

## CONTENTS

Notification Numbers	Subjects	Pages
S 47	Constitution of Brunei Darussalam — Insolvency (Amendment) Oder, 2017 ... ..	4777
S 48	Insolvency Order, 2016 (S 1/2016) — Insolvency Judicial Management) Rules, 2017... ..	4780
S 49	Insolvency Order, 2016 (S 1/2016) — Insolvency (Winding Up)(Fees) Rules, 2017 ... ..	4803
S 50	Insolvency Order, 2016 (S 1/2016) — Notification of commencement ... ..	4809

---

The following Notifications are published for general information by Command of  
His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam.

Bil. S 50

**PERINTAH KETIDAKSOLVENAN, 2016**  
(S 1/2016)

**Pemberitahuan permulaan kuat kuasa**

Pada menjalankan kuasa yang diberikan oleh bab 1(1) dan (2) dari Perintah Ketidaksolvenan, 2016, maka Menteri Kewangan, dengan titah perkenan Kebawah Duli Yang Maha Mulia Paduka Seri Baginda Sultan dan Yang Di-Pertuan, dengan ini menetapkan tarikh permulaan kuat kuasa Aturan-Aturan Ketidaksolvenan (Pengurusan Kehakiman), 2017 sebagai tarikh bab 246(c) (sebutan kepada Jadual Keempat Belas kepada Akta Syarikat (Penggagal 39)) dari Perintah itu mula berjalan kuat kuasanya.

Bertarikh pada hari ini 3 haribulan Ramadhan, Tahun Hijrah 1438 bersamaan dengan 29 haribulan Mei, 2017.

**DAYANG NORLIAH BINTI HAJI KULA**  
Setiausaha Tetap,  
Kementerian Kewangan,  
Negara Brunei Darussalam.

No. S 47

**CONSTITUTION OF BRUNEI DARUSSALAM  
(Order made under Article 83(3))**

**INSOLVENCY (AMENDMENT) ORDER, 2017**

**ARRANGEMENT OF SECTIONS**

**Section**

1. Citation
  2. Amendment of section 81 of S 1/2016
  3. Amendment of section 99
  4. Amendment of section 224
  5. Amendment of section 241
  6. Amendment of section 242
  7. Amendment of section 243
-

CONSTITUTION OF BRUNEI DARUSSALAM  
(Order made under Article 83(3))

INSOLVENCY (AMENDMENT) ORDER, 2017

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Order —

**Citation**

1. This Order may be cited as the Insolvency (Amendment) Order, 2017.

**Amendment of section 81 of S 1/2016**

2. Section 81 of the Insolvency Order, 2016, in this Order referred to as the principal Order, is amended —

(a) by inserting the following new subsection immediately after subsection (1) —

“(1A) The nomination under subsection (1) shall be approved by a majority of the creditors.”;

(b) in subsection (2), by adding “and approved by the creditors”.

**Amendment of section 99**

3. Section 99 of the principal Order is amended —

(a) by inserting “(1)” immediately before “A company” in the first line;

(b) in paragraph (g), by deleting the full stop and by substituting a semicolon therefor;

(c) by adding the following new paragraph —

“(h) the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatever which appears to be unfair or unjust to other members.”;

(d) by adding the following new subsection —

“(2) On an application for winding up on the ground specified in subsection (1)(g) or (h), instead of making an order for the winding up, the

Court may, if it is of the opinion that it is just and equitable to do so, make an order for the interests in shares of one or more members to be purchased by the company or one or more other members on terms to the satisfaction of the Court.”.

**Amendment of section 224**

4. Section 224 of the principal Order is amended, in subsection (3), by deleting “for one year” and by substituting “from the date on which the authorisation or further authorisation takes effect until 31st December for the year in respect of which the authorisation was granted” therefor.

**Amendment of section 241**

5. Section 241 of the principal Order is amended by inserting “, including financial records,” immediately after “records” in the last line.

**Amendment of section 242**

6. Section 242 of the principal Order is amended by deleting “regulations” from the fourth line and by substituting “rules” therefor.

**Amendment of section 243**

7. Section 243 of the principal Order is amended by deleting “regulations” from the second line and by substituting “rules” therefor.

