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The Insolvency Rules: A 2017 update

6th April 2017 saw the Insolvency (England and Wales) Rules 2016 come into force.

The new rules attempt to modernise the previous rules and to make the insolvency process easier to understand and more efficient. They consolidate and replace the Insolvency Rules 1986 and their 28 successive amendments, restructure the rules and update the language, and bring into effect the changes made to the Insolvency Act 1986 ['the Act'] by the Deregulation Act 2015 ['DA 2015'] and the Small Business, Enterprise and Employment Act 2015 ['SBEE 2015'].

The main changes in summary are as follows:

Statutory Forms

The new rules remove the requirement to use standard forms in insolvency proceedings. Instead, the rules describe what should be included in notices and documents.

Jurisdiction

The new rules clarify that the county courts have jurisdiction in regards to winding up where companies have a share capital of less than £120,000, and other forms of corporate insolvency. Previously, it was unclear as to whether jurisdiction was limited to winding up.

Appeals of the decisions of district judges will be either to a judge sitting in a district registry of the High Court or a registrar in bankruptcy of the High Court. (Although this amendment is already in force having been introduced as a previous amendment to the 1986 Rules due to the delay in the coming into force of the 2016 Rules.)

Communication and Reporting

Electronic communication

Under the 1986 Rules, if a debtor and creditor had been corresponding electronically (i.e. via email) before insolvency, an insolvency office holder was required to obtain written permission from the creditor before they could correspond electronically with the debtor. Under the new rules, the office holder is no longer required to seek written consent. The idea is for the rules to reflect the way the business world now operates.

Use of websites

Under the old rules, following an initial notice to creditors, any future documents relating to the case could not be uploaded to a website without a court order. Now, office holders are able to send a

notice to creditors stating that future documents will be available on a website and, unless certain exceptions apply, a court order is not necessary.

Opting out of further correspondence

The new rules give effect to an amendment to the Act which allow a creditor to opt out of receiving further correspondence. Therefore, if a creditor has no further interest in a case and has opted out of receiving further information, the office holder is no longer obliged to keep sending them notices. This change is designed to avoid unnecessary expense. Creditors are able to opt back in at any time and notices of intended dividends are not subject to the opt-out.

Progress reports

If the insolvency office holder is not the official reviewer, they have a fixed reporting requirement under the new rules for the following: administration; compulsory voluntary liquidation; compulsory liquidation; and bankruptcy. This is the case even if the insolvency proceedings have been extended or transferred to another practitioner. Depending on the procedure, the cycle of reporting is usually 6 or 12 months and this will remain unchanged throughout the life of the case.

The 2016 Rules also re-introduce the requirement of an administrator to file a final progress report together with the notice sent to the registrar of companies under para 83 to Sch B of the Act. The intent is to reduce the number of necessary filings as the registered notice converts the administration into liquidation proceedings, which then ensures that information relating to activity taking place between the filing of the notice and registration will be provided to creditors in the liquidator's first progress report.

Statements of affairs

Under the new rules, where a statement of affairs is to be filed with a registrar of companies, the details of creditors who are consumer customers, employees and ex-employees will be contained in a separate schedule with only a summary in the body of the document. The schedule will be removed before the statement of affairs is filed. This is to prevent identity theft and to otherwise protect privacy.

Creditors' Meetings

Deemed consent

The SBEE 2015 amendments remove meetings as the default method of seeking decisions of creditors. The new rules detail the process under the Act whereby an office holder can write to the creditors with a proposal which will be deemed to be approved if objections from 10% of creditors in value are not received. If 10% or more objections are received, an alternative decision making process can be used. This is possible unless the court requires a 'creditors' decision making procedure'.

Alternatives to meetings of creditors

The new rules specify the types of alternative decision making processes that can be used to seek the decisions of creditors where a meeting is not called. This is at the discretion of the office holder unless one of the two exceptions arise:

1. An office holder can only call a meeting of creditors if 10% or more of the total number of creditors request it; or 10% or more of the creditors by value request it; or 10 or more

individual creditors request it. Creditors can make this request at any time when asked to make a decision;

2. Where a liquidator has been appointed in a creditor's voluntary liquidation, the company may only seek a decision from creditors via a virtual meeting or deemed consent. If creditors object to the use of deemed consent, then a physical meeting must be called immediately.

Abolition of final meetings

The SBEE 2015 amendments to the Act remove the previous requirements in certain situations to hold final creditors' meetings, as well as the requirement to hold final members' meetings in members' voluntary liquidations. The office holder will still be required to send members a copy of the final account, and members can still object to the release of the office holder on receipt of that account by notifying the office holder of their objection.

Paying dividends where debt is less than £1,000

Under the new rules, where a debt is less than £1,000, the office holder can pay a dividend in reliance upon the information contained in the company/bankrupt's statement of affairs or accounting records. Therefore the creditor is no longer required to submit a claim in such circumstances.

Appointments

Appointing an official receiver as trustee

The new rules give effect to the amendments of the Act which remove the interim status of receiver and manager of the bankruptcy estate - the position of an official receiver between the dates of the making of the bankruptcy order and appointment of a trustee. Under the new rules, the official receiver will be made trustee on the making of the order. This change is to avoid delay in the realisation of assets.

Appointing an interim receiver

The new rules give effect to the amendments of the Act which permit the court to appoint an insolvency practitioner as interim receiver in all circumstances. This is a change from the previous position which only permitted the appointment of an insolvency practitioner as interim receiver ahead of a bankruptcy petition hearing in very limited circumstances.

The new rules will be reviewed within 5 years.

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