

**2011 No. 0000**

**INSOLVENCY**

**The Insolvency (Amendment) (No. 2) Rules 2011**

*Made* - - - - - \*\*\*

*Laid before Parliament* \*\*\*

*Coming into force* - - - [1st October 2011]

The Lord Chancellor has consulted the committee existing for the purposes of section 413 of the Insolvency Act 1986(a) (“the Act”).

The Lord Chancellor makes the following Rules—

in exercise of the powers conferred by section 411(b) of the Act, and with the concurrence of the Secretary of State.

**PART 1**

**General**

**Citation and commencement**

1. These Rules may be cited as the Insolvency (Amendment) (No. 2) Rules 2011 and come into force on [1st October 2011].

**Review**

2.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of these Rules,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by these Rules,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) “Review period” means—

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(a) 1986 c. 45.

(b) Section 411 was amended by the Insolvency Act 1986 (Amendment) Regulations 2002 (S.I. 2002/1037).



- (a) the purpose of the administration will be achieved, in whole or in part, by means of a pre-pack sale, and
- (b) the consideration to be received for the pre-pack sale will achieve a better result for the company's creditors as a whole than anything else,

the administrator must add to the end of paragraph 3 of Form 2.2B the words, "by means of a pre-pack sale and that such a sale will achieve a better result for the company's creditors as a whole than anything else".

(4) At the end of Rule 2.23 add—

"(3) Where the administrator is of the opinion that—

- (a) the purpose of the administration will be achieved, in whole or in part, by means of a pre-pack sale, and
- (b) the consideration to be received for the pre-pack sale will achieve a better result for the company's creditors as a whole than anything else,

the administrator must add to the end of paragraph 3 of Form 2.2B the words, "by means of a pre-pack sale and that such a sale will achieve a better result for the company's creditors as a whole than anything else".

### **Opinion that pre-pack represents best value for creditors: winding up**

6. After paragraph (2) in each of Rules 4.100, 4.101, 4.102 and 4.103 insert—

"(2A) Where the person to be appointed as liquidator is of the opinion that the consideration to be received for a pre-pack sale will achieve a better result for the company's creditors as a whole than anything else, that person must include a statement to that effect in the written statement made under paragraph (2)."

## **PART 3**

### **Sales to connected or associated parties**

#### **Definition of "connected or associated party"**

7. After Rule 13.13(20), added by rule 4 above, add—

"(21) A connected or associated party in relation to a company is a person who is connected<sup>(a)</sup> with the company or an associate<sup>(b)</sup> of a member or secured creditor of the company."

#### **Notice to creditors: administration**

8. After Rule 2.33A insert—

##### **"Notice of sale to connected or associated party**

**2.33B.**—(1) The administrator may not realise—

- (a) the whole or a substantial part of the assets of the company, or
- (b) the assets needed for continuance of the business of the company or a substantial part of the business of the company,

unless one of the conditions in paragraph (2) is satisfied.

(2) Those conditions are that—

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(a) "Connected" is defined in 1986 c. 45, s. 249.

(b) "Associate" is defined in 1986 c.45, s. 435.

- (a) the realisation does not result, directly or indirectly, in the transfer of the assets to a connected or associated party, or
  - (b) if the realisation does so result, either—
    - (i) the assets were previously offered or otherwise made available for sale in the open market—
      - (aa) by the administrator, or
      - (bb) within the 3 months immediately before the company entered administration, or
    - (ii) notice complying with paragraph (3) was given in accordance with paragraph (4) to every creditor of the company of whose address the administrator was aware.
- (3) The notice must—
- (a) contain the information which would be required by Rules 12A.38(2) and 12A.39 if the notice were advertised;
  - (b) specify—
    - (i) the assets of the company which the administrator proposes to realise or to transfer, directly or indirectly, to a connected or associated party, and
    - (ii) the assets of the company which the administrator does not propose so to realise or transfer;
  - (c) identify the connected or associated party;
  - (d) specify the nature of—
    - (i) any connection between the company and the connected or associated party, and
    - (ii) any association between a member or secured creditor of the company and the connected or associated party;
  - (e) set out the terms (contractual or otherwise) under which the administrator proposes to realise or transfer the assets, including the amount of any consideration to be received;
  - (f) state whether the assets which the administrator proposes to realise or transfer have been valued by a person who is not an associate of the administrator or of the connected or associated party and, if so, whether the amount of any consideration to be received is not less than the valuation;
  - (g) state that creditors may make representations to the administrator about the proposed realisation or transfer;
  - (h) indicate the earliest date on which the proposed realisation or transfer may occur in accordance with paragraph (4).
- (4) The notice must be given so that not less than 3 business days fall between the day on which every creditor is given notice and the day upon which any of the assets in question is realised or transferred (whether to a connected or associated party or otherwise).
- (5) This Rule does not prevent the administrator from transferring any perishable goods the value of which is likely to diminish if they are not disposed of.”.

