Justice

PRACTICE DIRECTION – INSOLVENCY PROCEEDINGS

Contents of this Practice Direction

PART ONE: GENERAL PROVISIONS

1. Definitions

1.1 In this Practice Direction, which shall be referred to as the "IPD", the following definitions will apply:

(1) The "Act" means the Insolvency Act 1986 and includes the Act as applied to limited liability partnerships by the Limited Liability Partnerships Regulations 2001 or as applied to any other person or body by virtue of the Act or any other legislation;

(2) The "Insolvency Rules" means the rules for the time being in force and made under s.411 and s.412 of the Act in relation to Insolvency Proceedings (currently The Insolvency (England and Wales) Rules 2016, as amended), and, save where otherwise provided, any reference to a 'rule' is to a rule in the Insolvency Rules;

(3) "CPR" means the Civil Procedure Rules and "CPRPD" means a Civil Procedure Rules Practice Direction;

(4) "EU Regulation on Insolvency Proceedings" means either the Council Regulation (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings or the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings (known as the "Recast" EU Insolvency Regulation), as applicable

(5) "Service Regulation" means Council Regulation (EC) No. 1393/2007 or such successor regulation as may come into force replacing Council Regulation (EC) No. 1393/2007 concerning the service in the Member States of judicial and extrajudicial documents in civil and commercial matters;

(6) "Insolvency proceedings" means:

(a) any proceedings under Parts 1 to 11 of the Act, the Insolvency Rules, the Administration of Insolvent Estates of Deceased Persons Order 1986 (S.I. 1986 No.1999), the Insolvent Partnerships Order 1994 (S.I. 1994 No. 2421) or the Limited Liability Partnerships Regulations 2001;

(b) any proceedings under the EU Regulation on Insolvency Proceedings or the Cross-Border Insolvency Regulations 2006 (SI 2006/1030); and

(c) in an insolvency context an application made pursuant to s.423 of the Act.

(7) References to a 'company' include a limited liability partnership and references to a 'contributory' include a member of a limited liability partnership;

(8) The following judicial definitions apply:

(a) "District Judge" means a person appointed a District Judge under s.6(1) of the County Courts Act 1984;

(b) "District Judge Sitting in a District Registry" means a District Judge sitting in an assigned District Registry having insolvency jurisdiction as a District Judge of the High Court under s.100 of the Senior Courts Act 1981;

(c) "Circuit Judge" means a judge sitting pursuant to s.5(1)(a) of the County Courts Act 1984;

(d) "ICC Judge" means a person appointed to the office of Insolvency and Companies Court Judge (previously, Registrar in Bankruptcy) under s.89(1) of the Senior Courts Act 1981;

(e) "High Court Judge" means a High Court Judge listed in s.4(1) of the Senior Courts Act 1981.

(9) The definitions in paragraph 1.1(8) include Deputies unless otherwise specified and Deputies are defined as meaning, for each definition above respectively, a deputy District judge appointed under s.8 of the County Courts Act 1984, a deputy District Judge of the High Court appointed under s.102 of the Senior Courts Act 1981, a deputy Circuit Judge appointed under s.24 of the Courts Act 1971, a deputy ICC Judge appointed under s.91 of the Senior Courts Act 1981, and a judicial office holder acting as a judge of the High Court under s.9(1) of the Senior Courts Act 1981 or a deputy judge of the High Court appointed under s.9(4) of the Senior Courts Act 1981;

(10) "Court" means the High Court or any County Court hearing centre having insolvency jurisdiction;

(11) "Royal Courts of Justice" means the Business and Property Courts of England and Wales at the Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL.

(12) In part six of this IPD "assessor" means a person appointed as an assessor under s.70 of the Senior Courts Act 1981 or s.63 of the County Courts Act 1984] as an assessor.

Back to top

2. Coming into force

2.1 This IPD shall come into force on 4 July 2018 and shall replace all previous Practice Directions, Practice Statements and Practice Notes relating to insolvency proceedings. This IPD does not affect PDs 51P - Pilot for Insolvency Express Trials, and for the avoidance of doubt, does not affect the PD for Directors' Disqualification Proceedings.

2.2 If at the date of commencement of this IPD, a petition or application within or for the commencement of insolvency proceedings has already been listed for a hearing at a County Court hearing centre and such County Court hearing centre would otherwise have had jurisdiction to hear and determine that petition or application as at 24th April 2018, paragraph 3 of this IPD shall not apply and a judge at that hearing centre may proceed to determine that petition or application, unless

the court considers or the parties agree that it would be appropriate to transfer the petition or application in line with paragraph 3.6 in any event, in which case paragraphs 3.8-3.10 may be considered.

Back to top

3. Distribution of business

3.1 In the High Court, all petitions and applications, save where paragraph 3.2 below provides otherwise, should be listed for an initial hearing before an ICC Judge in the Royal Courts of Justice, or a District Judge Sitting in a District Registry.

3.2 The following applications relating to insolvent companies or insolvent individuals must be listed before a High Court Judge:

(1) applications for committal for contempt; and

(2) applications for a search order (CPR 25.1(1)(h)) and a freezing order (CPR 25.1(1)(f)).

3.3 The following applications relating to insolvent companies or insolvent individuals may be listed before a High Court Judge or ICC Judge but, subject to paragraph 3.4 below, not before a District Judge Sitting in a District Registry or a District Judge:

(1) applications for an administration order;

(2) applications for an injunction pursuant to the Court's inherent jurisdiction (e.g. to restrain the presentation or advertisement of a winding up petition);

(3) interim applications and applications for directions or case management after any proceedings have been referred or adjourned to the High Court Judge;

(4) applications for the appointment of a provisional liquidator; and

(5) applications for an injunction (other than those referred to in paragraph 3.2(2) above) pursuant to s.37 of the Senior Courts Act 1981, including an ancillary order under CPR 25.1(1)(g).

3.4 The following applications relating to insolvent companies or insolvent individuals may be listed before a District Judge Sitting in a District Registry only with the consent of the Supervising Judge for the circuit in which the District Judge is sitting, or with the consent of the Supervising Judge's nominee:

(1) applications pursuant to the Court's inherent jurisdiction (e.g. to restrain the presentation or advertisement of a winding up petition);

(2) interim applications and applications for directions or case management after any proceedings have been referred or adjourned to a High Court Judge.

3.5 When deciding whether to hear and determine proceedings or to refer or adjourn them to a different level of judge, regard must be had to the following factors:

(1) whether the proceedings raise new or controversial points of law or have wide public interest implications;

(2) which venue can provide the earliest date for the hearing;

(3) the likely length of the hearing; and/or

(4) whether the petition or application includes or is likely to include matters that must be heard by a High Court Judge under paragraph 3.2 above.

3.6 Where an application or petition for the commencement of insolvency proceedings, or any application or petition within existing insolvency proceedings, is issued in a County Court hearing centre having insolvency jurisdiction, unless the application or petition is Local Business, the application or petition but more usually the entirety of those insolvency proceedings shall be transferred:

(a) to a County Court hearing centre having insolvency jurisdiction located at a Business and Property Court in the same circuit; or

(b) to the Central London County Court if the application or petition was issued in a County Court hearing centre located in the South-Eastern circuit; or

(c) to one of the specialist centres specified in a list published from time to time by the Chancellor of the High Court or their nominee, and located in the same circuit as the hearing centre in which the application or petition was issued,

and be listed before a judge specialising in Business and Property Courts work as defined in paragraph 4.4 of the Business and Property Courts Practice Direction (the “specialist judge”). (The current list of specified specialist centres may be found at https://www.judiciary.uk/insolvency-proceedings-practice-direction-specified-specialist-hearing-centres/).

