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24 January 2014

Dear Ms Tranter,

Insolvency Law Committee response to the Insolvency Service consultation on the Insolvency Rules 1986 – modernisation of rules relating to insolvency law

INTRODUCTION

The City of London Law Society ("CLLS") represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response, in respect of the Insolvency Service consultation on the Insolvency Rules 1986 – modernisation of rules relating to insolvency law (the "**Consultation**") has been prepared by the CLLS Insolvency Law Committee.

Yours sincerely

Hamish Anderson
Chair
CLLS Insolvency Law Committee

THE CITY OF LONDON LAW SOCIETY
INSOLVENCY LAW COMMITTEE

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INSOLVENCY RULES 1986 – MODERNISATION OF RULES RELATING TO INSOLVENCY LAW

CLLS COMMENTS ON CONSULTATION DOCUMENT AND DRAFT INSOLVENCY RULES 2015

PART A. COMMENTS ON SPECIFIC QUESTIONS RAISED IN THE CONSULTATION PAPER

Question number	Question	Comment
1.	Do you agree that replacing the current instruments with a single set of rules will make the legislation: less confusing? easier to use?	General comment We agree that in the long run, the rules will be easier to use. However, in the short term the modernisation of the rules will be a significant project for lawyers and insolvency professionals alike as people will need to refamiliarise themselves with the new rules and change current templates used. Given the time and effort involved, we would like to see that every opportunity is used to rectify substantive issues with the current rules, for example regarding administration expenses, set-off, and appointment of administrators. We have made further suggestions in our comments below. In modernising the language and changing the format only, there is a risk of disputes regarding whether re-worded rules are intended to achieve a different outcome to the old rules. We anticipate that the abolition of prescribed forms would also have a monetary impact as insolvency professionals would need to draft bespoke documents instead of using standard forms. In particular for smaller insolvency work we expect that this may, at least initially, have an impact on the time spent on the insolvency work and therefore the costs associated with these. What would make the rules even easier to use would be an additional on-line version with links to cross-referenced provisions and definitions, similar to the

Question number	Question	Comment
		FCA Handbook. Comment on particular sections The common rules for the calling of meetings will make the rules easier to use. The better split between MVLs and CVLs will make the rules easier to follow.
2.	Do you think that all of the definitions included are clear?	No – see further below. In addition, it is very hard to identify when the draft rules use a defined term as these are not always capitalised. What would assist practitioners is if definitions could stand out. A clear example that is very user-friendly is the FCA handbook. This has definitions underlined and hyperlinked making it easy for any reader to spot what is a defined term and also to go quickly to the definitions section. On the positive side, we do consider it an improvement to have a section detailing all the definitions at the start – rather than having definitions throughout the draft rules.
3.	Are there any further definitions that should be included?	
4.	Is the guidance in Part 1 (e.g. about standard content of notices, delivery of documents) helpful?	Yes we do believe that this is helpful.
5.	Do you agree that grouping processes common to different types of insolvency procedures (common parts) is helpful to users?	Partly – grouping sections into the different types of liquidation is helpful. However, this is a drastic change to the current rules and will require practitioners and advisers to re-familiarise themselves with the legislation which is time consuming and costly. While common parts make sense on a conceptual level, for advisers and

Question number	Question	Comment
		practitioners engaged in one process, for example a CVA, it is helpful to have all rules that relate to CVAs in one place – rather than have some in the CVA part with more in common parts in the end. It would be very helpful if the individual sections could be cross-referenced to the common parts.
6.	Do you find the way that liquidation parts have been set out helpful?	Yes, it is useful to have the rules applying to each type of liquidation stated separately. However, as there is a degree of overlap between Parts 5, 6 and 7 (i) the rules within each part should be set out in the same order and (ii) the rules should be identically worded, so far as is appropriate.
7.	Do you agree that the structure of the rules as drafted is clearer and more logical?	Yes, although see response to q.5.
8.	Do you think that the draft rules are easier to follow than the existing Rules?	In the majority of cases, yes – although we do point out certain areas of the existing rules that have been moved over without substantial changes where there is an opportunity to make more wholesale changes and rectify issues with the current rules. At present, on the policy level, the modernisation of the rules feels like a missed opportunity (and as such we would question its use when the changes will in the short term cause increased costs). The modernisation of the rules needs to be more than predominantly reordering the rules and providing plain English tweaks to the language.
9.	Is the plainer, modern language used easy to understand?	Yes, but the majority of the current rules do not give rise to difficulty on the plain English meaning. The plain English changes have not always been addressed consistently – see for example the inconsistent changing of defray to

