includes a proposal to move from administration to a creditors' voluntary liquidation--
    - (i) details of the proposed liquidator;
    - (ii) a statement that, in accordance with paragraph 83(7) and Rule 2.47, creditors may nominate another person to act as liquidator; and
    - (iii) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions.
- (2) Subject to paragraph 54(3), within 5 days of sending out the statement mentioned in paragraph (1) above, the administrator shall send a copy of the statement to every member of the company.
- (3) A notice under paragraph 54(3) shall be published once in the Edinburgh Gazette and once in the newspaper in which the administrator's appointment was advertised, and shall--
- (a) state the full name of the company;
  - (b) state the name and address of the administrator;
  - (c) specify an address to which any member of the company may apply in writing for a copy of the statement to be provided free of charge; and
  - (d) be published as soon as reasonably practicable after the administrator sends the statement to creditors.]

### **[2.35 Notices to creditors]**

- [(1) As soon as reasonably practicable after the conclusion of a meeting of creditors to consider the administrator's proposals or revised proposals, or of the conclusion of the business of such a meeting by correspondence in accordance with these Rules, the administrator shall--
- (a) send notice of the result of the meeting in the form required by Rule 7.30 and Schedule 5 (including details of any modifications to the proposals that were approved) to every creditor who received notice of the meeting

(b) lodge in court, and send to the registrar of companies and to any creditors who did not receive notice of the meeting and of whose claim he has become subsequently aware, a copy of the notice of the result of the meeting along with a copy of the proposals which were considered at that meeting; and

(c) place a copy of the notice of the result of the meeting in the sederunt book.

(2) Where the business of a creditors' meeting has been carried out by correspondence in accordance with Rule 2.28, for the references in the foregoing paragraph of this Rule to the result of the meeting and notice of the meeting there shall be substituted references to the result of the correspondence and to the correspondence.]

## **[Chapter 7 The Creditors' Committee]**

### **[2.36 Application of provisions in Part 3 (Receivers)]**

[(1) Chapter 3 of Part 3 (the creditors' committee) shall apply with regard to the creditors' committee in administration as it applies to the creditors' committee in receivership, subject to the modifications specified below and to any other necessary modifications.

(2) For any reference in the said Chapter 3, or in any provision of Chapter 7 of Part 4 as applied by Rule 3.6, to the receiver, receivership or the creditors' committee in receivership, there shall be substituted a reference to the administrator, the administration and the creditors' committee in the administration.

(3) In Rules 3.4(1) and 3.7(1), for the reference to section 68 or 68(2), there shall be substituted a reference to paragraph 57 or 57(2).

(4) For Rule 3.5 there shall be substituted the following Rule:--

#### **"Functions of the Committee**

#### **3.5**

The creditors' committee shall assist the administrator in discharging his functions and shall act in relation to him in such manner as may be agreed from time to time."

## **[Chapter 8 Functions and Remuneration of Administrator]**

### **[2.37 Disposal of secured property, etc]**

[(1) This Rule applies where the administrator applies to the court under paragraph 71 or 72 for authority to dispose of property of the company which is subject to a security (other than a floating charge), or goods in the possession of the company under a hire purchase agreement.

(2) If an order is made under paragraph 71 or 72 the administrator shall as soon as reasonably practicable give notice of it to that person or owner and shall send to that person or owner a copy of the order, certified by the clerk of court

(3) The administrator shall place in the sederunt book a copy of any order granted under paragraph 71 or 72.]

### **[2.38 Progress reports]**

[(1) The administrator shall

- (a) within six weeks after the end of each accounting period; and
- (b) within six weeks after he ceases to act as administrator,

send to the court and to the registrar of companies, and to each creditor, a progress report.

(2) For the purposes of this Part, "accounting period", in relation to an administration, shall be construed in accordance with section 52(1) and (6) of the Bankruptcy Act as applied by virtue of Rule 2.41.

(3) For the purposes of this Part, "progress report" means a report which includes--

- (a) the name of the court which granted the administration order or in which the notice of appointment was lodged, and the court reference number (if any);
- (b) details of the company's name, address and registration number;
- (c) details of the administrator's name and address, date of appointment and, where the administrator was appointed under paragraph 14 or 22, the name and address of the person who made the appointment;
- (d) details of any extensions to the initial period of appointment;
- (e) details of progress to date, including a receipts and payments account which states what assets of the company have been realised, for what value, and what payments have been made to creditors. The account is to be in the form of an abstract showing--
  - (i) receipts and payments during the relevant accounting period; or
  - (ii) where the administrator has ceased to act, receipts and payments during the period from the end of the last accounting period to the time when he so ceased (or, where he has made no previous progress report, receipts and payments in the period since his appointment as administrator);
- (f) details of what assets remain to be realised;
- (g) where a distribution is to be made in accordance with Chapter 9 in respect of an accounting period, the scheme of division; and



(h) any other relevant information for the creditors.

(4) In a receipts and payments account falling within paragraph (3)(e)(ii) above, the administrator shall include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A (prescribed part).

(5) The court may, on the application of the administrator, extend the period of six weeks referred to in paragraph (1) of this Rule.

(6) If the administrator makes default in complying with this Rule, he is liable to a fine and, for continued contravention, to a daily default fine.

(7) This Rule is without prejudice to the requirements of Chapter 9 (distributions to creditors).]

### **[2.39 Determination of outlays and remuneration]**

[(1) Within 2 weeks after the end of an accounting period, the administrator shall in respect of that period submit to the creditors' committee or, if there is no creditors' committee, to a meeting of creditors--

(a) his accounts of his intromissions with the company's assets for audit and, where funds are available after making allowance for contingencies, a scheme of division of the divisible funds; and

(b) a claim for the outlays reasonably incurred by him and for his remuneration.

(2) The administrator may, at any time before the end of an accounting period, submit to the creditors' committee or, if there is no creditors' committee, a meeting of creditors an interim claim in respect of that period for the outlays reasonably incurred by him and for his remuneration and the creditors' committee or meeting of creditors, as the case may be, may make an interim determination in relation to the amount of the outlays and remuneration payable to the administrator and, where they do so, they shall take into account that interim determination when making their determination under paragraph (3)(a)(ii).

(3) Within 6 weeks after the end of an accounting period--

(a) the creditors' committee or, as the case may be, a meeting of creditors--

(i) may audit the accounts; and

(ii) shall issue a determination fixing the amount of the outlays and the remuneration payable to the administrator; and

(b) the administrator shall make the audited accounts, scheme of division and the said determination available for inspection by the members of the company and the creditors.

(4) The basis for fixing the amount of the remuneration payable to the administrator may be a commission calculated by reference to the value of the company's assets which have been realised by the administrator, but there shall in any event be taken into account--

- (a) the work which, having regard to that value, was reasonably undertaken by him; and
- (b) the extent of his responsibilities in administering the company's assets.

(5) If the administrator's remuneration and outlays have been fixed by determination of the creditors' committee in accordance with paragraph (3)(a)(ii) and he considers the amount to be insufficient, he may request that it be increased by resolution of the creditors.

(6) If the creditors' committee fails to issue a determination in accordance with paragraph (3)(a)(ii), the administrator shall submit his claim to a meeting of creditors and they shall issue a determination in accordance with paragraph (3)(a)(ii).

(7) If the meeting of creditors fails to issue a determination in accordance with paragraph (6) then the administrator shall submit his claim to the court and it shall issue a determination.

(8) In a case where the administrator has made a statement under paragraph 52(1)(b), a resolution under paragraph (5) or Rule 2.39A(8) shall be taken to be passed if (and only if) passed with the approval of--

- (a) each secured creditor of the company; or
- (b) if the administrator has made, or proposes to make, a distribution to preferential creditors--
  - (i) each secured creditor of the company; and
  - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

(9) In a case where the administrator has made a statement under paragraph 52(1)(b), if there is no creditor's committee, or the committee does not make the requisite determination in accordance with paragraphs (2) or (3)(a)(ii), the administrator's remuneration and outlays may be fixed (in accordance with this Rule) by the approval of--

- (a) each secured creditor of the company; or
- (b) if the administrator has made, or proposes to make, a distribution to preferential creditors--
  - (i) each secured creditor of the company; and
  - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

(10) In fixing the amount of the administrator's remuneration and outlays in respect of any accounting period, the creditors' committee or, as the case may be, a meeting of creditors may take into account any adjustment which the creditors' committee or meeting of creditors may wish to make in the amount of the remuneration and outlays fixed in respect of any earlier accounting period.]

### **[2.39A Appeal against fixing of remuneration]**

[(1) If the administrator considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors is insufficient, he may apply to the court for an order increasing its amount or rate.

(2) The administrator shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

(3) If there is no creditors' committee, the administrator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented and be heard.

(4) The court may, if it appears to be a proper case, order the expenses of the administrator's application, including the expenses of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the administration.

(5) If the administrator's remuneration has been fixed by the creditors' committee or by the creditors, any creditor or creditors of the company representing in value at least 25 percent of the creditors may apply to the court not later than 8 weeks after the end of an accounting period for an order that the administrator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

(6) If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

(7) The court may, if it appears to be a proper case, order the expenses of the creditor making the application to be paid as an expense of the administration.

(8) Where there are joint administrators--

(a) it is for them to agree between themselves as to how the remuneration payable should be apportioned;

(b) if they cannot agree as to how the remuneration payable should be apportioned, any one of them may refer the issue for determination--

(i) by the court; or

(ii) by resolution of the creditors' committee or a meeting of creditors.]

**[Chapter 8A  
Expenses of the Administration]**

**[2.39B Expenses of the administration]**

[(1) This Rule applies for the purposes of determining the order of priority of the expenses of the administration.

(2) Paragraphs (1) and (3) of Rule 4.67 shall apply with regard to the expenses of the administration as they do to a company in liquidation, subject to the modifications specified below.

(3) In Rule 4.67(1) and (3) as applied by paragraph (2)--

(a) in paragraph (1)--

- (i) omit the words "Subject to section 156 and paragraph (2),";
- (ii) for any reference to liquidator there is substituted a reference to administrator;
- (iii) for any reference to liquidation there is substituted a reference to administration;
- (iv) omit the words "provisional liquidator or" in sub-paragraph (a) and the words "provisional liquidator," in sub-paragraph (b);
- (v) omit the words "or special manager" in sub-paragraph (b);
- (vi) omit sub-paragraphs (c) and (e);
- (vii) for the words "Rule 4.9(1)" in sub-paragraph (f) there is substituted "Rule 2.24(1)"; and
- (viii) for the words "Rule 4.32" in sub-paragraph (h) there is substituted "Rule 2.39"; and

(b) in paragraph (3) for the reference to liquidator there is substituted a reference to administrator.

(4) The priorities laid down by virtue of paragraph (2) are subject to the power of the court to make orders under paragraph (5) where the assets are insufficient to satisfy the liabilities.

(5) The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the administration in such order of priority as the court thinks just.

(6) For the purposes of paragraph 99(3), the former administrator's remuneration and expenses shall comprise all those items set out in Rule 4.67(1) as applied by paragraph (2).]

## [Chapter 9 Distributions to Creditors]

### [2.40]

[(1) This Chapter applies in any case where the administrator proposes to make a distribution to creditors or any class of them.

(2) Where the distribution is to a particular class of creditors, references in this Chapter (except Rule 2.41(4)(c)) to creditors shall, so far as the context requires, be references to that class of creditors only.]

### [2.41]

[(1) Chapter 5 of Part 4 (claims in liquidation) and Chapter 9 of that Part (distribution of company's assets by liquidator) [(except Rule 4.67)] shall apply with regard to claims to a dividend out of the assets of a company in administration as they do to a company in liquidation, subject to the modifications specified below and to any other necessary modifications.

[(1A) Section 53 of the Bankruptcy Act, as applied by Rule 4.68, shall not apply for the purposes of this Rule.]

(2) [Subject to paragraph (5) below,] in the said Chapters 5 and 9, or in any provision of the Bankruptcy Act as applied by Rule 4.16 or 4.68--

(a) for any reference to the liquidator, liquidation, and liquidation committee there shall be substituted a reference to the administrator, the administration and the creditors' committee in the administration; and

(b) for any reference to the date of commencement of winding up there shall be substituted a reference to the date on which the company entered administration.

(3) [Section 52(3)] of the Bankruptcy Act, as applied by Rule 4.68, shall apply subject to paragraph (4) of this Rule.

(4) The administrator may make a distribution to secured or preferential creditors or, where he has the permission of the court, to unsecured creditors only if--

(a) he has sufficient funds for the purpose;

(b) he does not intend to give notice pursuant to paragraph 83;

(c) his statement of proposals, as approved by the creditors under paragraph 53(1) or 54(5), contains a proposal to make a distribution to the class of creditors in question; and

(d) the payment of a dividend is consistent with the functions and duties of the administrator and any proposals made by him or which he intends to make.]

- [(5) Where the administration was immediately preceded by a winding up--
- (a) in Rule 4.17(2) the reference to administration and the date on which the company entered administration existing but for the application of this Rule shall be construed as a reference to liquidation and the date of commencement of winding up respectively;
  - (b) in Schedule 1 to the Bankruptcy Act, as applied by Rule 4.16, the reference to the date on which the company entered administration in paragraph 1(1) and the second reference to that date in paragraph 1(2) shall be construed as a reference to the date of commencement of winding up within the meaning of section 129.]

## **[2.41A Payments of dividends]**

[(1) On the final determination of the remuneration under Rules 2.39 and 2.39A, the administrator shall, subject to Rule 2.41, pay to the creditors their dividends in accordance with the scheme of division.

- (2) Any dividend--
- (a) allocated to a creditor which is not cashed or uplifted; or
  - (b) dependent on a claim in respect of which an amount has been set aside under subsection (7) or (8) of section 52 of the Bankruptcy Act as applied by Rules 2.41 and 4.68,

shall be deposited by the administrator in an appropriate bank or institution.

- (3) If a creditor's claim is revalued, the administrator may--
- (a) in paying any dividend to that creditor, make such adjustment to it as he considers necessary to take account of that revaluation; or
  - (b) require the creditor to repay to him the whole or part of a dividend already paid to him.

(4) The administrator shall insert in the sederunt book the audited accounts, the scheme of division and the final determination in relation to the administrator's outlays and remuneration.

(5) For the purposes of paragraph 99(3), the former administrator's remuneration and expenses shall comprise all those items set out in Rule 4.67(1) as applied by Rule 2.41.]

## **[Chapter 10 Ending Administration]**

#### **[2.42 Final progress reports]**

["Final progress report" means a progress report which includes a summary account of--

- (a) the administrator's original proposals;
- (b) any major changes to, or deviations from, those proposals in the course of the administration;
- (c) the steps taken during the administration; and
- (d) the outcome.]

#### **[2.43 Notice of automatic end of administration]**

(1) Where the appointment of an administrator has ceased to have effect, and the administrator is not required by any other Rule to give notice of that fact, he shall, as soon as reasonably practicable, and in any event within 5 business days of the date when the appointment has ceased, lodge in court a notice of automatic end of administration in the form required by Rule 7.30 and Schedule 5, together with a final progress report

(2) The administrator shall, as soon as reasonably practicable, send a copy of the notice and accompanying report to the registrar of companies, and to all persons who received a copy of the administrator's proposals.

(3) If the administrator makes default in complying with this Rule, he is liable to a fine and, for continued contravention, to a daily default fine.]

#### **[2.44 Applications for extension of administration]**

(1) An application to court for an extension of administration shall be accompanied by a progress report for the period since the last progress report (if any).

(2) A request for an extension of administration by consent of creditors shall be accompanied by a progress report for the period since the administrator's last progress report (if any).

(3) The administrator shall use the notice of extension of period of administration in the form required by Rule 7.30 and Schedule 5 in all circumstances where he is required to give such notice.]

#### **[2.45 Notice of end of administration]**

(1) A notice by the administrator

- (a) that the purpose of administration has been sufficiently achieved; or

- (b) that the court has ordered that the appointment shall cease to have effect,

shall be in the form required by Rule 7.30 and Schedule 5, and shall be accompanied by a final progress report.

(2) The administrator shall, as soon as reasonably practicable, and (in the case of a notice under paragraph 80(2)) within 5 business days of satisfying the requirements of paragraph 80(2)(a), send a copy of the notice to every creditor of the company of whose claim and address he is aware, to all those persons who were notified of his appointment, and to the company.

(3) The administrator shall be taken to have complied with the requirements of paragraph 80(5) if, within 5 business days of satisfying the requirements of paragraph 80(2)(a), he publishes, once in the Edinburgh Gazette and once in the newspaper in which his appointment was advertised, a notice undertaking to provide a copy of the notice of end of administration to any creditor of the company.

(4) The notice referred to in paragraph (3) above must--

- (a) state the full name of the company;
- (b) state the name and address of the administrator;
- (c) state the date upon which the administrator's appointment ceased to have effect; and
- (d) specify an address to which any creditor may apply in writing for a copy of the notice of end of administration to be provided to him.]

## **[2.46 Application to court]**

[(1) An application under paragraph 79 for an order providing for the appointment of an administrator of the company to cease to have effect shall be accompanied by a progress report for the period since the last such report (if any) and a statement indicating what the administrator thinks should be the next steps for the company.

(2) Where the administrator applies to the court because the creditors' meeting has required him to, his application shall be accompanied by a statement in which he shall indicate (giving reasons) whether or not he agrees with the creditors' requirement that he make the application.

(3) Where the administrator applies to the court other than at the request of a creditors' meeting, he shall give to--

- (a) the applicant for the administration order under which he was appointed;
- (b) the person by whom he was appointed or to the holder of the floating charge by virtue of which he was appointed (as the case may be); and
- (c) the creditors,



at least 7 days' written notice of his intention so to apply.

(4) Where the administrator applies to court under paragraph 79 in conjunction with a petition under section 124 for an order to wind up the company, he shall, in addition to the requirements of paragraph (3), notify the creditors of whether he intends to seek appointment as liquidator.]

#### **[2.47 Moving from administration to creditors' voluntary liquidation]**

[(1) A notice pursuant to paragraph 83(3) shall be in the form required by Rule 7.30 and Schedule 5, and shall be accompanied by a final progress report which includes details of the assets to be dealt with in the liquidation

(2) As soon as reasonably practicable, the administrator shall send a copy of the notice and accompanying documents to all those who received notice of the administrator's appointment.

(3) For the purposes of paragraph 83(7), a person shall be nominated by the creditors either--

(a) by the approval by the creditors of the administrator's statement of proposals under paragraph 49(1) or his statement of revised proposals under paragraph 54(2) in which that person is proposed to be nominated as liquidator; or

(b) where the creditors wish to nominate a person other than that proposed by the administrator, at the meeting held to consider the statement of proposals, or of revised proposals (as the case may be) in which the move from administration to creditors' voluntary liquidation is proposed.]

#### **[2.48 Moving from administration to dissolution]**

[(1) The notice required by paragraph 84(1) shall be in the form required by Rule 7.30 and Schedule 5, and shall be accompanied by a final progress report

(2) As soon as reasonably practicable a copy of the notice and accompanying documents shall be sent to all those who received notice of the administrator's appointment.

(3) Where the court makes an order under paragraph 84(7) it shall, where the applicant is not the administrator, give a copy of the order to the administrator.

(4) The notice required by paragraph 84(8) shall be in the form required by Rule 7.30 and Schedule 5.]

### **[Chapter 11 Replacing Administrator]**

#### **[2.49 Grounds for resignation]**

[(1) The administrator may give notice of his resignation on grounds of ill health or because--

- (a) he intends ceasing to be in practice as an insolvency practitioner; or
- (b) there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by him of the duties of administrator.

(2) The administrator may, with the leave of the court, give notice of his resignation on grounds other than those specified in paragraph (1).]

### **[2.50 Notice of intention to resign]**

[(1) The administrator must give to the persons specified below at least 7 days' notice of his intention to resign, or to apply for the court's leave to do so

- (a) if there is a continuing administrator of the company, to him;
- (b) if there is a creditors' committee, to it; and
- (c) if there is no such administrator and no creditors' committee, to the company and its creditors.

(2) Where the administrator gives notice under paragraph (1), he shall also give notice to a member State liquidator, if such a person has been appointed in relation to the company.

(3) Where the administrator was appointed by the holder of a qualifying floating charge under paragraph 14, the notice of intention to resign shall also be sent to all holders of a qualifying floating charge.

(4) Where the administrator was appointed by the company or the directors of the company under paragraph 22, a copy of the notice of intention to resign shall also be sent to the company and to all holders of a qualifying floating charge.]