Made this 3rd. day of Ramadhan, 1438 Hijriah corresponding to the 29th. day of May, 2017 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN  
BRUNEI DARUSSALAM

No. S 48

INSOLVENCY ORDER, 2016  
(S 1/2016)

INSOLVENCY (JUDICIAL MANAGEMENT) RULES, 2017

ARRANGEMENT OF RULES

**Rule**

1. Citation
2. Application
3. Form of petition by Minister
4. Affidavit to support petition by Minister
5. Filing of petition by Minister
6. Service of petition and affidavit
7. Affidavit to support application under section 32
8. Independent report on company's affairs
9. Contents of affidavit
10. Form of application under section 32
11. Filing of application under section 32
12. Service of application
13. Manner in which service to be effected
14. Proof of service
15. Hearing
16. Notice and advertisement of judicial management order
17. Notice requiring statement of affairs
18. Verification and filing

19. Limited disclosure
20. Expenses of statement of affairs
21. Non-application of rules 22 and 23
22. Statement to be annexed to judicial manager's proposals
23. Meeting of creditors
24. Judicial management order under section 33
25. Meeting to consider judicial manager's proposals
26. Chairman at meetings
27. Entitlement to vote
28. Admission and rejection of claims
29. Secured creditors
30. Holders of negotiable instruments
31. Retention of title creditors
32. Hire-purchase, conditional sale and chattel leasing agreements
33. Resolutions and minutes
34. Notices to creditors
35. Informal creditors' committee
36. Fixing of remuneration
37. Disposal of charged property etc.
38. Application of rule 37
39. Sums payable in respect of contracts of employment
40. Application of rule 39
41. Unenforceability of *liens*
42. Application of rule 41

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

---

43. Abstract of receipts and payments
  44. Resignation
  45. Judicial manager deceased
  46. Vacancy
  47. Release
  48. Application of rules 44 to 47
  49. Extension of time
  50. Petition etc. to be sealed
-



**INSOLVENCY ORDER, 2016  
(S 1/2016)**

**INSOLVENCY (JUDICIAL MANAGEMENT) RULES, 2017**

In exercise of the power conferred by section 245 of the Insolvency Order, 2016, the Minister of Finance, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Rules —

**Citation**

1. These Rules may be cited as the Insolvency (Judicial Management) Rules, 2017.

**Application**

2. (1) Rules 3 to 6 apply where a petition is presented by the Minister under section 33 and do not apply where an application is made by any other person under section 32.

(2) Rules 7 to 15 apply where an application is made by any person under section 32 and do not apply where a petition is presented by the Minister under section 33.

(3) Except where otherwise expressly provided, rules 16 to 37, 39, 41, 43 to 47, 49 and 50 apply where a judicial management order is made on the petition of the Minister or on the application of any other person.

**Form of petition by Minister**

3. (1) The petition shall state the name and address of the company for service and shall specify the name and address of the person proposed to be appointed as judicial manager.

(2) If the purposes or one of the purposes for which the judicial management order is sought is the promotion of the public interest, the petition shall specify that purpose.

**Affidavit to support petition by Minister**

4. (1) An affidavit in support of the petition shall be sworn by or on behalf of the Minister or by any other person authorised to do so on his behalf.

(2) The affidavit shall state —

(a) the deponent's belief that the making of a judicial management order will be in the public interest;

*(b)* which of the purposes specified in section 33(3) is expected to be achieved by the making of the order; and

*(c)* such other matters as the deponent considers will assist the Court in deciding whether to make a judicial management order.

**Filing of petition by Minister**

5. (1) The petition shall be filed in Court, with a sufficient number of copies for service and use as provided in rule 6(1).

(2) Each of the copies delivered shall be affixed with the seal of the Court and be issued to the Minister; and on each copy there shall be endorsed the date and time of filing.

(3) Subject to rule 6(2), the Court shall fix a date, time and place for the hearing of the petition and this shall be endorsed on each copy of the petition issued under subrule (2).