Question number	Question	Comment
		pay in rules 14.37 and 14.38.
10.	Are there any examples where you believe that the language used could be made simpler?	Yes. We have marked some of these up but as the review of the rules is an extensive project we have not been able to comment on the detailed drafting of each rule and have focussed on "big picture" points and issues that do not work as currently drafted.
11.	Do you agree that the draft rules improve consistency across insolvency procedures?	Yes; care will also need to be taken to ensure consistency is retained across the three types of liquidation procedure.
12.	Do you have any suggestions as to how consistency could be further improved?	Yes – see suggested drafting changes below.
13.	Do you agree that prescribing content instead of the form on which that information must be provided will make it easier to use electronic forms of communication?	We believe that there is merit in prescribed forms. This ensures that information is not missed accidentally (which might later jeopardise appointments) and that all stakeholders are used to seeing information in the same way. For example, we consider that it is likely to be helpful for the court or the registrar of companies to see certain prescribed information presented in the same way consistently. A prescribed form helps to achieve this. As such, we would appreciate template forms which practitioners could use and which are provided by the Insolvency Service. Prescribed forms also prevent a "battle of the forms" arising where different practitioners use different ways of communicating the prescribed content (such as plain English, different font size etc) – all of which can lead to confusion, increased costs, and, worse, to appointments potentially becoming invalid which is an outcome that the profession would wish to avoid. We believe that a combination of providing optional prescribed forms as well

Question number	Question	Comment
		as prescribing contents would be the most user-friendly. This would permit practitioners to use prescribed forms in most cases – while retaining the flexibility that in some cases, for example a case such as Lehman, the prescribed form may not be the best alternative and instead a different method could be used (e.g. the claims portal) where the focus then lies on having included the prescribed content.
14.	Do you find the write–out of the contents requirements in the rules to be helpful?	See response to q.13.
15.	What problems do you encounter with the delivery of documents by post?	There does not seem to be a general provision about addresses for service. Rule 1.39 provides for postal delivery and we can see that this rules has been included to provide for (cheaper) second class service which would not be permitted under the Civil Procedure Rules. We agree that this has merit. However, that means that the cross reference to rule 2.8 of the CPR has got lost so that there is no general reference to where documents should be sent (e.g. registered office etc.). This should be included.
16.	Do you agree with the estimated savings outlined?	We are unable to comment.
17.	Are you aware of any other savings or benefits associated with removing the requirement for first class postal delivery?	In general we do find it helpful to allow officeholders to make use of second class post. One point to note is however that second class post does not contain a date stamp and some alternative mail providers do not include a date stamp either.
18.	Do you agree that the technical changes listed should be made? If not, please identify which change(s) you do not think should be made and explain why.	Please see our detailed comments in the table below

Question number	Question	Comment
19.	Do you agree that contributories should not be able to form part of liquidation committees? If not, what value do contributories bring to a committee?	Yes, we agree contributories should not form part of liquidation committees; in practice, they are not usually appointed members anyway. However, although references to contributories have been removed from the Rules, the Act still refers to meetings of contributories being able to establish a committee e.g. even if the creditors decided against it (i.e. so contributories can appoint contributory members), and we are not clear how these inconsistencies are to be resolved. Surely the contributories should not have a say in the appointment of a creditors' committee if they are not to be represented on it. Also, while 'creditors committees' is the term now used throughout the Rules, 'liquidation committees' are still referred to in the Insolvency Act.
20.	Do you have any other suggestions or comments on the structure or content of the rules?	Electronic register of insolvency procedures As the draft rules have the clear aim of making the Insolvency Rules more user-friendly there is one suggestion that is not currently included in the draft rules but that we wish to reiterate. There is, at present, no electronic register in the UK where it is possible to find out conclusively and contemporaneously, whether a company is in an insolvency process. The current procedure of ringing the Central Winding Up Register is cumbersome and not suited for this day and age. Users would be greatly assisted by an electronic register which would be searchable. We note that there is a proposal on the current draft revision to the EC Regulation on Insolvency Proceedings that would introduce such a register and we would endorse this. Given the changes made to the rules at his stage we consider that it would be beneficial to include a register at this point – to prevent further wholesale changes at a later stage which are time-consuming for insolvency professionals. See also our comments in Part 19 of this draft rules.

Question number	Question	Comment
		Statement of affairs / addresses throughout the draft rules We believe that more thought should be given to respect creditors' rights to have their personal data protected. At present, a statement of affairs must disclose the names and addresses of creditors and the amounts of their debt. The statement of affairs is then sent to all creditors and filed with the court and/or filed with the Registrar of Companies. While it is possible to apply to the court for limited disclosure the test is very strict: if the officeholder thinks that it would prejudice the conduct of the "administration or might reasonably be expected to lead to violence against any person". Thought should be given how a proportionate middle ground can be reached that preserves people's data while disclosing that data only that is necessary for creditors. It is unclear to us what the policy underpin is to disclose all creditors' personal information. We also query whether in light of the Human Rights Act 1998 and the Data Protection Act 1998 (and, in particular, principle 7 in schedule 1) it is necessary and proportionate to publish this information. We are concerned that it leads to use and abuse by unauthorised persons. For example, a *de minimis* threshold could be introduced so that only creditors whose claim exceeds a certain amount would have their address and names disclosed. Alternatively, it would be possible to anonymise names or at least not include addresses. A different alternative is to include business addresses only as a matter of course and include a requirement on the insolvency practitioner to ask personal creditors in his / her first communication to creditors whether they would like their address to be public (for example, to allow claims trading). This would give individuals the ability to "opt in" to have their details public but would protect those who do not wish this to happen or who are more vulnerable.