### **[2.51 Notice of resignation]**

[(1) Where the administrator was appointed under an administration order, the notice of resignation shall be lodged in court, and a copy sent to the registrar of companies

(2) A copy of the notice of resignation shall be sent, not more than 5 business days after it has been lodged in court, to all those to whom notice of intention to resign was sent.

(3) Where the administrator was appointed by the holder of a qualifying floating charge, a copy of the notice of resignation shall be lodged in court and sent to the registrar of companies, and to anyone else who received notice of intention to resign, within 5 business days of the notice of resignation being sent to the holder of the floating charge by virtue of which the appointment was made.

(4) Where the administrator was appointed by the company or the directors, a copy of the notice of resignation shall be lodged in court and sent to the registrar of companies, and to anyone else who received the notice of intention to resign, within 5 business days of the notice of resignation being sent to either the company or the directors that made the appointment.]

## **[2.52 Incapacity to Act, through death or otherwise]**

[(1) Subject to the following paragraph of this Rule, where the administrator has died, it is the duty of his executors or, where the deceased administrator was a partner in a firm, of a partner of that firm to give notice of that fact to the court and to the registrar of companies, specifying the date of death

(2) Notice of the death may also be given by any person.

(3) Where an administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the company gives notice in accordance with paragraph 89(2), he shall also give notice to the registrar of companies.]

## **[2.53 Application to replace]**

[(1) Where an application is made to the court under paragraph 91 or 95 to appoint a replacement administrator, the application shall be accompanied by a Statement of the Proposed Administrator.

(2) Where the original administrator was appointed under an administration order, a copy of the application shall be served on the person who made the application for the administration order.

(3) Where the court makes an order filling a vacancy in the office of administrator, the same provisions shall apply, subject to such modification as may be necessary, in respect of giving notice of, and advertising, the appointment as in the case of the original appointment of an administrator.]

## **[2.54]**

[(1) This Rule applies where any person has appointed an administrator by notice in accordance with these Rules and a replacement administrator is appointed

(2) The same provisions apply in respect of giving notice of, and advertising, the replacement appointment as in the case of an initial appointment, and all statements, consents and other documents as required shall also be required in this case.

(3) All forms and notices shall clearly identify that the appointment is of a replacement administrator.]

#### **[2.55 Joint or concurrent appointments]**

[(1) Where a person is appointed in accordance with paragraph 103 to act as administrator jointly or concurrently with the person or persons then acting, the same provisions shall apply, subject to this Rule and to such other modification as may be necessary, in respect of the making of this appointment as in the case of the original appointment of an administrator.

(2) An appointment made under paragraph 103 shall be notified to the registrar of companies in the form required by Rule 7.30 and Schedule 5.]

#### **[2.56 Application to court to remove administrator from office]**

[(1) An application to the court to remove an administrator from office shall be served upon--

- (a) the administrator;
- (b) where the administrator was appointed by the court, the person who made the application for the administration order;
- (c) where the appointment was made by the holder of a qualifying floating charge, the holder of the floating charge by virtue of which the appointment was made;
- (d) where the appointment was made by the directors or by the company, the person who made the appointment;
- (e) the creditors' committee (if any);
- (f) the joint administrator (if any); and
- (g) where there is neither a creditor's committee nor a joint administrator, upon the company and the creditors.

(2) An applicant under this Rule shall, within 5 business days of the order being made, send a copy of the order to all those to whom notice of the application was sent, and a notice to the registrar of companies in the form required by Rule 7.30 and Schedule 5.]

### **[2.57 Application for conversion into winding up]**

[(1) Where a member State liquidator proposes to apply to the court for the conversion under Article 37 of the EC Regulation (conversion of earlier proceedings) of an administration into a winding up[, whether by entering voluntary winding up, being wound up by the court or wound up through the administration], there shall be lodged in support of his application an affidavit complying with Rule 2.58.

(2) The application and the affidavit required under this Rule shall be served upon--

- (a) the company; and
- (b) the administrator.]

### **[2.58 Contents of affidavit]**

[(1) The affidavit shall state--

- (a) that main proceedings have been opened in relation to the company in a member State other than the United Kingdom;
- (b) the deponent's belief that the conversion of the administration into a winding up would prove to be in the interests of the creditors in the main proceedings;
- (c) the deponent's opinion as to whether the company ought to enter voluntary winding up[, be wound up by the court or be wound up through the administration]; and
- (d) all other matters that, in the opinion of the member State liquidator, would assist the court--
  - (i) in deciding whether to make such an order; and
  - (ii) if the court were to do so, in considering the need for any consequential provision that would be necessary or desirable.

(2) An affidavit under this rule shall be sworn by, or on behalf of, the member State liquidator.]

### **[2.59 Power of court]**

[(1) On hearing the application for conversion into winding up the court may make such order as it thinks fit.

(2) If the court makes an order for conversion into winding up the order may contain all such consequential provisions as the court deems necessary or desirable.

(3) Without prejudice to the generality of paragraph (1) of this Rule, an order under that paragraph may provide that the company be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the order is made.]

## **[Chapter 13 EC Regulation--Member State Liquidator]**

### **[2.60 Interpretation of creditor and notice to member State liquidator]**

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

(2) For the purposes of Chapters 6, 7 and 8 of these Rules, (and except where the context otherwise requires) the member State liquidator is deemed to be a creditor.

(3) Paragraph (2) of this Rule is 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).

(4) Where the administrator 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 a provisional liquidator or liquidator, the administrator shall also give notice or provide copies, as the case may be, to the member State liquidator.

(5) Paragraph (4) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co-operate and communicate information).]

## **Part 3**

### **Receivers**

#### **Chapter 1 Appointment**

### **3.1 Acceptance of Appointment**

(1) Where a person has been appointed a receiver by the holder of a floating charge under section 53, his acceptance (which need not be in writing) of that appointment for the purposes of paragraph (a) of section 53(6) shall be intimated by him to the holder of the floating charge or his agent within the period specified in that paragraph and he shall, as soon as possible after his acceptance, endorse a written docquet to that effect on the instrument of appointment.

(2) The written docquet evidencing receipt of the instrument of appointment, which is required by section 53(6)(b), shall also be endorsed on the instrument of appointment.

(3) The receiver shall, as soon as possible after his acceptance of the appointment, deliver a copy of the endorsed instrument of appointment to the holder of the floating charge or his agent.

(4) This Rule shall apply in the case of the appointment of joint receivers as it applies to the appointment of a receiver, except that, where the docquet of acceptance required by paragraph (1) is endorsed by each of the joint receivers, or two or more of them, on the same instrument of appointment, it is the joint receiver who last endorses his docquet of acceptance who is required to send a copy of the instrument of appointment to the holder of the floating charge or his agent under paragraph (3).

## **Chapter 2 Statement of Affairs**

### **3.2 Notice requiring statement of affairs**

(1) Where the receiver decides to require from any person or persons a statement as to the affairs of the company to be made out and submitted to him in accordance with section 66, he shall send to each of those persons a notice in the form required by Rule 7.30 and Schedule 5 requiring him to make out and submit a statement of affairs in the form prescribed by the Receivers (Scotland) Regulations 1986.

(2) Any person to whom a notice is sent under this Rule is referred to in this Chapter as "a deponent".

(3) The receiver shall insert any statement of affairs submitted to him in the sederunt book.

### **3.3 Expenses of statement of affairs**

(1) A deponent who makes up and submits to the receiver a statement of affairs shall be allowed and be paid by the receiver as an expense of the receivership, any expenses considered to be reasonable.

(2) Any decision by the receiver under this Rule is subject to appeal to the court.

(3) Nothing in this Rule relieves a deponent from any obligation to make up and submit a statement of affairs, or to provide information to the receiver.

## **Chapter 3 The Creditors' Committee**

### **3.4 Constitution of committee**

- (1) Where it is resolved by the creditors' meeting to establish a creditors' committee under section 68, the committee shall consist of at least 3 and not more than 5 creditors of the company elected at the meeting.
- (2) Any creditor of the company who has lodged a claim is eligible to be a member of the committee, so long as his claim has not been rejected for the purpose of his entitlement to vote.
- (3) A body corporate or a partnership may be a member of the committee, but it cannot act as such otherwise than by a representative appointed under Rule 7.20, as applied by Rule 3.6.

### **3.5 Functions of the committee**

In addition to the functions conferred on it by the Act, the creditors' committee shall represent to the receiver the views of the unsecured creditors and shall act in relation to him in such manner as may be agreed from time to time.

### **3.6 Application of provisions relating to liquidation committee**

- (1) Chapter 7 of Part 4 (The liquidation committee) shall apply with regard to the creditors' committee in the receivership and its members as it applies to the liquidation committee and the creditor members thereof, subject to the modifications specified below and to any other necessary modifications.
- (2) For any reference in the said Chapter 7 to--
  - (a) the liquidator or the liquidation committee, there shall be substituted a reference to the receiver or to the creditors' committee;
  - (b) to the creditor member, there shall be substituted a reference to a creditor, and any reference to a contributory member shall be disregarded.
- (3) In Rule 4.42(3) and 4.52(2), for the reference to Rule 4.41(1), there shall be substituted a reference to Rule 3.4(1).
- (4) In Rule 4.57,
  - (a) for the reference to an expense of the liquidation, there shall be substituted a reference to an expense of the receivership;
  - (b) at the end of that Rule there shall be inserted the following:--

"This does not apply to any meeting of the committee held within 3 months of a previous meeting, unless the meeting in question is summoned at the instance of the receiver."

- (5) The following Rules shall not apply, namely--



Rules 4.40, 4.41, 4.43 to 4.44, 4.53, 4.56, 4.58 and 4.59.

### **3.7 Information from receiver**

- (1) Where the committee resolves to require the attendance of the receiver under section 68(2), the notice to him shall be in writing signed by the majority of the members of the committee for the time being or their representatives.
- (2) The meeting at which the receiver's attendance is required shall be fixed by the committee for a business day, and shall be held at such time and place as he determines.
- (3) Where the receiver so attends, the members of the committee may elect anyone of their number to be chairman of the meeting, in place of the receiver or any nominee of his.

### **3.8 Members' dealings with the company**

- (1) Membership of the committee does not prevent a person from dealing with the company while the receiver is acting, provided that any transactions in the course of such dealings are entered into on normal commercial terms.
- (2) The court may, on the application of any person interested, set aside a transaction which appears to it to be contrary to the requirements of this Rule, and may give such consequential directions as it thinks fit for compensating the company for any loss which it may have incurred in consequence of the transaction.

#### **[3.8A Prescribed part]**

[Where a receiver is appointed over the whole or any part of the property of a company and section 176A(2) applies, the receiver shall--

- (a) where the company is in liquidation or administration, make available to the liquidator or administrator for distribution to unsecured creditors the sums representing the prescribed part, or
- (b) in any other case (save where the receiver petitions for the winding up of the company), apply to the court for directions as to the disposal of the prescribed part.]

## **Chapter 4 Miscellaneous**

### **3.9 Abstract of receipts and payments**

- (1) The receiver shall--

- (a) within 2 months after the end of 12 months from the date of his appointment, and of every subsequent period of 12 months, and
- (b) within 2 months after he ceases to act as receiver,

send the requisite accounts of his receipts and payments as receiver to--

- [(i) the Accountant in Bankruptcy,]
  - (ii) the holder of the floating charge by virtue of which he was appointed,
  - (iii) the members of the creditors' committee (if any),
  - (iv) the company or, if it is in liquidation, the liquidator.
- (2) The court may, on the receiver's application, extend the period of 2 months referred to in paragraph (1).
- (3) The accounts are to be in the form of an abstract showing--
  - (a) receipts and payments during the relevant period of 12 months, or
  - (b) where the receiver has ceased to act, receipts and payments during the period from the end of the last 12-month period to the time when he so ceased (alternatively, if there has been no previous abstract, receipts and payments in the period since his appointment as receiver).
- (4) This Rule is without prejudice to the receiver's duty to render proper accounts required otherwise than as above.
- (5) If the receiver makes default in complying with this Rule, he is liable to a fine and, for continued contravention, to a daily default fine.

### **3.10 Receiver deceased**

If the receiver dies, the holder of the floating charge by virtue of which he was appointed shall, forthwith on his becoming aware of the death, give notice of it to--

- (a) the registrar of companies,
- (b) the members of the creditors' committee (if any),
- (c) the company or, if it is in liquidation, the liquidator,
- (d) the holder of any other floating charge and any receiver appointed by him,
- [(e) the Accountant in Bankruptcy].

### **3.11 Vacation of office**

The receiver, on vacating office on completion of the receivership or in consequence of his ceasing to be qualified as an insolvency practitioner, shall, in addition to giving notice to the registrar of companies [and the Accountant in Bankruptcy] under section 62(5), give notice of his vacating office, within 14 days thereof, to--

- (a) the holder of the floating charge by virtue of which he was appointed,
- (b) the members of the creditors' committee (if any),
- (c) the company or, if it is in liquidation, the liquidator,
- (d) the holder of any other floating charge and any receiver appointed by him.

## **Chapter 5**

### **VAT Bad Debt Relief**

#### **3.12 Issue of certificate of insolvency**

(1) In accordance with this Rule, it is the duty of the administrative receiver to issue a certificate in the terms of paragraph (b) of section 22(3) of the Value Added Tax Act 1983 (which specifies the circumstances in which a company is deemed insolvent for the purposes of that section) forthwith upon his forming the opinion described in that paragraph.

(2) There shall in the certificate be specified--

- (a) the name of the company and its registered number;
- (b) the name of the administrative receiver and the date of his appointment; and
- (c) the date on which the certificate is issued.

(3) The certificate shall be entitled "CERTIFICATE OF INSOLVENCY FOR THE PURPOSES OF SECTION 22(3)(b) OF THE VALUE ADDED TAX ACT 1983".

#### **3.13 Notice to creditors**

(1) Notice of the issue of the certificate shall be given by the administrative receiver within 3 months of his appointment or within 2 months of issuing the certificate, whichever is the later, to all of the company's unsecured creditors of whose address he is then aware and who have, to his knowledge, made supplies to the company, with a charge to value added tax, at any time before his appointment.

(2) Thereafter, he shall give the notice to any such creditor of whose address and supplies to the company he becomes aware.

(3) He is not under obligation to provide any creditor with a copy of the certificate.

### **3.14 Preservation of certificate with company's records**

(1) The certificate shall be retained with the company's accounting records, and section 222 of the Companies Act (where and for how long records are to be kept) shall apply to the certificate as it applies to those records.

(2) It is the duty of the administrative receiver, on vacating office, to bring this Rule to the attention of the directors or (as the case may be) any successor of his as receiver.

## **Part 4**

### **Winding Up by the Court**

#### **Chapter 1 Provisional Liquidator**

### **4.1 Appointment of provisional liquidator**

[(1)] An application to the court for the appointment of a provisional liquidator under section 135 may be made by the petitioner in the winding up, or by a creditor of the company, or by a contributory, or by the company itself, or by any person who under any enactment would be entitled to present a petition for the winding up of the company.

[(2)] The court shall be satisfied that a person has caution for the proper performance of his functions as provisional liquidator if a statement is lodged in court or it is averred in the winding-up petition that the person to be appointed is an insolvency practitioner, duly qualified under the Act to act as a liquidator, and that he consents so to act.]

### **4.2 Order of appointment**

(1) The provisional liquidator shall forthwith after the order appointing him is made, give notice of his appointment to--

(a) the registrar of companies;

[(aa) the Accountant in Bankruptcy;]

(b) the company; and

(c) any receiver of the whole or any part of the property of the company.

(2) The provisional liquidator shall advertise his appointment in accordance with any directions of the court.

### **4.3 Caution**

The cost of providing the caution required by the provisional liquidator under the Act shall unless the court otherwise directs be--

- (a) if a winding up order is not made, reimbursed to him out of the property of the company, and the court may make an order against the company accordingly, and
- (b) if a winding up order is made, reimbursed to him as an expense of the liquidation.

#### **4.4 Failure to find or to maintain caution**

- (1) If the provisional liquidator fails to find or to maintain his caution, the court may remove him and make such order as it thinks fit as to expenses.
- (2) If an order is made under this Rule removing the provisional liquidator, or discharging the order appointing him, the court shall give directions as to whether any, and if so what, steps should be taken for the appointment of another person in his place.

#### **4.5 Remuneration**

- (1) The remuneration of the provisional liquidator shall be fixed by the court from time to time.
- (2) Section 53(4) of the Bankruptcy Act shall apply to determine the basis for fixing the amount of the remuneration of the provisional liquidator, subject to the modifications specified in Rule 4.16(2) and to any other necessary modifications.
- [(3) Without prejudice to any order of the court as to expenses, the provisional liquidator's remuneration shall be paid to him, and the amount of any expenses incurred by him (including the remuneration and expenses of any special manager appointed under section 177) reimbursed--
  - (a) if a winding up order is not made, out of the property of the company], and
  - (b) if a winding up order is made, as an expense of the liquidation.
- [(4) Unless the court otherwise directs, in a case falling within paragraph (3)(a) above, the provisional liquidator may retain out of the company's property such sums or property as are or may be required for meeting his remuneration and expenses.]

#### **4.6 Termination of appointment**

(1) [Except in relation to winding-up petitions under section 124A,] the appointment of the provisional liquidator may be terminated by the court on his application, or on that of any of the persons entitled to make application for his appointment under Rule 4.1.

(2) If the provisional liquidator's appointment terminates, in consequence of the dismissal of the winding up petition or otherwise, the court may give such directions as it thinks fit with respect to--

- (a) the accounts of his administration;
- (b) the expenses properly incurred by the provisional liquidator; or
- (c) any other matters which it thinks appropriate

. . . .

[(3) In winding-up petitions under section 124A, the appointment of the provisional liquidator may be terminated by the court on his application, or on that of the Secretary of State.]

## **Chapter 2**

### **Statement of Affairs**

#### **4.7 Notice requiring statement of affairs**

(1) This Chapter applies where the liquidator or, in a case where a provisional liquidator is appointed, the provisional liquidator decides to require a statement as to the affairs of the company to be made out and submitted to him in accordance with section 131.

(2) In this Chapter the expression "liquidator" includes "provisional liquidator".

(3) The liquidator shall send to each of the persons upon whom he decides to such a requirement under section 131, a notice in the form required by Rule 7.30 and Schedule 5 requiring him to make out and submit a statement of affairs.

(4) Any person to whom a notice is sent under this Rule is referred to in this as "a deponent".

#### **4.8 Form of the statement of affairs**

(1) The statement of affairs shall be in the form required by Rule 7.30 and Schedule 5.

(2) The liquidator shall insert any statement of affairs submitted to him in the sederunt book.

#### **4.9 Expenses of statement of affairs**

- (1) At the request of any deponent, made on the grounds that he cannot himself prepare a proper statement of affairs, the liquidator may authorise an allowance towards expenses to be incurred by the deponent in employing some person or persons to be approved by the liquidator to assist the deponent in preparing it.
- (2) Any such request by the deponent shall be accompanied by an estimate of the expenses involved.
- (3) An authorisation given by the liquidator under this Rule shall be subject to such conditions (if any) as he thinks fit to impose with respect to the manner in which any person may obtain access to relevant books and papers.
- (4) Nothing in this Rule relieves a deponent from any obligation to make up and submit a statement of affairs, or to provide information to the liquidator.
- (5) Any allowance by the liquidator under this Rule shall be an expense of the liquidation.
- (6) The liquidator shall intimate to the deponent whether he grants or refuses his request for an allowance under this Rule and where such request is refused the deponent affected by the refusal may appeal to the court not later than 14 days from the date intimation of such refusal is made to him.

### **Chapter 3 Information**

#### **4.10 Information to creditors and contributories**

(1) The liquidator shall report to the creditors and, except where he considers it would be inappropriate to do so, the contributories with respect to the proceedings in the winding up within six weeks after the end of each accounting period or he may submit such a report to a meeting of creditors or of contributories held within such period.

[(1A) The report under paragraph (1) shall include--

- (a) to the best of the liquidator's knowledge and belief--
  - (i) an estimate of the value of the prescribed part (whether or not he proposes to make an application to the court under section 176A(5) or section 176A(3) applies), and
  - (ii) an estimate of the value of the company's net property,

provided that such estimates shall not be required to include any information the disclosure of which could seriously prejudice the commercial interests of the company, but if such information is excluded the estimates shall be accompanied by a statement to that effect, and

- (b) whether, and, if so, why, the liquidator proposes to make an application to the court under section 176A(5).]

(2) Any reference in this Rule to creditors is to persons known to the liquidator to be creditors of the company.