**Service of petition and affidavit**

6. (1) Subject to subrule (2), the petition and affidavit shall be served not less than 5 days before the date fixed for hearing and shall be served on —

*(a)* the company, by delivering the petition and affidavit to its registered office or to its last known place of business in Brunei Darussalam or to any of the directors at their proper or usual or last known address or in such other manner as the Court may direct;

*(b)* any person holding a charge over all or substantially all of the property of the company which, as created, was a floating charge; and

*(c)* if there is pending a petition for the winding up of the company, on the petitioner and on any provisional liquidator.

(2) Notwithstanding subrule (1), the Court may, if it thinks fit —

*(a)* hear the petition of the Minister immediately on presentation thereof;

*(b)* dispense with service or abridge the time for service, on all or any of the persons specified in subrule (1); and

*(c)* make a judicial management order forthwith.

**Affidavit to support application under section 32**

7. (1) Where it is proposed to apply to the Court by an application for a judicial management order to be made in relation to a company under section 32, an affidavit complying with rule 9 must be prepared and sworn, with a view to its being filed in Court in support of the application.

(2) If the application is to be made by the company or by the directors, the affidavit must be made by one of the directors, or the secretary of the company, stating himself to make it on behalf of the company or, as the case may be, on behalf of the directors.

(3) If the application is to be made by creditors, the affidavit must be made by a person acting under the authority of them all, whether or not he is one of their number. In any case, there must be stated in the affidavit the nature of his authority and the means of his knowledge of the matters to which the affidavit relates.

**Independent report on company's affairs**

8. (1) There may be prepared, with a view to its being exhibited to the affidavit in support of the application, a report by an independent person to the effect that the appointment of a judicial manager for the company is expedient.

(2) The report may be by the person proposed as judicial manager or the Executive Manager, or by any other person having adequate knowledge of the affairs of the company, not being a director, secretary, manager, member or employee of the company.

(3) The report shall specify the purposes which, in the opinion of the person preparing it, may be achieved for the company by the making of a judicial management order, being purposes particularly specified in section 32(2)(b).

**Contents of affidavit**

9. (1) The affidavit shall state —

(a) the deponent's belief that the company is, or is likely to become, unable to pay its debts, or that the value of the assets of the company is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, and the grounds of that belief; and

(b) which of the purposes specified in section 32(2)(b) is expected to be achieved by the making of a judicial management order.

(2) There shall be provided in the affidavit a statement of the financial position of the company, specifying to the best of the knowledge and belief of the deponent, assets and liabilities, including contingent and prospective liabilities.

(3) Details shall be given of any security known or believed to be held by creditors of the company.

(4) If any petition has been presented for the winding up of the company, details of it shall be given in the affidavit, so far as within the immediate knowledge of the deponent.

(5) If there are other matters which, in the opinion of those intending to make the application for a judicial management order, will assist the Court in deciding whether to make such an order, those matters so far as lying within the knowledge or belief of the deponent shall also be stated.

(6) If a report has been prepared for the company under rule 8, that fact shall be stated.

**Form of application under section 32**

10. (1) If made by the company or by the directors, the application shall state the name of the company and its address for service, which in the absence of special reasons to the contrary, is that of the registered office of the company.

(2) If made by a single creditor, the application shall state his name and address for service.

(3) If the application is made by the directors, it shall state that it is so made under section 32; but from and after applying, it is to be treated for all purposes as the application of the company.

(4) If the application is made by two or more creditors, it shall state it is so made, naming them; but from and after applying, it is to be treated for all purposes as the application of one only of them, named in the application as applying on behalf of himself and other creditors. An address for service for that creditor shall be specified.

(5) The application shall specify the name and address of the person proposed to be appointed as judicial manager.

(6) There shall be exhibited to the affidavit in support of the application —

(a) a copy of the application;

(b) a written consent by the proposed judicial manager to accept appointment, if a judicial management order is made; and

(c) if a report has been prepared under rule 8, a copy of it.

**Filing of application under section 32**

11. (1) The application and affidavit shall be filed in Court, with a sufficient number of copies for service and use as provided by rule 12.

(2) Each of the copies delivered shall be affixed with the seal of the Court and be issued to the applicant; and on each copy there shall be endorsed the date and time of filing.

(3) The Court shall fix a date, time and place for the hearing of the application and this also shall be endorsed on each copy of the application issued under subrule (2).

