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STATUTORY INSTRUMENTS

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**2017 No. 366**

**INSOLVENCY**

COMPANIES

INDIVIDUALS

**The Insolvency (England and Wales) (Amendment) Rules 2017**

<i>Made</i>	- - - -	<i>10th March 2017</i>
<i>Laid before Parliament</i>		<i>13th March 2017</i>
<i>Coming into force</i>	- -	<i>6th April 2017</i>

The Lord Chancellor has consulted the committee existing for the purposes of section 413 of the Insolvency Act 1986(1) (“the Act”).

The Lord Chancellor, with the concurrence of the Secretary of State and with the concurrence of the Master of the Rolls (nominated by the Lord Chief Justice under section 411(6) and 412(6) of the Act) in relation to those rules which affect court procedure, in exercise of the powers conferred by sections 411 and 412 of the Insolvency Act 1986(2), makes the following Rules.

**PART 1**

**Introductory Rules**

**Citation and Commencement**

1. These Rules may be cited as the Insolvency (England and Wales) (Amendment) Rules 2017 and come into force on 6th April 2017.

**Extent**

2. These Rules extend to England and Wales only.

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(1) 1986 c.45.

(2) Sections 411 and 412 confer on the Lord Chancellor the power to make rules in relation to insolvency in England and Wales with the concurrence of the Secretary of State and the Lord Chief Justice (in the case of rules that affect court procedure). Relevant amendments to sections 411 and 412 are made by regulations 2 and 3 of S.I. 2002/1037; paragraphs 185, 188 and 189 of Schedule 4 to the Constitutional Reform Act 2005 (c.4); paragraphs 1 and 8 of Schedule 20 to the Tribunals, Courts and Enforcement Act 2007 (c.15); paragraph 44 of Schedule 4 to S.I. 2007/2194; and paragraph 79 of Schedule 1 to S.I. 2009/1941.

## PART 2

### Amendments to the Insolvency (England and Wales) Rules 2016

3. The Insolvency (England and Wales) Rules 2016 are amended as follows.

#### **Definition of “attendance” and “attend”**

4. In rule 1.2, for the definition of “attendance and attend” substitute—

““attendance” and “attend” a person attends, or is in attendance at, a meeting who is present or attends remotely in accordance with section 246A or rule 15.6, or who participates in a virtual meeting, whether that person attends the meeting or virtual meeting in person, by proxy, or by corporate representative (in accordance with section 434B or section 323 of the Companies Act, as applicable);”.

#### **Delivery to the creditors and opting out**

5. In rule 1.37(1), for “(where the opt out applies)” substitute “unless the opt out does not apply”.

#### **Registrar of companies: covering notices**

6.—(1) In rule 1.20(1)(k) for “7.68(3)(b)” substitute “7.67(3)(b)”.

(2) In rule 1.20(1)(l) for “7.69(4)(b)” substitute “7.68(4)(b)”.

(3) In rule 1.20(m)(iv) for “6A” substitute “(6A)”.

#### **Requisition of physical meeting by creditors**

7. For rule 2.31(3), substitute—

“(3) A notice summoning a meeting of the creditors must be delivered to the creditors at least seven days before the day fixed for the meeting.”.

#### **Report of consideration of proposal under section 4(6) and (6A) or paragraph 30(3) and (4) of Schedule A1**

8.—(1) In rule 2.38(1), after “report” insert “or reports as the case may be”.

(2) In rule 2.38(2)(b), after “resolution” insert “or whether they abstained”.

(3) In rule 2.38(3), omit the words from “the deadline” to “correspondence) or”.

#### **Revocation or suspension of IVA**

9. In rule 2.40(4), for “a matter to be considered further” substitute “action to be taken”.

#### **Supervisor’s accounts and reports**

10. In rule 2.41(8), omit “(2)”.

11. In rule 8.28(7), omit “(3)”.

#### **Appointment taking place out of court business hours: content of notice**

12.—(1) In rule 3.21(1)(f)(i), for “from that date” substitute “since notice was given under paragraph 15(1)(a) of Schedule B1”.