(3) Where a statement of affairs has been submitted to him, the liquidator may send out to creditors and contributories with the next convenient report to be made under paragraph (1) a summary of the statement and such observations (if any) as he thinks fit to make with respect to it.

[(4) Any person appointed as liquidator of a company under section 140(1) who, following such appointment becomes aware of creditors of the company of whom he was not aware when he was acting as the administrator of the company, shall send to such creditors a copy of any statement or report which was sent by him to creditors under [Rule 2.25], with a note to the effect that it is being sent under this Rule.]

#### **4.11 Information to registrar of companies**

The statement which section 192 requires the liquidator to send to [the Accountant in Bankruptcy] if the winding up is not concluded within one year from its commencement, shall be sent not more than 30 days after the expiration of that year and thereafter [not more than 30 days after the end of each accounting period which ends after that year] until the winding up is concluded in the form required by Rule 7.30 and Schedule 5 and shall contain the particulars specified therein.

### **Chapter 4 Meetings of Creditors and Contributories**

#### **4.12 First meetings in the liquidation**

(1) This Rule applies where under [section 138(3) or (4)] the interim liquidator summons meetings of the creditors and the contributories of the company [or, as the case may be, a meeting of the creditors] for the purpose of choosing a person to be liquidator of the company in place of the interim liquidator.

(2) Meetings summoned by the interim liquidator under that section are known respectively as "the first meeting of creditors" and "the first meeting of contributories", and jointly as "the first meetings in the liquidation".

[(2A) Any meetings of creditors or contributories under section 138(3) or (4) shall be summoned for a date not later than 42 days after the date of the winding up order or such longer period as the court may allow.]

(3) Subject as follows, no resolutions shall be taken at the first meeting of creditors other than the following:--



- (a) a resolution to appoint one or more named insolvency practitioners to be liquidator or, as the case may be, joint liquidators and, in the case of joint liquidators, whether any act required or authorised to be done by the liquidator is to be done by both or all of them, or by any one or more;
  - (b) a resolution to establish a liquidation committee under section 142(1);
  - (c) unless a liquidation committee is to be established, a resolution specifying the terms on which the liquidator is to be remunerated, or to defer consideration of that matter;
  - (d) a resolution to adjourn the meeting for not more than 3 weeks;
  - (e) any other resolution which the chairman considers it right to allow for special reason.
- (4) This rule also applies with respect to the first meeting of contributories except that that meeting shall not pass any resolution to the effect of paragraph (3)(c).

#### **4.13 Other meetings**

- (1) The liquidator shall summon a meeting of the creditors in each year during which the liquidation is in force.
- (2) Subject to the above provision, the liquidator may summon a meeting of the creditors or of the contributories at any time for the purpose of ascertaining their wishes in all matters relating to the liquidation.

#### **4.14 Attendance at meetings of company's personnel**

- (1) This Rule applies to meetings of creditors and to meetings of contributories.
- (2) Whenever a meeting is summoned, the liquidator may, if he thinks fit, give at least 21 days' notice to any one or more of the company's personnel that he is or they are required to be present at the meeting or be in attendance.
- (3) In this Rule "the company's personnel" means the persons referred to in paragraphs (a) to (d) of section 235(3) (present and past officers, employees, etc).
- (4) The liquidator may authorise payment to any person whose attendance is requested at a meeting under this Rule of his reasonable expenses incurred in travelling to the meeting and any payment so authorised shall be an expense of the liquidation.
- (5) In the case of any meeting, any of the company's personnel may, if he has given reasonable notice of his wish to be present, be admitted to take part; but this is at the discretion of the chairman of the meeting, whose decision as to what (if any) intervention may be made by any of them is final.

(6) If it is desired to put questions to any of the company's personnel who are not present, the meeting may be adjourned with a view to obtaining his attendance.

(7) Where one of the company's personnel is present at a meeting, only such questions may be put to him as the chairman may in his discretion allow.

## **Chapter 5**

### **Claims in Liquidation**

#### **4.15 Submission of claims**

(1) A creditor, in order to obtain an adjudication as to his entitlement--

(a) to vote at any meeting of the creditors in the liquidation; or

(b) to a dividend (so far as funds are available) out of the assets of the company in respect of any accounting period,

shall submit his claim to the liquidator--

(a) at or before the meeting; or, as the case may be,

(b) not later than 8 weeks before the end of the accounting period.

(2) A creditor shall submit his claim by producing to the liquidator--

(a) a statement of claim in the form required by Rule 7.30 and Schedule 5; and

(b) an account or voucher (according to the nature of the debt claimed) which constitutes prima facie evidence of the debt,

but the liquidator may dispense with any requirement of this paragraph in respect of any debt or any class of debt.

(3) A claim submitted by a creditor, which has been accepted in whole or in part by the liquidator for the purpose of voting at a meeting or of drawing a dividend in respect of any accounting period, shall be deemed to have been resubmitted for the purpose of obtaining an adjudication as to his entitlement both to vote at any subsequent meeting and (so far as funds are available) to a dividend in respect of an accounting period or, as the case may be, any subsequent accounting period.

(4) A creditor, who has submitted a claim, may at any time submit a further claim specifying a different amount for his claim:

Provided that a secured creditor shall not be entitled to produce a further claim specifying a different value for the security at any time after the liquidator has required the creditor to discharge, or convey or assign, the security under paragraph 5(2) of Schedule 1 to the Bankruptcy Act, as applied by the following Rule.

[(5) Votes are calculated according to the amount of--

- (a) a creditor's debt as at the date of the commencement of the winding up within the meaning of section 129, deducting any amount paid in respect of that debt after that date; or
- (b) in relation to a member State liquidator, the debt claimed to be due to creditors in proceedings in relation to which he holds office.]

[(5A) No vote shall be cast by virtue of a debt more than once on any resolution put to the meeting.

(5B) Where a creditor--

- (a) is entitled to vote under this Rule (as read with Rule 7.9);
- (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.

(5C) 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.

(5D) For the purposes of paragraphs (5B) and (5C), "other proceedings" means main proceedings, secondary proceedings or territorial proceedings in another member State.]

(6) In this Rule and in Rule 4.16, including the provisions of the Bankruptcy Act applied by that Rule, any reference to the liquidator includes a reference to the chairman of the meeting.

#### **4.16 Application of the Bankruptcy Act**

(1) Subject to the provisions in this Chapter, the following provisions of the Bankruptcy Act shall apply in relation to a liquidation of a company in like manner as they apply in a sequestration of a debtor's estate, subject to the modifications specified in [paragraphs (2) and (3)] and to any other necessary modifications--

- (a) section 22(5) and (10) (criminal offence in relation to producing false claims or evidence);
- (b) section 48(5), (6) and (8), together with sections 44(2) and (3) and 47(1) as applied by those sections (further evidence in relation to claims);

- (c) section 49 (adjudication of claim);
- (d) section 50 (entitlement to vote and draw dividend);
- (e) section 60 (liabilities and rights of co-obligants); and
- (f) Schedule 1 except paragraphs 2, 4 and 6 (determination of amount of creditor's claim).

(2) [Subject to paragraph (3) below,] for any reference in the provisions of the Bankruptcy Act, as applied by these Rules, to any expression in column 1 below, there shall be substituted a reference to the expression in column 2 opposite thereto—

<i>Column 1</i>	<i>Column 2</i>
Interim trustee	Liquidator
Permanent trustee	Liquidator
Sequestration	Liquidation
Date of sequestration	Date of commencement of winding up within the meaning of section 129
Debtor	[The company or, in the application of section 49(6) of the Bankruptcy Act, any member or contributory of the company]
[Debtor's estate]	Company's assets
Accountant in Bankruptcy	The court
Commissioners	Liquidation committee
Sheriff	The court
Preferred debts	Preferential debts within the meaning of section 386

[(3) Where the winding up was immediately preceded by an administration, the references to the date of sequestration in paragraph 1(1) of Schedule 1 to the Bankruptcy Act and the second reference to that date in paragraph 1(2) shall be construed as references to the date on which the company entered administration.]

#### **4.17 Claims in foreign currency**

- (1) A creditor may state the amount of his claim in a currency other than sterling where--
- (a) his claim is constituted by decree or other order made by a court ordering the company to pay to the creditor a sum expressed in a currency other than sterling, or
  - (b) where it is not so constituted, his claim arises from a contract or bill of exchange in terms of which payment is or may be required to be made by the company to the creditor in a currency other than sterling.

(2) Where a claim is stated in currency other than sterling for the purpose of the preceding paragraph, it shall be converted into sterling at the rate of exchange for that other currency at the mean of the buying and selling spot rates prevailing in the London market at the close of business on the date of commencement of winding up [or, if the liquidation was immediately preceded by an administration, on the date on which the company entered administration].

## **Chapter 6 The Liquidator**

### **Section A: Appointment and Functions of Liquidator**

#### **4.18 Appointment of liquidator by the court**

(1) This Rule applies where a liquidator is appointed by the court under section 138(1) (appointment of interim liquidator), 138(5) (no person appointed or nominated by the meetings of creditors and contributories), 139(4) (different persons nominated by creditors and contributories) or 140(1) or (2) (liquidation following administration or voluntary arrangement).

(2) The court shall not make the appointment unless and until there is lodged in court a statement to the effect that the person to be appointed is an insolvency practitioner, duly qualified under the Act to be the liquidator, and that he consents so to act.

(3) Thereafter, the court shall send a copy of the order to the liquidator, whose appointment takes effect from the date of the order.

(4) The liquidator shall--

(a) within 7 days of his appointment, give notice of it to [the Accountant in Bankruptcy]; and

(b) within 28 days of his appointment, give notice of it to the creditors and contributories or, if the court so permits, he shall advertise his appointment in accordance with the directions of the court.

(5) In any notice or advertisement to be given by him under this Rule, the liquidator shall [state whether a liquidation committee has been established by a meeting of creditors or contributories, and, if this is not the case, he shall]--

(a) state whether he intends to summon meetings of creditors and contributories for the purpose of establishing a liquidation committee or whether he proposes to summon only a meeting of creditors for that purpose; and

(b) if he does not propose to summon any meeting, set out the powers of the creditors under section 142(3) to require him to summon such a meeting.

#### **4.19 Appointment by creditors or contributories**

(1) This Rule applies where a person is nominated for appointment as liquidator under section 139(2) either by a meeting of creditors or by a meeting of contributories.

(2) Subject to section 139(4) the interim liquidator, as chairman of the meeting, or, where the interim liquidator is nominated as liquidator, the chairman of the meeting, shall certify the appointment of a person as liquidator by the meeting but not until and unless the person to be appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator and that he consents so to act.

(3) The appointment of the liquidator [takes effect upon the passing of the resolution for his appointment] and [the date of his appointment] shall be stated in the certificate.

(4) The liquidator shall--

(a) within 7 days of his appointment, give notice of his appointment to the court and to [the Accountant in Bankruptcy]; and

(b) within 28 days of his appointment, give notice of it in a newspaper circulating in the area where the company has its principle place of business or in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the company's creditors and contributories.

(5) The provisions of Rule 4.18(5) shall apply to any notice given by the liquidator under this Rule.

(6) Paragraphs (4) and (5) need not be complied with in the case of a liquidator appointed by [a meeting of contributories] and replaced by another liquidator appointed on the same day by a creditors' meeting.

#### **4.20 Authentication of liquidator's appointment**

A copy certified by the clerk of court of any order of court appointing the liquidator or, as the case may be, a copy, certified by the chairman of the meeting which appointed the liquidator, of the certificate of the liquidator's appointment under Rule 4.19(2), shall be sufficient evidence for all purposes and in any proceedings that he has been appointed to exercise the powers and perform the duties of liquidator in the winding up of the company.

#### **4.21 Hand-over of assets to liquidator**

(1) This Rule applies where a person appointed as liquidator ("the succeeding liquidator") succeeds a previous liquidator ("the former liquidator") as the liquidator.

(2) When the succeeding liquidator's appointment takes effect, the former liquidator shall forthwith do all that is required for putting the succeeding liquidator into possession of the assets.

(3) The former liquidator shall give to the succeeding liquidator all such information, relating to the affairs of the company and the course of the winding up, as the succeeding liquidator considers to be reasonably required for the effective discharge by him of his duties as such and shall hand over all books, accounts, statements of affairs, statements of claim and other records and documents in his possession relating to the affairs of the company and its winding up.

#### **[4.22 Taking possession and realisation of the company's assets]**

[(1) The liquidator shall--

- (a) as soon as may be after his appointment take possession of the whole assets of the company and any property, books, papers or records in the possession or control of the company or to which the company appears to be entitled; and
- (b) make up and maintain an inventory and valuation of the assets which he shall retain in the sederunt book.

(2) The liquidator shall be entitled to have access to all documents or records relating to the assets or the property or the business or financial affairs of the company sent by or on behalf of the company to a third party and in that third party's hands and to make copies of any such documents or records.

(3) If any person obstructs a liquidator who is exercising, or attempting to exercise, a power conferred by sub-section (2) above, the court, on the application of the liquidator, may order that person to cease so to obstruct the liquidator.

(4) The liquidator may require delivery to him of any title deed or other document or record of the company, notwithstanding that a right of lien is claimed over the title deed or document or record, but this paragraph is without prejudice to any preference of the holder of the lien.

(5) Section 39(4) and (7) of the Bankruptcy Act shall apply in relation to a liquidation of a company as it applies in relation to a sequestration of a debtor's estate, subject to the modifications specified in Rule 4.16(2) and to any other necessary modifications.]

### **Section B: Removal and Resignation: Vacation of Office**

#### **4.23 Summoning of meeting for removal of liquidator**

(1) Subject to section 172(3) and without prejudice to any other method of summoning the meeting, a meeting of creditors for the removal of the liquidator in accordance with sec-

tion 172(2) shall be summoned by the liquidator if requested to do so by not less than one quarter in value of the creditors.

(2) Where a meeting of creditors is summoned especially for the purpose of removing the liquidator in accordance with section 172(2), the notice summoning it shall draw attention to section 174(4)(a) or (b) with respect to the liquidator's release.

(3) At the meeting, a person other than the liquidator or his nominee may be elected to act as chairman; but if the liquidator or his nominee is chairman and a resolution has been proposed for the liquidator's removal, the chairman shall not adjourn the meeting without the consent of at least one-half (in value) of the creditors present (in person or by proxy) and entitled to vote.

(4) Where a meeting is to be held or is proposed to be summoned under this Rule, the court may, on the application of any creditor, give directions as to the mode of summoning it, the sending out and return of forms of proxy, the conduct of the meeting, and any other matter which appears to the court to require regulation or control under this Rule.

#### **4.24 Procedure on liquidator's removal**

(1) Where the creditors have resolved that the liquidator be removed, the chairman of the creditors' meeting shall forthwith--

(a) if, at the meeting, another liquidator was not appointed, send a certificate of the liquidator's removal to the court and [a copy of the certificate] to [the Accountant in Bankruptcy], and

(b) otherwise, deliver the certificate to the new liquidator, who shall forthwith send [a copy of the certificate] to the court and to [the Accountant in Bankruptcy].

(2) The liquidator's removal is effective as from such date as the meeting of the creditors shall determine, and this shall be stated in the certificate of removal.

#### **4.25 Release of liquidator on removal**

(1) Where the liquidator has been removed by a creditors' meeting which has not resolved against his release, the date on which he has his release in terms of section 174(4)(a) shall be stated in the certificate of removal before a copy of it is sent to the court and to [the Accountant in Bankruptcy] under Rule 4.24(1).

(2) Where the liquidator is removed by a creditors' meeting which has resolved against his release, or is removed by the court, he must apply to the Accountant of Court for his release.

(3) When the Accountant of Court releases the former liquidator, he shall--



- (a) issue a certificate of release to the new liquidator who shall send a copy of it to [the Accountant in Bankruptcy], and
- (b) send a copy of the certificate to the former liquidator.

and in this case release of the former liquidator is effective from the date of the certificate.

#### **4.26 Removal of liquidator by the court**

- (1) This Rule applies where the application is made to the court for the removal of the liquidator, or for an order directing the liquidator to summon a meeting of creditors for the purpose of removing him.
- (2) The court may require the applicant to make a deposit or give caution for the expenses to be incurred by the liquidator on the application.
- (3) The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating its date, time and place and accompanied by a copy of the application, and of any evidence which he intends to adduce in support of it.
- (4) Subject to any contrary order of the court, the expenses of the application are not payable as an expense of the liquidation.
- (5) Where the court removes the liquidator--
  - (a) it shall send two copies of the order of removal to him;
  - (b) the order may include such provision as the court thinks fit with respect to matters arising in connection with the removal; and
  - (c) if the court appoints a new liquidator, Rule 4.18 applies,

and the liquidator, on receipt of the two court orders under sub-paragraph (a), shall send one copy of the order to [the Accountant in Bankruptcy], together with a notice of his ceasing to act as liquidator.

#### **4.27 Advertisement of removal**

Where a new liquidator is appointed in place of the one removed, Rules 4.19 to 4.21 shall apply to the appointment of the new liquidator except that the notice to be given by the new liquidator under Rule 4.19(4) shall also state--

- (a) that his predecessor as liquidator has been removed; and
- (b) whether his predecessor has been released.

#### **4.28 Resignation of liquidator**

- (1) before resigning his office under section 172(6) the liquidator shall call a meeting of creditors for the purpose of receiving his resignation.
- (2) The notice summoning the meeting shall draw attention to section 174(4)(c) and Rule 4.29(4) with respect of the liquidator's release and shall also be accompanied by an account of the liquidator's administration of the winding up, including a summary of his receipts and payments [and a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A (prescribed part)].
- (3) Subject to paragraph (4), the liquidator may only proceed under this Rule on the grounds of ill health or because--
  - (a) he intends ceasing to be in practice as an insolvency practitioner; or
  - (b) there has been some conflict of interest or change of personal circumstances which precludes or makes impracticable the further discharge by him of the duties of the liquidator.
- (4) Where two or more persons are acting as liquidator jointly, any one of them may resign (without prejudice to the continuation in office of the other or others) on the ground that, in his opinion and that of the other or others, it is no longer expedient that there should continue to be the present number of joint liquidators.

#### **4.29 Action following acceptance of liquidator's resignation**

- (1) This Rule applies where a meeting is summoned to receive the liquidator's resignation.
- (2) If the liquidator's resignation is accepted, it is effective as from such date as the meeting of the creditors may determine and that date shall be stated in the notice given by the liquidator under paragraph (3).
- (3) The liquidator, whose resignation is accepted, shall forthwith after the meeting give notice of his resignation to the court as required by section 172(6) and shall send a copy of it to [the Accountant in Bankruptcy].
- (4) The meeting of the creditors may grant the liquidator his release from such date as they may determine. If the meeting resolves against the liquidator having his release, Rule 4.25(2) and (3) shall apply.
- (5) Where the creditors have resolved to appoint a new liquidator in place of the one who has resigned, Rules 4.19 to 4.21 shall apply to the appointment of the new liquidator, except that the notice to be given by the new liquidator under Rule 4.19(4) shall also state that his predecessor as liquidator has resigned and whether he has been released.
- [(6) If there is no quorum present at the meeting summoned to receive the liquidator's resignation, the meeting is deemed to have been held, a resolution is deemed to have

been passed that the liquidator's resignation be accepted, and the creditors are deemed not to have resolved against the liquidator having his release.

(7) Where paragraph (6) applies--

- (a) the liquidator's resignation is effective as from the date for which the meeting was summoned and that date shall be stated in the notice given by the liquidator under paragraph (3), and
- (b) the liquidator is deemed to have been released as from that date.]

#### **4.30 Leave to resign granted by the court**

- (1) If, at a creditors' meeting summoned to receive the liquidator's resignation, it is resolved that it be not accepted, the court may, on the liquidator's application, make an order giving him leave to resign.
- (2) The court's order under this Rule may include such provision as it thinks fit with respect to matters arising in connection with the resignation including the notices to be given to the creditors and [the Accountant in Bankruptcy] and shall determine the date from which the liquidator's release is effective.

