

Restructuring and insolvency update
Rosling King LLP



The Insolvency (England and Wales) Rules 2016 (the “2016 Rules”) were published on 18 October 2016 and laid before Parliament on 25 October 2016. The 2016 Rules are due to come into force with effect from 6 April 2017. The 2016 Rules are the product of an extensive programme of consultation with a range of parties, including the insolvency profession, creditor representatives, insolvency regulators and public bodies. The aim was to streamline the process and reduce regulation with the ultimate goal of increasing returns to creditors.

The 2016 Rules will apply to all future insolvency appointments, as well as applying retrospectively to existing appointments in England and Wales. However, the 2016 Rules do not apply to Scotland and Northern Ireland, although new rules for Scotland and Northern Ireland are expected to follow the 2016 Rules

The Aim

The 2016 Rules are intended to do three things to the existing insolvency rules. Firstly, they are intended to replace the Insolvency Rules 1986 (the “1986 Rules”), whilst consolidating the 1986 Rules with the amendments which were subsequently made, thereby removing unnecessary procedural requirements where possible. The hope is that this will make the rules easier to use, and therefore better meet the needs of the judiciary, insolvency office-holders and public officials.

Secondly, the 2016 Rules are intended to simplify the 1986 Rules, with a particular focus on modernising the language and style of drafting of the 1986 Rules. The changes to the language of the 1986 Rules are not intended to change the content of the law, but instead to modernise and introduce gender neutral language. The 2016 Rules also restructure the 1986 Rules with a view to making them more logical, easier to understand and removing unnecessary repetition.

Finally, the 2016 Rules aim to reduce, as far as possible, the burden of red tape caused by the various changes in the law since the 1986 Rules. The 1986 Rules have been amended approximately 28 times since their introduction. In particular further to the Enterprise and Regulatory Reform Act 2011, the Deregulation Act 2015 and the Small Business, Enterprise and Employment Act 2015 which brought about major changes to the 1986 Rules, including replacing creditors’ and contributories’ meetings with decision making procedures and enabling the use of modern methods of communication. The 2016 Rules will incorporate all of these changes.

The Changes

The structural changes to the 2016 Rules include the separation by type of liquidation, to help bring clarity, and the streamlining of the procedures and processes which are common across all insolvency processes, which are set out in separate parts in the 2016 Rules.

In addition to the linguistic and structural changes, there are also substantive changes to the law, as follows:

- (1) creditors’ meetings being the default of all decision making (subject to expectations)

has now been removed and a new decision making process created. The 2016 Rules replace creditors' meetings with correspondence with creditors, in particular removing the need for the initial creditors' meeting;

(2) creditors are given the opportunity to opt-out of receiving communications from an insolvency practitioner if they wish, although this does not apply where the communication relates to dividends;

(3) creditors are now required to lodge a proof of debt in creditors' voluntary liquidations. You will note that this is required in other types of insolvency process, but not previously in a creditors' voluntary liquidation, therefore creating consistency across the different types of insolvency process;

(4) insolvency practitioners are now able to use websites and electronic mail to communicate with creditors in particular circumstances, both pre- and post- insolvency, without obtaining the creditor's written consent;

(5) there will be prescribed content for notices and documents in the 2016 Rules, as opposed to in statutory forms, which it is hoped will build in future-proofing, preventing the need for amendments to accommodate any technological advances;

(6) the requirement for an administrator to file a final progress report with a notice sent to the Registrar of Companies has been re-introduced. The notice, once registered, will convert the administration into liquidation proceedings and any relevant activities which take place between the notice being sent and the registration will be included in the liquidator's first progress report. The hope is that this will decrease the number of filings required;

(7) where a dividend payment is less than £1,000, office-holders are now entitled to rely on information in the company or bankrupt's statement of affairs or accounting records without needing the creditor to submit a claim; and

(8) insolvency practitioners can now be appointed by the Court as an interim receiver ahead of a bankruptcy petition hearing in all circumstances, as opposed to only the limited circumstances allowed under the 1986 Rules.

Impact

The impact of the 2016 Rules is largely deregulatory. The hope is that the 2016 Rules will create a more efficient process for insolvency proceedings, thereby decreasing the costs for dealing with the administration of insolvency. This should result in increased returns for creditors going forward.

The Future

The 2016 Rules come into force on 6 April 2017. The government has confirmed that they will be reviewing the 2016 Rules 5 years after they come into force, with a view to considering whether they are still fit for purpose.



For further information, please contact [James Walton](#) or the Partner with whom you usually deal.