Question number	Question	Comment
		Administration Expenses It would be useful if the Rules contained a provision creating a bar date for expense claims, thus allowing the administrator to crystallise all outstanding expenses. At present, there is nothing to stop an expense creditor putting in his claim after all funds have been distributed and the administrators paid. The US Chapter 11 procedures provide an example of a procedure where notice is given of various events, and if creditors don't object, they become bound, and the investment bank special administration rules envisage a time bar. In Re WW Realisation 1 Ltd (in administration) [2010] EWHC 3604 (Ch) the Court permitted landlords and local authorities to be time barred where they had been given notice by the administrator of their potential claims but did not respond by a set deadline. Exemption from property rates for period of administration If the government were willing to waive the requirement for administrators to pay rates while using a property, this may give various retail chains a better chance of survival if the administrators could keep the business going longer without rates liability. FSMA The draft rules do not fully reflect the roles that the FCA and PRA may have under Part XXIV (Insolvency) FSMA in respect of the insolvency of regulated companies, and it would be helpful for the relevant parts of the new rules to flag more clearly the need to comply with the insolvency provisions of FSMA.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
Part 1: Interpretation, time and rules about documents		
Chapter 1: Interpretation and Time		
1.1		Rule 1.1(2): This relates to insolvency proceedings which "are being proposed". It is not clear what is meant by this. Does this refer to the technical definition, e.g. when a CVA is proposed? A lender could propose an insolvency process or directors could hold a board meeting to propose a process – is it intended that the definition catches at this early a stage, especially in circumstances where third parties may not be on notice (as, for example nothing would have been file with the court yet)? Rule 1.1(3) • Definition of "centre of main interests". Article 3(1) of the EC Regulation does not define COMI as such. We would suggest an appropriate definition such as this: ""centre of main interests" has the meaning given to it by the EC Regulation" – this would then also capture case law issued by the ECJ. • Definition of "establishment". We would suggest this: ""establishment" has the meaning given to it by the EC Regulation" • The definition of "office-holder" should include a nominee. This ties in with SIP 3 which states the three different roles that an insolvency practitioner has in relation to a voluntary arrangement: advisory, nominee and supervisor. This will also mean that rule 1.35(3) will apply to the nominee so that when he is required to deliver documents to "all the creditors" he will need to do so only to

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		those creditors of whose address he is aware. If the nominee is not included as officeholder, individual provisions will need to be changed throughout. • It is not clear to us when the definition of "non EC Regulation" is applicable.
1.2 and Schedule 3		There are only few definitions in Schedule 3. We wonder if the need for a special schedule could not be avoided. For example, the definition of "business day" for the Rules is the same as that set out in section 251 of the Act (save that it will apply to the entire Rules, not just the first group of parts to the Act). We also query what the meaning is for those definitions that do not purport to have a separate meaning in the Rules, see "the EC Regulation".
Chapter 7 Applications to the court		
1.34(a)(b)	7.3	This should read: "the section of the Act, the paragraph of Schedule A1 or B 1 or the rule under which the application is made" – to ensure that it does not just refer to a section in the Act but also to applications made under other parts of the insolvency legislation.
Chapter 8 Delivery of documents and opting out		
1.39(4)		Do alternative postal providers such as TNT, Fed Ex etc record the date on which a letter enters its postal system or is it intended that postal delivery will only be possible for use with the Royal Mail and a delivery by a courier company will qualify as personal delivery?
1.48(4)	12A.8	Insert "or" so the rule reads: "In the case of a non-OR office holder the certificate must be given by (a) the office-holder ; or (b) the office-holder's solicitor; or (c) a partner or an employee of either firm".
Chapter 9 Inspection of documents, copies and provision of information		