(4) After the application is filed, it is the duty of the applicant to notify the Court in writing of any winding up petition presented against the company as soon as he becomes aware of it.

**Service of application**

12. (1) In this rule, references to the application are to a copy of the application issued by the Court under rule 11(2) together with the affidavit in support of it and the document, other than the copy application, exhibited to the affidavit.

(2) The application shall be served —

(a) on the Minister;

(b) if there is pending a petition for the winding up of the company, on the petitioner and also on the provisional liquidator, if any; and

(c) on the person proposed as judicial manager.

(3) If the application for the making of a judicial management order is made by creditors of the company, the application shall be served on the company.

**Manner in which service to be effected**

13. (1) Service of the application in accordance with rule 12 shall be effected by the applicant, or his solicitor, or by a person instructed by him or his solicitor, not less than 5 days before the date fixed for the hearing.

(2) Service shall be effected as follows —

(a) on the company, subject to subrule (3), by delivering the documents to its registered office;

(b) on any other person, subject to subrule (4), by delivering the documents to his proper address;

(c) in either case, in such other manner as the Court may direct.

(3) If delivery to the registered office of the company is not practicable, service may be effected by delivery to its last known principal place of business in Brunei Darussalam or by serving any of the directors at their proper or usual or last known address or in such other manner as the Court may direct.

(4) For the purposes of subrule (2)(b), a proper address of a person is any which he has previously notified as his address for service; but if he has not notified any such address, service may be effected by delivery to his usual or last known address.

#### **Proof of service**

14. (1) Service of the application shall be verified by affidavit, specifying the date on which, and the manner in which, service was effected.

(2) The affidavit, with a sealed copy of the application exhibited to it, shall be filed in Court forthwith after service, and in any event not less than one day before the hearing of the application.

#### **Hearing**

15. (1) At the hearing of the application, any of the following may appear or be represented —

(a) the applicant;

(b) the company;

(c) any person holding a charge over all or substantially all the property of the company which, as created, was a floating charge;

(d) any receiver or manager appointed over all or substantially all of the property of the company;

(e) any person who has presented a petition for the winding up of the company;

(f) the person proposed for appointment as judicial manager; and

(g) with the leave of the Court, any other person who appears to have an interest justifying his appearance.

(2) If the Court makes a judicial management order, the costs of the applicant, and of any person appearing whose costs are allowed by the Court, are payable as an expense of the judicial management.

**Notice and advertisement of judicial management order**

16. (1) If the Court makes a judicial management order, it shall forthwith give notice to the person appointed as judicial manager.

(2) The judicial management order shall be published in the *Gazette* by the judicial manager or as the Court may otherwise direct forthwith after the order is made.

(3) The judicial manager shall also forthwith give notice of the making of the order to —

(a) if there is pending a petition for the winding up of the company, the petitioner and the provisional liquidator, if any; and

(b) the Registrar.

(4) Two sealed copies of the judicial management order shall be sent by the Court to the judicial manager, one of which shall be sent by him to the Registrar, and a copy of the order shall be supplied by the judicial manager to any Executive Manager.

(5) If under section 32 or 33 the Court makes any other order, it shall give directions as to the persons to whom, and how, notice of it is to be given.

**Notice requiring statement of affairs**

17. (1) Where the judicial manager requires a statement of the affairs of the company to be made out and submitted to him in accordance with section 43, he shall send notice to each of the persons whom he considers should be made responsible under that section, requiring them to prepare and submit the statement.

(2) The persons to whom the notice is sent are referred to in this rule and in rules 18 and 20 as the deponents.

(3) The notice shall inform each of the deponents of the following —

(a) the names and addresses of all others, if any, to whom the same notice has been sent;

- (b) the time within which the statement must be delivered;
  - (c) the consequence of any failure to comply with sections 43 and 53;
- and
- (d) the application to him, and to each of the other deponents, of section 53.

**Verification and filing**

18. (1) The statement of affairs shall be in such form as the judicial manager may require, and shall be verified by affidavit by the deponents using the same form.

(2) The judicial manager may require any of the persons mentioned in section 43(2) to submit an affidavit of concurrence, stating that he concurs in the statement of affairs.

(3) An affidavit of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the affidavit is not in agreement with the deponents, or he considers the statement to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.