### **Section C: Release on Completion of Winding Up**

#### **4.31 Final meeting**

- (1) The liquidator shall give at least 28 days' notice of the final meeting of creditors to be held under section 146. The notice shall be sent to all creditors whose claims in the liquidation have been accepted.
- (2) The liquidator's report laid before the meeting shall contain an account of his administration of the winding up, including a summary of his receipts and payments [and a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A (prescribed part)].
- (3) At the final meeting, the creditors may question the liquidator with respect to any matter contained in his report, and may resolve against the liquidator having his release.
- (4) The liquidator shall within 7 days of the meeting give notice to the court and to the registrar of companies [and the Accountant in Bankruptcy] under section 172(8) that the final meeting has been held and the notice shall state whether or not he has been released, and be accompanied by a copy of the report laid before the meeting.
- (5) If there is no quorum present at the final meeting, the liquidator shall report to the court that a final meeting was summoned in accordance with the Rules, but that there was no quorum present; and the final meeting is then deemed to have been held and the creditors not to have resolved against the liquidator being released.

(6) If the creditors at the final meeting have not resolved against the liquidator having his release, he is released in terms of section 174(4)(d)(ii) when he vacates office under section 172(8). If they have so resolved he shall apply for his release to the Accountant of Court, and Rules 4.25(2) and (3) shall apply accordingly [subject to the modifications that in Rule 4.25(3) sub-paragraph (a) shall apply with the word "new" replaced by the word "former" and sub-paragraph (b) shall not apply].

## **Section D: Outlays and Remuneration**

### **4.32 Determination of amount of outlays and remuneration**

(1) Subject to the provisions of Rules 4.33 to 4.35, claims by the liquidator for the outlays reasonably incurred by him and for his remuneration shall be made in accordance with section 53 of the Bankruptcy Act as applied by Rule 4.68 and as further modified by paragraphs (2) and (3) below.

(2) After section 53(1) of the Bankruptcy Act, there shall be inserted the following subsection:--

"(1A) The liquidator may, at any time before the end of an accounting period, submit to the liquidation committee (if any) an interim claim in respect of that period for the outlays reasonably incurred by him and for his remuneration and the liquidation committee may make an interim determination in relation to the amount of the outlays and remuneration payable to the liquidator and, where they do so, they shall take into account that interim determination when making their determination under subsection (3)(a)(ii).".

(3) In section 53(6) of the Bankruptcy Act, for the reference to "subsection (3)(a)(ii)" there shall be substituted a reference to "subsection (1A) or (3)(a)(ii)".

### **4.33 Recourse of liquidator to meeting of creditors**

If the liquidator's remuneration has been fixed by the liquidation committee and he considers the amount to be insufficient, he may request that it be increased by resolution of the creditors.

### **4.34 Recourse to the court**

(1) If the liquidator considers that the remuneration fixed for him by the liquidation committee, or by resolution of the creditors, is insufficient, he may apply to the court for an order increasing its amount or rate.

(2) The liquidator shall give at least 14 days' notice of his application to the members of the liquidation committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

(3) If there is no liquidation committee, the liquidator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

(4) The court may, if it appears to be a proper case, order the expenses of the liquidator's application, including the expenses of any member of the liquidation committee appearing [or being represented] on it, or any creditor so appearing [or being represented], to be paid as an expense of the liquidation.

#### **4.35 Creditors' claim that remuneration is excessive**

(1) If the liquidator's remuneration has been fixed by the liquidation committee or by the creditors, any creditor or creditors of the company representing in value at least 25 per cent of the creditors may apply to the court for an order that the liquidator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

(2) If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

(3) Unless the court orders otherwise, the expenses of the application shall be paid by the applicant, and are not payable as an expense of the liquidation.

### **Section E: Supplementary Provisions**

#### **4.36 Liquidator deceased**

(1) Subject to the following paragraph, where the liquidator has died, it is the duty of his executors or, where the deceased liquidator was a partner in a firm, of a partner in that firm to give notice of that fact to the court and to [the Accountant in Bankruptcy], specifying the date of death. This does not apply if notice has been given under the following paragraph.

(2) Notice of the death may also be given by any person producing to the court and to [the Accountant in Bankruptcy] a copy of the death certificate.

#### **4.37 Loss of qualification as insolvency practitioner**

(1) This Rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the company.

(2) He shall forthwith give notice of his doing so to the court and to [the Accountant in Bankruptcy].

(3) Rule 4.25(2) and (3) apply as regards the liquidator obtaining his release, as if he had been removed by the court.

#### **4.38 Power of court to set aside certain transactions**

(1) If in the course of the liquidation the liquidator enters into any transaction with a person who is an associate of his, the court may, on the application of any person interested, set the transaction aside and order the liquidator to compensate the company for any loss suffered in consequence of it.

(2) This does not apply if either--

(a) the transaction was entered into with the prior consent of the court, or

(b) it is shown to the court's satisfaction that the transaction was for value, and that it was entered into by the liquidator without knowing, or having any reason to suppose, that the person concerned was an associate.

(3) Nothing in this Rule is to be taken as prejudicing the operation of any rule of law with respect to a trustee's dealings with trust property, or the fiduciary obligations of any person.

#### **4.39 Rule against solicitation**

(1) Where the court is satisfied that any improper solicitation has been used by or on behalf of the liquidator in obtaining proxies or procuring his appointment, it may order that no remuneration be allowed as an expense of the liquidation to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the court under this Rule overrides any resolution of the liquidation committee or the creditors, or any other provision of the Rules relating to the liquidator's remuneration.

### **Chapter 7**

#### **The Liquidation Committee**

#### **4.40 Preliminary**

For the purposes of this Chapter--

(a) an "insolvent winding up" takes place where a company is being wound up on grounds which include its inability to pay its debts, and

(b) a "solvent winding up" takes place where a company is being wound up on grounds which do not include that one.

#### **4.41 Membership of committee**

- (1) Subject to Rule 4.43 below, the liquidation committee shall consist as follows:--
  - (a) in the case of any winding up, of at least 3 and not more than 5 creditors of the company, elected by the meeting of creditors held under section 138 or 142 of the Act, and also
  - (b) in the case of a solvent winding up where the contributories' meeting held under either of those sections so decides, [of] up to 3 contributories, elected by that meeting.
- (2) Any creditor of the company (other than one whose debt is fully secured and who has not agreed to surrender his security to the liquidator) is eligible to be a member of the committee, so long as--
  - (a) he has lodged a claim of his debt in the liquidation, and
  - (b) his claim has neither been wholly rejected for voting purposes, nor wholly rejected for the purposes of his entitlement so far as funds are available to a dividend.
- (3) No person can be a member as both a creditor and a contributory.
- (4) A body corporate or a partnership may be a member of the committee, but it cannot act as such otherwise than by a member's representative appointed under Rule 4.48 below.
- (5) In this Chapter, members of the committee elected or appointed by a creditors' meeting are called "creditor members", and those elected or appointed by a contributories' meeting are called "contributory members".
- (6) Where the Deposit Protection Board exercises the right (under [section 58 of the Banking Act]) to be a member of the committee, the Board is to be regarded as an additional creditor member.

#### **4.42 Formalities of establishment**

- (1) The liquidation committee shall not come into being, and accordingly cannot act, until the liquidator has issued a certificate of its due constitution.
- (2) If the chairman of the meeting which resolves to establish the committee is not the liquidator, he shall forthwith give notice of the resolution to the liquidator (or, as the case may be, the person appointed as liquidator by the same meeting), and inform him of the names and addresses of the persons elected to be members of the committee.
- (3) No person may act as a member of the committee unless and until he has agreed to do so [and, unless the relevant proxy or authorisation contains a statement to the contrary,

such agreement may be given on behalf of the member by his proxy-holder or any representative under section 375 of the Companies Act who is present at the meeting at which the committee is established]; and the liquidator's certificate of the committee's due constitution shall not be issued until at least the minimum number of persons in accordance with Rule 4.41 who are to be members of it have agreed to act, but shall be issued forthwith thereafter.

(4) As and when the others (if any) agree to act, the liquidator shall issue an amended certificate.

(5) The certificate (and any amended certificate) shall be sent by the liquidator to [the Accountant in Bankruptcy].

(6) If after the first establishment of the committee there is any change in its membership, the liquidator shall report the change to [the Accountant in Bankruptcy].

#### **4.43 Committee established by contributories**

(1) The following applies where the creditors' meeting under section 138 or 142 of the Act does not decide that a liquidation committee should be established or decides that a liquidation committee should not be established.

(2) A meeting of contributories under section 138 or 142 may appoint one of their number to make application to the court for an order to the liquidator that a further creditors' meeting be summoned for the purpose of establishing a liquidation committee; and--

(a) the court may, if it thinks that there are special circumstances to justify it, make that order, and

(b) the creditors' meeting summoned by the liquidator in compliance with the order is deemed to have been summoned under section 142.

(3) If the creditors' meeting so summoned does not establish a liquidation committee, a meeting of contributories may do so.

(4) The committee shall then consist of at least 3, and not more than 5, contributories elected by that meeting; and Rule 4.42 shall apply to such a committee [with the substitution of the reference to Rule 4.41 in paragraph (3) of that Rule by reference to this paragraph].

#### **4.44 Obligations of liquidator to committee**

(1) Subject as follows, it is the duty of the liquidator to report to the members of the liquidation committee all such matters as appear to him to be, or as they have indicated to him as being, of concern to them with respect to the winding up.



(2) In the case of matters so indicated to him by the committee, the liquidator need not comply with any request for information where it appears to him that--

- (a) the request is frivolous or unreasonable, or
- (b) the cost of complying would be excessive, having regard to the relative importance of the information, or
- (c) there are not sufficient assets to enable him to comply.

(3) Where the committee has come into being more than 28 days after the appointment of the liquidator, he shall report to them, in summary form, what actions he has taken since his appointment, and shall answer all such questions as they may put to him regarding his conduct of the winding up hitherto.

(4) A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report to him by the liquidator, otherwise than in summary form, of any matters previously arising.

(5) Nothing in this Rule disentitles the committee, or any member of it, from access to the liquidator's cash book and sederunt book, or from seeking an explanation of any matter within the committee's responsibility.

#### **4.45 Meetings of the committee**

(1) Subject as follows, meetings of the liquidation committee shall be held when and where determined by the liquidator.

(2) The liquidator shall call a first meeting of the committee to take place within 3 months of his appointment or of the committee's establishment (whichever is the later); and thereafter he shall call a meeting--

- (a) if so requested by a creditor member of the committee or his representative (the meeting then to be held within 21 days of the request being received by the liquidator), and
- (b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

(3) The liquidator shall give 7 days' written notice of the time and place of any meeting to every member of the committee (or his representative, if designated for purpose), unless in any case the requirement of the notice has been waived by or on behalf of any member. Waiver may be signified either at or before the meeting.

#### **4.46 The chairman at meetings**

- (1) The chairman at any meeting of the liquidation committee shall be the liquidator, or a person nominated by him to act.
- (2) A person so nominated must be either--
  - (a) a person who is qualified to act as an insolvency practitioner in relation to the company, or
  - (b) an employee of the liquidator or his firm who is experienced in insolvency matters.

#### **4.47 Quorum**

A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least 2 creditor members or, in the case of a committee of contributories, 2 contributory members are present or represented.

#### **4.48 Committee members' representatives**

- (1) A member of the liquidation committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.
- (2) A person acting as a committee-member's representative must hold a mandate entitling him so to act (either generally or specially) and signed by or on behalf of the committee-member[, and for this purpose any proxy or authorisation under section 375 of the Companies Act in relation to any meeting of creditors (or, as the case may be, members or contributories) of the company shall, unless it contains a statement to the contrary, be treated as such a mandate to act generally signed by or on behalf of the committee-member].
- (3) The chairman at any meeting of the committee may call on a person claiming to act as a committee-member's representative to produce his mandate and may exclude him if it appears that his mandate is deficient.
- (4) No member may be represented by a body corporate or by a partnership, or by an undischarged bankrupt.
- (5) No person shall--
  - (a) on the same committee, act at one and the same time as representative of more than one committee-member, or
  - (b) act both as a member of the committee and as representative of another member.
- (6) Where a member's representative signs any document on the member's behalf, the fact that he so signs must be stated below his signature.

#### **4.49 Resignation**

A member of the liquidation committee may resign by notice in writing delivered to the liquidator.

#### **4.50 Termination of membership**

Membership of the liquidation committee of any person is automatically terminated if--

- (a) his estate is sequestrated or he becomes bankrupt or grants a trust deed for the benefit of or makes a composition with his creditors, or
- (b) at 3 consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this Rule is not to apply in his case) ,or
- (c) that creditor being a creditor member, he ceases to or is found never to have been a creditor.

#### **4.51 Removal**

A creditor member of the committee may be removed by resolution at a meeting of creditors; and a contributory member may be removed by a resolution of a meeting of contributories.

#### **4.52 Vacancy (creditor members)**

- (1) The following applies if there is a vacancy among the creditor members of the committee.
- (2) The vacancy need not be filled if the liquidator and a majority of the creditor members so agree, provided that the total number of members does not fall below the minimum required by Rule 4.41(1).
- (3) The liquidator may appoint any creditor, who is qualified under the Rules to be a member of the committee, to fill the vacancy, if a majority of the other creditor members agrees to the appointment, and the creditor concerned consents to act.
- (4) Alternatively, a meeting of creditors may resolve that a creditor be appointed (with his consent) to fill the vacancy. In this case, at least 14 days' notice must have been given of the resolution to make such an appointment (whether or not of person named in the notice).

(5) Where the vacancy is filled by an appointment made by a creditors' meeting at which the liquidator is not present, the chairman of the meeting shall report to the liquidator the appointment which has been made.

#### **4.53 Vacancy (contributory members)**

(1) The following applies if there is a vacancy among the contributory members of the committee.

(2) The vacancy need not be filled if the liquidator and a majority of the remaining contributory members so agree, provided that, in the case of a committee of contributory members only, the total number of members does not fall below the minimum required by [Rule 4.43(4)] or, as the case may be, 4.59(4).

(3) The liquidator may appoint any contributory member (being qualified under the Rules to be a member of the committee) to fill the vacancy, if a majority of the other contributory members agree to the appointment, and the contributory concerned consents to act.

(4) Alternatively, a meeting of contributories may resolve that a contributory be appointed (with his consent) to fill the vacancy. In this case, at least 14 days' notice must have been given of the resolution to make such an appointment (whether or not of a person named in the notice).

(5) Where the vacancy is filled by an appointment made by a contributories' meeting at which the liquidator is not present, the chairman of the meeting shall report to the liquidator the appointment which has been made.

#### **4.54 Voting rights and resolutions**

(1) At any meeting of the committee, each member of it (whether present himself, or by his representative) has one vote; and a resolution is passed when a majority of the creditor members present or represented have voted in favour of it.

(2) Subject to the next paragraph, the votes of contributory members do not count towards the number required for passing a resolution, but the way in which they vote on any resolution shall be recorded.

(3) Paragraph (2) does not apply where, by virtue of Rule 4.43(4) or 4.59, the only members of the committee are contributories. In that case the committee is to be treated for voting purposes as if all its members were creditors.

(4) Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting. The record shall be signed by the chairman and kept as part of the sederunt book.

#### **4.55 Resolutions by post**

- (1) In accordance with this Rule, the liquidator may seek to obtain the agreement of members of the liquidation committee to a resolution by sending to every member (or his representative designated for the purpose) a copy of the proposed resolution.
- (2) Where the liquidator makes use of the procedure allowed by this Rule, he shall send out to members of the committee or their representatives (as the case may be) [a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent].
- (3) Any creditor member of the committee may, within 7 business days from the date of the liquidator sending out a resolution, require him to summon a meeting of the committee to consider the matters raised by the resolution.
- (4) In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the liquidator is notified in writing by a majority of the creditor members that they concur with it.
- (5) A copy of every resolution passed under this Rule, and a note that the committee's concurrence was obtained, shall be kept in the sederunt book.

#### **4.56 Liquidator's reports**

- (1) The liquidator shall, as and when directed by the liquidation committee (but not more often than once in any period of 2 months), send a written report to every member of the committee setting out the position generally as regards the progress of the winding up and matters arising in connection with it, to which the liquidator considers the committee's attention should be drawn.
- (2) In the absence of such directions by the committee, the liquidator shall send such a report not less often than once in every period of 6 months.
- (3) The obligations of the liquidator under this Rule are without prejudice to those imposed by Rule 4.44.

#### **4.57 Expenses of members, etc**

- (1) The liquidator shall defray any reasonable travelling expenses directly incurred by members of the liquidation committee or their representatives in respect of their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the liquidation.
- (2) Paragraph (1) does not apply to any meeting of the committee held within 3 months of a previous meeting.

#### **4.58 Dealings by committee-members and others**

- (1) This Rule applies to--
  - (a) any member of the liquidation committee;
  - (b) any committee-member's representative;
  - (c) any person who is an associate of a member of the committee or of a committee-member's representative; and
  - (d) any person who has been a member of the committee at any time in the last 12 months.
- (2) Subject as follows, a person to whom this Rule applies shall not enter into any transaction whereby he--
  - (a) receives out of the company's assets any payment for services given or goods supplied in connection with the liquidation, or
  - (b) obtains any profit from the liquidation, or
  - (c) acquires any part of the company's assets.
- (3) Such a transaction may be entered into by a person to whom this Rule applies--
  - (a) with the prior leave of the court, or
  - (b) if he does so as a matter of urgency, or by way of performance of a contract in force before the date on which the company went into liquidation, and obtains the court's leave for the transaction, having applied for it without undue delay, or
  - (c) with the prior sanction of the liquidation committee, where it is satisfied (after full disclosure of the circumstances) that the transaction will be on normal commercial terms.
- (4) Where in the committee a resolution is proposed that sanction be accorded for a transaction to be entered into which, without that sanction or the leave of the court, would be in contravention of this Rule, no member of the committee, and no representative of a member, shall vote if he is to participate directly or indirectly in the transaction.
- (5) The court may, on the application of any person interested,--
  - (a) set aside a transaction on the ground that it has been entered into in contravention of this Rule, and
  - (b) make with respect to it such other order as it thinks fit, including (subject to the following paragraph) an order requiring a person to whom this Rule applies to account for any profit obtained from the transaction and compensate the company's assets for any resultant loss.

(6) In the case of a person to whom this Rule applies as an associate of a member of the committee or of a committee-member's representative, the court shall not make any order under paragraph (5), if satisfied that he entered into the relevant transaction without having any reason to suppose that in doing so he would contravene this Rule.

(7) The expenses of an application to the court for leave under this Rule are not payable as an expense of the liquidation, unless the court so orders.

#### **4.59 Composition of committee when creditors paid in full**

(1) This Rule applies if the liquidator issues a certificate that the creditors been paid in full, with interest in accordance with section 189.

(2) The liquidator shall forthwith send a copy of the certificate to [the Accountant in Bankruptcy].

(3) The creditor members of the liquidation committee shall cease to be members of the committee.

(4) The committee continues in being unless and until abolished by decision of a meeting of contributories, and (subject to the next paragraph) so long as it consists of at least 2 contributory members.

(5) The committee does not cease to exist on account of the number of contributory members falling below 2, unless and until 28 days have elapsed since the issue of the liquidator's certificate under paragraph (1), but at any time when the committee consists of less than 2 contributory members, it is suspended and cannot act.

(6) Contributories may be co-opted by the liquidator, or appointed by a contributories' meeting, to be members of the committee; but the maximum number of members is 5.

(7) The foregoing Rules in this Chapter continue to apply to the liquidation committee (with any necessary modifications) as if all the members of the committee were creditor members.

#### **[4.59A Formal defects]**

[The acts of the liquidation committee established for any winding up are valid notwithstanding any defect in the appointment, election or qualifications of any member of the committee or any committee-member's representative or in the formalities of its establishment.]

## **Chapter 8**

### **The Liquidation Committee where Winding Up Follows Immediately on Administration**

#### **4.60 Preliminary**

- (1) The Rules in this Chapter apply where--
- (a) the winding up order has been made immediately upon the [ending of administration] under Part II of the Act, and
  - (b) the court makes an order under section 140(1) appointing as liquidator the person who was previously the administrator.
- (2) In this Chapter the expressions "insolvent winding up", "solvent winding up", "creditor member", and "contributory member" each have the same meaning as in Chapter 7.

#### **4.61 Continuation of creditors' committee**

- (1) If under [Schedule B1 to the Act] a creditors' committee has been established for the purposes of the administration, then (subject as follows in this Chapter) that committee continues in being as the liquidation committee for the purposes of the winding up, and--
- (a) it is deemed to be a committee established as such under section 142, and
  - (b) no action shall be taken under subsections (1) to (4) of that section to establish any other.
- (2) This Rule does not apply if, at the time when the court's order under section 140(1) is made, the committee under [Schedule B1 to the Act] consists of less than 3 members; and a creditor who was, immediately before the date of that order, a member of such a committee ceases to be a member on the making of the order if his debt is fully secured (and he has not agreed to surrender his security to the liquidator).