3.7 For the purpose of paragraph 3.6 Local Business means (i) applications to set aside statutory demands; (ii) unopposed creditors’ winding up petitions; (iii) unopposed bankruptcy petitions; (iv) applications for income payment orders; (v) applications for and the conduct of public and private examinations; (vi) warrants for arrest in connection with the conduct of public or private examinations; (vii) claims for possession by an office-holder against a bankrupt (whether or not the bankrupt has been discharged); (viii) claims falling under the Trusts of Land and Appointment of Trustees Act 1996 (notwithstanding the application of section 335A of the Act); (ix) claims for the granting or enforcement of charging orders pursuant to section 313 of the Act; (x) unopposed applications by the Official Receiver to suspend discharge from bankruptcy, and if the application transpires to be opposed, any application by the Official Receiver for an interim suspension pending the matter being heard following its transfer pursuant to paragraph 3.6 above; and (xi) applications for debt relief orders under Part 7A of the Act Such Local Business may be heard and determined by any judge in the County Court hearing centre in which those insolvency proceedings were issued, unless such a judge considers that it would be appropriate to transfer them in accordance with paragraph 3.6 in any event.

3.8 Where insolvency proceedings are transferred under paragraph 3.6 or 3.7, they shall be listed for review on paper before a specialist judge in the receiving court as soon as possible. The specialist judge shall determine of their own initiative where the application (or any part of it) can most fairly be determined having regard to (i) the nature and complexity of the issues; (ii) the amounts involved in the insolvency proceedings or insolvency application; (iii) the location and needs of the parties; (iv) the available judicial resources; and (v) all the other circumstances of the case. The specialist judge shall take into account any views of the transferring judge and those of the parties to the application expressed in writing (without the need for evidence).

3.9 The options available to the specialist judge include (but are not limited to):

(a) Retaining the entirety of the insolvency proceedings in the receiving court;

(b) Retaining the entirety of the insolvency proceedings in the receiving court but fixing the venue of any hearing before a specialist judge at some other hearing centre or by some means other than a physical hearing;

(c) Returning the insolvency proceedings to the sending court to be dealt with as if it were Local Business;

(d) Retaining the insolvency proceedings in the receiving court but transferring some part back for hearing or for management and hearing in the sending court as if it were Local Business.

3.10 The case management decision about transfer shall be recorded in an order made of the specialist judge's own initiative.

Back to top

4. Court documents

4.1 All insolvency proceedings should be commenced and applications in insolvency proceedings should be made using the information prescribed by the Act, Insolvency Rules, the Business and Property Courts Practice Direction and/or other legislation under which the same is or are brought or made. Some forms relating to insolvency proceedings may be found at:

http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=Bankruptcy%20and%20Insolvency

Back to top

5. Service of Court documents in insolvency proceedings

5.1 Schedule 4 to the Insolvency Rules prescribes the requirements for service where a Court document is required to be served pursuant to the Act or the Insolvency Rules. Pursuant to Schedule 4, CPR Part 6 applies except where Schedule 4 provides otherwise, or the court otherwise approves or directs.

5.2 Subject to the Court approving or directing otherwise, CPR Part 6 applies to the service of Court documents both within and out of the jurisdiction.

5.3 Attention is drawn to paragraph 6 of Schedule 4 to the Insolvency Rules which provides that where the Court has directed that service be effected in a particular manner, the certificate of service must be accompanied by a sealed copy of the order directing such manner of service.

5.4 The provisions of CPR Part 6 are modified by Schedule 4 to the Insolvency Rules in respect of certain documents. Reference should be made to the "Table of requirements for service" in Schedule 4. Notable modifications relate to the service of: (a) a winding up petition; and (b) an application for an administration order.

5.5 A statutory demand is not a Court document.

6. Drawing up of orders

6.1 The parties are responsible for drawing up all orders, unless the Court directs otherwise. Attention is drawn to CPRPD 40B 1.2 and the Chancery Guide. All applications should be accompanied by draft orders.

7. Urgent applications

7.1 In the Royal Courts of Justice the ICC Judges and the High Court Judges (and in other Courts exercising insolvency jurisdiction the High Court Judges, District Judges Sitting in a District Registry and District Judges) will hear urgent applications and time-critical applications as soon as reasonably practicable. This may involve delaying the hearing of another matter. Accordingly, parties asking for an application to be dealt with urgently must be able to justify the urgency with reasons.

PART TWO: COMPANY INSOLVENCY

8. Administrations

8.1 Attention is drawn to paragraph 2.1 of the Electronic Practice Direction 51O -The Electronic Working Pilot Scheme, or to any subsequent Electronic Practice Direction made after the date of this IPD, where a notice of appointment is made using the electronic filing system. For the avoidance of doubt, and notwithstanding the restriction in sub-paragraph (c) to notices of appointment made by qualifying floating charge holders, paragraph 2.1 of the Electronic Practice Direction 51O shall not apply to any filing of a notice of appointment of an administrator outside Court opening hours, and the provisions of Insolvency Rules 3.20 to 3.22 shall in those circumstances continue to apply.

8.2 Paragraph 5.4 of the Electronic Practice Direction 510 provides that 'the date and time of payment' will be the filing date and time and 'it will also be the date and time of issue for all claim forms and other originating processes submitted using Electronic Working'.

8.3 In the absence of special circumstances, an application for the extension of an administration should be made not less than one month before the end of the administration. The evidence in support of any later application must explain why the application is being made late. The Court will consider whether any part of the costs should be disallowed where an application is made less than one month before the end of the administration.

9. Winding up petitions

9.1. Where a winding up petition is presented following service of a statutory demand, the statutory demand must contain the information set out in rule 7.3 of the Insolvency Rules and should, as far as possible, follow the form which appears at https://www.gov.uk/government/publications/demand-immediate-payment-of-a-debt-from-a-limited-company-form-sd1.

9.2 Before presenting a winding up petition, the creditor must conduct a search to ensure that no petition is pending. Save in exceptional circumstances a second winding up petition should not be presented whilst a prior petition is pending. A petitioner who presents a petition while another petition is pending does so at risk as to costs.

9.3 Payment of the fee and deposit

9.3.1 Unless the petition is one in respect of which rule 7.7(2)(b) of the Insolvency Rules applies, a winding up petition will not be treated as having been presented until the Court fee and official receiver's deposit have been paid.

9.3.2 A petition filed electronically without payment of the deposit will be marked "private" and will not be available for inspection until the deposit has been paid. The date of presentation of the petition will accord with the date on which the deposit has been paid. If the official receiver's deposit is not paid within 7 calendar days after filing the petition, the petition will not be accepted, in accordance with paragraph 5.3 of the Electronic Practice Direction 510 -The Electronic Working Pilot Scheme. If a petition is not accepted, a new petition will have to be filed if the petitioner wishes to wind up a company.

9.3.3 The deposit will be taken by the Court and forwarded to the official receiver. In the Royal Courts of Justice the petition fee and deposit should be paid by cheque, or by debit or credit card over the phone. The Court will record the receipt and will impress two entries on the original petition, one in respect of the Court fee and the other in respect of the deposit. In a District Registry or a County Court hearing centre, the petition fee and deposit should be paid to the staff of the duly authorised officer of the Court, who will record its receipt.

9.3.4 If payment is made by cheque, it should be made payable to 'HM Courts and Tribunals Service' or 'HMCTS'. For the purposes of paragraph 9.3 of this IPD, the deposit will be treated as paid when the cheque is received by the Court.

9.4 Save where by reason of the nature of the company or its place of incorporation the information cannot be stated (in which case as much similar information as is available should be given), every creditor's winding up petition must (in the case of a company) contain the information set out in rule 7.5. Similar information (so far as is appropriate) should be given where the petition is presented against a partnership.

9.5 Where the petitioning creditor relies on failure to pay a debt, details of the debt relied on should be given in the petition (whether or not they have been given in any statutory demand served in respect of the debt), including the amount of the

debt, its nature and the date or dates on or between which it was incurred.

9.6 The statement of truth verifying the petition in accordance with rule 7.6 should be made no more than ten business days before the date of issue of the petition.

9.7 Where the company to be wound up has been struck off the register, the petition should state that fact and include as part of the relief sought an order that it be restored to the register. Save where the petition has been presented by a Minister of the Crown or a government department, evidence of service on the Government Legal Department or the Solicitor for the Affairs of the Duchy of Lancaster or the Solicitor to the Duchy of Cornwall (as appropriate) should be filed exhibiting the bona vacantia waiver letter.