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
1.53		Rule 1.53(1)(b): "Insolvent winding up" should be replaced with "creditors' voluntary winding up". The rule should therefore read: "This rule applies in the following proceedings – (a) administration; (b) creditors' voluntary or compulsory winding up Rule 1.53(2)(a)(i): It should say "in a creditors' voluntary or compulsory winding up" – to make clear that the rule does not apply to MVLs
Part 2: Company voluntary arrangements		
General comment as regards CVAs: we believe that a definition of "CVA Proposal" would be helpful to avoid confusion in the body of the text between the verb "proposing" and the defined legal term CVA proposal. This is especially acute in rule 2.23 (see comments below). There is no cut-off date and time for the submission of proxies in a CVA. This is the case in the current rules and has not been amended in the new rules. It would be very helpful if this point was addressed (see for example current rule 2.34 for administrations).		
Chapter 3: Procedure for a CVA without a moratorium		
2.2(1)(c)	1.1(4)	We suggest that the proposal for a CVA must "(c) explain why the creditors **may be** expected to agree with the CVA" because use of the words "are expected to agree" implies greater knowledge and wider consultation with the creditors generally than the existing rules. Under the existing version the CVA proposal is required to state why it is "desirable, and give reasons why the company's creditors may be expected to concur". This requires an explanation of why the proposal makes good business sense, but does not go as far as to suggest that the creditors are expected to agree to it.
2.2(3)(b), 2.7, 2.8 etc		It would be clearer here to say "the proposal is not made by an administrator or liquidator" (assuming that is what is intended). Section 1 says that a proposal can be made by the directors, or an administrator or liquidator, not the nominee. This comment applies to rules 2.7 2.8 and elsewhere.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
2.3(m)	1.3	"timing" – the use of the phrase "how long the CVA is expected to last" begs the question whether it is referring to its proposed duration or its anticipated failure (given that a large proportion of CVAs fail). We suggest retaining the existing language of "proposed duration" because this is more accurate.
2.4		We note the comments in the explanatory statement that the requirement for the proposer to submit a notice that a proposal is being made has been abolished. We agree with this approach.
2.9	1.8	• Rule 2.9(1): The text should read: "A person (other than the nominee) who intends…." Given that rule 2.9(2) deals with an application by the nominee. • Rule 2.9(2): The text should read: "A nominee who intends to apply under that section to be replaced must deliver a notice that such an application is being made **to the proposer** at least five business…." – to avoid confusion and to use consistent language.
Chapter 4: Procedure for a CVA with a moratorium		
2.13	1.39	• Rule 2.13(1): The statement of the company's affairs under paragraph 7(1)(b) of Schedule A1 must be the same as the one under paragraph 6(1). The rule should also make clear that this is the same as is required under new rule 2.5. • Rule 2.13(3): The referent to rule 8(3)(b) is wrong. This should be rule 2.12(3).
2.16	1.42	• Rule 2.16(3): Subsection (d) refers to "the creditors of the company". If the nominee is included as officeholder (see comments in definition section), this should be amended to read "all the creditors". If the nominee is not included as officeholder, this needs to be amended to read "all the creditors of the company of which the nominee is aware and whose address the nominee has".

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		• Rule 2.16(4): It should read "The notice ***required under rule 2.16(3)*** to the court must…."
2.19 and 2.20	1.45 and 1.40	These refer to the replacement of a nominee by the court (rule 2.19) and make reference to where the appointment is not by the court (rule 2.20). There are however no provisions on how a nominee could be replaced outside of the court. Are there any circumstances where this can be the case and if so, where are they set out? If not, then the reference in rule 2.20 should be deleted.
2.20(2)	1.40	To be clear, this should read "The notice required by subsection (1)"
Chapter 5: Consideration of the proposals by the company members and creditors		
2.22(1)	Partially rule 1.9	If the nominee is not made an officeholder (see our comments in the definition section), then the reference to "creditors" needs to be amended to read all the creditors of the company of which the nominee is aware and whose address the nominee has".
2.23	NEW	• Rule 2.23(1): If the nominee is not made an officeholder (see our comments in the definition section), then the reference to "all creditors" needs to be amended to read all the creditors of the company of which the nominee is aware and whose address the nominee has". • There is an inconsistency between rule 2.22 – which requires the nominee to send the proposals to all the company's members (no qualification) and rule 2.23 which requires him to send the documents only to those people who, to the nominee's best belief, are members. This is also the case in rule 2.25 – which picks up the best belief qualification. The sections should be consistent and there is no reason why the nominee should not send the document to all members (relying on the shareholder register). • Rule 2.23(2)(d): If there is no definition of "CVA Proposal" (see our general remarks) then we would like to rephrase this to make it clearer: "state how any ***suggestions*** by those entitled to vote

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		for modifications to the proposals can be made, and how the nominee ***intends*** to deal with ***suggestions*** for modifications". This will avoid the use of the defined legal term "proposal" and the verb "proposing".
2.24(2)		The nominee should have regard to the convenience of those invited to attend when fixing the venue and time for a meeting. It would still be more flexible than the existing 10am to 4pm, but would not seem an unreasonable limitation on the nominee. Otherwise nominees could unreasonably fix meetings at times difficult for some to reach even if the venue is quite centrally located.
2.25	1.48, 1.12, 1.11, 1.16	See the comment to rule 2.23(1): there is an inconsistency between the information that must be sent to all members and only those persons who to the best of the nominee's belief, are members.
2.26		It is not clear to us the purpose of this provision or whether it is necessary at all. Section 5(2)(b)(ii) ensures the CVA is binding on creditors even if they did not have notice of it. There is no equivalent of this proposed new rule in the existing rules. The only relevant difference in the new rules is that they contemplate CVA approval by correspondence. It is not obvious that this change would require such a provision as the proposed r2.26. We would prefer that it was deleted because its purpose is unclear and it could have wider unintended significance. For example, if it is intended to be confined to CVAs we recommend that this is made clear by reference to "this part of the Rules" and that the word "proposal" is modified to "CVA proposal". Otherwise items such as an administrator's statement of proposals could be covered here, too.
2.28(2)		The way that this rule is currently drafted implies that if the chairman and one other creditor is present, the chairman still needs to wait for 15 minutes. This does not make sense to us. Instead, we recommend that the section is drafted this way: "The start of a creditors' meeting must be delayed for at least 15 minutes if – (a) the quorum consists ***only*** of the chair and….".
2.29(2)		This rule should make reference to rule 1.4 to clarify that creditors' proxies and corporate representatives will be permitted to attend the meetings.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
2.33(2)	1.20 and 1.53	For clarity, this should read "***Rule 2.33(1)*** is subject to…"
2.34	1.17, 1.49, 1.52, 1.19	• Rule 2.34 (1): We note the comments in the explanatory memorandum. However, we do not believe that the distinction between "entitlement to vote" and "casting of votes" is clear and there is contradiction in the draft rules (e.g. see rule 2.35(4). We would suggest that this is reworded. What the rule is aimed at is to make a distinction as to who is entitled to vote and how votes are calculated. For example, a wholly secured creditor is entitled to vote but his vote would be calculated at nil. We would suggest to redraft as follows: "For the purposes of section 5(2) and paragraph 37(2) of Schedule A1, every creditor, secured or unsecured, is entitled to vote in respect of the debt due from the company but the calculation of the creditor's vote is determined by these Rules." • Rule 2.34(2); Claims must be delivered to the nominee before the meeting. There is however no provision in the current or the draft rules as to what the content of such claim needs to be. It would be helpful to set this out – even if the reference is that a claim needs to have the same details as a proof of debt. We also suggest that in the claim a creditor needs to represent whether or not he is connected to the company. This will enable the Chairman to take the decision on how votes are counted with much greater ease.
2.35		• Rule 2.35(2): We believe that this is currently confusing and would suggest to redraft as follows: "A creditor may vote in respect of a debt for an unliquidated amount or of an unascertained or contingent amount". • Rule 2.35(3): The reference to "such a debt" should be tightened: "… a debt in rule 2.35(2)", alternatively 2.35(2) and 2.35(3) could be merged into one sub-rule. • Rule 2.35(4): We would rephrase: "The vote of a creditor whose claim is wholly secured is calculated at zero." This solves the contradiction between rule 2.34 (the secured creditor is entitled

