

Restructuring and insolvency  
Rosling King LLP



The Insolvency (England and Wales) Rules 2016 come into effect In November 2016, we wrote how the Insolvency (England and Wales) Rules 2016 (the “**2016 Rules**”) were laid before Parliament on 25 October 2016 (<http://tinyurl.com/kcy2723>). The 2016 Rules came into effect on 6 April 2017 and replace the Insolvency Rules 1986 (the “**1986 Rules**”), and apply to all future insolvency appointments, as well as applying retrospectively to existing appointments in England and Wales, subject to certain transitional provisions.

We expand upon the key changes that impact creditors below.

### Key Changes

- 1 Decision Making – Whereas the 1986 Rules placed heavy reliance on physical meetings, the 2016 Rules have largely abolished physical creditors’ meetings as the default of all decision making, and the new regime has established its own prescribed decision making procedures.

Instead of face-to-face meetings, under the 2016 Rules, creditors’ meetings will largely be conducted through correspondence between the insolvency practitioners and the creditors, however decisions can also be made by electronic voting, virtual meetings or such other decision making procedure which enables all creditors, who are entitled to do so, to participate equally.

The 2016 Rules also introduce a new procedure for deemed consent, whereby if the insolvency practitioner notifies creditors of the proposed decision, the creditors shall be deemed to have approved the decision, unless more than 10% (by value) of the creditors, or (where relevant) contributories, object to the decision. Deemed consent cannot be used for certain decisions, such as deciding an insolvency practitioner’s remuneration.

- 2 Electronic communication – The changes effected by the 2016 Rules encourage the use of websites and emails.
  - 2.1 Emails - Under the 1986 Rules, an insolvency practitioner could only communicate with creditors by email where the creditor had given written consent. Under the 2016 Rules, a creditor who communicates with the debtor by email before the insolvency proceedings commenced is deemed to have consented to receive documents by email from the insolvency practitioner, unless that consent is revoked. The provision for deemed consent will not apply in insolvency proceedings commenced before 6 April 2017.
  - 2.2 Websites - Under the 1986 Rules, before an insolvency practitioner could communicate with creditors via a website, they would be required to notify the creditors that the specific notice would be available on the website, and

obtain permission from the Court. Now, under the 2016 Rules, the insolvency practitioner would not require the Court's permission, and would only need to send creditors a notice stating that all future notices and documents (other than those which require personal delivery, or detail an intention to declare a dividend) will be published on a website.

- 3 Option to Opt-Out – under the 2016 Rules, creditors can opt-out of receiving communications from insolvency practitioners, although this does not apply where the communication relates to dividends or where the 2016 Rules require notice to be given to all creditors.
- 4 Proofs of Debt – under the 2016 Rules, creditors are now required to lodge a proof of debt in creditors' voluntary liquidations. Lodging a proof of debt is required in other types of insolvency process, but not previously in a creditors' voluntary liquidation. This therefore creates consistency across the different types of insolvency process.

Whilst creditors are required to lodge a proof of debt, the 2016 Rules provide that an insolvency practitioner may treat small debts as proved. A small debt is one which is less than £1,000. This change has been introduced with a view to limiting the costs of inquiry into small debts.

- 5 Statutory forms – the 2016 Rules have abolished the prescribed statutory forms contained within the 1986 Rules, to be used in insolvency proceedings. Instead of prescribed forms, the 2016 Rules set out what should be included in the various documents and notices. This change has been made with a view to future proofing the 2016 Rules from the need for amendments to accommodate any technological advances.
- 6 Final Progress Report for administration – the 2016 Rules re-introduce the requirement for an administrator to file a final progress report with a notice sent to the Registrar of Companies. 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 Interim receiver for bankruptcies - under the 2016 Rules, 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 simplification and consolidation of rules across the various insolvency processes. The hope is that the 2016 Rules will make insolvency processes more efficient, thereby decreasing the costs for dealing with

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insolvencies. This should result in increased returns for creditors going forward.

#### [The Future](#)

The government has confirmed that they will be reviewing the 2016 Rules in five years' time, with a view to considering whether they are still fit for purpose.

For further information, please [Alex Pelopidas](#) or the Partner with whom you usually deal.

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