#### **4.62 Membership of committee**

- (1) Subject as follows, the liquidation committee shall consist of at least 3, and not more than 5, creditors of the company, elected by the creditors' meeting held under [Schedule B1 to the Act] or (in order to make up numbers or fill vacancies) by a creditors' meeting summoned by the liquidator after the company goes into liquidation.
- (2) In the case of a solvent winding up, the liquidator shall, on not less than 21 days' notice, summon a meeting of contributories, in order to elect (if it so wishes) contributory members of the liquidation committee, up to 3 in number.

#### **4.63 Liquidator's certificate**



- (1) The liquidator shall issue a certificate of the liquidation committee's continuance specifying the persons who are, or are to be, members of it.
- (2) It shall be stated in the certificate whether or not the liquidator has summoned a meeting of contributories under Rule 4.62(2), and whether (if so) the meeting has elected contributories to be members of the committee.
- (3) Pending the issue of the liquidator's certificate, the committee is suspended and cannot act.
- (4) No person may act, or continue to act, as a member of the committee unless and until he has agreed to do so; and the liquidator's certificate shall not be issued until at least the minimum number of persons required under Rule 4.62 to form a committee elected, whether under Rule 4.62 above or under [Schedule B1 to the Act], have signified their agreement.
- (5) As and when the others signify their agreement, the liquidator shall issue an amended certificate.
- (6) The liquidator's certificate (or, as the case may be, the amended certificate) shall be sent by him to [the Accountant in Bankruptcy].
- (7) If subsequently there is any change in the committee's membership, the liquidator shall report the change to [the Accountant in Bankruptcy].

#### **4.64 Obligations of liquidator to committee**

- (1) As soon as may be after the issue of the liquidator's certificate under Rule 4.63, the liquidator shall report to the liquidation committee what actions he has taken since the date on which the company went into liquidation.
- (2) A person who becomes a member of the committee after that date is not entitled to require a report to him by the liquidator, otherwise than in a summary form, of any matters previously arising.
- (3) Nothing in this Rule disentitles the committee, or any member of it, from having access to the sederunt book (whether relating to the period when he was administrator, or to any subsequent period), or from seeking an explanation of any matter within the committee's responsibility.

#### **4.65 Application of Chapter 7**

Except as provided elsewhere in this Chapter, [Rules 4.44 to 4.59A] of Chapter 7 shall apply to a liquidation committee established under this Chapter from the date of issue of the certificate under Rule 4.63 as if it had been established under section 142.

## **Chapter 9**

## **Distribution of Company's Assets by Liquidator**

### **4.66 Order of priority in distribution**

(1) The funds of the company's assets shall be distributed by the liquidator to meet the following expenses and debts in the order in which they are mentioned:--

(a) the expenses of the liquidation;

[(aa) where the court makes a winding up order in relation to a company and, at the time when the petition for winding up was first presented to the court, there was in force in relation to the company a voluntary arrangement under Part 1 of the Act, any expenses properly incurred as expenses of the administration of that arrangement;]

(b) any preferential debts within the meaning of section 386 (excluding any interest which has been accrued thereon to the date of commencement of the winding up within the meaning of section 129);

(c) ordinary debts, that is to say a debt which is neither a secured debt nor a debt mentioned in any other sub-paragraph of this paragraph;

(d) interest at the official rate on--

(i) the preferential debts, and

(ii) the ordinary debts,

between the said date of commencement of the winding up and the date of the payment of the debt; and

(e) any postponed debt.

(2) In the above paragraph--

(a) "postponed debt" means a creditor's right to any alienation which has been reduced or restored to the company's assets under section 242 or to the proceeds of sale of such an alienation; and

(b) "official rate" shall be construed in accordance with subsection (4) of section 189 and, for the purposes of paragraph (a) of that subsection, as applied to Scotland by subsection (5), the rate specified in the Rules shall be 15 per centum per annum.

(3) The expenses of the liquidation mentioned in sub-paragraph (a) of paragraph (1) are payable in the order of priority mentioned in Rule 4.67.

(4) Subject to the provisions of section 175, any debt falling within any of sub-paragraphs (b) to (e) of paragraph (1) shall have the same priority as any other debt falling within the same sub-paragraph and, where the funds of the company's assets are inadequate to enable the debts mentioned in this sub-paragraph to be paid in full, they shall abate in equal proportions.

(5) Any surplus remaining, after all expenses and debts mentioned in paragraph (1) have been paid in full, shall (unless the articles of the company otherwise provide) be distributed among the members according to their rights and interests the company.

(6) Nothing in this rule shall effect--

- (a) the right of a secured creditor which is preferable to the rights of the liquidator;  
or
- (b) any preference of the holder of a lien over a title deed or other document which has been delivered to [the liquidator] in accordance with a requirement under [Rule 4.22(4)].

#### **4.67 Order of priority of expenses of liquidation**

(1) Subject to section 156 and paragraph (2), the expenses of the liquidation are payable out of the assets in the following order of priority--

- (a) any outlays properly chargeable or incurred by the provisional liquidator or liquidator in carrying out his functions in the liquidation, except those outlays specifically mentioned in the following sub-paragraphs;
- (b) the cost, or proportionate cost, of any caution provided by a provisional liquidator, liquidator or special manager in accordance with the Act or the Rules;
- (c) the remuneration of the provisional liquidator (if any);
- (d) the expenses of the petitioner in the liquidation, and of any person appearing in the petition whose expenses are allowed by the court;
- (e) the remuneration of the special manager (if any);
- (f) any allowance made by the liquidator under Rule 4.9(1) (expenses of statement of affairs);
- (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 the Rules;
- (h) the remuneration of the liquidator determined in accordance with Rule 4.32;
- (i) the amount of any [corporation] tax on chargeable gains accruing on the realisation of any asset of the company (without regard to whether the realisation is effected by the liquidator, a secured creditor or otherwise).

(2) In any winding up by the court which follows immediately on a voluntary winding up (whether members' voluntary or creditors' voluntary), such outlays and remuneration of the voluntary liquidator as the court may allow, shall have the same priority as the outlays mentioned in sub-paragraph (a) of paragraph (1).

(3) Nothing in this Rule applies to or affects the power of any court, in proceedings by or against the company, to order expenses to be paid by the company, or the liquidator; nor does it affect the rights of any person to whom such expenses are ordered to be paid.

#### **4.68 Application of the Bankruptcy Act**

(1) Sections 52, 53 and 58 of the Bankruptcy Act shall apply in relation to the liquidation of a company as they apply in relation to a sequestration of a debtor's estate, subject to the modifications specified in Rules 4.16(2) and 4.32(2) and (3) and the following paragraph and to any other necessary modifications.

(2) In section 52, the following modifications shall be made:--

- (a) in subsection (4)(a) for the reference to "the debts mentioned in subsection (1)(a) to (d)", there shall be substituted a reference to the expenses of the winding up mentioned in Rule 4.67(1)(a);
- (b) in subsection (5) the words "with the consent of the commissioners or if there are no commissioners of the Accountant in Bankruptcy" should be deleted; . . .
- (c) in subsection (7) and (8) for the references to section 48(5) and 49(6)(b) there should be substituted a reference to those sections as applied by Rule 4.16(1); and
- (d) for subsection (11) substitute--

"(11) Subject to any notification by the person entitled to a dividend given to the liquidator that he wishes the dividend to be paid to another person, or that he has assigned his entitlement to another person, where both a creditor and a member State liquidator have had a claim accepted in relation to the same debt, payment shall only be made to the creditor."].

### **Chapter 10 Special Manager**

#### **4.69 Appointment and Remuneration**

(1) This Chapter applies to an application under section 177 by the liquidator or, where one has been appointed, by the provisional liquidator for the appointment of a person to be special manager (references in this Chapter to the liquidator shall be read as including the provisional liquidator).

(2) An application shall be supported by a report setting out the reasons for the appointment. The report shall include the applicant's estimate of the value of the assets in respect of which the special manager is to be appointed.

(3) The order of the court appointing the special manager shall specify the duration of his appointment, which may be for a period of time or until the occurrence of a specified

event. Alternatively the order may specify that the duration of the appointment is to be subject to a further order of the court.

- (4) The appointment of a special manager may be renewed by order of the court.
- (5) The special manager's remuneration shall be fixed from time to time by the court.
- (6) The acts of the special manager are valid notwithstanding any defect in his appointment or qualifications.

#### **4.70 Caution**

- (1) The appointment of the special manager does not take effect until the person appointed has found (or, being allowed by the court to do so, has undertaken to find caution to the person who applies for him to be appointed.
- (2) It is not necessary that caution be found for each separate company liquidation; but it may be found either specially for a particular liquidation or generally for any liquidation in relation to which the special manager may be employed as such.
- (3) The amount of the caution shall be not less than the value of the assets in respect of which he is appointed, as estimated by the applicant in his report under Rule 4.69.
- (4) When the special manager has found caution to the person applying for his appointment, that person shall certify the adequacy of the security and notify the court accordingly.
- (5) The cost of finding caution shall be paid in the first instance by the special manager; but--
  - (a) where a winding up order is not made, he is entitled to be reimbursed out of the property of the company, and the court may make an order on the company accordingly, and
  - (b) where a winding up order has been or is subsequently made, he is entitled to be reimbursed as an expense of the liquidation.

#### **4.71 Failure to find or to maintain caution**

- (1) If the special manager fails to find the required caution within the time stated for that purpose by the order appointing him, or any extension of that time that may be allowed, the liquidator shall report the failure to the court, which may thereupon discharge the order appointing the special manager.
- (2) If the special manager fails to maintain his caution the liquidator shall report his failure to the court, which may thereupon remove the special manager and make such order as it thinks fit as to expenses.

(3) If an order is made under this Rule removing the special manager, or recalling the order appointing him, the court shall give directions as to whether any, and if so what, steps should be taken to appoint another special manager in his place.

#### **4.72 Accounting**

(1) The special manager shall produce accounts containing details of his receipts and payments for the approval of the liquidator.

(2) The accounts shall be in respect of 3-month periods for the duration of the special manager's appointment (or for a lesser period if his appointment terminates less than 3 months from its date, or from the date to which the last accounts were made up).

(3) When the accounts have been approved, the special manager's receipts and shall be added to those of the liquidator.

#### **4.73 Termination of appointment**

(1) The special manager's appointment terminates if the winding up is dismissed or, if a provisional liquidator having been appointed, he is without a winding up order having been made.

(2) If the liquidator is of opinion that the employment of the special manager is no longer necessary or profitable for the company, he shall apply to the court for directions and the court may order the special manager's appointment to be terminated.

(3) The liquidator shall make the same application if a resolution of the creditors is passed, requesting that the appointment be terminated.

### **Chapter 11**

#### **Public Examination of Company Officers and Others**

#### **4.74 Notice of order for public examination**

Where the court orders the public examination of any person under section 133(1), then, unless the court otherwise directs, the liquidator shall give at least 14 days' notice of the time and place of the examination to the persons specified in paragraphs (c) to (e) of section 133(4) and the liquidator may, if he thinks fit, cause notice of the order to be given, by public advertisement in one or more newspapers circulating in the area of the principal place of business of the company, at least 14 days before the date fixed for the examination but there shall be no such advertisement before at least 7 days have elapsed from the date when the person to be examined was served with the order.

#### **4.75 Order on request by creditors or contributories**

- (1) A request to the liquidator by a creditor or creditors or contributory or contributories under section 133(2) shall be made in writing and be accompanied by--
  - (a) a list of the creditors (if any) concurring with the request and the amounts of their respective claims in the liquidation, or (as the case may be) of the contributories (if any) so concurring, with their respective values, and
  - (b) from each creditor or contributory concurring, written confirmation of his concurrence.
- (2) The request must specify the name of the proposed examinee, the relationship which he has, or has had, to the company and the reasons why his examination is requested.
- (3) Before an application to the court is made on the request, the requisitionists shall deposit with the liquidator such sum as the latter may determine to be appropriate by way of caution for the expenses of the hearing of a public examination, if ordered.
- (4) Subject as follows, the liquidator shall, within 28 days of receiving the request, make the application to the court required by section 133(2).
- (5) If the liquidator is of opinion that the request is an unreasonable one in the circumstances, he may apply to the court for an order relieving him from the obligation to make the application otherwise required by that subsection.
- (6) If the court so orders and the application for the order was made *ex parte*, notice of the order shall be given forthwith by the liquidator to the requisitionists. If the application for an order is dismissed, the liquidator's application under section 133(2) shall be made forthwith on conclusion of the hearing of the application first mentioned.
- (7) Where a public examination of the examinee has been ordered by the court on a creditors' or contributories' requisition under this Rule the court may order that the expenses of the examination are to be paid, as to a specified proportion, out of the caution under paragraph (3), instead of out of the assets.

### **Chapter 12 Miscellaneous**

#### **4.76 Limitation**

The provisions of section 8(5) and 22(8), as read with section 73(5), of the Bankruptcy (Scotland) Act 1985 (presentation of petition or submission of claim to bar of limitation of actions) shall apply in relation to the liquidation as they apply in relation to a sequestration, subject to the modifications specified in Rule 4.16(2) and to any other necessary modifications.

#### **4.77 Dissolution after winding up**

Where the court makes an order under section 204(5) or 205(5), the person on whose application the order was made shall deliver to the registrar of companies a copy of the order.

### **Chapter 13 Company with Prohibited Name**

#### **4.78 Preliminary**

The Rules in this Chapter--

- (a) relate to the leave required under section 216 (restriction on re-use of name of company in insolvent liquidation) for a person to act as mentioned in section 216(3) in relation to a company with a prohibited name, . . .
- (b) prescribe the cases excepted from that provision, that is to say, those in which a person to whom the section applies may so act without that leave[, and
- (c) apply to all windings up to which section 216 applies, whether or not the winding up commenced before or after the coming into force of the Insolvency (Scotland) Amendment Rules 1987].

#### **4.79 Application for leave under section 216(3)**

When considering an application for leave under section 216, the court may call on the liquidator, or any former liquidator, of the liquidating company for a report of the circumstances in which that company became insolvent, and the extent (if any) of the applicant's apparent responsibility for its doing so.

#### **[4.80 First excepted case]**

[(1) This Rule applies where--

- (a) a person ("the person") was within the period mentioned in section 216(1) a director, or shadow director, of an insolvent company that has gone into insolvent liquidation;
- (b) the person acts in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on (or proposed carrying on) of the whole or substantially the whole of the business of the insolvent company where that business (or substantially the whole of it) is (or is to be) acquired from the insolvent company under arrangements--
  - (i) made by its liquidator; or



(ii) made before the insolvent company entered into insolvent liquidation by an office-holder acting in relation to it as administrator, receiver or supervisor of a voluntary arrangement under Part 1 of the Act.

(2) The person will not be taken to have contravened section 216 if prior to his acting in the circumstances set out in paragraph (1) a notice is, in accordance with the requirements of paragraph (3)--

(a) given by the person to every creditor of the insolvent company whose name and address--

(i) is known by him; or

(ii) is ascertainable by him on the making of such enquiries as are reasonable in the circumstances; and

(b) published in the Edinburgh Gazette.

(3) The notice referred to in paragraph (2)--

(a) may be given and published before the completion of the arrangements referred to in paragraph (1)(b) but must be given and published no later than 28 days after that completion;

(b) must state--

(i) the name and registered number of the insolvent company;

(ii) the name of the person;

(iii) that it is his intention to act (or, where the insolvent company has not entered insolvent liquidation, to act or continue to act) in all or any of the ways specified in section 216(3) in connection with, or for the purposes of, the carrying on of the whole, or substantially the whole, of the business of the insolvent company; and

(iv) the prohibited name or, where the company has not entered insolvent liquidation, the name under which the business is being, or is to be, carried on which would be a prohibited name in respect of the person in the event of the insolvent company entering insolvent liquidation; and

(c) must in the case of notice given to each creditor of the company be given using Form 4.32(Scot).

(4) Notice may in particular be given under this Rule--

(a) prior to the insolvent company entering insolvent liquidation where the business (or substantially the whole of the business) is, or is to be, acquired by another company under arrangements made by an office-holder acting in relation to the insolvent company as administrator, receiver or supervisor of a voluntary arrangement (whether

or not at the time of the giving of the notice the director is a director of that other company); or

- (b) at a time where the person is a director of another company where--
  - (i) the other company has acquired, or is to acquire, the whole, or substantially the whole, of the business of the insolvent company under arrangements made by its liquidator; and
  - (ii) it is proposed that after the giving of the notice a prohibited name should be adopted by the other company.]

#### **[4.81 Second excepted case]**

[(1) Where a person to whom section 216 applies as having been a director or shadow director of the liquidating company applies for leave of the court under that section not later than 7 days from the date on which the company went into liquidation, he may, during the period specified in paragraph (2) below, act in any of the ways mentioned in section 216(3), notwithstanding that he has not the leave of the court under that section.

(2) The period referred to in paragraph (1) begins with the day in which the company goes into liquidation and ends either on the day falling 6 weeks after that date or on the day on which the court disposes of the application for leave under section 216, whichever of those days occurs first.]

#### **4.82 Third excepted case**

The court's leave under section 216(3) is not required where the company there referred to, though known by a prohibited name within the meaning of the section--

- (a) has been known by that name for the whole of the period of 12 months ending with the day before the liquidating company went into liquidation, and
- (b) has not at any time in those 12 months been dormant within the meaning of section 252(5) of the Companies Act.

### **[Chapter 14 EC Regulation--Member State Liquidator]**

#### **[4.83 Interpretation of creditor and notice to member State liquidator]**

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

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

(3) The provisions referred to in paragraph (2) are--

(a) Rules 4.10(1) (report to creditors and contributories), 4.10(3) (summary of statement of affairs), 4.13 (other meetings of creditors), 4.15 (submission of claims), 4.17 (claims in foreign currency), 4.18(4) (appointment of liquidator by court), 4.23(2) and (4) (summoning of meeting for removal of liquidator), 4.31 (final meeting), 4.35 (creditors' claim that remuneration is excessive), 4.41(1), (2) and (3) (membership of liquidation committee), 4.52(3) (vacancy (creditor members)), 4.62(1) (membership of committee), 4.74 (notice of order for public examination), 7.3 (notice of meeting) (insofar as it applies to a notice of meeting of creditors under section 138(3) or (4) for the purposes of rule 4.12 and to a meeting requisitioned under rule 7.6 insofar as it applies in a winding up by the court), 7.6(2) (meetings requisitioned) (insofar as it applies in a winding up by the court) and 7.9 (entitlement to vote (creditors)) (insofar as it applies in a winding up by the court); and

(b) sections 48(5), (6) and (8) and 49 of the Bankruptcy Act as applied by Rule 4.16 and section 52(3) of that Act as applied by rule 4.68(1).

(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 creditors' 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 or the registrar of companies, 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 co operate and communicate information).]

## **[Chapter 15**

### **EC Regulation--Creditors' Voluntary Winding Up--Confirmation by the Court]**

#### **[4.84 Application for confirmation]**

[(1) Where a company has passed a resolution for voluntary winding up, and no declaration under section 89 has been made, the liquidator may apply to the court for an order confirming the creditors' voluntary winding up for the purposes of the EC Regulation.

(2) The application shall be in writing in the form required by Rule 7.30 and Schedule 5 and verified by affidavit by the liquidator (using the same form) and shall state--

(a) the name of the applicant;

(b) the name of the company and its registered number;

(c) the date on which the resolution for voluntary winding up was passed;

(d) that the application is accompanied by all of the documents required under paragraph (3) which are true copies of the documents required; and

- (e) that the EC Regulation will apply to the company and whether the proceedings will be main proceedings, territorial proceedings or secondary proceedings.
- (3) The liquidator shall lodge in court two copies of the application, together with one copy of the following:--
- (a) the resolution for voluntary winding up referred to by section 84(3);
  - (b) evidence of his appointment as liquidator of the company; and
  - (c) the statement of affairs required under section 99.
- (4) It shall not be necessary to serve the application on, or give notice of it to, any person.
- (5) On an application under this Rule the court may confirm the creditors' voluntary winding up.
- (6) If the court confirms the creditor's voluntary winding up it may do so without a hearing.
- (7) This Rule applies in relation to a UK insurer (within the meaning of the Insurers (Reorganisation and Winding Up) Regulations 2003) with the modification specified in paragraph (8) below.
- (8) For the purposes of paragraph (7), this Rule has effect as if there were substituted for paragraph (1) above--
- "(1) Where a UK Insurer (within the meaning of the Insurers (Reorganisation and Winding Up) Regulations 2003) has passed a resolution for voluntary winding up, and no declaration under section 89 has been made, the liquidator may apply to court for an order confirming the creditors' voluntary winding up for the purposes of Articles 9 and 27 of Directive 2001/17/EC of the European Parliament and of the Council of 19th March 2001 on the reorganisation and winding up of insurance undertakings.".]