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		to vote) but makes clear that his vote will have a zero value. • Rule 2.35(5): We would rephrase: "The vote of a creditor whose claim is partly secured is calculated by ascribing a zero value to that part of the creditor's claim which is secured."
2.36	1.17A, 1.50	• Rule 2.36(1): This rule includes the distinction of being "entitled to vote" and "casting" a vote. We do not believe that this is helpful. This rule should deal with entitlement to vote only – not with the calculation of votes. A fully secured creditor's claim would accordingly not be rejected but would be admitted at the value of nil. • It could be reworded as follows: "The nominee or the appointed person must ascertain both entitlement to vote and how the creditor's vote is to be calculated." • Rule 2.36(2): This again includes the concept of casting a vote. We would rephrase as follows: "…, the nominee or appointed person must mark it as objected to and allow the creditor to vote in respect of the debt…."
2.37	1.19, 1.52	• Rule 2.37(1): This should start "Subject to paragraph (2), a resolution…." • Rule 2.37(4): This test – expressed as it is in a double negative – is not helpful (and has not been helpful in practice). It would be much preferable if the test could be expressed in a positive way. It is also not clear what the term "qualifying" adds, or whether the bracketed words "(whether or not actually cast)" are really necessary. In any event it creates a complex test to understand and would greatly benefit from simplification. For example would the following wording achieve the desired result and be easier to understand: "A resolution is not passed unless those whose votes are admitted for voting in accordance with rule 2.36 and who vote for it include at least half in value of the unconnected admitted votes."?

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		• As regards the Chairman's power to decide who is a connected creditor, it would be helpful if the Insolvency Rules expressly provided the Chairman with the power to ask a creditor for further information as to whether he is connected. The statement of affairs must include information about debts with connected creditors (rule 2.5) but there is not otherwise an obligation to state this. See our comments to rule 2.34. We believe that it would be helpful to set out the standard contents of a claim and include a representation whether or not the creditor is connected. We also believe that there should be an express provision in the rules that would allow the nominee to call on the creditor for further information about the claim. In particular (but not limited to), whether a creditor is connected. • Rule 2.37(6): We are not sure what the reference "or otherwise in accordance with these Rules" refers to. We would prefer to see a clear reference in this rule that the reference to connected party is a reference to sections 249 and 435.
2.38(2)	1.19, 1.17A, 1.50	It should read "… was ***delivered*** to the court".
2.39(6)	1.24	CVA is not defined – see our comments at the start of the CVA section of this table.
Chapter 6: proxies and corporate representation		
General comment: Why is it necessary to have a separate chapter in the CVA section dealing with proxies? Ought these not to be dealt with in one place for all insolvency processes, for example in the section on meetings? We believe that this chapter could be generalised and have wider application.		
2.43		There is no guideline in the Rules as to how long a nominee must retain proxies. This is presumably a relatively long time to allow a creditor who did not have notice of the CVA meeting to challenge the CVA but it would be useful to have a long stop date.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
Chapter 7 (remote attendance at meetings) and Chapter 8 (company meetings)		
General comment: why do these chapters form part of the CVA part and cannot be dealt with for all meetings in a general place (with relevant adaptations to cater for CVAs)?		
2.49	12A.24	It would be helpful to have a deadline for the request, for example "as soon as reasonably practicable but in any event no later than 4.00 pm on the business day following".
2.50(6)	12A.25	Where the notice has already been filed with the court or the registrar of companies a notice of the change should be delivered to these too.
Chapter 9: Action following approval of CVA		
2.52(2) and (3)		These provisions come under the chapter heading of "Action following approval of CVA" but the appointment of an alternative IP as a supervisor and his providing confirmation of his qualifications and consent to act would normally precede the resolution approving the CVA. They might sit more comfortably in Chapter 5?
2.58(a)	1.28	The fees should be agreed with the company only (not with the proposer). The company will then act by the directors, the administrator the liquidator, as appropriate. It would not be appropriate for the directors in their personal capacity to agree the fees – hence we do not believe the reference to "proposer" is correct as this could capture the directors.
2.56 and 2.57		It would be helpful to include a long stop date for the retention of documents and of the Secretary of State's power to require the production and inspection of documents.
2.59(1)	1.29	The reference to rule 2.29(4)(c) is wrong and should be to rule 2.46(4)(c)
Part 3: Administration (Freshfields with input from CMS Cameron McKenna, Slaughter and May and Clifford Chance)		