(4) The statement of affairs shall be delivered to the judicial manager by the deponent making the affidavit of verification or by one of them, if more than one, together with a copy of the verified statement.

(5) Every affidavit of concurrence shall be delivered by the person who makes it, together with a copy.

(6) The judicial manager shall file the verified copy of the statement, and the affidavits of concurrence, if any, in Court.

**Limited disclosure**

19. (1) Where the judicial manager thinks that it would prejudice the conduct of the judicial management for the whole or part of the statement of affairs to be disclosed, he may apply to the Court for an order of limited disclosure in respect of the statement, or any specified part of it.

(2) The Court may, on the application, order that —

(a) the statement or, as the case may be, the specified part of it, not be filed in Court; or

(b) the statement is to be filed separately and not be open to inspection otherwise than with leave of the Court.



(3) The order of the Court may include directions as to the delivery of documents to the Registrar and the disclosure of relevant information to other persons.

**Expenses of statement of affairs**

20. (1) A deponent making the statement of affairs and affidavit shall be allowed, and paid by the judicial manager out of his receipts, any costs or expenses incurred by the deponent which the judicial manager considers reasonable.

(2) Nothing in this rule relieves a deponent from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to the judicial manager.

**Non-application of rules 22 and 23**

21. Rules 22 and 23 do not apply where a judicial management order has been made on the petition of the Minister and the sole purpose or one of the purposes for the achievement of which the order was made was the promotion of the public interest.

**Statement to be annexed to judicial manager's proposals**

22. (1) There shall be annexed to the judicial manager's proposals under section 44, when laid before the creditors' meeting to be summoned under section 44(1)(b), a statement by him showing —

(a) details relating to his appointment as judicial manager, the purposes for which a judicial management order was applied for and made, and any subsequent variation of those purposes;

(b) the names of the directors and secretary of the company;

(c) an account of the circumstances giving rise to the application for a judicial management order;

(d) if a statement of affairs has been submitted, a copy or summary of it, with the comments of the judicial manager, if any;

(e) if no statement of affairs has been submitted, details of the financial position of the company at the latest practicable date which must, unless the Court otherwise orders, be a date not earlier than that of the judicial management order;

(f) the manner in which the affairs and business of the company –

(i) have, since the date of the appointment of the judicial manager, been managed and financed; and

(ii) will, if the judicial manager's proposals are approved, continue to be managed and financed; and

(g) such other information, if any, as the judicial manager thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.

(2) Where the judicial manager intends to apply to the Court under section 48 for the judicial management order to be discharged at a time before he has sent a statement of his proposals to creditors in accordance with section 44(1)(a), he shall, at least 10 days before he makes such an application, send to all creditors of the company, so far as he is aware of their addresses, a report containing the information required by subrule (1)(a) to (f)(i).

#### **Meeting of creditors**

23. (1) A creditors' meeting summoned under section 44(1)(b) shall decide whether or not to approve the judicial manager's proposals.

(2) The meeting may approve the judicial manager's proposals with modifications, but shall not do so unless the judicial manager consents to each modification.

(3) If the meeting approves the judicial manager's proposals, he shall manage the affairs, business and property in accordance with those proposals subject to such revisions as may be made.

(4) If the meeting declines to approve the judicial manager's proposals, on the application of the judicial manager, the Court may, by order, discharge the judicial management order and make such consequential provisions as it thinks fit, or make any other order that it thinks fit.

#### **Judicial management order under section 33**

24. (1) This rule applies to a judicial management order made on the petition of the Minister under section 33 where the sole purpose or one of the purposes for the achievement of which the order was made was the promotion of the public interest.

(2) The judicial manager shall, as soon as practicable, formulate his proposals for the achievement of the purposes for which the judicial management order was made and lay the proposals before the Minister.

(3) If the Minister approves the proposals, the judicial manager shall manage the affairs, business and property of the company in accordance with the proposals.

(4) If the Minister declines to approve the judicial manager's proposals, the Court may, by order, discharge the judicial management order and make such consequential provision as it thinks fit, or make any other order that it thinks fit.