9.8 Notice of the petition

9.8.1 The provisions contained in Chapter 4 of Part 1 and in particular rule 7.10 must be followed (unless waived by the Court). These provisions are designed to preserve the sanctity of the class remedy in any given winding up by the Court. Failure to comply with rule 7.10 may lead to summary dismissal of the petition on the return date. If the Court, in its discretion, grants an adjournment, this will usually be on terms that notice of the petition is gazetted or otherwise given in accordance with the Insolvency Rules in due time for the adjourned hearing. No further adjournment to comply with rule 7.10 will normally be given.

9.8.2 Copies of every notice gazetted in connection with a winding up petition, or where this is not practicable a description of the form and content of the notice, must be lodged with the Court as soon as possible after publication and in any event not later than five business days before the hearing of the petition. This direction applies even if the notice is defective in any way (e.g. is published on a date not in accordance with the Insolvency Rules, or omits or misprints some important words) or if the petitioner decides not to pursue the petition (e.g. on receiving payment).

9.8.3 Attention is drawn to the requirement to give notice of the dismissal of a petition under rule 7.23(1). The Court will usually, on request, dispense with the requirement where (a) presentation of the petition has not previously been gazetted or (b) the company has become the subject of some supervening insolvency process, or (c) the company consents.

9.9 Errors in petitions

9.9.1 Applications for permission to amend errors in petitions which are discovered after a winding up order has been made should be made to the member of Court staff in charge of the winding up list in the Royal Courts of Justice or to a District Judge Sitting in a District Registry or District Judge.

9.9.2 Where the error is an error in the name of the company, the member of Court staff in charge of the winding up list in the Royal Courts of Justice or a District Judge Sitting in a District Registry or District Judge may make any necessary amendments to ensure that the winding up order is drawn up with the correct name of the company inserted. If there is any doubt, e.g. where there might be another company in existence which could be confused with the company to be wound up, the member of Court staff in charge of the winding up list will refer the application to an ICC Judge at the Royal Courts of Justice. A District Judge Sitting in a District Registry or District Judge may refer the matter to a High Court Judge.

9.9.3 Where it is discovered that the company has been struck off the Register of Companies prior to the winding up order being made, the petition must be restored to the list as soon as possible to enable an order for the restoration of the name to be made as well as the order to wind up and, save where the petition has been presented by a Minister of the Crown or a government department, evidence of service on the Government Legal Department or the Solicitor for the Affairs of the Duchy of Lancaster or the Solicitor to the Duchy of Cornwall (as appropriate) should be filed exhibiting the bona vacantia waiver letter.

9.10 Rescission of a winding up order

9.10.1 A request to rescind a winding up order must be made by application.

9.10.2 The application must be made within five business days after the date on which the order was made, failing which it should include an application to extend time pursuant to Schedule 5 to the Insolvency Rules. Notice of any such application must be given to the petitioning creditor, any supporting or opposing creditor, any incumbent insolvency practitioner and the official receiver.

9.10.3 An application to rescind will only be entertained if made by a (a) creditor, or (b) contributory, or (c) by the company jointly with a creditor or with a contributory. The application must be supported by a witness statement which should include details of assets and liabilities and (where appropriate) reasons for any failure to apply within five business days.

9.10.4 In the case of an unsuccessful application, the costs of the petitioning creditor, any supporting or opposing creditor, any incumbent insolvency practitioner and the official receiver will normally be ordered to be paid by the creditor or the contributory making or joining in the application. The reason for this is that if the costs of an unsuccessful application are made payable by the company, those costs will inevitably fall on the general body of creditors.

9.11 Validation orders

9.11.1 A company against which a winding up petition has been presented may apply to the Court after the presentation of a petition for relief from the effects of s.127(1) of the Act, by seeking an order that a certain disposition or dispositions of its property, including payments out of its bank account (whether such account is in credit or overdrawn), shall not be void in the event of a winding up order being made at the hearing of the petition (a validation order).

9.11.2 Save in exceptional circumstances, notice of the making of the application should be given to: (a) the petitioning creditor; (b) any person entitled to receive a copy of the petition pursuant to rule 7.9; (c) any creditor who has given notice to the petitioner of their intention to appear on the hearing of the petition pursuant to rule 7.14; and (d) any creditor who has been substituted as petitioner pursuant to rule 7.17. Failure to do so is likely to lead to an adjournment of the application or dismissal.

9.11.3 The application should be supported by a witness statement which should be made by a director or officer of the company who is intimately acquainted with the company's affairs and financial circumstances. If appropriate, supporting evidence in the form of a witness statement from the company's accountant should also be produced.

9.11.4 The extent and content of the evidence will vary according to the circumstances and the nature of the relief sought, but in the majority of cases it should include, as a minimum, the following information:

(1) when and to whom notice has been given in accordance with paragraph 9.11.2 above;

(2) the company's registered office;

(3) the company's capital;

(4) brief details of the circumstances leading to presentation of the petition;

(5) how the company became aware of presentation of the petition;

(6) whether the petition debt is admitted or disputed and, if the latter, brief details of the basis on which the debt is disputed;

(7) full details of the company's financial position including details of its assets (and including details of any security and the amount(s) secured) and liabilities, which should be supported, as far as possible, by documentary evidence, e.g. the latest filed accounts, any draft audited accounts, management accounts or estimated statement of affairs;

(8) a cash flow forecast and profit and loss projection for the period for which the order is sought;

(9) details of the dispositions or payments in respect of which an order is sought;

(10) the reasons relied on in support of the need for such dispositions or payments to be made prior to the hearing of the petition;

(11) any other information relevant to the exercise of the Court's discretion;

(12) details of any consents obtained from the persons mentioned in paragraph 9.11.2 above (supported by documentary evidence where appropriate);

(13) details of any relevant bank account, including its number and the address and sort code of the bank at which such account is held, and the amount of the credit or debit balance on such account at the time of making the application.

9.11.5 Where an application is made urgently to enable payments to be made which are essential to continued trading (e.g. wages) and it is not possible to assemble all the evidence listed above, the Court may consider granting limited relief for a short period, but there should be sufficient evidence to satisfy the Court that the interests of creditors are unlikely to be prejudiced by the grant of limited relief.

9.11.6 Where the application involves a disposition of property, the Court will need details of the property (including its title number if the property is land) and to be satisfied that any proposed disposal will be at a proper value. Accordingly, an independent valuation should be obtained and exhibited to the evidence.

9.11.7 The Court will need to be satisfied by credible evidence either that the company is solvent and able to pay its debts as they fall due or that a particular transaction or series of transactions in respect of which the order is sought will be beneficial to or will not prejudice the interests of all the unsecured creditors as a class.

9.11.8 A draft of the order sought should be attached to the application.

9.11.9 Similar considerations to those set out above are likely to apply to applications seeking ratification of a transaction or payment after the making of a winding up order.

10. Applications

10.1 In accordance with rule 12.2(2), in the Royal Courts of Justice an officer acting on behalf of the operations manager or chief clerk has been authorised to deal with applications:

(1) to extend or abridge time prescribed by the Insolvency Rules in connection with winding up;

(2) for permission to withdraw a winding up petition (rule 7.13);

(3) made by the official receiver for a public examination (s.133(1)(c) of the Act), where no penal notice is endorsed and no unless order is made;

(4) made by the official receiver to transfer proceedings from the High Court to a specified hearing centre within the meaning of rule 12.30;

(5) to list a hearing for directions with a time estimate of 30 minutes or less in circumstances where both parties are represented without reference to an ICC Judge;

(6) for a first extension of time to serve a bankruptcy petition.

10.2 Outside of the Royal Courts of Justice, applications listed in paragraph 10.1 must be made to a District Judge Sitting in a District Registry or in the County Court to a District Judge.

10.3 Where an application is made by an official receiver in respect of the matters listed in paragraph 10.1(4) above, the official receiver must comply with rule 12.32 and give any incumbent office-holder 14 days' written notice of the application.

