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The Insolvency (England and Wales) Rules 2016 at a Glance

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The Insolvency (England and Wales) Rules 2016 ("the 2016 Rules") came into force on 6 April 2017 with the stated purpose of doing three things: consolidating the Insolvency Rules 1986 ("the 1986 Rules) with the 28 amending instruments made since the 1986 Rules came into force; restructuring the rules and updating the language, including gender neutral drafting; and modernising the 1986 Rules to take into account the changes made to the Insolvency Act 1986 by the Deregulation Act 2015 and the Small Business, Enterprise and Employment Act 2015.

Attempts have clearly been made to ensure that the 2016 Rules are more accessible than their predecessors, for example, winding up is separated into 3 parts: members' voluntary liquidation, creditors' voluntary liquidation and compulsory liquidation.

It would be neither possible nor productive to detail all the differences between the 1986 Rules and the 2016 Rules here. What this article will do is highlight some of the key changes brought in.

Transitional Provisions

The transitional provisions are contained in the 2016 Rules at schedule 2. It is important to note that the 2016 Rules apply, not only to all insolvencies that began on or after 6 April 2017, but also to most insolvencies than began before that date. When considering the changes detailed below these transitional provisions should be consulted in relation to any proceedings which have already commenced.

Statutory Forms

The 2016 Rules remove all reference to statutory forms and instead they set out the content requirements for prescribed notices and documents. This is dealt with in Part 1 of the 2016 Rules (see for example rules 1.35, 7.5 and 7.26). The reasoning behind this is stated to be to future-proof the rules, as there will be less need for amendment to take account of changes in technology and business. However; this conceivably means additional work for Insolvency Practitioners, who will have to keep their own forms updated.

Creditors' Meetings and Deemed Consent

Amendments made to the Insolvency Act 1986 by the Small Business, Enterprise and Employment Act 2015 gave rise to a number of changes in respect of creditors' meetings. The relevant provisions in the 2016 Rules dealing with these changes can be found in Part 15.

Under the 2016 Rules, where an office holder writes to creditors with a proposal it will be deemed approved unless the office holder receives objections from 10% or more creditors by value.
If 10% or more object, then office-holder will use an alternative decision making process (per rule 15.3), e.g. virtual meeting, correspondence or electronic voting.

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The requirement for physical creditors' meetings has been removed. Indeed an office holder can no longer call a physical meeting of creditors unless required to by a at least 10% creditors by value, 10% of total number of creditors or 10 individual creditors. Section 98 meetings have been replaced by the deemed consent procedure or a virtual meeting and final meetings have been replaced with final reports. The purpose of these changes is to reduce the costs charged to an insolvency estate.

Creditors' Correspondence

Under the 2016 Rules (rules 1.37-1.39) creditors can opt out of receiving certain correspondence from office holders. The provisions also allow them to opt back in at any time.

The 2016 Rules also make it easier for office-holders to communicate electronically with creditors. A creditor who communicated with the debtor by email before the insolvency proceedings commenced will be automatically deemed to have consented to electronic communication by the office holder, unless consent is revoked (rule 1.45). Under the 1986 Rules an office holder could only communicate with a creditor by email where the creditor had given written consent.

In addition an office holder can now give notice to creditors that future notices will be published on a website, without further notification to creditors (rule 1.50). Previously the Court's permission would have been required.

Debts Less than £1,000

Pursuant to rule 14.31 of the 2016 Rules an office holder may now pay a creditor a dividend without the need for a formal claim, if the debt is less than £1,000, providing the debtor's accounting records record the debt. This provision has been included in the 2016 Rules with a view to limiting the costs of investigating relatively small debts.

Amendments to the Insolvency Act 1986

By virtue of the amendments to the Insolvency Act 1986 made by the by the Small Business, Enterprise and Employment Act 2015, the Official Receiver will now be appointed as trustee on the making of a bankruptcy order, rather than being appointed as receiver and manager pending the appointment of a trustee. The stated purpose of this is to avoid delay between the making of a bankruptcy order and the vesting of property in the trustee. The 2016 Rules reflect this change. The transitional provisions make it clear that this applies not only to proceedings where a bankruptcy order is made after 6 April 2017, but also to those where a bankruptcy order was made prior to that date, but a trustee has not yet been appointed.

The 2016 Rules also reflect the amendments to the Insolvency Act 1986 which enable the Court to appoint an insolvency practitioner as an interim receiver following presentation of a petition, but prior to a bankruptcy order being made (see rules 10.49-10.54). Previously this was only possible in very limited circumstances, but the scope of this has been greatly widened.

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Conclusions

The 2016 Rules are expected to result in efficiency savings due to the lower costs of dealing with the administration of an insolvency. This should mean increased returns to creditors and should enable the Insolvency Service to carry out its duties at a lower cost. Whether the 2016 Rules will achieve their aims will no doubt be seen over the coming months.

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