(5) If the judicial manager thinks fit, and if the Minister considers it expedient in the public interest and so directs, the judicial manager may —

(a) lay a statement of his proposals containing such of the information referred to in rule 22 as the judicial manager considers appropriate before a meeting of creditors of the company summoned for that purpose. The meeting of creditors shall not be entitled to vote on, approve, decline to approve, or modify the proposals, but the judicial manager may, if he thinks fit, have regard to any view expressed at such meeting; and

(b) publish a notice in a Malay and English local daily newspaper stating an address to which members of the company should write for copies of the statement of proposals to be sent to them free of charge.

#### **Meeting to consider judicial manager's proposals**

25. (1) Notice of the creditors' meeting, to be summoned under section 44(1)(b) or, if such is summoned under rule 24(5)(a), shall be given to all the creditors of the company who are identified in the statement of affairs, or are known to the judicial manager and had claims against the company at the date of the judicial management order.

(2) The notice shall specify the purpose of the meeting and contain a statement of the effect of rule 27 and forms of proxy.

(3) Notice of the meeting shall also, unless the Court otherwise directs, be published in a Malay and English local daily newspaper.

(4) Notice to attend the meeting shall be sent out at the same time to any director or officer of the company, including persons who have been directors or officers in the past, whose presence at the meeting is, in the opinion of the judicial manager, required.

(5) The meeting may be adjourned, if the chairman thinks fit, but not for more than 14 days from the date on which it was fixed to commence.

**Chairman at meetings**

26. At any meeting of creditors summoned by the judicial manager, either he shall be chairman or a person nominated by him in writing to act in his place.

**Entitlement to vote**

27. (1) Subject to the provisions of this rule, at a meeting of creditors in judicial management proceedings, a person is entitled to vote only if —

(a) he has given to the judicial manager, not later than 12.00 hours on the business day before the day fixed for the meeting, details in writing of the debt which he claims to be due to him from the company and the claim has been duly admitted under this rule; and

(b) there has been lodged with the judicial manager any proxy which he intends to be used on his behalf.

(2) For the purposes of subrule (1)(a), details of the debt must include any calculation for the purposes of rules 29 to 31.

(3) The chairman of the meeting may allow a creditor to vote, notwithstanding that he has failed to comply with subrule (1)(a) if satisfied that the failure was due to circumstances beyond the control of the creditor.

(4) The judicial manager or, if other, the chairman of the meeting may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim.

(5) Votes are calculated according to the amount of a creditor's debt as at the date of the judicial management order, deducting any amount paid in respect of the debt after that date.

(6) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman decides to put on the debt an estimated value for the purposes of entitlement to vote and admits the claim for that purpose.

**Admission and rejection of claims**

28. (1) At any creditors' meeting, the chairman has power to admit or reject a creditor's claim for the purpose of his entitlement to vote; and the power is exercisable with respect to the whole or any part of the claim.

(2) The decision of the chairman under this rule, or in respect of any matter arising under rule 27, is subject to appeal to the Court by any creditor.

(3) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained.

(4) If on an appeal, the decision of the chairman is reversed or varied, or a creditor's vote is declared invalid, the Court may order that another meeting be summoned, or make such other order as it thinks just.

(5) In the case of the meeting summoned under section 44(1)(b) to consider the judicial manager's proposals, an application to the Court by way of appeal under this rule against a decision of the chairman shall not be made later than 28 days after the date of the meeting.

(6) Neither the judicial manager nor any person nominated by him to be chairman is personally liable for costs incurred by any person in respect of an appeal to the Court under this rule, unless the Court makes an order to that effect.

#### **Secured creditors**

29. A creditors' meeting, a secured creditor is entitled to vote only in respect of the balance, if any, of his debt after deducting the value of his security as estimated by him.

#### **Holders of negotiable instruments**

30. A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing to —

(a) treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a receiving order has not been made or, in the case of a company, which has not gone into liquidation, as a security in his hands; and

(b) estimate the value of the security and, for the purpose of his entitlement to vote, to deduct it from his claim.

#### **Retention of title creditors**

31. For the purposes of entitlement to vote at a creditors' meeting in judicial management proceedings, a seller of goods to the company under a retention of title agreement shall deduct from his claim the value, as estimated by him, of any rights arising under that agreement in respect of goods in the possession of the company.