**Notice to creditors: winding up**

9. After Rule 4.179 insert—

**“Notice of sale to connected or associated party**

**4.179A.**—(1) The liquidator may not realise—

- (a) the whole or a substantial part of the assets of the company, or

(b) the assets which would be needed for continuance of the business of the company or a substantial part of the business of the company, were it not to be wound up, unless one of the conditions in paragraph (2) is satisfied.

(2) Those conditions are that—

- (a) the realisation does not result, directly or indirectly, in the transfer of the assets to a connected or associated party, or
- (b) if the realisation does so result, either—
  - (i) the assets were previously offered or otherwise made available for sale in the open market—
    - (aa) by the liquidator, or
    - (bb) within the 3 months immediately before commencement of the winding up, or
  - (ii) notice complying with paragraph (3) was given in accordance with paragraph (4) to every creditor of the company of whose address the liquidator was aware.

(3) The notice must—

- (a) contain the information which would be required by Rules 12A.38(2) and 12A.39 if the notice were advertised;
- (b) specify—
  - (i) the assets of the company which the liquidator proposes to realise or to transfer, directly or indirectly, to a connected or associated party, and
  - (ii) the assets of the company which the liquidator does not propose so to realise or transfer;
- (c) identify the connected or associated party;
- (d) specify the nature of—
  - (i) any connection between the company and the connected or associated party, and
  - (ii) any association between a member or secured creditor of the company and the connected or associated party;
- (e) set out the terms (contractual or otherwise) under which the liquidator proposes to realise or transfer the assets, including the amount of any consideration to be received;
- (f) state whether the assets which the liquidator proposes to realise or transfer have been valued by a person who is not an associate of the liquidator or of the connected or associated party and, if so, whether the amount of any consideration to be received is not less than the valuation;
- (g) state that creditors may make representations to the liquidator about the proposed realisation or transfer;
- (h) indicate the earliest date on which the proposed realisation or transfer may occur in accordance with paragraph (4).

(4) The notice must be given so that not less than 3 business days fall between the day on which every creditor is given notice and the day upon which any of the assets in question is realised or transferred (whether to a connected or associated party or otherwise).

(5) This Rule does not prevent the liquidator from transferring any perishable goods the value of which is likely to diminish if they are not disposed of.”

## PART 4

### Sales of substantial or necessary assets

#### Sale before statement, or revised statement, of administrator's proposals

10.—(1) After Rule 2.33(2)(e) insert—

“(ea) if—

- (i) the whole or a substantial part of the assets of the company, or
- (ii) the assets needed for continuance of the business of the company or a substantial part of the business of the company,

have already been disposed of to a single person or a group of connected or otherwise associated persons, details of any previous relationship between the administrator and the company or its directors (including shadow directors), members or secured creditors;”.

(2) After Rule 2.33(2)(o) insert—

“(oa) if—

- (i) the whole or a substantial part of the assets of the company, or
- (ii) the assets needed for continuance of the business of the company or a substantial part of the business of the company,

have already been disposed of to a single person or a group of connected or otherwise associated persons, a statement of the matters specified in paragraph (2ZA), so far as not already included in the statement under sub-paragraph (o);”.