(2) In rule 3.21(1)(f)(iii) and (iv), after “consent” insert “in writing”.

(3) In rule 3.21(1)(h), omit the words “and that a statement of the reasons for stating this in the appointer’s possession”.

(4) In rule 3.21(1)(i), after the words “non-EC proceedings” insert “and that a statement of the reasons for stating this is in the appointer’s possession”.

#### **Notice of intention to appoint**

13. In rule 3.23(4), for “delivered” substitute “sent”.

#### **Notice of appointment after notice of intention to appoint**

14. In rule 3.24(1)(i)(i), for “from that date” substitute “since notice was given under paragraph 26(1) of Schedule B1”.

#### **Statement of affairs: notice requiring and delivery to the administrator (paragraph 47(1) of Schedule B1)**

15. For rule 3.29(2)(b)(ii), substitute—

“(ii) the requirement to deliver the statement of affairs to the administrator no later than eleven days after receipt of the notice requiring the statement of affairs;”.

#### **Administrator’s proposals: revisions**

16. In rule 3.42, after paragraph (5), insert—

“(6) A copy of the statement of revised proposals under rule 3.43(3) must be delivered to the registrar of companies not later than five days after the report under rule 3.43(1) is delivered.”

#### **Receivers or managers appointed under an instrument: acceptance of appointment (section 33)**

17. In rule 4.1(1), after the word “applies” in the second place it occurs, insert “(other than those appointed under section 51 (Scottish Receiverships))”.

#### **Removal of liquidator by the court**

18. In rule 5.7(7)(g)(ii), for “meeting of the company’s creditors” substitute “company meeting”.

#### **Application for and appointment of special manager (section 177)**

19. In rule 5.17(3)(h), for “177(4)” substitute “177(3)”.

20. In rule 6.37(3)(h), for “177(4)” substitute “177(3)”.

21. In rule 7.93(3)(g), for “177(4)” substitute “177(3)”.

#### **Information to creditors and contributories (conversion of members’ voluntary winding up into creditors’ voluntary winding up)**

22. In rule 6.13(1)(b), for “6.10” substitute “6.11”.

### **Creditors' decision on appointment other than at a meeting (conversion from members' voluntary winding up)**

23. In rule 6.12(6), for “deliver” substitute “send”.

### **Appointment by creditors or by the company**

24. For rule 6.20(2), substitute—

“(2) The liquidator’s appointment takes effect from the date of the passing of the resolution of the company or, where the creditors decide to appoint a person who is not the person appointed by the company, from the relevant decision date.”.

### **Definition of “approval” and “authorisation”**

25. In rule 6.44(1), in the definition of “approval” and “authorisation”, for “176ZA(3)” substitute “176ZA(1)”.

### **General Rule as to Priority**

26. For rule 7.108(2), substitute—

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

- (a) assets of the company available for the payment of general creditors, including—
  - (i) proceeds of any legal action which the liquidator has power to bring in the liquidator’s own name or in the name of the company;
  - (ii) proceeds arising from any award made under any arbitration or other dispute resolution procedure which the liquidator has power to bring in the liquidator’s own name or in the name of the company;
  - (iii) any payments made under any compromise or other agreement intended to avoid legal action or recourse to arbitration or to any other dispute resolution procedure;
  - (iv) payments made as a result of an assignment or a settlement of any such action, arrangement or procedure in lieu of or before any judgment being given or award being made; and
- (b) subject as provided in rules 7.111 to 7.116, property comprised in or subject to a floating charge created by the company.”

### **Report of the creditors' consideration of a proposal**

27. For rule 8.24(2)(b), substitute—

“(b) list the creditors who voted or attended or who were represented at the meeting or decision procedure (as applicable) used to consider the proposal, setting out (with their respective values) how they voted on each resolution or whether they abstained;”.

### **Debt Relief Orders, Excluded Debts**

28. In rule 9.2(3)—

(a) in sub-paragraph (b), omit “and”; and

(b) for sub-paragraph (c) substitute—

“and includes any interest on the loan and any penalties or charges incurred in connection with it.”.