PART THREE: PERSONAL INSOLVENCY

11. Statutory demands

11.1 Rule 10.1 prescribes the contents of a statutory demand. An example of a statutory demand may be found at:

http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=Bankruptcy%20and%20Insolvency

11.2. Rule 10.2 applies to service of a statutory demand whether within or out of the jurisdiction. If personal service is not practicable in the particular circumstances, a creditor must do all that is reasonable to bring the statutory demand to the debtor's attention. This could include taking those steps set out at paragraph 12.7 below which justify the Court making an order for service of a bankruptcy petition other than by personal service. It may also include any other form of physical or electronic communication which will bring the statutory demand to the notice of the debtor.

11.3 A creditor wishing to serve a statutory demand out of the jurisdiction in a foreign country with an applicable civil procedure convention (including the Hague Convention) may and, if the assistance of a British Consul is desired, must adopt the procedure prescribed by CPR rule 6.42 and CPR rule 6.43. In the case of any doubt whether the country is a 'convention country', enquiries should be made of the Foreign Process Section of the Queen's Bench Division, Room E16, Royal Courts of Justice, Strand, London WC2A 2LL.

11.4 Setting aside a statutory demand

11.4.1 The application and witness statement in support of setting aside a statutory demand, exhibiting a copy of the statutory demand, must be filed in Court within 18 days of service of the statutory demand on the debtor. The time limits are different if the statutory demand has been served out of the jurisdiction: see rule 10.1(10).

11.4.2 A debtor who wishes to apply to set aside a statutory demand after the expiration of 18 days, or if service is out of the jurisdiction, after the expiration of the time limit specified by rule 10.1(10)(a) from the date of service of the statutory demand, must apply for an extension of time within which to apply to set aside the statutory demand. The witness statement in support of the application to set aside statutory demand should also contain evidence in support of the application for an extension of time and should state that to the best of the debtor's knowledge and belief the creditor(s) named in the statutory demand has/have not presented a bankruptcy petition.

11.4.3 Unless the Court to which the application to set aside is made operates Electronic Filing and Electronic Practice Direction 51O applies, the following applies:

(1) Three copies of each document must be lodged with the application, to enable the Court to serve notice of the hearing date on the applicant, the creditor and the person named under rule 10.1(3).

(2) Where copies of the documents are not lodged with the application, any order of the Court fixing a venue is conditional upon copies of the documents being lodged on the next business day after the Court's order, otherwise the application will be deemed to have been dismissed.

11.4.4 Where the debt claimed in the statutory demand is based on a judgment, order, liability order, costs certificate, tax assessment or decision of a tribunal, the Court will not at this stage inquire into the validity of the debt nor, as a general rule, will it adjourn the application to await the result of an application to set aside the judgment, order, decision, costs certificate or any appeal.

11.4.5 The Court will determine an application to set aside a statutory demand in accordance with rule 10.5.

11.4.6 Attention is drawn to the power of the Court to decline to file a petition if there has been a failure to comply with the requirement of rule 10.2.

12. Bankruptcy petitions

12.1 All petitions presented will be listed under the name of the debtor unless the Court directs otherwise.

12.2 Content of petitions

12.2.1 The attention of Court users is drawn to the following points:

(1) A creditor's petition does not require dating, signing or witnessing, but must be verified in accordance with rule 10.10.

(2) In the heading, it is only necessary to recite the debtor's name e.g. Re John William Smith or Re J W Smith (Male). Any alias or trading name will appear in the body of the petition.

12.2.2 Where the petition is based solely on a statutory demand, only the debt claimed in the demand may be included in the petition.

12.2.3 The attention of Court users is also drawn to rules 10.8 and 10.9, where the 'aggregate sum' is made up of a number of debts.

12.2.4 The date of service of the statutory demand should be recited as follows:

(1) Where the demand has been served personally, the date of service as set out in the certificate of service.

(2) Where the demand has been served other than personally, the date as set out in the certificate of service filed in compliance with rule 10.3.

12.3 Searches

12.3.1 The petitioning creditor shall, before presenting a petition, conduct an Official Search with the Chief Land Registrar in the register of pending actions for pending petitions presented against the debtor and shall include the following certificate at the end of the petition:

"I/we certify that within 7 days ending today, I/we have conducted a search for pending petitions presented against the debtor and that to the best of my/our knowledge, information, and belief [no prior petitions have been presented which are still pending] [a prior petition (No [ ]) has been presented and is/may be pending in the [Court] and I/we am/are issuing this petition at risk as to costs].Signed…..Dated….".

12.4 The deposit

12.4.1 A bankruptcy petition will not be treated as having been presented until the Court fee and official receiver's deposit have been paid. A petition filed electronically without payment of the deposit will be marked "private" and will not be available for inspection until the deposit has been paid. The date of presentation of the petition will accord with the date on which the deposit has been paid. If the official receiver's deposit is not paid within 7 calendar days after filing the petition, the petition will not be accepted, in accordance with paragraph 5.3 of the Electronic Practice Direction 51O -The Electronic Working Pilot Scheme.

12.4.2 The deposit will be taken by the Court and forwarded to the official receiver. In the Royal Courts of Justice the petition fee and deposit should be paid by cheque, or by debit or credit card over the phone. In a District Registry or a County Court hearing centre, the petition fee and deposit should be handed to the staff of the duly authorised officer of the

Court who will record its receipt. For the purposes of paragraph 12.4.1 above, the deposit will be treated as paid when received by the Court.

12.4.3 If payment is made by cheque, it should be made payable to 'HM Courts and Tribunals Service' or 'HMCTS'. For the purposes of paragraph 12.4 of this IPD, the deposit will be treated as paid when the cheque is received by the Court

12.5 Certificates of continuing debt and of notice of adjournment

12.5.1 At the final hearing of a petition, the Court will need to be satisfied that the debt on which the petition is founded has not been paid or secured or compounded. The Court will normally accept as sufficient evidence a certificate signed by the person representing the petitioning creditor in the following form:

"I certify that I have/my firm has made enquiries of the petitioning creditor(s) within the last business day prior to the hearing/adjourned hearing and to the best of my knowledge and belief the debt on which the petition is founded is still due and owing and has not been paid or secured or compounded for save as to …
Signed …… Dated ……"

12.5.2 For convenience, in the Royal Courts of Justice this certificate is incorporated in the attendance sheet for the parties to complete when they come to Court and is to be filed at the hearing. A fresh certificate will be required on each adjourned hearing.

12.5.3 On any adjourned hearing of a petition, in order to satisfy the Court that the petitioner has complied with rule 10.23, the petitioner will be required to file evidence of when (the date), how (the manner), and where (the address), notice of the adjournment order and notification of the venue for the adjourned hearing was sent to:

(1) the debtor, and

(2) any creditor who has given notice under rule 10.19 but was not present at the hearing when the order for adjournment was made or was present at the hearing but the date of the adjourned hearing was not fixed at that hearing.

12.5.4 For convenience, in the Royal Courts of Justice this certificate is incorporated in the attendance sheet for the parties to complete when they come to Court and is to be filed at the hearing. A fresh certificate will be required on each adjourned hearing. It is as follows:

"I certify that the petitioner has complied with rule 10.23 of the Insolvency Rules 2016 by sending notice of adjournment to the debtor [supporting/opposing creditor(s)] on [date] at [address]".

12.6 Extension of hearing date of petition

12.6.1 Late applications for extension of hearing dates under rule 10.22, and failure to attend on the listed hearing of a petition, will be dealt with as follows:

(1) If an application is submitted less than two clear working days before the hearing date (for example, later than Monday for Thursday, or Wednesday for Monday), the costs of the application will not be allowed under rule 10.22.

(2) If the petition has not been served and no extension has been granted by the time fixed for the hearing of the petition, and if no one attends for the hearing, the petition may be dismissed or re-listed for hearing about 21 days later. The Court will notify the petitioning creditor's solicitors (or the petitioning creditor in person), and any known supporting or opposing creditors or their solicitors, of the new date and time. A witness statement should then be filed on behalf of the petitioning creditor explaining fully the reasons for the failure to apply for an extension or to appear at the hearing, and (if appropriate) giving reasons why the petition should not be dismissed.