#### **[4.85 Notice to member State liquidator and creditors in member States]**

[Where the court has confirmed the creditors' voluntary winding up, the liquidator shall forthwith give notice--

- (a) if there is a member State liquidator in relation to the company, to the member State liquidator;
- (b) in accordance with Article 40 of the EC Regulation (duty to inform creditors).]

### **Part 5**

## **Creditors' Voluntary Winding Up**

### **5 Application of Part 4**

The provisions of Part 4 shall apply in a creditor's voluntary winding up of a company as they apply in a winding up by the court subject to the modifications specified in Schedule 1 and to any other necessary modifications.

## **Part 6**

## **Members' Voluntary Winding Up**

### **6 Application of Part 4**

The provisions of Part 4, which are specified in Schedule 2, shall apply in relation to a members' voluntary winding up of a company as they apply in a winding up by the court, subject to the modifications specified in Schedule 2 and to any other necessary modifications.

## **Part 7**

## **Provisions of General Application**

### **Chapter 1 Meetings**

#### **7.1 Scope of Chapter 1**

- (1) This Chapter applies to any meetings held in insolvency proceedings other than meetings of a creditors' committee in administration or receivership, or of a liquidation committee.
- (2) The Rules in this Chapter shall apply to any such meeting subject to any contrary provision in the Act or in the Rules, or to any direction of the court.

#### **7.2 Summoning of meetings**

- (1) In fixing the date, time and place for a meeting, the person summoning the meeting ("the convenor") shall have regard to the convenience of the persons who are to attend.
- (2) Meetings shall in all cases be summoned for commencement between 10.00 and 16.00 hours on a business day, unless the court otherwise directs.

### 7.3 Notice of meeting

(1) The convenor shall give not less than 21 days' notice of the date, time and place of the meeting to every person known to him as being entitled to attend the meeting.

(2) In paragraph (1), for the reference to 21 days, there shall be substituted a reference to 14 days in the following cases:--

- (a) any meeting of the company or of its creditors summoned under section 3 (to consider directors' proposal for voluntary arrangement);
- (b) a meeting of the creditors under [paragraph 51 or 54(2)] (to consider administrator's proposals or proposed revisions); . . .
- (c) a meeting of creditors under section 67(2) (meeting of unsecured creditors in receivership)[; and
- (d) a meeting of creditors or contributories under section 138(3) or (4)]

(3) The convenor may also publish notice of the date, time and place of the meeting in a newspaper circulating in the area of the principal place of business of the company or in such other newspaper as he thinks most appropriate for ensuring that it comes to the notice of the persons who are entitled to attend the meeting. In case of a creditors' meeting summoned by the administrator under [paragraph 51], the administrator shall publish such a notice.

[(3A) Any notice under this paragraph shall be published not less than 21 days or, in cases to which paragraph (2) above applies, 14 days before the meeting.]

(4) Any notice under this Rule shall state--

- (a) the purpose of the meeting;
- (b) the persons who are entitled to attend and vote at the meeting;
- (c) the effects of Rule 7.9 or, as the case may be, 7.10 (Entitlement to Vote) and of the relevant provisions of Rule 7.12 (Resolutions);
- (d) in the case of a meeting of creditors or contributories, that proxies may be lodged at or before the meeting and the place where they may be lodged; and
- (e) in the case of a meeting of creditors, that claims may be lodged by those who have not already done so at or before the meeting and the place where they may be lodged.

Where a meeting of creditors is summoned specially for the purpose of removing the liquidator in accordance with section 171(2) or 172(2), or of receiving his resignation under Rule 4.28, the notice summoning it shall also include the information required by Rule 4.23(2) or, as the case may be, 4.28(2).

(5) With the notice given under paragraph (1), the convenor shall also send out a proxy form.

(6) In the case of any meeting of creditors or contributories, the court may order that notice of the meeting be given by public advertisement in such form as may be specified in the order and not by individual notice to the persons concerned. In considering whether to make such an order, the court shall have regard to the cost of the public advertisement, to the amount of the assets available and to the extent of the interest of creditors or contributories or any particular class of either.

[(7) The provisions of this Rule shall not apply to a meeting of creditors summoned under section 95 or 98 but any notice advertised in accordance with section 95(2)(c) or 98(1)(c) shall give not less than 7 days' notice of the meeting.]

#### **7.4 Additional notices in certain cases**

[(1) This Rule applies where a company goes, or proposes to go, into liquidation and it is an authorised institution or a former authorised institution within the meaning of the Banking Act.]

(2) Notice of any meeting of the company at which it is intended to propose a resolution for its voluntary winding up shall be given by the directors to the Bank of England ("the Bank") and to the Deposit Protection Board ("the Board") as such notice is given to members of the company.

(3) Where a creditors' meeting is summoned by the liquidator under section 95 or 98, the same notice of meeting must be given to the Bank and Board as is given to the creditors under this Chapter.

(4) Where the company is being wound up by the court, notice of the first meetings of creditors and contributories within the meaning of Rule 4.12 shall be given to the Bank and the Board by the liquidator.

(5) Where in any winding up a meeting of creditors or contributories is summoned for the purpose of--

- (a) receiving the liquidator's resignation, or
- (b) removing the liquidator, or
- (c) appointing a new liquidator,

the person summoning the meeting and giving notice of it shall also give notice to Bank and the Board.

(6) The Board is entitled to be represented at any meeting of which it is required by this Rule to be given notice; and Schedule 3 has effect with respect to the voting rights of the Board at such a meeting.

## 7.5 Chairman of meetings

- (1) The chairman at any meeting of creditors in insolvency proceedings[, other than at a meeting of creditors summoned under section 98] shall be the responsible insolvency practitioner, or [except at a meeting of creditors summoned under section 95] a person nominated by him in writing.
- (2) A person nominated under this Rule must be either--
  - (a) a person who is qualified to act as an insolvency practitioner in relation to the company, or
  - (b) an employee of the administrator, receiver or liquidator, as the case may be, or his firm who is experienced in insolvency matters.
- (3) This Rule also applies to meetings of contributories in a liquidation.
- (4) At the first meeting of creditors or contributories in a winding up by the court, the interim liquidator shall be the chairman except that, where a resolution is proposed to appoint the interim liquidator to be the liquidator, another person may be elected to act as chairman for the purpose of choosing the liquidator.
- (5) This Rule is subject to Rule 4.23(3) (meeting for removal of liquidator).

## 7.6 Meetings requisitioned

- [(1) Subject to paragraph (8), this Rule applies to any request by a creditor or creditors--
  - (a) to--
    - (i) an administrator under [paragraph 52(2) or 56(1)], or
    - (ii) a liquidator under section 171(3) or 172(3),

for a meeting of creditors; or

  - (b) to a liquidator under section 142(3) for separate meetings of creditors and contributories, or for any other meeting under any other provision of the Act or the Rules.]
- (2) Any such request shall be accompanied by--
  - (a) a list of any creditors concurring with the request, showing the amounts of the respective claims against the company of the creditor making the request and the concurring creditors;
  - (b) from each creditor concurring, written confirmation of his concurrence; and
  - (c) a statement of the purpose of the proposed meeting.



(3) If the administrator or, as the case may be, the liquidator considers the request to be properly made in accordance with the Act or the Rules, he shall summon a meeting of the creditors to be held on a date not more than 35 days from the date of his receipt of the request.

(4) Expenses of summoning and holding a meeting under this Rule shall be paid by the creditor or creditors making the request, who shall deposit with the administrator [or, as the case may be, the liquidator] caution for their payment.

(5) The sum to be deposited shall be such as the administrator or, as the case may be, the liquidator may determine and he shall not act without the deposit having been made.

(6) The meeting may resolve that the expenses of summoning and holding it are to be payable out of the assets of the company as an expense of the administration or, as the case may be, the liquidation.

(7) To the extent that any caution deposited under this Rule is not required for the payment of expenses of summoning and holding the meeting, it shall be repaid to the person or persons who made it.

(8) This Rule applies to requests by a contributory or contributories for a meeting of contributories, with the modification that, for the reference in paragraph (2) to the creditors' respective claims, there shall be substituted a reference to the contributories' respective values (being the amounts for which they may vote at any meeting).

(9) This Rule is without prejudice to the powers of the court under Rule 4.67(2) (voluntary winding up succeeded by winding up by the court).

## **7.7 Quorum**

(1) Subject to the next paragraph, a quorum is--

- (a) in the case of a creditors' meeting, at least one creditor entitled to vote;
- (b) in the case of a meeting of contributories, at least 2 contributories so entitled, or all the contributories, if their number does not exceed 2.

(2) For the purposes of this Rule, the reference to the creditor or contributories necessary to constitute a quorum is not confined to those persons present or duly represented under section 375 of the Companies Act but includes those represented by proxy by any person (including the chairman).

[(3) Where at any meeting of creditors or contributories--

- (a) the provisions of this Rule as to a quorum being present are satisfied by the attendance of--
  - (i) the chairman alone, or
  - (ii) one other person in addition to the chairman, and

- (b) the chairman is aware, by virtue of claims and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote,

the meeting shall not commence until at least the expiry of 15 minutes after the time appointed for its commencement.]

## **7.8 Adjournment**

- (1) This Rule applies to meetings of creditors and to meetings of contributories.
- (2) If, within a period of 30 minutes from the time appointed for the commencement of a meeting, a quorum is not present, then, unless the chairman otherwise decides, the meeting shall be adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.
- (3) In the course of any meeting, the chairman may, in his discretion, and shall, if the meeting so resolves, adjourn it to such date, time and place as seems to him to be appropriate in the circumstances.
- (4) Paragraph (3) is subject to Rule 4.23(3) where the liquidator or his nominee is chairman and a resolution has been proposed for the liquidator's removal.
- (5) An adjournment under paragraph [(2) or (3)] shall not be for a period of more than 21 days [and notice of the adjourned meeting may be given by the chairman].
- (6) Where a meeting is adjourned, any proxies given for the original meeting may be used at the adjourned meeting.
- [(7) Where a company meeting at which a resolution for voluntary winding up is to be proposed is adjourned without that resolution having been passed, any resolution passed at a meeting under section 98 held before the holding of the adjourned company meeting only has effect on and from the passing by the company of a resolution for winding up.]

## **7.9 Entitlement to vote (creditors)**

- (1) This Rule applies to a creditors' meeting in any insolvency proceedings.
- (2) A creditor is entitled to vote at any meeting if he has submitted his claim to the responsible insolvency practitioner and his claim has been accepted in whole or in part.
- (3) Chapter 5 of Part 4 (claims in liquidation) shall apply for the purpose of determining a creditor's entitlement to vote at any creditors' meeting in any insolvency proceedings as it applies for the purpose of determining a creditor's entitlement to vote at a meeting of creditors in a liquidation, subject to the modifications specified in the following paragraphs and to any other necessary modification.

- (4) For any reference in the said Chapter 5, or in any provision of the Act as applied by Rule 4.16(1), to--
- (a) the liquidator, there shall be substituted a reference to the supervisor, administrator or receiver, as the case may be;
  - (b) the liquidation, there shall be substituted a reference to the voluntary arrangement, administration or receivership as the case may be;
  - (c) the date of commencement of winding up, there shall be substituted a reference--
    - (i) in the case of a meeting in a voluntary arrangement, to the date of the meeting or, where the company is being wound up or is [in administration], the date of its going into liquidation or, as the case may be, [entering administration]; and
    - (ii) in the case of a meeting in the administration or receivership, to [the date upon which the company entered administration] or, as the case may be, the date of appointment of the receiver;
- (5) In the application to meetings of creditors other than in liquidation proceedings of Schedule 1 to the Bankruptcy Act, paragraph 5(2) and (3) (secured creditors) shall not apply.
- (6) This Rule is subject to Rule 7.4(6) and Schedule 3.

## **7.10 Entitlement to vote (members and contributories)**

- (1) Members of a company or contributories at their meetings shall vote according to their rights attaching to their shares respectively in accordance with the articles of association.
- (2) . . .
- (3) Reference in this Rule to a person's share include any other interests which he may have as a member of the company.

## **7.11 Chairman of meeting as proxy holder**

- (1) Where the chairman at a meeting of creditors or contributories holds a proxy which requires him to vote for a particular resolution and no other person proposes that resolution--
- (a) he shall propose it himself, unless he considers that there is good reason for not doing so, and
  - (b) if he does not propose it, he shall forthwith after the meeting notify the person who granted him the proxy of the reason why he did not do so.

(2) At any meeting in a voluntary arrangement, the chairman shall not, by virtue of any proxy held by him, vote to increase or reduce the amount of the remuneration or expenses of the nominee or the supervisor of the proposed arrangement, unless the proxy specifically directs him to vote in that way.

## **7.12 Resolutions**

(1) Subject to any contrary provision in the Act or the Rules, at any meeting of creditors, contributories or members of a company, a resolution is passed when a majority in value of those voting, in person or by proxy, have voted in favour of it.

(2) In a voluntary arrangement, at a creditors' meeting for any resolution to pass approving any proposal or modification, there must be at least three quarters in value of the creditors present or represented and voting, in person or by proxy, in favour of the resolution.

(3) In a liquidation, in the case of a resolution for the appointment of a liquidator--

(a) if, on any vote, there are two nominees for appointment, the person for whom a majority in value has voted shall be appointed;

(b) if there are three or more nominees, and one of them has a clear majority over both or all the others together, that one is appointed; and

(c) in any other case, the chairman of the meeting shall continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time), until a clear majority is obtained for any one nominee.

The chairman may, at any time, put to the meeting a resolution for the joint appointment of any two or more nominees.

(4) Where a resolution is proposed which affects a person in respect of his remuneration or conduct as a responsible insolvency practitioner, the vote of that person, or of his firm or of any partner or employee of his shall not be reckoned in the majority required for passing the resolution. This paragraph applies with respect to a vote given by a person [(whether personally or on his behalf by a proxy-holder)] either as creditor or contributory or member or as [proxy-holder] for a creditor, contributory, or member.

## **7.13 Report of meeting**

(1) The chairman at any meeting shall cause a report to be made of the proceedings at the meeting which shall be signed by him.

(2) The report of the meeting shall include--

(a) a list of all the creditors or, as the case may be, contributories who attended the meeting, either in person or by proxy;

- (b) a copy of every resolution passed; and
  - (c) if the meeting established a creditors' committee or a liquidation committee, as the case may be, a list of the names and addresses of those elected to be members of the committee.
- (3) The chairman shall keep a copy of the report of the meeting as part of the sederunt book in the insolvency proceedings.

### **[Chapter 1A Prescribed Part]**

#### **[7.13A Application under section 176A(5) to disapply section 176A]**

[An application under section 176A(5) shall include averments as to--

- (a) the type of insolvency proceedings in which the application arises,
- (b) the financial position of the company,
- (c) the basis of the applicant's view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits, and
- (d) whether any other insolvency practitioner is acting in relation to the company and, if so, his address.]

#### **[7.13B Notice of order under section 176A(5)]**

[(1) Where the court makes an order under section 176A(5) the applicant shall, as soon as reasonably practicable after the making of the order--

- (a) send to the company a copy of the order certified by the clerk of court,
- (b) send to the registrar of companies and, where a receiver or liquidator has been appointed, to the Accountant in Bankruptcy a copy of the order together with the form required by Rule 7.30 and Schedule 5, and
- (c) give notice of the order to each creditor of whose claim and address he is aware.

(2) The court may direct that the requirement of paragraph (1)(c) of this Rule be met by the publication of a notice in a newspaper calculated to come to the attention of the unsecured creditors stating that the court has made an order disapplying the requirement to set aside the prescribed part.]

## **Chapter 2**

### **Proxies and Company Representation**

#### **7.14 Definition of "proxy"**

- (1) For the purposes of the Rules, a person ("the principal") may authorise another person ("the proxy-holder") to attend, speak and vote as his representative at meetings of creditors or contributories or of the company in insolvency proceedings, and any such authority is referred to as a proxy.
- (2) A proxy may be given either generally for all meetings in insolvency proceedings or specifically for any meeting or class of meetings.
- (3) Only one proxy may be given by the principal for any one meeting; and it may only be given to one person, being an individual aged 18 or over. The principal may nevertheless nominate one or more other such persons to be proxy-holder in the alternative in the order in which they are named in the proxy.
- (4) Without prejudice to the generality of paragraph (3), a proxy for a particular meeting may be given to whoever is to be the chairman of the meeting [and any person to whom any such proxy is given cannot decline to be proxy-holder in relation to that proxy].
- (5) A proxy may require the holder to vote on behalf of the principal on matters arising for determination at any meeting, or to abstain, either as directed or in accordance with the holder's own discretion; and it may authorise or require the holder to propose, in the principal's name, a resolution to be voted on by the meeting.

#### **7.15 Form of proxy**

- (1) With every notice summoning a meeting of creditors or contributories or of the company in insolvency proceedings there shall be sent out forms of proxy.
- (2) A form of proxy shall not be sent out with the name or description of any person inserted in it.
- (3) A proxy shall be in the form sent out with the notice summoning the meeting or in a form substantially to the same effect.
- (4) A form of proxy shall be filled out and signed by the principal, or by some person acting under his authority and, where it is signed by someone other than the principal, the nature of his authority shall be stated on the form.

#### **7.16 Use of proxy at meeting**

- (1) A proxy given for a particular meeting may be used at any adjournment of that meeting.

- (2) A proxy may be lodged at or before the meeting at which it is to be used.
- (3) Where the responsible insolvency practitioner holds proxies to be used by him as chairman of the meeting, and some other person acts as chairman, the other person may use the insolvency practitioner's proxies as if he were himself proxy-holder.
- [(4) Where a proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person to be the responsible insolvency practitioner, the proxy-holder may, unless the proxy states otherwise, vote for or against (as he thinks fit) any resolution for the nomination or appointment of that person jointly with another or others.
- (5) A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which he would be entitled to vote by virtue of the proxy.
- (6) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy-holder from voting at his discretion on resolutions put to the meeting which are not dealt with in the proxy.]

### **7.17 Retention of proxies**

- (1) Proxies used for voting at any meeting shall be retained by the chairman of the meeting.
- (2) The chairman shall deliver the proxies forthwith after the meeting to the responsible insolvency practitioner (where he was not the chairman).
- (3) The responsible insolvency practitioner shall retain all proxies in the sederunt book.

### **7.18 Right of inspection**

- (1) The responsible insolvency practitioner shall, so long as proxies lodged with him are in his hands, allow them to be inspected at all reasonable times on any business day, by--
  - (a) the creditors, in the case of proxies used at a meeting of creditors,
  - (b) a company's members or contributories, in the case of proxies used at a meeting of the company or of its contributories.
- (2) The reference in paragraph (1) to creditors is--
  - (a) in the case of a company in liquidation, those creditors whose claims have been accepted in whole or in part, and
  - (b) in any other case, persons who have submitted in writing a claim to be creditors of the company concerned,

but in neither case does it include a person whose claim has been wholly rejected for purposes of voting, dividend or otherwise.

(3) The right of inspection given by this Rule is also exercisable, in the case of an insolvent company, by its directors.

(4) Any person attending a meeting in insolvency proceedings is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents [(including claims)--

(a) to be used in connection with that meeting, or

(b) sent or given to the chairman of that meeting or to any other person by a creditor, member or contributory for the purpose of that meeting, whether or not they are to be used at it].

### **7.19 Proxy-holder with financial interest**

(1) A proxy-holder shall not vote in favour of any resolution which would directly or indirectly place him, or any associate of his, in a position to receive any remuneration out of the insolvent estate, unless the proxy specifically directs him to vote in that way.

[(1A) Where a proxy-holder has signed the proxy as being authorised to do so by his principal and the proxy specifically directs him to vote in the way mentioned in paragraph (1), he shall nevertheless not vote in that way unless he produces to the chairman of the meeting written authorisation from his principal sufficient to show that the proxy-holder was entitled so to sign the proxy.]

(2) This Rule applies also to any person acting as chairman of a meeting and using proxies in that capacity [in accordance with Rule 7.16(3)]; and [in the application of this Rule to any such person], the proxy-holder is deemed an associate of his.