**Hire-purchase, conditional sale and chattel leasing agreements**

32. (1) Subject to the provisions of this rule, an owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to him by the company as at the date of the judicial management order.

(2) In calculating the amount of any debt for this purpose, no account shall be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the presentation of the petition for a judicial management order or any matter arising in consequence of that, or the making of the order.

**Resolutions and minutes**

33. (1) Subject to subrule (2), at a creditors' meeting in judicial management proceedings, a resolution is passed when a majority, in value, of those present and voting, in person or by proxy, have voted in favour of it.

(2) Any resolution is invalid if those voting against it include more than half in value of the creditors to whom notice of the meeting was sent and who are not, to the best of the belief of the chairman, persons connected with the company.

(3) A person is connected with a company if —

(a) he is —

(i) a director of the company;

(ii) a person in accordance with whose directions or instructions the directors of the company are accustomed to act;

(iii) a husband or wife or relative of such person referred to in sub-paragraph (i) or (ii); or

(b) he is entitled, directly or indirectly, to exercise or control the exercise of one-third or more of the voting power at any general meeting of the company.

(4) The chairman of the meeting shall cause minutes of its proceedings to be entered in the minute book of the company.

(5) The minutes shall include a list of the creditors who attended, personally or by proxy, and if an informal creditors' committee has been established, the names and addresses of those appointed or elected to be members of the committee.

**Notices to creditors**

34. (1) Within 14 days of the conclusion of a meeting of creditors to consider the judicial manager's proposals, the judicial manager shall send notice of the result of the meeting including, where appropriate, details of the proposals as approved, to every creditor who received notice of the meeting under these Rules, and to any other creditor of whom the judicial manager has since become aware.

(2) Within 14 days of the end of every period of 12 months beginning with the date of approval of the judicial manager's proposals, the judicial manager shall send to all creditors of the company a report on the progress of the judicial management.

(3) On vacating office, the judicial manager shall send to creditors a report on the judicial management up to that time.

(4) Subrule (3) does not apply where the judicial management is immediately followed by the company going into liquidation, nor when the judicial manager is removed from office by the Court.

**Informal creditors' committee**

35. (1) The judicial manager may, at any time he considers it appropriate, establish an informal creditors' committee for the purposes of the judicial management.

(2) The informal creditors' committee shall assist the judicial manager in discharging his functions and act in relation to him in such manner as may be agreed.

**Fixing of remuneration**

36. (1) The remuneration of the judicial manager shall be fixed in accordance with this rule.

(2) The remuneration of the judicial manager shall be determined by the Court, having regard to the time properly given by the judicial manager and his firm, employees or agents in attending to matters arising in the judicial management.

(3) In arriving at that determination, the Court shall have regard to the following matters —

(a) the complexity or otherwise of the case;

(b) any respect in which, in connection with the affairs of the company, there falls on the judicial manager any responsibility of an exceptional kind or degree;

(c) the effectiveness with which the judicial manager appears to be carrying out, or to have carried out, his duties as such; and

(d) the value and nature of the property with which he has to deal.

(4) If the judicial manager is an accountant or advocate and solicitor and employs his own firm, or any partner in or employee of it, to act on behalf of the company, profit costs shall be paid unless the Court otherwise orders.

**Disposal of charged property etc.**

37. (1) The judicial manager is entitled to —

(a) dispose of any property of the company subject to a security as if the property was not subject to the security;

(b) dispose of any goods in the possession of the company under a hire-purchase agreement as if all rights of the owner under the hire-purchase agreement were vested in the company; and

(c) require any receiver or manager of all or any part of the property of the company to vacate office.

(2) Where property is disposed of under subrule (1), the holder of such security or owner of the goods has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security or in respect of the goods.

(3) Except where the judicial manager requires to employ all or part of the proceeds of a disposal under subrule (1) for the purposes of the trading of the company, the net proceeds of such disposal shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(4) If the judicial manager requires to employ all or part of the proceeds of a disposal under subrule (1) for the purposes of the trading of the company, the holder of the security or owner of the goods has the same priority in respect of any other property of the company as he would have had under subrule (2) as if such other property of the company had directly or indirectly represented the property disposed of.