(3) On the re-listed hearing the Court may dismiss the petition if not satisfied it should be adjourned or a further extension granted.

12.6.2 All applications for an extension should include a statement of the date fixed for the hearing of the petition.

12.6.3 The petitioning creditor should contact the Court (by solicitors or in person) on or before the hearing date to ascertain whether the application has reached the file and been dealt with. It should not be assumed that an extension will be granted.

12.7 Service of bankruptcy petitions other than by personal service

12.7.1 Where personal service of the bankruptcy petition is not practicable, service by other means may be permitted. In most cases, evidence that the steps set out in the following paragraphs have been taken will suffice to justify an order for service of a bankruptcy petition other than by personal service:

(1) One personal call at the residence and place of business of the debtor. Where it is known that the debtor has more than one residential or business addresses, personal calls should be made at all the addresses.

(2) Should the creditor fail to effect personal service, a letter should be written to the debtor referring to the call(s), the purpose of the same, and the failure to meet the debtor, adding that a further call will be made for the same purpose on the [day] of [month] 20[ ] at [ ] hours at [place]. Such letter may be sent by first class prepaid post or left at or delivered to the debtor's address in such a way as it is reasonably likely to come to the debtor's attention. At least two business days' notice should be given of the appointment and copies of the letter sent to or left at all known addresses of the debtor. The appointment letter should also state that:

(a) in the event of the time and place not being convenient, the debtor should propose some other time and place reasonably convenient for the purpose;

(b) in the case of a statutory demand as suggested in paragraph 11.2 above, reference is being made to this paragraph for the purpose of service of a statutory demand, the appointment letter should state that if the debtor fails to keep the appointment the creditor proposes to serve the demand by advertisement/ post/ insertion through a letter box as the case may be, and that, in the event of a bankruptcy petition being presented, the Court will be asked to treat such service as service of the demand on the debtor;

(c) (in the case of a petition) if the debtor fails to keep the appointment, an application will be made to the Court for an order that service be effected either by advertisement or in such other manner as the Court may think fit.

(3) when attending any appointment made by letter, inquiry should be made as to whether the debtor is still resident at the address or still frequents the address, and/or other enquiries should be made to ascertain receipt of all letters left for them. If the debtor is away, inquiry should also be made as to when they are returning and whether the letters are being forwarded to an address within the jurisdiction (England and Wales) or elsewhere.

(4) If the debtor is represented by a solicitor, an attempt should be made to arrange an appointment for personal service through such solicitor. The Insolvency Rules permit a solicitor to accept service of a statutory demand on behalf of their client but not the service of a bankruptcy petition.

12.8 Validation orders

12.8.1 A person against whom a bankruptcy petition has been presented may apply to the Court after presentation of the petition for relief from the effects of s.284(1) – (3) of the Act by seeking an order that a certain disposition or dispositions of that person's property, including payments out of their bank account (whether such account is in credit or overdrawn), shall not be void in the event of a bankruptcy order being made at the hearing of the petition (a validation order).

12.8.2 Save in exceptional circumstances, notice of the making of the application should be given to (a) the petitioning creditor(s) or other petitioner, (b) any creditor who has given notice to the petitioner of their intention to appear on the

hearing of the petition pursuant to rule 10.19, (c) any creditor who has been substituted as petitioner pursuant to rule 10.27 and (d) any creditor who has carriage of the petition pursuant to rule 10.29.

12.8.3 The application should be supported by a witness statement which, save in exceptional circumstances, should be made by the debtor. If appropriate, supporting evidence in the form of a witness statement from the debtor's accountant should also be produced.

12.8.4 The extent and contents of the evidence will vary according to the circumstances and the nature of the relief sought, but in a case where the debtor is trading or carrying on business it should include, as a minimum, the following information:

(1) when and to whom notice has been given in accordance with paragraph 12.8.2 above;

(2) brief details of the circumstances leading to presentation of the petition;

(3) how the debtor became aware of the presentation of the petition;

(4) whether the petition debt is admitted or disputed and, if the latter, brief details of the basis on which the debt is disputed;

(5) full details of the debtor's financial position including details of their assets (including details of any security and the amount(s) secured) and liabilities, which should be supported, as far as possible, by documentary evidence, e.g. accounts, draft accounts, management accounts or estimated statement of affairs;

(6) a cash flow forecast and profit and loss projection for the period for which the order is sought;

(7) details of the dispositions or payments in respect of which an order is sought;

(8) the reasons relied on in support of the need for such dispositions or payments to be made;

(9) any other information relevant to the exercise of the Court's discretion;

(10) details of any consents obtained from the persons mentioned in paragraph 12.8.2 above (supported by documentary evidence where appropriate);

(11) details of any relevant bank account, including its number and the address and sort code of the bank at which such account is held and the amount of the credit or debit balance on such account at the time of making the application.

12.8.5 Where an application is made urgently to enable payments to be made which are essential to continued trading (e.g. wages) and it is not possible to assemble all the evidence listed above, the Court may consider granting limited relief for a short period, but there must be sufficient evidence to satisfy the Court that the interests of creditors are unlikely to be prejudiced.

12.8.6 Where the debtor is not trading or carrying on business and the application relates only to a proposed sale, mortgage or re-mortgage of the debtor's home, evidence of the following will generally suffice:

(1) when and to whom notice has been given in accordance with 12.8.2 above;

(2) whether the petition debt is admitted or disputed and, if the latter, brief details of the basis on which the debt is disputed;

(3) details of the property to be sold, mortgaged or re-mortgaged (including its title number);

(4) the value of the property and the proposed sale price, or details of the mortgage or re-mortgage;

(5) details of any existing mortgages or charges on the property and redemption figures;

(6) the costs of sale (e.g. solicitors' or agents' costs);

(7) how and by whom any net proceeds of sale (or sums coming into the debtor's hands as a result of any mortgage or re-mortgage) are to be held pending the final hearing of the petition;

(8) any other information relevant to the exercise of the Court's discretion;

(9) details of any consents obtained from the persons mentioned in 12.8.2 above (supported by documentary evidence where appropriate).

12.8.7 Whether or not the debtor is trading or carrying on business, where the application involves a disposition of property the Court will need to be satisfied that any proposed disposal will be at a proper value. An independent valuation should be obtained for this purpose and exhibited to the evidence.

12.8.8 The Court will need to be satisfied by credible evidence that the debtor is solvent and able to pay their debts as they fall due or that a particular transaction or series of transactions in respect of which the order is sought will be beneficial to or will not prejudice the interests of all the unsecured creditors as a class.

12.8.9 A draft of the order should accompany the application.

12.8.10 Similar considerations to those set out above are likely to apply to applications seeking ratification of a transaction or payment after the making of a bankruptcy order.

13. Applications

13.1 In accordance with rule 12.2(2), in the Royal Courts of Justice an officer acting on behalf of the Operations Manager or chief clerk has been authorised to deal with applications:

(1) by petitioning creditors to extend the time for hearing petitions (rule 10.22);

(2) by the official receiver:

(a) to transfer proceedings from the High Court to a specified hearing centre within the meaning of rule 12.30.

(b) to amend the title of the proceedings (rule 10.165).

13.2 Outside of the Royal Courts of Justice, applications listed in paragraph 13.1 must be made to a District Judge Sitting in a District Registry or in the County Court to a District Judge.

13.3 Where an application is to be made under 13.1(2)(a) above, the official receiver must comply with rule 12.32, and give any incumbent office-holder 14 days' written notice of the application.

14. Orders without attendance

14.1 In suitable cases the Court will normally be prepared to make orders under Part VIII of the Act (Individual Voluntary Arrangements), without the attendance of the parties, provided there is no bankruptcy order in existence and (so far as is known) no pending petition. The orders are:

(1) A 14 day interim order adjourning the application for 14 days for consideration of the nominee's report, where the papers are in order, and the nominee's signed consent to act includes a waiver of notice of the application or the consent by the nominee to the making of an interim order without attendance.