### **7.20 Representation of corporations**

(1) Where a person is authorised under section 375 of the Companies Act to represent a corporation at a meeting of creditors or contributories, he shall produce to the chairman of the meeting a copy of the resolution from which he derives his authority.

(2) The copy resolution must be executed in accordance with the provisions of section 36(3) of the Companies Act, or certified by the secretary or a director of the corporation to be a true copy.

[(3) Nothing in this Rule requires the authority of a person to sign a proxy on behalf of a principal which is a corporation to be in the form of a resolution of that corporation.]

#### **[7.20A Interpretation of creditor]**



[(1) This Rule applies where a member State liquidator has been appointed in relation to a person subject to insolvency proceedings.

(2) For the purposes of the Rule 7.18(1) (right of inspection of proxies) a member State liquidator appointed in main proceedings is deemed to be a creditor.

(3) Paragraph (2) is without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditors' rights).]

## **Chapter 3 Miscellaneous**

### **7.21 Giving of notices, etc**

(1) All notices required or authorised by or under the Act or the Rules to be given, sent or delivered must be in writing, unless it is otherwise provided, or the court allows the notice to be sent or given in some other way.

(2) Any reference in the [Act or the] Rules to giving, sending or delivering a notice or any such document means, without prejudice to any other way and unless it is otherwise provided, that the notice or document may be sent by post, and that, subject to Rule 7.22, any form of post may be used. Personal service of the notice or document is permissible in all cases.

(3) Where under the Act or the Rules a notice or other document is required or authorised to be given, sent or delivered by a person ("the sender") to another ("the recipient"), it may be given, sent or delivered by any person duly authorised by the sender to do so to any person duly authorised by the recipient to receive or accept it.

(4) Where two or more persons are acting jointly as the responsible insolvency practitioner in any proceedings, the giving, sending or delivering of a notice or document to one of them is to be treated as the giving, sending or delivering of a notice or document to each or all.

### **7.22 Sending by post**

(1) For a document to be properly sent by post, it must be contained in an envelope addressed to the person to whom it is to be sent, and pre-paid for either first or second class post.

[(1A) Any document to be sent by post may be sent to the last known address of the person to whom the document is to be sent.]

(2) Where first class post is used, the document is to be deemed to be received on the second business day after the date of posting, unless the contrary is shown.

(3) Where second class post is used, the document is to be deemed to be received on the fourth business day after the date of posting, unless the contrary is shown.

### **7.23 Certificate of giving notice, etc**

- (1) Where in any proceedings a notice or document is required to be given, sent or delivered by the responsible insolvency practitioner, the date of giving, sending or delivery of it may be proved by means of a certificate signed by him or on his behalf by his solicitor, or a partner or an employee of either of them, that the notice or document was duly given, posted or otherwise sent, or delivered on the date stated in the certificate.
- (2) In the case of a notice or document to be given, sent or delivered by a person other than the responsible insolvency practitioner, the date of giving, sending or delivery of it may be proved by means of a certificate by that person that he gave, posted or otherwise sent or delivered the notice or document on the date stated in the certificate, or that he instructed another person (naming him) to do so.
- (3) A certificate under this Rule may be endorsed on a copy of the notice to which it relates.
- (4) A certificate purporting to be signed by or on behalf of the responsible insolvency practitioner, or by the person mentioned in paragraph (2), shall be deemed, unless the contrary is shown, to be sufficient evidence of the matters stated therein.

### **7.24 Validity of proceedings**

Where in accordance with the Act or the Rules a meeting of creditors or other persons is summoned by notice, the meeting is presumed to have been duly summoned and held, notwithstanding that not all those to whom the notice is to be given have received it.

### **7.25 Evidence of proceedings at meetings**

A report of proceedings at a meeting of the company or of the company's creditors or contributories in any insolvency proceedings, which is signed by a person describing himself as the chairman of that meeting, shall be deemed, unless the contrary is shown, to be sufficient evidence of the matters contained in that report.

### **7.26 Right to list of creditors and copy documents**

- (1) Paragraph (2) applies to--
  - (a) proceedings under Part II of the Act (company administration), and
  - (b) proceedings in a creditors' voluntary winding up, or a winding up by the court.

(2) Subject to Rule 7.27, in any such proceedings, a creditor who has the right to inspect documents also has the right to require the responsible insolvency practitioner to furnish him with a list of the company's creditors and the amounts of their respective debts.

[(2A) For the purpose of this Rule a member State liquidator appointed in main proceedings in relation to a person is deemed to be a creditor.]

[(2A) Where the responsible insolvency practitioner is requested by a creditor, member, contributory or by a member of a liquidation committee or of a creditors' committee to supply a copy of any document, he is entitled to require payment of the appropriate fee in respect of the supply of that copy.]

(3) Subject to Rule 7.27, where a person has the right to inspect documents, the right includes that of taking copies of those documents, on payment of the appropriate fee.

(4) In this Rule, the appropriate fee means 15 pence per A4 or A5 page and 30 pence per A3 page.

## **7.27 Confidentiality of documents**

(1) Where, in any insolvency proceedings, the responsible insolvency practitioner considers, in the case of a document forming part of the records of those proceedings--

(a) that it should be treated as confidential, or

(b) that it is of such a nature that its disclosure would be calculated to be injurious to the interests of the company's creditors or, in the case of the winding up of a company, its members or the contributories in its winding up,

he may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) The persons who may be refused the right to inspect documents under this Rule by the responsible insolvency practitioner include the members of a creditors' committee in administration or in receivership, or of a liquidation committee.

(3) Where under this Rule the responsible insolvency practitioner refuses inspection of a document, the person who made that request may apply to the court for an order to overrule the refusal and the court may either overrule it altogether, or sustain it, either unconditionally or subject to such conditions, if any, as it thinks fit to impose.

[(4) Nothing in this Rule entitles the responsible insolvency practitioner to decline to allow inspection of any claim or proxy.]

## **7.28 Insolvency practitioner's caution**

(1) Wherever under the Rules any person has to appoint, or certify the appointment of, an insolvency practitioner to any office, he is under a duty to satisfy himself that the person appointed or to be appointed has caution for the proper performance of his functions.

(2) It is the duty--

- (a) of the creditors' committee in administration or in receivership,
- (b) of the liquidation committee in companies winding up, and
- (c) of any committee of creditors established for the purposes of a voluntary arrangement under Part I of the Act,

to review from time to time the adequacy of the responsible insolvency practitioner's caution.

(3) In any insolvency proceedings the cost of the responsible insolvency practitioner's caution shall be paid as an expense of the proceedings.

## **7.29 Punishment of offences**

(1) Schedule 4 has effect with respect to the way in which contraventions of the Rules are punishable on conviction.

(2) In that Schedule--

- (a) the first column specifies the provision of the Rules which creates an offence;
- (b) in relation to each such offence, the second column describes the general nature of the offence;
- (c) the third column indicates its mode of trial, that is to say whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other;
- (d) the fourth column shows the maximum punishment by way of fine or imprisonment which may be imposed on a person convicted of the offence in the mode of trial specified in relation to it in the third column (that is to say, on indictment or summarily), a reference to a period of years or months being to a maximum term of imprisonment of that duration; and
- (e) the fifth column shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say, he is liable on a second or subsequent conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of that Schedule).

(3) Section 431 (summary proceedings), as it applies to Scotland, has effect in relation to offences under the Rules as to offences under the Act.

### 7.30 Forms for use in insolvency proceedings

The forms contained in Schedule 5, with such variations as circumstances require, are the forms to be used for the purposes of the provisions of the Act or the Rules which are referred to in those forms.

### 7.31 Fees, expenses, etc

All fees, costs, charges and other expenses incurred in the course of insolvency proceedings are to be regarded as expenses of those proceedings[, with the exception of the fees, costs, charges and other expenses associated with the prescribed part, which shall be met out of the prescribed part].

### 7.32 Power of court to cure defects in procedure

(1) Section 63 of the Bankruptcy Act (power of court to cure defects in procedure) shall apply in relation to any insolvency proceedings as it applies in relation to sequestration, subject to the modifications specified in paragraph (2) and to any other necessary modifications.

(2) For any reference in the said section 63 to any expression in column 1 below, there shall be substituted a reference to the expression in column 2 opposite thereto:--

<i>Column 1</i>	<i>Column 2</i>
This Act or any regulations made under it	The Act or the Rules
Permanent trustee	Responsible insolvency practitioner
Sequestration process	Insolvency proceedings
Debtor	Company
Sheriff	The court
Person who would be eligible to be elected under section 24 of this Act	Person who would be eligible to act as a responsible insolvency practitioner

### 7.33 Sederunt book

- (1) The responsible insolvency practitioner shall maintain a sederunt book during his term of office for the purpose of providing an accurate record of the administration of each insolvency proceedings.
- (2) Without prejudice to the generality of the above paragraph, there shall be in the sederunt book a copy of anything required to be recorded in it by provision of the Act or of the Rules.
- (3) The responsible insolvency practitioner shall make the sederunt book available for inspection at all reasonable hours by any interested person.
- (4) Any entry in the sederunt book shall be sufficient evidence of the facts therein, except where it is founded on by the responsible insolvency practitioner in his own interest.
- [(5) Without prejudice to paragraph (3), the responsible insolvency practitioner shall retain, or shall make arrangements for retention of, the sederunt book for a period of ten years from the relevant date.
- (6) Where the sederunt book is maintained in non-documentary form it shall be capable of reproduction in legible form.
- (7) In this Rule "the relevant date" has the following meanings:--
  - (a) in the case of a company voluntary arrangement under Part I of the Act, the date of final completion of the voluntary arrangement;
  - (b) in the case of an administration . . . under Part II of the Act, the date on which the administration [ends in accordance with that Part];
  - (c) in the case of a receivership under Part III of the Act, the date on which the receiver resigns and the receivership terminates without a further receiver being appointed; and
  - (d) in the case of a winding-up, the date of dissolution of the company.]

#### **[7.34 Disposal of company's books, papers and other records]**

[(1) Where a company has been the subject of insolvency proceedings ("the original proceedings") which have terminated and other insolvency proceedings ("the subsequent proceedings") have commenced in relation to that company, the responsible insolvency practitioner appointed in relation to the original proceedings, shall, before the expiry of the later of--

- (a) the period of 30 days following a request to him to do so by the responsible insolvency practitioner appointed in relation to the subsequent proceedings, or
- (b) the period of 6 months after the relevant date (within the meaning of Rule 7.33),

deliver to the responsible insolvency practitioner appointed in relation to the subsequent proceedings the books, papers and other records of the company.

(2) In the case of insolvency proceedings, other than winding up [or administration], where--

- (a) the original proceedings have terminated, and
- (b) no subsequent proceedings have commenced within the period of 6 months after the relevant date in relation to the original proceedings,

the responsible insolvency practitioner appointed in relation to the original proceedings may dispose of the books, papers and records of the company after the expiry of the period of 6 months referred to in sub-paragraph (b), but only in accordance with directions given by--

- (i) . . .
- (ii) the members of the company by extraordinary resolution, or
- (iii) the court.

(3) Where a company is being wound up the liquidator shall dispose of the books, papers and records of the company either in accordance with--

- (a) in the case of a winding up by the court, directions of the liquidation committee, or, if there is no such committee, directions of the court;
- (b) in the case of a members' voluntary winding up, directions of the members by extraordinary resolution; and
- (c) in the case of a creditors' voluntary winding up, directions of the liquidation committee, or, if there is no such committee, of the creditors given at or before the final meeting under section 106,

or, if, by the date which is 12 months after the dissolution of the company, no such directions have been given, he may do so after that date in such a way as he deems appropriate.

[(4) In the case of administration proceedings, the administrator shall dispose of the books, papers and records of the company either in accordance with--

- (a) the directions of the creditors' committee (if any); or
- (b) where there is no such committee, the court,

or, if by the date which is 12 months after dissolution of the company, no such directions have been given, he may do so after that date in such a way as he deems appropriate.

(5) An administrator or former administrator shall within 14 days of a request by the Secretary of State give the Secretary of State particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company or dividends or other sums due to any person as a member or former member of the company.]]

**[7.35 Information about time spent on a case--administration and company voluntary arrangements]**

[(1) Subject as set out in this Rule, in respect of any administration or company voluntary arrangement in which he acts, an insolvency practitioner shall on request in writing made by any person mentioned in paragraph (2), supply free of charge to that person a statement of the kind described in paragraph (3).

(2) The persons referred to in paragraph (1) are--

- (a) any creditor in the case; and
- (b) any director or contributory of the company.

(3) The statement referred to in paragraph (1) shall comprise in relation to the period beginning with the date of the insolvency practitioner's appointment and ending with the relevant date the following details--

- (a) the total number of hours spent on the case by the insolvency practitioner and any staff assigned to the case during that period;
- (b) for each grade of individual so engaged, the average hourly rate at which any work carried out by individuals in that grade is charged; and
- (c) the number of hours spent by each grade of staff during that period.

(4) In relation to paragraph (3) the "relevant date" means the date next before the date of the making of the request on which the insolvency practitioner has completed any period in office which is a multiple of six months or, where the insolvency practitioner has vacated office, the date that he vacated office.

(5) Where an insolvency practitioner has vacated office, an obligation to provide information under this Rule shall only arise in relation to a request that is made within 2 years of the date he vacates office.

(6) Any statement required to be provided to any person under this Rule shall be supplied within 28 days of the date of the receipt of the request by the insolvency practitioner.]

**[7.36 Information about time spent on a case]**

[(1) Subject as set out in this Rule, in respect of any liquidation or receivership in which an insolvency practitioner acts, the insolvency practitioner shall on request in writing made by any person mentioned in paragraph (2), supply free of charge to that person a statement of the kind described in paragraph (3).

(2) The persons referred to in paragraph (1) are--

- (a) any creditor in the case; and



- (b) where the case relates to a company, any director or contributory of that company.
- (3) The statement referred to in paragraph (1) shall comprise in relation to the period beginning with the date of the insolvency practitioner's appointment and ending with the relevant date the following details--
  - (a) the total number of hours spent on the case by the insolvency practitioner and any staff assigned to the case during that period;
  - (b) for each grade of individual so engaged, the average hourly rate at which any work carried out by individuals in that grade is charged; and
  - (c) the number of hours spent by each grade of staff during that period.
- (4) In relation to paragraph (3) the "relevant date" means the date next before the date of the making of the request on which the insolvency practitioner has completed any period in office which is a multiple of six months or, where the insolvency practitioner has vacated office, the date that the insolvency practitioner vacated office.
- (5) Where an insolvency practitioner has vacated office, an obligation to provide information under this Rule shall only arise in relation to a request that is made within 2 years of the date the insolvency practitioner vacates office.
- (6) Any statement required to be provided to any person under this Rule shall be supplied within 28 days of the date of the receipt of the request by the insolvency practitioner.]

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10th November 1986

## **SCHEDULES**

### **SCHEDULE 1**

#### **MODIFICATIONS OF PART 4 IN RELATION TO CREDITORS' VOLUNTARY WINDING UP**

##### **Rule 5**

1. The following paragraphs describe the modifications to be made to the provisions of Part 4 in their application by Rule 5 to a creditors' voluntary winding up of a company.

##### **General**

2. Any reference, in any provision in Part 4, which is applied to a creditors' voluntary winding up, to any other Rule is a reference to that Rule as so applied.

##### **Chapter 1 (Provisional liquidator)**

3. This Chapter shall not apply.

##### **Chapter 2 (Statement of affairs)**

##### **Rules 4.7 and 4.8**

4. For these Rules, there shall be substituted the following:--

"4.7. (1) This Rule applies with respect to the statement of affairs made out by the liquidator under section 95(3) (or as the case may be) by the directors under section 99(1).

(2) The statement of affairs shall be in the form required by Rule 7.30 and Schedule 5.

(3) Where the statement of affairs is made out by the directors under section 99(1), it shall be sent by them to the liquidator, when appointed.

[(3A) Where a liquidator is nominated by the company at a general meeting held on a day prior to that on which the creditors' meeting summoned under section 98 is held, the directors shall forthwith after his nomination or the making of the statement of affairs, whichever is the later, deliver to him a copy of the statement of affairs.]

(4) The liquidator shall insert a copy of the statement of affairs made out under this Rule in the sederunt book."

[(5) The statement of affairs under section 99(1) shall be made up to the nearest practicable date before the date of the meeting of creditors under section 98 or to a date not more than 14 days before that on which the resolution for voluntary winding up is passed by the company, whichever is the later.

(6) At any meeting held under section 98 where the statement of affairs laid before the meeting does not state the company's affairs as at the date of the meeting, the directors of the company shall cause to be made to the meeting, either by the director presiding at the meeting or by another person with knowledge of the relevant matters, a report (written or oral) on any material transactions relating to the company occurring between the date of the making of the statement of affairs and that of the meeting and any such report shall be recorded in the report of the meeting kept under Rule 7.13.]

## **Rule 4.9**

5. For this Rule, there shall be substituted--

### **"4.9 Expenses of statement of affairs**

(1) Payment may be made as an expense of the liquidation, either before or after the commencement of the winding up, of any reasonable and necessary expenses of preparing the statement of affairs under section 99.

(2) Where such a payment is made before the commencement of the winding up, the director presiding at the creditors' meeting held under section 98 shall inform the meeting of the amount of the payment and the identity of the person to whom it was made.

(3) The liquidator appointed under section 100 may make such a payment (subject to the next paragraph); but if there is a liquidation committee, he must give the committee at least 7 days' notice of his intention to make it.

(4) Such a payment shall not be made by the liquidator to himself, or to any associate of his, otherwise than with the approval of the liquidation committee, the creditors, or the court.

(5) This Rule is without prejudice to the powers of the court under Rule 4.67(2) (voluntary winding up succeeded by winding up by the court).".

## **Chapter 3 (Information)**

### **Rule 4.10**

6. For this Rule, there shall be substituted the following:--

#### **"4.10 Information to creditors and contributories**

[(1)] The liquidator shall, within 28 days of a meeting held under section 95 or 98, send to creditors and contributories of the company--

- (a) a copy or summary of the statement of affairs, and
- (b) a report of the proceedings at the meeting.

[(2)] The report under paragraph 1(b) shall include--

- (a) to the best of the liquidator's knowledge and belief--
  - (i) an estimate of the value of the prescribed part (whether or not he proposes to make an application to the court under section 176A(5) or section 176A(3) applies), and
  - (ii) an estimate of the value of the company's net property,

provided that such estimates shall not be required to include any information the disclosure of which could seriously prejudice the commercial interests of the company, but if such information is excluded the estimates shall be accompanied by a statement to that effect; and

- (b) whether, and, if so, why, the liquidator proposes to make an application to the court under section 176A(5).]".

## **Chapter 4 (Meetings of creditors and contributories)**

### **Rule 4.12**

7. This Rule shall not apply.

### **Rule 4.14**

8. After this Rule, there shall be inserted the following:--

#### **"4.14A Expenses of meeting under section 98**

- (1) Payment may be made out of the company's assets as an expense of the liquidation, either before or after the commencement of the winding up, of any reasonable and necessary expenses incurred in connection with the summoning, advertisement and holding of a creditors' meeting under section 98.
- (2) Where any such payments are made before the commencement of the winding up, the director presiding at the creditors' meeting shall inform the meeting of their amount and the identity of the persons to whom they were made.
- (3) The liquidator appointed under section 100 may make such a payment (subject to the next paragraph); but if there is a liquidation committee, he must give the committee at least 7 days' notice of his intention to make the payment.
- (4) Such a payment shall not be made by the liquidator to himself, or to any associate of his, otherwise than with the approval of the liquidation committee, the creditors, or the court.
- (5) This Rule is without prejudice to the powers of the court under Rule 4.67(2) (voluntary winding up succeeded by winding up by the court).".

### **Rule 4.15**

9. [(1)] In paragraph (5), for the reference to section 129, there shall be substituted a reference to section 86.

[(2)] In paragraph (6) there shall be inserted at the end the following--

"and to the director who presides over any meeting of creditors as provided by section 99(1)".]

#### **Rule 4.16**

10. In paragraph (2), for the reference to section 129, there shall be substituted a reference to section 86.

### **Chapter 6 (the liquidator)**

#### **Rule 4.18**

11.(1) For paragraph (1), there shall be substituted the following:--

"(1) This Rule applies where the liquidator is appointed by the court under section 100(3) or 108.".

(2) Paragraphs (4)(a) and (5) shall be deleted.

#### **Rule 4.19**

12.(1) For paragraphs (1) to (3) there shall be substituted the following:--

"(1) This Rule applies where a person is nominated for appointment as liquidator under section 100(1) either by a meeting of the creditors or by a meeting of the company.