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
3.1	2.33	*Interpretation for Part 3 – pre-administration costs* • The definition of "pre-administration costs" is the same as in the current rules. However, it would be helpful to have a little more clarity on this. It appears that the costs covered are only those of a qualified insolvency practitioner, not of legal advisers [or the company itself?]. The words "with a view to its doing so" are vague and it is not clear at what point costs could be classified as being pre-administration costs, we assume that costs incurred prior to the filing of a notice of intention to appoint has been filed are intended to be covered given the large amount of work that is often carried out before that point? Also, there is overlap with existing rule 2.67(1)(c) on administration expenses which allow the costs of the application to be part of the administration expenses (and therefore these would not fall to be part of pre-administration costs). Clarity here would be welcome.
3.2	2.3 & Form 2.2B	*Proposed administrator's statement and consent to act* • Regarding the removal of requirement in existing rule 2.3(5)(b). We note the point made in the explanatory statement to the Insolvency Rules that ethical guidance exists to regulate whether appointments are taken where there has been a prior professional relationship. However, we believe that it would be useful to retain this requirement to further focus the mind of a prospective administrator on any such prior professional relationship prior to taking on an appointment. This would also be in keeping with the increased transparency to creditors in the administration process, especially in the context of pre-pack administrations. • Rule 3.2(1) – while the administrator's IP number and regulatory body are to be included, there is no reference to including his/ her name in the consent to act. This should be added.
3.3	12A.56(1)	The new rule is not explicit in that the appointor should be satisfied before the appointment that the

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		administrator has adequate security.
3.4	Form 2.1B	*Administration application* • Rule (1)(v)(bb) – we agree with the explanatory statement that we cannot identify why companies limited by guarantee should not be included. • Rule 3.4(1)(c)(ii)(aa) – following cases such as *Re Frontsouth (Witham) Ltd (In Administration)* [2011] EWHC 1668 (Ch) it would be helpful to have clarity that certain references in the Act and the Rules to "the company" permit shareholders to effect administration appointments (both by applying to court and using the out-of-court method) and on what, if any, formalities would need to be complied with for such an appointment. • Rule 3.4(1)(c)(ii)(bb) – following cases such as *Minmar (929) Ltd v Khalatschi* [2011] EWHC 1159 (Ch) it would be helpful if the Rules could clarify that directors can decide to seek the appointment of an administrator using the court or out-of-court method either informally, if unanimous, but otherwise by a formal decision of the majority at a properly convened board meeting. • Rule 3.4(1)(c)(ii)(ee) add "qualifying" before floating. • Rule 3.4(1)(c)(iv) – while this wording is contained in the current prescribed form, it would be helpful to have clarity as to what is meant by "financial limit". If this means the "secured amount" then it would be helpful to state this. It would also make sense to include the date on which the charge was created. This information is required by the form prescribed to register a charge (MR01). • Rule 3.4(1)(c)(v) – again referred to in the current prescribed form but not clear what is meant by

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		"nominal" capital? We assume that this means the issued share capital but please confirm.
3.5	2.2 & 2.4	*Witness statement in support of administration application* Rule 3.5(3)(e) - we note the request in the explanatory notes to comment on whether it would make sense to treat the paragraph 100 statement in a consistent fashion across all different methods of appointment. We agree that this is desirable and that it makes sense to include the statement in the respective appointment document (i.e. the witness statement and the court order, or the notice of appointment for out of court appointments).
3.7(3)	2.6	*Service of application* We understand the combination of rule 3.4(3)(a) and rule 3.7(3)(e) to mean that where the administration application is being made by the directors there will be no need to serve it on the company. Please confirm if this is not the case. If this is the case, for consistency the company should also not be one of the prescribed persons who need to receive notice of the directors' intention to appoint in an out of court appointment by directors (see our comments to rule 3.22).
3.9	2.5	Rule 3.9(a) - the words "(or in Wales)" are duplicated.
3.10	2.10	*Intervention by holder of qualifying floating charge* Rule 3.10(1)(a) should refer to the "written" consent of the qualifying floating charge holder.
3.12	Form 2.4B, rule 2.13	*The order* • The numbering has gone wrong. There are no subsections 1, 2 and 3 but there is subsection (4).