(2) A standard order on consideration of the nominee's report, extending the interim order to a date seven weeks after the proposed decision date, directing the implementation of the decision procedure and adjourning to a date about three weeks after the decision date. Such an order may be made without attendance if the nominee's report has been delivered to the Court and complies with s.256(1) of the Act, and proposes a decision date not less than 14 days from that on which the nominee's report is filed in Court under rule 8.15, nor more than 28 days from that on which that report is considered by the Court under rule 8.18.

(3) A 'concertina' order, combining orders as under (1) and (2) above. Such an order may be made without attendance if the initial application for an interim order is accompanied by a report of the nominee and the conditions set out in (1) and (2) above are satisfied.

(4) A final order on consideration of the report of the creditors' consideration of the proposal. Such an order may be made without attendance if the report has been filed and complies with rule 8.24. The order will record the effect of the report and may discharge the interim order.

14.2 Provided that the conditions under sub-paragraphs 14.1(2) and 14.1 (4) above are satisfied and that the appropriate report has been lodged with the Court in due time the parties need not attend or be represented on the adjourned hearing for consideration of the nominee's report or of the report of the creditors' giving consideration of the proposal (as the case may be), unless they are notified by the Court that attendance is required. Sealed copies of the order made (in all four cases in paragraph 14.1 above) will be posted by the Court to the applicant or their solicitor and to the nominee.

14.3 In suitable cases the Court may make consent orders without attendance by the parties. The written consent of the parties endorsed on the consent order will be required. Examples of such orders are as follows:

(1) on applications to set aside a statutory demand, orders:

(a) dismissing the application, with or without an order for costs as may be agreed (permission will be given to present a petition on or after the seventh day after the date of the order, unless a different date is agreed);

(b) setting aside the demand, with or without an order for costs as may be agreed.

(2) On petitions where there are no supporting or opposing creditors (see rule 10.19), and there is a statement signed by or on behalf of the petitioning creditor confirming that no notices have been received from supporting or opposing creditors, orders:

(a) dismissing the petition, with or without an order for costs as may be agreed; or

(b) if the petition has not been served, giving permission to withdraw the petition (with no order for costs).

(3) On other applications or orders:

(a) for sale of property, possession of property, disposal of proceeds of sale;

(b) giving interim directions;

(c) dismissing the application, with or without an order for costs as may be agreed;

(d) giving permission to withdraw the application, with or without an order for costs as may be agreed.

14.4 If, as may often be the case with orders under sub-paragraphs 3(a) or (b) above, an adjournment is required, whether generally with liberty to restore or to a fixed date, the order by consent may include an order for the adjournment. If adjournment to a date is requested, a time estimate should be given and the Court will fix the first available date and time on or after the date requested.

14.5 The above lists should not be regarded as exhaustive, nor should it be assumed that an order will be made without attendance as requested.

14.6 Applications for consent orders without attendance should be lodged at least two clear working days (and preferably longer) before any hearing date.

14.7 Whenever a document is lodged or a letter sent, the correct case number should be quoted. A note should also be given of the date and time of the next hearing (if any).

15. Bankruptcy restrictions undertakings

15.1 Where a bankrupt has given a bankruptcy restrictions undertaking, the Secretary of State or official receiver must file a copy in Court and send a copy to the bankrupt as soon as reasonably practicable (rule 11.11). In addition the Secretary of State must notify the Court immediately that the bankrupt has given such an undertaking in order that any hearing date can be vacated.

16. Persons at risk of violence

16.1 Where an application is made pursuant to rules 8.6, 20.2, 20.3, 20.4, 20.5, 20.6 or otherwise to limit disclosure of information as to a person's current address by reason of the possibility of violence, the relevant application should be accompanied by a witness statement which includes the following:

(1) The grounds upon which it is contended that disclosure of the current address as defined by rule 20.1 might reasonably be expected to lead to violence against the debtor or a person who normally resides with them as a member of their family or where appropriate any other person.

(2) Where the application is made in respect of the address of the debtor, the debtor's proposals with regard to information which may safely be given to potential creditors in order that they can recognise that the debtor is a person who may be indebted to them, in particular the address at which the debtor previously resided or carried on business and the nature of such business.

(3) The terms of the order sought by the applicant by reference to the Court's particular powers as set out in the rule under which the application is made and, unless impracticable, a draft of the order sought.

(4) Where the application is made by the debtor in respect of whom a nominee or supervisor has been appointed or against whom a bankruptcy order has been made, evidence of the consent of the nominee/supervisor, or, in the case of bankruptcy, the official receiver or any other person appointed as trustee in bankruptcy. Where such consent is not available the statement must indicate whether such consent has been refused.

16.2. Any person listed in 16.1(4) shall be made a respondent to the application.

16.3 The application shall be referred to a District Judge Sitting in a District Registry, ICC Judge, or High Court Judge where it will be considered without a hearing in the first instance but without prejudice to the right of the Court to list it for hearing if:

(1) the Court is not persuaded by the written evidence, and consequently may refuse the application;

(2) the consent of any respondent is not attached; or

(3) the Court is of the view that there is another reason why listing is appropriate.

PART FOUR: APPEALS

17. Appeals

17.1 CPR Part 52 and its attendant practice directions apply to insolvency appeals unless dis-applied or inconsistent with the Act or the Insolvency Rules. This IPD provides greater detail on the routes of appeal as applied to insolvency proceedings under the Act, the Insolvency Rules and CPR Part 52.

17.2 Appeals in Personal Insolvency Matters

17.2(1) Paragraph 17.2 applies to all applications for permission to appeal and appeals from decisions made in personal insolvency matters, save those that arise from s.263N of the Act relating to bankruptcy applications to an adjudicator.

17.2(2) An application for permission to appeal relating to a decision made in a personal insolvency matter by a District Judge lies to a High Court Judge.

17.2(3) An application for permission to appeal relating to a decision made in a personal insolvency matter by a District Judge Sitting in a District Registry, a Circuit Judge, or an ICC Judge lies to a High Court Judge, but not to a Deputy.

17.2(4) An appeal from a decision in a personal insolvency matter made by a District Judge lies to a High Court Judge.

17.2(5) An appeal from a decision in a personal insolvency matter made by a District Judge Sitting in a District Registry, a Recorder, a Circuit Judge, or an ICC Judge lies to a High Court Judge, but not to a Deputy. Supervising Judges for the Business and Property Courts may, in circumstances they consider to be appropriate, allow for an appeal from a decision in a personal insolvency matter made by a District Judge Sitting in a District Registry to be handled by a Circuit Judge acting as a judge of the High Court under s.9(1) of the Senior Courts Act 1981.

17.3 Appeals from Decisions of Adjudicators

17.3(1) An application under s.263N(5) of the Act appealing the decision of an adjudicator to refuse to make a bankruptcy order is made to the Court, in accordance with the provisions in rule 10.48.

17.3(2) No prior application for permission to appeal is required.

17.3(3) An application under s.263N(5) of the Act will be treated as the first hearing of the matter.

17.3(4) It is the responsibility of the applicant to obtain from the adjudicator a copy (digital or otherwise) of the original application reviewed by the adjudicator (including the adjudicator's notice of refusal to make a bankruptcy order and notice confirming that refusal) and a record of (a) the verification checks undertaken under rule 10.38 by the adjudicator and (b) any additional information provided under rule 10.39(3) and available to the adjudicator at the date when the adjudicator refused to make a bankruptcy order.

17.3(5) Prior to making a final decision the Court may:

(a) direct that notice of the application be given to any interested person;

(b) give permission to any interested person and the petitioner to file evidence;

(c) make any case management order to assist in determining whether to dismiss the application or make a bankruptcy order.

17.4 Appeals in Corporate Insolvency Matters

17.4(1) Routes of appeal for appeals from decisions in corporate insolvency matters under Parts 1 to 7 of the Act (and the corresponding Insolvency Rules) are specified in rule 12.59.

17.4(2) An application for permission to appeal relating to a decision made in a corporate insolvency matter by a District Judge lies to a High Court Judge or an ICC Judge but not to a Deputy ICC Judge. Whether it lies to a High Court Judge or an ICC Judge depends on the location from which the decision being appealed originates, in conformity with Schedule 10 of the Insolvency Rules.

