

January 2017

Practice Group:
Restructuring & Insolvency

Banking & Asset Finance

Modernised UK Insolvency Rules Arriving April 2017

By Jonathan Lawrence

- The updated UK Insolvency Rules 2016 will come into force on 6 April 2017.
- The new rules have four aims:
 - to reflect modern business practice and increase efficiency;
 - to restructure and modernise the 1986 Rules;
 - to implement policy changes; and
 - to consolidate the 1986 Rules and subsequent amendments.

The Insolvency Rules 2016 (the “2016 Rules”) were laid before the UK Parliament on 25 October 2016, and will come into force on 6 April 2017. The Insolvency Rules 1986 (the “1986 Rules”) and all amending legislation will be repealed.

There will be significant changes in the way insolvency practitioners conduct insolvency procedures. The structure and layout of the 2016 Rules are very different to the 1986 Rules and they seek to recognise the use of technology and electronic communication in modern business life.

Restructuring

The language used in the 2016 Rules has been modernised and the structure updated to make navigation simpler. To avoid repetition, there is greater use of common parts applicable to multiple insolvency procedures. Since the 1986 Rules were introduced, they have been amended by 28 different statutory instruments. The 2016 Rules consolidate all of these amendments. Where possible, this results in a single regime under the 2016 Rules applicable to all types of procedures.

The table below shows the structure of the 2016 Rules. For example, Part 15 contains all the decision making rules.

Part Number	Title of Part
1	Interpretation, Time and Rules about Documents
2	Company Voluntary Arrangements
3	Administration
4	Receivership
5	Members' Voluntary Winding Up
6	Creditors' Voluntary Winding Up
7	Winding Up by the Court

Modernised UK Insolvency Rules Arriving April 2017

8	Individual Voluntary Arrangements
9	Debt Relief Orders
10	Bankruptcy
11	Bankruptcy Restrictions and Debt Relief Restrictions Orders and Undertakings and Insolvency Registers
12	Court Procedure and Practice
13	Official Receivers
14	Claims by and Distributions to Creditors
15	Decision Making
16	Proxies and Corporate Representation
17	Creditors' and Liquidation Committees
18	Progress Reports and Remuneration
19	Disclaimer
20	Persons at risk of violence and non-disclosure of addresses
21	The EC Regulation
22	Permission to Act as Director etc. of Company with a Prohibited Name

Abolition of statutory forms

The 2016 Rules no longer prescribe any statutory forms. Instead, Part 1 sets out general rules about documents and specific rules set out the exact requirements for particular notices. For example, rule 1.35 sets out the contents of application notices. The required information must be provided in the order listed in the relevant rule or in another order which the author considers would be convenient for the intended recipient.

In practice, it is likely that commercial providers will develop forms that become the market practice. It is expected that Companies House will continue to use prescribed forms for documents that are required to be submitted to the Registrar of Companies and these are currently being updated.

Key changes

The key changes are:

New decision-making procedures

Alternative procedures may be used to make decisions in insolvency proceedings. These include correspondence, electronic voting, virtual meetings, physical meetings (subject to the restrictions below), or any other procedure which enables all creditors entitled to participate in the making of the decision to participate equally.

New deemed consent procedure

Where an officeholder writes to creditors with a proposal, and fewer than 10% of creditors in value object, the proposal is deemed to be approved.

Modernised UK Insolvency Rules Arriving April 2017

Emails	A creditor who communicated with the debtor by email before the insolvency proceedings commenced will be deemed to have consented to electronic communication by the office holder, unless that consent is revoked. The deemed consent provision will not apply to insolvency proceedings commenced before 6 April 2017.
Use of websites	An office holder can give notice to creditors that future notices will be published on a website without further notification to creditors. This previously required court permission. There are certain exceptions: documents for which personal delivery is required, notices of intention to declare a dividend and documents which are not delivered generally.
Progress reports	The office holder's obligation to produce progress reports every 6-12 months (depending on the insolvency process) is fixed in relation to the day of appointment, and will not be affected by any change of office holder. A final progress report must be issued on conversion of an administration to a liquidation.
Restrictions on calling creditors' meetings	An office holder can no longer call a physical meeting of creditors unless requested to do so by a minimum number of creditors - either 10% of creditors by value, or 10% of creditors by number, or 10 individual creditors.
Removal of requirement for creditors' meetings	These provisions will apply to meetings in all insolvency proceedings, including those commencing before 6 April 2017, except certain meetings where notices or reports were issued before that date. The requirement to hold certain meetings has been abolished. For example, creditor approval of a liquidator in a creditors' voluntary liquidation must be obtained either using the deemed consent procedure or a virtual meeting. Final meetings of creditors in liquidation and bankruptcy are no longer required. Instead the liquidator or trustee must file a final report. The liquidator or trustee's release from liability is subject to creditors' rights to raise an objection within a prescribed period.
Ability to opt out of communications	Creditors can opt out of receiving certain communications from office holders. They can also opt back in at any time. Certain documents must continue to be delivered, for example, changes of office holder contact details and notices of distributions.
Address details of consumers and employees	Where a statement of affairs that is to be filed at Companies House would otherwise include details of creditors who are consumers or employees, it should simply note the number of such creditors and the total value of their debts.
Payment of small dividends without formal claim	An office holder may now treat debts of less than £1,000 as proved without the requirement for the creditor to submit a formal claim, providing that the debtor's accounting records or statement of affairs records the debt.

Modernised UK Insolvency Rules Arriving April 2017

Conclusion

Given the length of time the existing rules have been in place, the new rules will take some time to assimilate and require ongoing review to assess whether they meet the stated aims of promoting efficiency and increasing returns to creditors.

Further resources

For the full text of the new Rules, please click [here](#).

The UK Insolvency Service has published a [table of derivations](#) showing where rules in the 1986 Rules are to be found in the 2016 Rules and also [explanatory notes](#) to the 2016 Rules.

Author:

Jonathan Lawrence
Jonathan.Lawrence@klgates.com
+44.(0).20.7360.8242

K&L GATES

Anchorage Austin Beijing Berlin Boston Brisbane Brussels Charleston Charlotte Chicago Dallas Doha Dubai
Fort Worth Frankfurt Harrisburg Hong Kong Houston London Los Angeles Melbourne Miami Milan Munich Newark New York
Orange County Palo Alto Paris Perth Pittsburgh Portland Raleigh Research Triangle Park San Francisco São Paulo Seattle
Seoul Shanghai Singapore Sydney Taipei Tokyo Warsaw Washington, D.C. Wilmington

K&L Gates comprises approximately 2,000 lawyers globally who practice in fully integrated offices located on five continents. The firm represents leading multinational corporations, growth and middle-market companies, capital markets participants and entrepreneurs in every major industry group as well as public sector entities, educational institutions, philanthropic organizations and individuals. For more information about K&L Gates or its locations, practices and registrations, visit www.klgates.com.

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

© 2017 K&L Gates LLP. All Rights Reserved.