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		• Rule 3.12 (d) - the administration order is required to state the "postal address" of the applicant. This is however not required in rule 3.4 (the application) so the court will not know this. In any event, the requirement should be for the address for service as this is required to be included by rule 3.4. • Rule 3.12 (f) - the words "consideration of" the evidence are more accurate than "reading" as often evidence is no longer read out in court. • Rule 3.12(j) – the words "as defined in Article 3 of the EC Regulation" are not required as main, secondary or territorial proceedings are defined. • Rule 3.12(k) and (4)– in accordance with para 13(2) Sch B1, an administration order takes effect at a time appointed by the order or where no time is appointed by the order, when the order is made. The new language in (4) cuts across this by stating that the appointment takes effect "from the date of the order". It would be helpful if this language could be removed so that there is no doubt that an administration order can take effect at the time the order is made or at an appointed time before or after the order is made (see e.g. *Re G-Tech Construction Ltd* [2007] B.P.I.R. 1275). • Rule 3.12(4) - there is a new requirement for the court to deliver a sealed copy of the order directly to the administrator. However, under rule 3.14(2) the applicant must also deliver a sealed copy to the administrator (as is currently the case). It does not seem necessary that a sealed copy is delivered to the administrator by the applicant and the court directly.
3.14	2.14	*Notice of administration order* See comment at rule 3.12 above.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
3.15	2.15 and Form 2.5B	*Notice of intention to appoint* • Rule 3.15(1) – we suggest that this rule should apply in all cases where notice is given under paragraph 15(1)(a) Sch B1 to a prior qualifying floating chargeholder i.e. not only where a notice of intention to appoint is filed with the court. We note that at present, there is no prescribed form for notifying a holder of a prior qualifying floating chargeholder unless it is to be filed with the court under paragraph 44 in order to obtain a moratorium, in which case form 2.5B must be used. It would be helpful to prescribe the content of the notice – regardless of whether it is then filed with the court to ensure that the holder of a prior qualifying floating charge obtains all relevant information. If this approach is adopted, the words "and files a copy…." in rule 3.15(1) should be deleted. • Rule 3.15(2) - the words "filed with the court" should be deleted if the approach suggested above is adopted. • Rule 3.15(2)(c)(v) - See our comments for rule 3.4 as regards the "financial limit" and that the date of creation of the charge should be included. • Rule 3.15(2)(d) - the notice should be authenticated by the appointor (or his solicitors) – not the applicant as this is not a court application. • Rule 3.15(3) - the filing of the notice of intention at court under paragraph 44 must be done "at the same time" as notice is given to the prior qualifying floating charge holder. This is the same requirement as in current rule 2.15 but it is not practical to do these things simultaneously. It would make more sense for the notice of intention to be delivered to the qualifying floating charge holder and then filed at the court at the same time "or as soon as reasonably practicable thereafter". • Rule 3.15(4) is not clear. Existing rule 2.15(3) specifies that the notice of intention must be

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		"served" and that the provisions for service that apply to a court administration application apply equally to such a notice. However, in the new rules "service" means (i) for court documents, service in accordance with Chapter 5 of Part 12; and (ii) for other documents, service in accordance with Part 6 of the CPR with such modifications as the court may direct. The provisions of Part 12, Chapter 5 only apply to "court documents" which includes administration applications but not a notice of intention. Is the intention that the rules of service for an administration application differ to those for a notice of intention to appoint? It would also be helpful to cross refer to this part in rule 3.15(4).
3.16	Forms 2.2 and 2.6B and rule 2.16	*Notice of appointment* • Rule 3.16(1)(c)(iv) - should refer to "a copy of each administrator's consent to act" as each administrator has to provide this. We note the explanatory statement and the reference to the Interpretation Act 1975 but we would prefer that it is clear that each administrator will need to consent to their appointment. • Rule 3.16(1)(c)(vi) – see our comments on rule 3.4 as to "financial limit" and that the date of creation of the charge should be included. • Rule 3.16(1)(c)(vii)(aa) – should state that "that two business days have elapsed from the date when the notice was given to the prior floating charge holder (or the latest date on which notice was given, if more than one)." The obligation under para. 15(1) of Schedule B1 is that the qualifying floating charge holder is given two business days notice – not the court. The current drafting makes sense if the filing at court has to be at the same time but this is not practical (see our comments at rule 3.15 above) and the rule should in any event reflect the obligation in para 15(1) Sch B1. See also our comments on timing as regards rule 3.15 above. • Rule 3.16(1)(c)(vii)(bb) – there is no reference here to the requirement that at least two business

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		days must have lapsed since the holder of a prior floating charge holder was given notice. This needs to be added. • Rule 3.16(1)(c)(vii)(cc)- it should be made clear that the holder of a floating charge should consent ***in writing***. See also comments below at rule 3.17. • Rule 3.16(1)(c)(vii)(dd) - it should be made clear that the holder of a floating charge should consent ***in writing***. See also comments below at rule 3.17.
3.17	2.16(2) –(4) & 2.17	*Filing of notice with the court* • Rule 3.17(1)(a) – this should refer to ***each*** administrator's consent to act. • Rule 3.17(1)(b)(ii) – this should refer to the ***written*** consent of each prior qualifying floating charge holder. The existing rules (rule 2.16(5) set out what the QFHC's consent should include where he chooses not to indicate his consent on form 2.5B – these were helpful so it would be good if they could be retained.
3.19	2.19	*Appointment taking place outside court hours : procedure* • Rule 3.19(5) – it would make sense to require the appointor to retain not only the hard copy of the email but also any attachments that were appended to the email. • Rule 3.19(6) – this language, i.e. giving notice of notice, is not clear (the existing rules are clearer). We suggest that "the appointor must deliver a copy of the faxed or emailed notice of appointment together with the fax transmission report or email to the administrator as soon as reasonably practicable".