(3) After Rule 2.33(2) insert—

“(2ZA) The matters referred to in paragraph (2)(oa) are—

- (a) if notice had been given to creditors under Rule 2.33B(2)(b)(ii), what happened after that, including—
  - (i) the response of the administrator to representations received from creditors,
  - (ii) what further steps were taken by the company or the administrator to dispose of the company's assets, and
  - (iii) offers and expressions of interest received by the administrator for the acquisition of the company's assets;
- (b) valuations of the company's assets obtained by the administrator, including in each case the identity of the valuer;
- (c) the date of the disposal referred to in paragraph (2)(oa);
- (d) the assets of the company disposed of by the administrator;
- (e) the assets of the company not disposed of by the administrator;
- (f) the consideration received for the disposal, including the terms for its payment and any security received in respect of deferred payment;
- (g) any conditions of the contract for the disposal which might affect its value to the company;
- (h) the identity of the acquirer;
- (j) any connection or association between the acquirer and the company, its members or its secured creditors;
- (k) any guarantee of which the administrator is aware which has been given by a director or former director of the company to a creditor of the company who has lent or proposes to lend money or otherwise extend credit to the acquirer;

and for the purpose of this paragraph, the acquirer of assets disposed of includes the person (or group of connected or otherwise associated persons) to whom the assets were disposed

of and any person (or group of connected or otherwise associated persons) to whom the assets are subsequently transferred before the administrator makes the statement under this Rule.”.

### **Sale before first progress report in winding up**

#### **11.—(1) After Rule 4.49B(3) insert—**

“(3A) If either the whole or a substantial part of the assets of the company, or the assets needed for continuance of the business of the company or a substantial part of the business of the company, are disposed of to a single person or a group of connected or otherwise associated persons before the end of the period covered by the first progress report, that report must contain—

- (a) details of any previous relationship between the liquidator and the company or its directors (including shadow directors), members or secured creditors;
- (b) if notice had been given to creditors under Rule 4.179A(2)(b)(ii), what happened after that, including—
  - (i) the response of the liquidator to representations received from creditors,
  - (ii) what further steps were taken by the company or the liquidator to dispose of the company’s assets, and
  - (iii) details of offers and expressions of interest received by the liquidator for the acquisition of the company’s assets;
- (c) details of valuations of the company’s assets obtained by the liquidator, including in each case the identity of the valuer;
- (d) the date of the disposal;
- (e) the assets of the company disposed of by the liquidator;
- (f) the assets of the company not disposed of by the liquidator;
- (g) the consideration received for the disposal, including the terms for its payment and any security received in respect of deferred payment;
- (h) any conditions of the contract for the disposal which might affect its value to the company;
- (j) the identity of the acquirer;
- (k) any connection or association between the acquirer and the company, its members or its secured creditors;
- (l) details of any guarantee of which the liquidator is aware which has been given by a director or former director of the company to a creditor of the company who has lent or proposes to lend money or otherwise extend credit to the acquirer;

and for the purpose of this paragraph, the acquirer of assets disposed of includes the person (or group of connected or otherwise associated persons) to whom the assets were disposed of and any person (or group of connected or otherwise associated persons) to whom the assets are subsequently transferred before the end of the period covered by the first progress report.”.

#### **(2) In Rule 4.49C(5)—**

- (a) for “(2) and (3)” substitute “(2), (3) and (3A)”;
- (b) at the end of sub-paragraph (b)(ii), omit “, and”;
- (c) after sub-paragraph (c) add—

“, and
- (d) Rule 4.49B(3A) is to be disregarded.”.

## **EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules amend the Insolvency Rules 1986 in respect of administration, winding up by the court and creditors' voluntary winding up. They apply in England and Wales only.

Rule 2 requires the Secretary of State to review the operation and effect of these Rules and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the 1986 Rules should remain as they are or be amended to remove the provisions inserted by these Rules. A further instrument would be needed to amend the the 1986 Rules in that way.

Part 2 of the Rules (rules 4 to 6) makes provision about "pre-pack sales", defined in rule 4 as sales of the whole or a substantial part of the assets or business of the company arranged before the appointment of the administrator or liquidator. The administrator or liquidator must give an opinion that the sale will achieve a better result for creditors than anything else.

Part 3 of the Rules (rules 7 to 9) makes provision about sales to connected or associated parties, defined in rule 7 by reference to the definitions of "connected person" and "associate" in sections 249 and 435 of the Insolvency Act 1986. The administrator or liquidator must not sell the whole or a substantial part of the assets or business of the company to connected or associated parties unless they were previously available for sale on the open market or three clear business days' notice is given to creditors.

Part 4 of the Rules (rules 10 and 11) require the administrator or liquidator to report details of a sale of the whole or a substantial part of the assets or business of the company if it takes place before the making of the administrator's proposals or the liquidator's first progress report.

**DRAFT**