

BLAKE-TURNER

COMPANY BULLETIN

April 2010

The Insolvency (Amendment) Rules 2010

On 6 April 2010, the Insolvency (Amendment) Rules 2010 came into force to implement changes to the Insolvency Rules 1986. The stated aim of the amendments was to introduce significant changes to the Insolvency Rules 1986 and the Insolvency Act 1986 with the intention of reducing the time and cost of insolvency proceedings.

The amendments are wide-ranging and therefore our intention in this bulletin is to flag up some highlights and pointers that may assist your practice in the first few weeks post-implementation. If you feel that more specific advice would be of assistance to you in any area then please do not hesitate to contact us for more information.

Generally, practitioners should be aware that:

- The time scales for giving notice of meetings and in relation to adjournments of meetings have been reduced. For example, when a liquidator convenes a meeting during the course of a compulsory liquidation, 14 days' notice of the meeting may be given rather than 21.
- Providing insolvency practitioners meet certain requirements they are now in many instances able to give out information using web-sites and electronic communication rather than post. Attendance at meetings may also now take place via video conference.
- Where the Insolvency Rules previously required affidavit evidence to be filed this is replaced with the use of witness statements instead, including for the purposes of supporting winding-up and bankruptcy petitions.
- There are new insolvency forms, fees, time limits and procedures, and the Civil Procedure Rules 1998 apply to the calculation of time periods for service of Court documents.

The following is a summary of some key changes in specific areas of practice:

Administration

The long awaited and most significant change concerns the new ability of an insolvency practitioner to recover pre-appointment fees and expenses incurred *with a view to the administration* of a company. These should ideally be ratified by way of the creditors' approval of the administrator's proposals. It would seem sensible for practitioners to henceforth record in contemporaneous minutes and correspondence that pre-appointment work is being carried out with a view to the administration.

An administrator may now also be remunerated for his work as administrator on a fixed fee basis and/or be remunerated on a different basis for different aspects of his work as an administrator.

A qualifying floating charge holder may now appoint an administrator out of court by email.

An administrator may postpone or cancel a distribution of assets to creditors if there is a challenge to the administrator's valuation of a creditor's claim.

Liquidation

The Court is now generally less involved in liquidations. For example, neither the notice of appointment, nor notices of creditors' meetings need be filed at Court.

As with administration and bankruptcy, a liquidator may now be remunerated for his work as administrator on a fixed fee basis and/or on a different basis for different aspects of his work as liquidator.

A notice of disclaimer is now effective as soon as a liquidator or trustee in bankruptcy authenticates it. There is no longer a requirement to lodge the notice at the Court or for the Court to seal it to become effective. A copy of the notice must be sent, however, to the Registrar of Companies and to every person who claims an interest or is under any liability in respect of the disclaimed property within 7 business days.

Bankruptcy

Insolvency practitioners must give periodic progress reports to creditors and a final progress report at the end of the appointment. Other changes relating to disclaimers, shorter notice periods and the trustee's options relating to remuneration by way of fixed fee and/or for different aspects of work carried out mirror the changes in liquidation and administration.

Implementation

The amendments apply in their entirety to insolvency proceedings commenced after 6 April 2010, unless those proceedings follow on from insolvency proceedings commenced before 6 April 2010.

Further, some of the minor amendments such as electronic communications, video meetings and the use of witness statements rather than affidavits apply to all proceedings, whether commenced before or after 06 April 2010.

If you have any queries about the effect of the amendments or, indeed, any insolvency related matter then please do not hesitate to contact us.

For further information please contact:

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Paul Cooper is a partner at Blake-Turner & Co who focuses on giving commercially driven advice to businesses, individuals and professionals with a view to efficiently obtaining the best solutions for his clients. He runs the corporate/commercial department with Peter Blake-Turner and is also an experienced commercial litigator.