(2) Subject as follows, the chairman of the meeting shall certify the appointment, but not unless and until the person to be appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator and that he consents so to act. The liquidator's appointment [takes effect on the passing of the resolution for his appointment].

(3) The chairman shall forthwith send the certificate to the liquidator, who shall keep it in the sederunt book.".

(2) Paragraphs (4)(a) and (5) shall not apply.

(3) In paragraph (6), for the reference to paragraphs (4) and (5), there shall be substituted a reference to paragraphs (3) and (4).

[(4)] After paragraph (6) there shall be inserted the following paragraph--

"(7) Where a vacancy in the office of the liquidator occurs in the manner mentioned in section 104, a meeting of creditors to fill the vacancy may be convened by any creditor or, if there were more liquidators than one, by any continuing liquidator".]

#### **Rule 4.23**

13.(1) In paragraph (1), for the references to section 172(2) and (3), there shall be substituted a reference to section 171(2) and (3).

(2) In paragraph (2), for the references to section 172(2) and 174(4)(a) or (b), there shall be substituted a reference to section 171(2) and 173(2)(a) or (b).

#### **Rule 4.24**

14. In this Rule the references to the court shall be deleted.

#### **Rule 4.25**

15. In paragraph (1), for the reference to section 174(4)(a), there shall be substituted a reference to section 173(2)(a), and the reference to the court shall be deleted.

#### **Rule 4.28**

16.(1) In paragraph (1), for the reference to section 172(6), there shall be substituted a reference to section 171(5).

(2) In paragraph (2), for the reference to section 174(4)(c), there shall be substituted a reference to section 173(2)(c).

#### **Rule 4.29**

17. In this Rule for paragraph (3) there shall be substituted the following:--

"(3) The liquidator, whose resignation is accepted, shall forthwith after the meeting give notice of his resignation to [the Accountant in Bankruptcy] as required by section 171(5)".

#### **Rule 4.31**

18. For this Rule, substitute the following:--

##### **"4.31 Final Meeting**

(1) The liquidator shall give at least 28 days' notice of the final meeting of creditors to be held under section 106. The notice shall be sent to all creditors whose claims in the liquidation have been accepted.

(2) At the final meeting, the creditors may question the liquidator with respect to any matter contained in the account required under that section and may resolve against the liquidator having his release.

(3) The liquidator shall, within 7 days of the meeting, give notice to [the Accountant in Bankruptcy] under section 171(6) that the final meeting has been held. The notice shall state whether or not he has been released.

(4) If the creditors at the final meeting have not resolved against the liquidator having his release, he is released in terms of section 173(2)(e)(ii) when he vacates office under section 171(6). If they have so resolved, he must obtain his release from the Accountant of Court and Rule 4.25(2) and (3) shall apply accordingly [subject to the modifications that in Rule 4.25(3) sub-paragraph (a) shall apply with the word "new" replaced by the word "former" and sub-paragraph (b) shall not apply].".

#### **Rule 4.36**

19. For the reference to the court there shall be substituted a reference to the liquidation committee (if any) or a member of that committee.

#### **Rule 4.37**

20.(1) In paragraph (2), the reference to the court shall be omitted.

(2) At the end of this Rule, there shall be inserted the following:--

#### **"4.37A Vacation of office on making of winding up order**

Where the liquidator vacates office in consequence of the court making a winding up order against the company, Rule 4.25(2) and (3) apply as regards the liquidator obtaining his release, as if he had been removed by the court."

### **Chapter 7 (the liquidation committee)**

#### **Rule 4.40**

21. This Rule shall not apply.

#### **Rule 4.41**

22. For paragraph (1) there shall be substituted the following:--

"(1) The committee must have at least 3 members before it can be established."

#### **Rule 4.43**

23. This Rule shall not apply.

#### **Rule 4.47**

24. For this Rule, there shall be substituted the following:--

##### **"4.47 Quorum**

A meeting of the committee is duly constituted if due notice of it has been given to all the members and at least 2 members are present or represented."

#### **Rule 4.53**

25. After paragraph (4) there shall be inserted the following:--

"(4A) Where the contributories make an appointment under paragraph (4), the creditor members of the committee may, if they think fit, resolve that the person appointed ought not to be a member of the committee; and--

(a) that person is not then, unless the court otherwise directs, qualified to act as a member of the committee, and

(b) on any application to the court for a direction under this paragraph the court may, if it thinks fit, appoint another person (being a contributory) to fill the vacancy on the committee."

#### **Rule 4.54**

26. Paragraphs (2) and (3) shall not apply.

#### **Rule 4.55**

27. In paragraphs (3) and (4), the word "creditor" shall be omitted.

### **Chapter 8 (The liquidation committee where winding up follows immediately on administration)**

28. This Chapter shall not apply.

### **Chapter 9 (Distribution of company's assets by liquidator)**

#### **Rule 4.66**

29. (1) At the beginning of paragraph (1), insert the following:--

"Subject to the provision of section 107,".



(2) In paragraph (1)(b), for the reference to section 129, there shall be substituted a reference to section 86.

## **Chapter 10 (Special manager)**

### **Rule 4.70**

30. For paragraph (5), there shall be substituted the following:--

"(5) The cost of finding caution shall be paid in the first instance by the special manager; but he is entitled to be reimbursed out of the assets as an expense of the liquidation.".

### **Rule 4.71**

31. Paragraph (1) shall not apply.

## **Chapter 11 (Public examination of company officers and others)**

32. This Chapter shall not apply.

## **Chapter 12 (Miscellaneous)**

### **Rule 4.77**

33. This Rule shall not apply.

## **SCHEDULE 2**

### **APPLICATION OF PART 4 IN RELATION TO MEMBERS' VOLUNTARY WINDING UP**

#### **Rule 6**

1. The following paragraphs describe the provisions of Part 4 which, subject to the modifications set out in those paragraphs and any other necessary modifications, apply to a members' voluntary winding up.

#### **General**

2. Any reference in any provision of Part 4, which is applied to a members' voluntary winding up, to any other Rule is a reference to that Rule as so applied.

## **Chapter 3 (Information)**

### **Rule 4.11**

3. This Rule shall apply [subject to the modifications that for the words "accounting period" where they occur, there shall be substituted the words "period of twenty six weeks"].

## **Chapter 6 (the liquidator)**

### **Rule 4.18**

4.(1) This Rule shall apply subject to the following modifications.

(2) For paragraph (1), there shall be substituted the following:--

"(1) This Rule applies where the liquidator is appointed by the court under section 108."

(3) Paragraphs 4 and 5 shall be deleted.

### **Rule 4.19**

5.(1) This Rule shall apply subject to the following modifications.

(2) For paragraphs (1) to (3) there shall be substituted the following:--

"(1) This Rule applies where the liquidator is appointed by a meeting of the company.

(2) Subject as follows, the chairman of the meeting shall certify the appointment, but not unless and until the person to be appointed has provided him with a written statement to the effect that he is an insolvency practitioner, duly qualified under the Act to be the liquidator and that he consents so to act. The liquidator's appointment [takes effect on the passing of the resolution for his appointment].

(3) The chairman shall forthwith send the certificate to the liquidator, who shall keep it in the sederunt book."

(3) Paragraphs 4(a), (5) and (6) shall be deleted.

### **Rules 4.20 to 4.22**

6. These Rules shall apply.

### **Rule 4.26**

7. This Rule shall apply except that in paragraph (1) for the reference to "creditors" there shall be substituted the words "the company".

**Rule 4.27**

8. This Rule shall apply.

**Rule 4.28**

9.(1) This Rule shall apply subject to the following modifications.

(2) In paragraph (1)--

(a) for the reference to section 172(6), there shall be substituted a reference to section 171(5), and

(b) for the reference to a meeting of creditors, there shall be substituted a reference to a meeting of the company.

(3) In paragraph (2)--

(a) for reference to section 174(4)(c) there shall be substituted a reference to section 173(2)(c), and

(b) for the reference to Rule 4.29(4), there shall be substituted a reference to Rule 4.28A.

(4) After paragraph (4) there shall be inserted the following paragraphs:--

"(5) The notice of the liquidator's resignation required by section 171(5) shall be given by him to [the Accountant in Bankruptcy] forthwith after the meeting.

(6) Where a new liquidator is appointed in place of the one who has resigned, the former shall, in giving notice of his appointment, state that his predecessor has resigned and whether he has been released.

[(7) If there is no quorum present at the meeting summoned to receive the liquidator's resignation the meeting is deemed to have been held.]".

(5) After this Rule, there shall be inserted the following Rule:--

**"4.28A Release of resigning or removed liquidator**

(1) Where the liquidator resigns, he has his release from the date on which he gives notice of his resignation to [the Accountant in Bankruptcy].

(2) Where the liquidator is removed by a meeting of the company, he shall forthwith give notice to [the Accountant in Bankruptcy] of his ceasing to act.

(3) Where the liquidator is removed by the court, he must apply to the Accountant of Court for his release.

(4) Where the Accountant of Court gives the release, he shall certify it accordingly, and send the certificate to [the Accountant in Bankruptcy].

(5) A copy of the certificate shall be sent by the Accountant of Court to the former liquidator, whose release is effective from the date of the certificate."

#### **Rule 4.36**

10. This Rule shall apply, except that for any reference to the court, there shall be substituted a reference to the directors of the company or any one of them.

#### **Rule 4.37**

11.(1) This Rule shall apply subject to the following modifications.

(2) In paragraph (2), the reference to the court shall be omitted.

(3) For paragraph (3), there shall be substituted the following:--

"(3) Rule 4.28A applies as regards the liquidator obtaining his release, as if he had been removed by the court."

(4) At the end of this Rule, there shall be inserted the following:--

#### **"4.37A Vacation of office on making of winding up order**

Where the liquidator vacates office in consequence of the court making a winding up order against the company, Rule 4.28A applies as regards the liquidator obtaining his release, as if he had been removed by the court."

#### **Rule 4.38**

12. This Rule shall apply.

#### **Rule 4.39**

13. This Rule shall apply.

### **Chapter 10 (Special manager)**

14. (1) This Chapter shall apply subject to the following modifications.

(2) In Rule 4.70 for paragraph (5), there shall be substituted the following:--

"(5) The cost of finding caution shall be paid in the first instance by the special manager; but he is entitled to be reimbursed out of the assets as an expense of the liquidation."

(3) In Rule 4.71, paragraph (1) shall not apply.

## **SCHEDULE 3**

### **DEPOSIT PROTECTION BOARD'S VOTING RIGHTS**

#### **Rule 7.4(6)**

1. This Schedule applies where Rule 7.4 does.
2. In relation to any meeting at which the Deposit Protection Board is under Rule 7.4 entitled to be represented, the Board may submit in the liquidation, instead of a claim, a written statement of voting rights ("the statement").
3. The statement shall contain details of:--
  - (a) the names of creditors of the company in respect of whom an obligation of the Board has arisen or may reasonably be expected to arise as a result of the liquidation or proposed liquidation;
  - (b) the amount of the obligation so arising; and
  - (c) the total amount of all such obligations specified in the statement.
4. The Board's statement shall, for the purpose of voting at a meeting (but for no other purpose), be treated in all respects as if it were a claim.
5. Any voting rights which a creditor might otherwise exercise at a meeting in respect of a claim against the company are reduced by a sum equal to the amount of that claim in relation to which the Board, by virtue of its having submitted a statement, is entitled to exercise voting rights at that meeting.
6. The Board may from time to time submit a further statement, and, if it does so, that statement supersedes any statement previously submitted.

## SCHEDULE 4

### PUNISHMENT OF OFFENCES UNDER THE RULES

#### Rule 7.29

Note: In the fourth and fifth columns of this Schedule, "the statutory maximum" means the prescribed sum under section 289B(6) of the Criminal Procedure (Scotland) Act 1975 (c 21).

<i>Rule creating offence</i>	<i>General nature of offence</i>	<i>Mode of prosecution</i>	<i>Punishment</i>	<i>Daily default fine (where applicable)</i>
...	...	...	...	
In Part 2, [Rule 2.38(6)]	Administrator failing to send notification as to progress of administration	Summary	One-fifth of the statutory maximum	One-fiftieth of the statutory maximum
[In Part 2, Rule 2.43(3)]	Administrator failing to lodge notice of automatic end of administration	Summary	One-fifth of the statutory maximum	One-fiftieth of the statutory maximum]
In Part 3, Rule 3.9(5)	Receiver failing to send notification as to progress of receivership	Summary	One-fifth of the statutory maximum	One-fiftieth of the statutory maximum

## SCHEDULE 5

### FORMS

#### Form No

#### Title

#### Part 1: Company Voluntary Arrangements

[1.1 (Scot)	Notice to registrar of companies of voluntary arrangement taking effect]
[1.2 (Scot)	Notice to registrar of companies of order of revocation or suspension voluntary arrangement]
[1.3 (Scot)	Notice to registrar of companies of supervisor's abstract of receipts and payments]
[1.4 (Scot)	Notice to registrar of companies of completion or termination of voluntary arrangement]
[1.5 (Scot)	Nominee's statement of opinion pursuant to paragraph 6(2) of Schedule A1 to the Insolvency Act 1986]
[1.6 (Scot)	Statement of affairs]
[1.7 (Scot)	Statement of eligibility for a moratorium pursuant to paragraph 7(1)(c) of Schedule A1 to the Insolvency Act 1986]
[1.8 (Scot)	Statement of consent to act by nominee]
[1.9 (Scot)	Documents to be submitted to court to obtain moratorium]
[1.10 (Scot)	Advertisement of coming into force or ending of moratorium (for newspaper or Edinburgh Gazette]
[1.11 (Scot)	Notice to registrar of companies of commencement of moratorium]
[1.12 (Scot)	Notice to registrar of companies of extension or further extension or renewal or continuation of moratorium]
[1.13 (Scot)	Notice to court of extension or further extension or moratorium]
[1.14 (Scot)	Notice to registrar of companies of ending of moratorium]
[1.15 (Scot)	Nominee's notice to court of end of moratorium]
[1.16 (Scot)	Notice to registrar of companies of withdrawal of nominee's consent to act]
[1.17 (Scot)	Notice to court by nominee of withdrawal of consent to act]
[1.18 (Scot)	Notice to registrar of companies of appointment of a replacement nominee]
[1.19 (Scot)	Notice to court of appointment of replacement nominee]

#### Part 2: Administration Procedure

[2.1B (Scot)	Statement of proposed administrator]
[2.2B (Scot)	Notice of petition for administration order]
[2.3B (Scot)	Notice of dismissal of petition for administration order]
[2.4B (Scot)	Notice of intention to appoint an administrator by holder of qualifying

	floating charge]
[2.5B (Scot)	Notice of appointment of an administrator by holder of qualifying floating charge]
[2.6B (Scot)	Notice of appointment of an administrator by holder of qualifying floating charge]
[2.7B (Scot)	Notice of appointment of an administrator by holder of qualifying floating charge]
[2.8B (Scot)	Notice of appointment of an administrator by company or director(s)]
[2.9 (Scot)	Notice of appointment of an administrator by company or director(s)]
[2.10B (Scot)	Notice of appointment of administrator (for newspaper or Edinburgh Gazette)]
[2.11B (Scot)	Notice of administrator's appointment]
[2.12B (Scot)	Notice requiring submission of a statement of affairs]
[2.13B (Scot)	Statement of affairs]
[2.14B (Scot)	Statement of concurrence]
[2.15B (Scot)	Notice of statement of affairs]
[2.16B (Scot)	Statement of administrator's proposals]
[2.17B (Scot)	Statement of administrator's revised proposals]
[2.18B (Scot)	Notice of results meeting of creditors]
[2.19B (Scot)	Notice of order to deal with secured property]
[2.20B (Scot)	Administrator's progress report]
[2.21B (Scot)	Notice of automatic end of administration]
[2.22B (Scot)	Notice of extension of period of administration]
[2.23B (Scot)	Notice of end of administration]
[2.24B (Scot)	Notice of court order ending administration]
[2.25B (Scot)	Notice of move from administration to creditors' voluntary liquidation]
[2.26B (Scot)	Notice of move from administration to dissolution]
[2.27B (Scot)	Notice to registrar of companies in respect of date of dissolution]
[2.28B (Scot)	Notice of intention to resign as administrator]
[2.29B (Scot)	Notice of resignation by administrator]
[2.30B (Scot)	Notice of vacation of office by administrator]
[2.31B (Scot)	Notice of appointment of replacement/additional administrator]
[2.32B (Scot)	Notice of insufficient property for distribution to unsecured creditors Other than by virtue of s 176A(2)(a)]

### **Part 3: Receivers**

3.1 (Scot)	Notice requiring submission of receivership statement of affairs
3.2 (Scot)	Receiver's abstract of receipts and payments
3.3 (Scot)	Notice of receiver's death
3.4 (Scot)	Notice of authorisation to dispose of secured property
3.5 (Scot)	Notice of receiver's report

### **Part 4: Winding Up**



[4.1 (Scot)	Statutory demand for payment of debt]
4.2 (Scot)	Notice of winding up order
4.3 (Scot)	Notice requiring submission of statement of affairs in a liquidation
4.4 (Scot)	Statement of affairs
4.5 (Scot)	Liquidator's statement of receipts and payments
4.6 (Scot)	Notice of liquidator's statement of receipts and payments
[4.7 (Scot)	Statement of claim by creditor]
4.8 (Scot)	Certificate of appointment of liquidator
[4.9 (Scot)	Notice of appointment of liquidator]
4.10 (Scot)	Certificate of removal of liquidator
4.11 (Scot)	Notice of removal of liquidator
4.12 (Scot)	Application by liquidator to the Accountant of Court for his release
4.13 (Scot)	Certificate by the Accountant of Court of release of the liquidator
4.14 (Scot)	Notice of certificate of release of liquidator
4.15 (Scot)	Notice to court of resignation of liquidator
4.16 (Scot)	Notice of resignation of liquidator
4.17 (Scot)	Notice of final meeting of creditors
4.18 (Scot)	Notice of death of liquidator
4.19 (Scot)	Notice of vacation of office of liquidator
4.20 (Scot)	Certificate of constitution of creditors'/liquidation committee
4.21 (Scot)	Liquidator's certificate of continuance of liquidation committee
4.22 (Scot)	Notice of constitution/continuance of liquidation/creditors' committee
4.23 (Scot)	Liquidator's certificate that creditors have been paid in full
4.24 (Scot)	Notice of certificate that creditors have been paid in full
4.25 (Scot)	Declaration of solvency
4.26 (Scot)	Return of final meeting in a voluntary winding up
4.27 (Scot)	Notice of court's order sisting proceedings in winding up by the court
4.28 (Scot)	Notice under section 204(6) or 205(6)
[4.29 (Scot)	Proxy]
[4.30 (Scot)	Confirmation by court of creditor's voluntary winding up application and order]
[4.31 (Scot)	Notice in respect of order under section 176A]
[4.32 (Scot)	Notice to the creditors of an insolvent company of the re-use of a Prohibited name]

## EXPLANATORY NOTE

***(This Note does not form part of the Rules)***

These Rules set out the detailed procedure for the conduct of insolvency proceedings under the Insolvency Act 1986 ("the Act") relating to companies registered in Scotland and other companies which the Scottish courts have jurisdiction to wind up and otherwise give effect to that Act in relation to Scotland.

Part 1 of the Rules sets out the procedure relating to company voluntary arrangements under Part I of the Act.

Part 2 of the Rules sets out the procedure relating to the administration procedure in Part II of the Act (Administration Orders).

Part 3 of the Rules sets out the procedure relating to receivers in Chapter II of Part III of the Act (Receivers (Scotland)). In addition, the Receivers (Scotland) Regulations 1986 (SI 1986/1917) prescribe matters which expressly fall to be prescribed in terms of that Chapter.

Parts 4-6 of the Rules set out the procedure relating to winding up of companies in Part IV of the Act. Part 4 of the Rules deals with winding up by the court. Parts 5 and 6 of, and Schedule 1 and 2 to, the Rules apply the provisions of Part 4, with modifications, to the creditors' voluntary winding up and members' voluntary winding up respectively.

Part 7 of the Rules contains provisions of general application to insolvency proceedings. They include provisions relating to meetings (Chapter 1), proxies and company representation (Chapter 2) and miscellaneous matters (Chapter 3). In particular, Schedule 5 contains the forms which are to be used for the purposes of the provision of the Act or the Rules which are referred to in those forms.

The Rules come into force on 29th December 1986 when the Act comes into force and will apply to insolvency proceedings which are commenced on or after that day.