17.4(3) An application for permission to appeal relating to a decision made in a corporate insolvency matter by a District Judge Sitting in a District Registry or a Circuit Judge lies to a High Court Judge, but not to a Deputy.

17.4(4) An application for permission to appeal relating to a decision made at first instance in a corporate insolvency matter by an ICC Judge lies to a High Court Judge, but not to a Deputy.

17.4(5) An application for permission to appeal relating to a decision made by an ICC Judge on appeal from a District Judge in a corporate insolvency matter lies to the Civil Division of the Court of Appeal.

17.4(6) An appeal from a decision in a corporate insolvency matter made by a District Judge lies to a High Court Judge or to an ICC Judge, depending on the location from which the decision being appealed originates, in accordance with Schedule 10 of the Insolvency Rules.

17.4(7) An appeal from a decision in a corporate insolvency matter made by a District Judge Sitting in a District Registry lies to a High Court Judge but not to a Deputy. Supervising Judges for the Business and Property Courts may, in circumstances they consider to be appropriate, allow for an appeal from a decision in a corporate insolvency matter made by a District Judge Sitting in a District Registry to be handled by a Circuit Judge acting as a judge of the High Court under s.9(1) of the Senior Courts Act 1981.

17.4(8) An appeal from a decision in a corporate insolvency matter made by a Recorder or a Circuit Judge lies to a High Court Judge, but not to a Deputy.

17.4(9) An appeal from a decision in a corporate insolvency matter made at first instance by an ICC Judge lies to a High Court Judge, but not to a Deputy.

17.4(10) An appeal from a decision in a corporate insolvency matter made by an ICC Judge on appeal from a District Judge in a corporate insolvency matter lies to the Civil Division of the Court of Appeal.

18 Permission to Appeal

18.1 A first appeal is subject to the permission requirements of CPR Part 52, rule 3.

18.2 An appeal from a decision of a High Court Judge, or from a decision of an ICC Judge which was itself made on appeal, requires the permission of the Court of Appeal.

19 Filing Appeals

19.1 An application for permission to appeal or an appeal from a decision of an ICC Judge which lies to a High Court Judge must be filed at the Royal Courts of Justice.

19.2 An application for permission to appeal or an appeal from a decision of a District Judge Sitting in a District Registry must be filed in that District Registry.

19.3 An application for permission to appeal or an appeal from a decision of a District Judge must be filed in its corresponding appeal centre, as identified in the table in Schedule 10 of the Insolvency Rules.

PART FIVE: FINANCIAL MARKETS AND INSOLVENCY (SETTLEMENT FINALITY) REGULATIONS 1999 – REQUIRED INFORMATION

20. In any case in which the Court is asked to make an order to which regulation 22(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999/2979) applies, the party applying for the order must include in the petition or application a statement to that effect, identifying the system operator of the relevant designated system, the relevant designating authority, and the email or other addresses to which the Court will be required to send notice pursuant to regulation 22(1) if an order is made.

20.1 At the date of this IPD, the Regulations apply where, in respect of "a participant in a designated system" (as those terms are defined in the Regulations), an order is made for administration, winding-up, bankruptcy, sequestration, bank insolvency, bank administration, building society insolvency, building society special administration or investment bank special administration. Applicants must, before making the application, check for any amendments to the Regulations.

PART SIX: APPLICATIONS RELATING TO THE REMUNERATION OF OFFICE-HOLDERS

21. This IPD sets out the governing principles and court practice. Reference should also be made to the Act and the Insolvency Rules.

21.1 The objective in any remuneration application is to ensure that the amount and/or basis of any remuneration fixed by the Court is fair, reasonable and commensurate with the nature and extent of the work properly undertaken or to be undertaken by the office-holder in any given case and is fixed and approved by a process which is consistent and predictable.

21.2. The guiding principles which follow are intended to assist in achieving the objective:

(1) "Justification". It is for the office-holder who seeks to be remunerated at a particular level and / or in a particular manner to justify their claim. They are responsible for preparing and providing full particulars of the basis for, and the nature of, their claim for remuneration.

(2) "The benefit of the doubt". The corollary of the "justification" principle is that if after having regard to the evidence and guiding principles there remains any doubt as to the appropriateness, fairness or reasonableness of the remuneration sought or to be fixed (whether arising from a lack of particularity as to the basis for and the nature of the office-holder's claim to remuneration or otherwise), such element of doubt should be resolved by the Court against the office-holder.

(3) "Professional integrity". The Court should (where this is the case) give weight to the fact that the office-holder is a member of a regulated profession and as such is subject to rules and guidance as to professional conduct and the fact that (where this is the case) the office-holder is an officer of the Court.

(4) "The value of the service rendered". The remuneration of an office-holder should reflect the value of the service rendered by the office-holder, not simply reimburse the office-holder in respect of time expended and cost incurred.

(5) "Fair and reasonable". The amount and basis of the office-holder's remuneration should represent fair and reasonable remuneration for the work properly undertaken or to be undertaken.

(6) "Proportionality of information". In considering the nature and extent of the information which should be provided by an office-holder in respect of a remuneration application to the Court, the office-holder and any other parties to the application shall have regard to what is proportionate by reference to the amount of remuneration to be fixed, the nature, complexity and extent of the work to be completed (where the application relates to future remuneration) or that has been completed by the office-holder and the value and nature of the assets and liabilities with which the office-holder will have to deal or has had to deal.

(7) "Proportionality of remuneration". The amount and basis of remuneration to be fixed by the Court should be proportionate to the nature, complexity and extent of the work to be completed (where the application relates to future

remuneration) or that has been completed by the office-holder and the value and nature of the assets and/or potential assets and the liabilities and/or potential liabilities with which the office-holder will have to deal or has had to deal, the nature and degree of the responsibility to which the office-holder has been subject in any given case, the nature and extent of the risk (if any) assumed by the office-holder and the efficiency (in respect of both time and cost) with which the office-holder has completed the work undertaken.

(8) “Professional guidance”. In respect of an application for the fixing and approval of the amount and/or basis of the remuneration, the office-holder may have regard to the relevant and current statements of practice promulgated by any relevant regulatory and professional bodies in relation to the fixing of the remuneration of an office-holder. In considering a remuneration application, the Court may also have regard to such statements of practice and the extent of compliance with such statements of practice by the office-holder.

(9) “Timing of application”. The Court will take into account whether any application should have been made earlier and if so the reasons for any delay.

21.3 Hearing of a remuneration application. The general rule applies for the listing of hearings as set out in paragraph 3 of this IPD. The judge hearing the application may summarily determine the application or adjourn with directions including (but not confined to) directions as to (i) whether an assessor or costs judge should prepare a report to the Court in respect of the remuneration (ii) or whether the application should be heard by a judge and an assessor or a costs judge.

21.4. On any remuneration application, the office-holder should provide the information and evidence referred to in paragraphs 21.4.1 to 21.4.12 below.

21.4.1 A narrative description and explanation of:

(a) the background to, the relevant circumstances of, and the reasons for their appointment;

(b) the work undertaken or to be undertaken in respect of the appointment; the description should be divided, insofar as possible, into individual tasks or categories of task (general descriptions of work, tasks, or categories of task should (insofar as possible) be avoided);

(c) the reasons why it is or was considered reasonable and/or necessary and/or beneficial for such work to be done, giving details of why particular tasks or categories of task were undertaken and why such tasks or categories of task are to be undertaken or have been undertaken by particular individuals and in a particular manner;

(d) the amount of time to be spent or that has been spent in respect of work to be completed or that has been completed and why it is considered to be fair, reasonable and proportionate;

(e) what is likely to be and has been achieved, the benefits that are likely to and have accrued as a consequence of the work that is to be or has been completed, the manner in which the work required in respect of the appointment is progressing and what, in the opinion of the office-holder, remains to be achieved.

21.4.2 Details sufficient for the Court to determine the application by reference to the criteria which are required to be taken into account by reference to the Insolvency Rules and any other applicable enactments or rules relevant to the fixing of the remuneration.