(5) In this rule, references to hire-purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.



**Application of rule 37**

38. (1) Rule 37 applies to disposals of property by an Executive Manager of a company pursuant to section 233(4) as if the expression "Executive Manager" were substituted for the expression "judicial manager" wherever the latter appears in rule 37.

**Sums payable in respect of contracts of employment**

39. (1) For the purposes of section 41(3), sums payable in respect of contracts of employment adopted by the judicial manager are only such sums as are payable in respect of qualifying liabilities under such contracts.

(2) For the purposes of subrule (1), qualifying liabilities are those liabilities which are —

(a) liabilities to pay a sum by way of wages or salary or contribution to an occupational pension scheme; and

(b) in respect of services rendered after the adoption of the contract,

and there shall be disregarded so much of any qualifying liability as represents liability or payment in respect of services rendered before the adoption of the contract.

**Application of rule 39**

40. Rule 39 applies to sums payable pursuant to section 233(6) as if —

(a) the expression "Executive Manager" were substituted for the expression "judicial manager" wherever the latter appears in rule 39; and

(b) the expression "section 233(6)" were substituted for the expression "section 41(3)" wherever the latter appears in rule 39.

**Unenforceability of liens**

41. (1) Where a judicial management order has been made, a *lien* or other right of possession of any of the documents of the company is unenforceable to the extent that its enforcement would deny possession of any such documents to the judicial manager.

(2) This applies to a *lien* on documents which give a title to property and are held as such.

(3) In this rule, "document" has the meaning given by section 235(6).

**Application of rule 41**

42. Rule 41 applies where an Executive Manager has been appointed as if —

(a) the expression “where an Executive Manager has been appointed” were substituted for the expression “where a judicial management order has been made” in rule 41(1); and

(b) the expression “Executive Manager” were substituted for the expression “judicial manager” in rule 41(1).

**Abstract of receipts and payments**

43. (1) The judicial manager shall —

(a) within 2 months after the end of 12 months from the date of his appointment, and of every subsequent period of 12 months; and

(b) within 2 months after he ceases to act as judicial manager,

send to the Court, and to the Registrar, the requisite accounts of the receipts and payments of the company.

(2) The Court may, on the application of the judicial manager, extend the period of 2 months mentioned in subrule (1).

(3) The accounts are to be in the form of an abstract showing —

(a) receipts and payments during the relevant period of 12 months; or

(b) where the judicial manager has ceased to act, receipts and payments during the period from the end of the last 12 months period to the time when he so ceased. Alternatively, if there has been no previous abstract, receipts and payments in the period since his appointment as judicial manager.

**Resignation**

44. (1) The judicial manager may give notice of his resignation on grounds of ill health or because there is some conflicts of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by him of the duties of judicial manager.

(2) The judicial manager may, with the leave of the Court, give notice of his resignation on grounds other than those specified in subrule (1).

(3) The judicial manager shall give to the persons specified in paragraphs (a), (b) and (c) at least 7 days' notice of his intention to resign, or to apply for the leave of the Court to do so if —

(a) there is a continuing judicial manager of the company, to him;

(b) there is no such judicial manager, to the informal creditors' committee; and

(c) there is no such judicial manager and no informal creditors' committee, to the company and its creditors.

**Judicial manager deceased**

45. (1) Subject to the provisions of this rule, where the judicial manager has died, it is the duty of his personal representatives to give notice of the fact to the Court, specifying the date of the death.

(2) If the deceased judicial manager was a partner in a firm, notice may be given by a partner in the firm.

(3) Notice of the death may be given by any person producing to the Court the relevant death certificate or a copy of it.

**Vacancy**

46. If a vacancy occurs by death, resignation or otherwise in the office of judicial manager, the Court may, by order, fill the vacancy.

**Release**

47. The judicial manager has his release —

(a) where he has died, at the time notice is given to the Court under rule 45;

(b) in any other case, at such time as the Court may determine.

**Application of rules 44 to 47**

48. Rules 44 to 47 apply to the resignation, death and release of an Executive Manager of a company as if the expression "Executive Manager" were substituted for the expression "judicial manager" wherever the latter appears.



















