

NEWSLETTER

Q1 March 2017

The new Insolvency Rules 2016 – in force 6 April 2017

This is the first full re-write since 1986 and involves the re-structuring of the rules to avoid repetition and the abolition of statutory forms. A brief summary of the main changes follows:

Goodbye to physical creditors' meetings (almost)

There are new rules specifying alternative forms of 'decision making'

New Procedure for Deemed Consent. Where an officeholder writes to the creditors with a proposal, and does not receive objections from 10% or more of creditors in value, the proposal is deemed to be approved. This procedure is available unless the court or the insolvency legislation requires the use of a "creditors' decision making procedure" (e.g. to approve remuneration).

Restrictions on the use of physical meetings. Whereas the 1986 Act placed heavy reliance on physical meetings, under the new regime the responsible person 'P' cannot summon physical meeting of creditors unless requested by to do so by either 10% of the creditors in value, 10% of the total number of creditors or 10 individual creditors

Alternative Creditors' Decision Making Procedures. Rule 15.3 of the 2016 Rules defines the following procedures that may be adopted as an alternative to deemed consent:- correspondence; electronic voting; virtual meetings;(such as a teleconference or Skype), physical meetings (subject to the aforementioned restriction); 'any other decision making procedure which enables all creditors who are entitled to participate in the making of the decision to participate equally'.

Abolition of requirement for certain meetings

Section 98 meetings are abolished and rule 6.14 provides that creditor approval of a liquidator's appointment in creditors' voluntary liquidation must be obtained either using the deemed consent procedure or a virtual meeting unless a physical meeting is requested.

Abolition of Final Meetings. The rules no longer require a final meeting of creditors in liquidation and bankruptcy proceedings. Instead there is a requirement that the liquidator or trustee submit a final report. Part 18 of the 2016 Rules prescribes the information to be included, the procedure for seeking further information, and the procedure for challenging remuneration claimed.

New provisions for release of liquidators and trustees. As the creditors will no longer be able to raise an objection to the release of a liquidator or trustee at the final meeting, that release is subject to creditors' rights to raise an objection within a defined period; the later of 8 weeks from delivery of the prescribed notice, (with the final reports) or the determination of an application for further information or challenge to remuneration.

Distributions

Distributions may be made to creditors without a formal claim for debts that are less than £1000. These new provisions allow an officeholder to treat small debts as automatically proved.

Commencement and Transitional Provisions relating to meetings

The aforementioned provisions relating to meetings come into force on 6 April 2017 and will apply to meetings in all insolvency proceedings, but will not apply to meetings or reporting in progress at the 6 April 2017.

Changes to the officeholder reports and communications

Creditors will be allowed to opt out of communications, there is an encouragement of email communications, and improvements to the law in relation to the use of websites. Reintroduced is the final progress report on conversion of administration to CVL. Address details of consumers and employees will no longer be published in Statements of Affairs filed at Companies House

Changes to the appointment of trustees

The Official Receiver will be automatically appointed as first trustee immediately upon the making of a bankruptcy order. There will also be no requirement for the OR to summon a creditors' meeting to appoint a first trustee.

Insolvency practitioners as interim receivers in bankruptcy proceedings

It will be possible for the court to appoint insolvency practitioners as interim receivers between presentation of a petition and a bankruptcy order.

Insolvency Service Statistics

| | Q4 2016 | Change Q4 2015 | Total 2016 | Change on 2015 |
|-----------------------------------|---------|-------------------|---------------|-------------------|
| Case numbers | | | | |
| Corporate | | | | |
| Compulsory Liquidations | 800 | 34.7% | 2,910 | 0.7% |
| Creditors' Voluntary Liquidations | 4,359 | 75.3% | 11,900 | 19.1% |
| Administrations | 327 | -3.8% | 1,349 | -3.8% |
| Company Voluntary Arrangements | 78 | -3.7% | 338 | -6.9% |
| Receiverships | 0 | -100.0% | 5 | -54.5% |
| Personal | | | | |
| Bankruptcies | 3,786 | 0.1% | 14,989 | -5.4% |
| Debt Relief Orders | 6,243 | -4.0% | 26,196 | 8.4% |
| IVAs | 12,823 | 21.7% | 49,745 | 23.2% |

Commentary

Total company insolvencies were higher in 2016 than the previous year, primarily due to 1,796 connected personal service companies entering liquidation on the same date following changes to claimable expenses rules. The underlying number of insolvencies was broadly unchanged. There was a significant increase in IVAs. Bankruptcies fell but DROs rose because of a change to eligibility criteria. In 2016 only 1 in 215 companies (0.47%) went into a formal insolvency of circa 3.1 million active registered companies in E & W. In 2016, 1 in 506 adults (0.2%) of adults became personally insolvent. The rate remains elevated compared with rates of less than 0.1% before 2004. Rates have increased with household debt since the early 2000's. Personal debt in the UK is approaching £200bn. There are no reliable figures for the number of people in **Debt Management Plans** that are not formal insolvencies but dwarf them in numbers. R3 estimates that between 300,000-700,000 people are subject to such plans.

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