21.4.3 A statement of the total number of hours of work undertaken or to be undertaken in respect of which the remuneration is sought, together with a breakdown of such hours by individual member of staff and individual tasks or categories of tasks to be performed or that have been performed. Where appropriate, a proportionate level of detail should also be given of:

(a) the tasks or categories of tasks to be undertaken as a proportion of the total amount of work to be undertaken in respect of which the remuneration is sought and the tasks or categories of tasks that have been undertaken as a

proportion of the total amount of work that has been undertaken in respect of which the remuneration is sought; and

(b) the tasks or categories of task to be completed by individual members of staff or grade of personnel including the office-holder as a proportion of the total amount of work to be completed by all members of staff including the office-holder in respect of which the remuneration is sought and the tasks or categories of task that have been completed by individual members of staff or grade of personnel as a proportion of the total amount of work that has been completed by all members of staff including the office-holder in respect of which the remuneration is sought.

21.4.4 A statement of the total amount to be or likely to be charged for the work to be undertaken or that has been undertaken in respect of which the remuneration is sought which should include:

(a) a breakdown of such amounts by individual member of staff and individual task or categories of task performed or to be performed;

(b) details of the time expended or to be expended and the remuneration charged or to be charged in respect of each individual task or category of task as a proportion (respectively) of the total time expended or to be expended and the total remuneration charged or to be charged.

In respect of an application pursuant to which some or all of the amount of the office-holder's remuneration is to be fixed on a basis other than time properly spent, the office-holder shall provide (for the purposes of comparison) the same details as are required by this paragraph 19.4.4, but on the basis of what would have been charged had they been seeking remuneration on the basis of the time properly spent by the office-holder and their staff.

21.4.5 Details of each individual to be engaged or who has been engaged in work in respect of the appointment and in respect of which the remuneration is sought, including details of their relevant experience, training, qualifications and the level of their seniority.

21.4.6 An explanation of:

(a) the steps, if any, to be taken or that have been taken by the office-holder to avoid duplication of effort and cost in respect of the work to be completed or that has been completed in respect of which the remuneration is sought;

(b) the steps to be taken or that have been taken to ensure that the work to be completed or that has been completed is to be or was undertaken by individuals of appropriate experience and seniority relative to the nature of the work to be or that has been undertaken.

21.4.7 Details of the individual rates charged by the office-holder and members of their staff in respect of the work to be completed or that has been completed and in respect of which the remuneration is sought. Such details should include:

(a) a general explanation of the policy adopted in relation to the fixing or calculation of such rates and the recording of time spent;

(b) where, exceptionally, the office-holder seeks remuneration in respect of time spent by secretaries, cashiers or other administrative staff whose work would otherwise be regarded as an overhead cost forming a component part of the rates charged by the office-holder and members of their staff, a detailed explanation as to why such costs should be allowed or should be provided.

21.4.8 Where the remuneration application is in respect of a period of time during which the charge-out rates of the office-holder and/or members of their staff engaged in work in respect of the appointment have increased, an explanation of the nature, extent and reason for such increase and the date when such increase took effect.

21.4.9 Details of any basis or amount of remuneration previously fixed or approved in relation to the appointment (whether by the Court or otherwise) including in particular the bases or amounts that were previously sought to be fixed or approved

and the bases or amounts that were in fact fixed or approved and the method by which such amounts were fixed or approved.

21.4.10 Where the application is for approval to draw remuneration in excess of the total amount set out in the fees estimate, their evidence must exhibit a copy of the fees estimate and address the matters listed in rule 18.30(3).

21.4.11 In order that the Court may be able to consider the views of any persons who the office-holder considers have an interest in the assets that are under their control and of any other persons who are required by the Insolvency Rules to be notified of the hearing of the application, the office-holder must provide details of:

(a) the names and contact details for all such persons;

(b)what (if any) consultation has taken place between the office-holder and those persons and if no such consultation has taken place, an explanation as to the reason why;

(c) the number and value of the interests of the persons consulted including details of the proportion (by number and by value) of the interests of such persons by reference to the entirety of those persons having an interest in the assets under the control of the office-holder.

21.4.12 Such other relevant information as the office-holder considers, in the circumstances, ought to be provided to the Court.

21.5 This paragraph applies to applications where some or all of the remuneration of the office-holder is to be fixed and/or approved on a basis other than time properly spent. On such applications in addition to the matters referred to in paragraph 21.4, the office-holder shall:

(a) Provide a full description of the reasons for remuneration being sought by reference to the basis contended for.

(b) Where the remuneration is sought to be fixed by reference to a percentage of the value of the property with which the office-holder has to deal or of the assets which are realised or distributed, provide a full explanation of the basis upon which any percentage rates to be applied to the values of such property or the assets realised and/or distributed have been chosen.

(c) Provide a statement that to the best of the office-holder's belief the percentage rates or other bases by reference to which some or all of the remuneration is to be fixed are similar to the percentage rates or other bases that are applied or have been applied in respect of other appointments of a similar nature.

(d) Provide a comparison of the amount to be charged by reference to the basis contended for and the amount that would otherwise have been charged by reference to the other available bases of remuneration, including by reference to rule 18.22 and Schedule 11 to the Insolvency Rules (scale of fees).

21.6 The witness evidence may exclude matters set out in paragraph 21.4 above but an explanation as to why a decision to exclude such material should be included in the witness evidence.

21.7 The evidence placed before the Court by the office-holder in respect of any remuneration application should also include the following documents:

(a) a copy of the most recent receipts and payments account;

(b) copies of any reports by the office-holder to the persons having an interest in the assets under their control relevant to the period for which the remuneration sought to be fixed and approved relates;

(c) any fees estimate, details of anticipated expenses or other relevant information given or required to be given to the creditors in relation to remuneration by the office-holder pursuant to the Insolvency Rules;

(d) any other schedules or such other documents providing the information referred to in paragraphs 21.4 above, where these are likely to be of assistance to the Court in considering the application;

(e) evidence of any consultation or copies of any relevant communications with those persons having an interest in the assets under the control of office-holder in relation to the remuneration of the office-holder.

21.8 On any remuneration application the Court may make an order allowing payments of remuneration to be made on account subject to final approval whether by the Court or otherwise.

21.9 Unless otherwise ordered by the Court (or as may otherwise be provided for in any enactment or rules of procedure), the costs of and occasioned by an application for the fixing and/or approval of the remuneration of an office-holder, including those of any assessor, shall be paid out of the assets under the control of the office-holder.

PART SEVEN: UNFAIR PREJUDICE PETITIONS, WINDING UP AND VALIDATION ORDERS

22 Unfair Prejudice Petitions

22.1 Attention is drawn to the undesirability of asking as a matter of course for a winding up order as an alternative to an order under s.994 of the 2006 Act. The petition should not ask for a winding up order unless that is the remedy which the petitioner prefers, or it is thought that it may be the only remedy to which the petitioner is entitled.

22.2. Whenever a winding up order is asked for in a contributory's petition, the petition must state whether the petitioner consents or objects to a validation order under s.127 of the Insolvency Act 1986 in the standard form. If the petitioner objects, the written evidence in support must contain a short statement of the petitioner’s reasons.

22.3. If the petitioner objects to a validation order in the standard form but consents to such an order in a modified form, the petition must set out the form of order to which the petitioner consents, and the written evidence in support must contain a short statement of the petitioner’s reasons for seeking the modification.

22.4. If the petition contains a statement that the petitioner consents to a validation order, whether in the standard or a modified form, but the petitioner changes their mind before the first hearing of the petition, the petitioner must notify the respondents and may apply on notice to the court for an order directing that no validation order or a modified order only (as the case may be) shall be made by the Court, but validating dispositions made without notice of the order made by the Court.

22.5. If the petition contains a statement that the petitioner consents to validation order, whether in the standard or a modified form, the Court shall without further enquiry make such an order at the first hearing unless an order to the contrary has been made by the Court in the meantime.

22.6. If the petition contains a statement that the petitioner objects to a validation order in the standard form, the company may apply (in the case of urgency, without notice) to the Court for an order.

Back to top