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		• Rule 3.19(7) – the requirement that the notice of appointment be delivered to "the court specified in the notice as the court having jurisdiction in the case" does not at present work as the notice is not required to contain a reference to the relevant court (cf. an administration application where this will be required, see rule 1.34). • Rule 3.19(8)(c) – the cross reference should be to rule 3.20(1)(c)(***vi***)(bb),(cc) or (dd).
3.20	2.19	*Appointment taking place outside of court hours: content of notice* • Rule 3.20(1) - this should refer to rule 3.19 instead of the "preceding rule" to be clear. • Rule 3.20(1)(c)(vi) – see comments to rule 3.16 above. • There is no requirement for this notice to be authenticated – we assume that this is because a statutory declaration is required. Please confirm.
3.22	2.20 (1), (2), 2.22 and Form 2.8B	• Rule 3.22(2)(b) - see our comments above at rule 3.4 about providing clarity as to what constitutes a valid decision of the directors and a record of that. • Rule 3.22(3) - as drafted, notice to certain prescribed persons, such as the company and the supervisor of a CVA need only be given where there is a qualifying floating chargeholder. While this goes someway to minimising the risk that an appointment will be invalidated by reason only of a failure to notify a prescribed person (often the company itself) (see *Minmar* and subsequent cases conceptually we do not agree that it makes sense to determine whether such persons receive notice of an intended appointment on the basis of whether there is a qualifying floating chargeholder. [We would suggest that a copy of the notice of intention to appoint should always be given to certain prescribed persons, such as enforcement officers, CVA supervisors.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		• We would further suggest that it is not necessary to include the company (where the appointment is made by the directors) in the list of prescribed persons (in rule 3.22(3)(d)). Given that the notice is served on the company's registered address (and not on the shareholders) it is hard to see what this notice in fact achieves as the directors will be well aware of the situation. This would also be consistent with our suggestion that the company does not have to be notified of an application for a court appointment (see our comments on rule 3.7, above). • We would however wish to ensure that the rules make it clear that the prescribed persons (such as a CVA supervisor) do not need to be given 5 business days notice (the words "in the same terms" could perhaps be construed as requiring this). Instead, they should be notified but: (i) where there is a qualifying floating charge holder, the appointor should be able to proceed to appointment as soon as the five business days have elapsed or sooner where the qualifying floating chargeholder has consented in writing; (ii) where there is no qualifying floating charge holder, the appointor should be able to proceed to appointment immediately. See the drafting suggested by the Financial Markets Law Committee (Appointment of Administrators by Companies and Directors, Issue 173) as to the notice being given for information purposes only and not subject to a minimum notice requirement. • We would therefore suggest that the rules should be amended so that rule 3.22, 3.23 and 3.24 are used where there is a qualifying floating charge holder and/or or an enforcement officer and/or person who has distrained and/or or CVA supervisor. Where there is no such person, rule 3.25 should apply. It is otherwise hard to see when rule 3.25 applies (a shareholder appointment seems the only circumstance and these are rare . • The statutory declaration should be required by the rule on prescribed content (see the qualifying floating charge holder application) for ease and consistency.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
3.23	2.21 & Form 2.8B	*Accompanying statutory declaration:* See our final comment on rule 3.22, above.
3.24	2.23 7 Form 2.9	*Notice of appointment after notice of intention to appoint* • Rule 3.24(1) - should be amended to read "(where ***one or more*** notices of intention to appoint ***have*** been given") • Rule 3.24(1)(a) - the notice should be headed "Notice of appointment of an administrator ***by company or director(s)*** …" • Rule 3.24(1)(c)(iii) – this should refer to the consent of each administrator • Rule 3.24(1)(x) – this should refer to the fact that the company has or the directors have, as the case may be, "given notice ***of their intention*** to appoint" in accordance with paragraph 26 of Schedule B1 …". • The notice is not required to be authenticated – is this because a statutory declaration is required?
3.25	2.23 and Form 2.10	*Notice of appointment without prior notice of intention to appoint* • Rule 3.25(1) - the notice of intention should be headed "Notice of appointment of an administrator by ***company or director(s)*** …" • Rule 3.25(1)(xi)(bb) – see our comments are regards "record of the decision" of the directors at rule 3.4, above. • The notice is not required to be authenticated – is this because a statutory declaration is required?

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
3.26	2.26	*Notice of appointment: filing with the court* • Rule 3.26(1)(b) - should refer to the ***written*** consent • Rule 3.26(3) - should refer to "the appointor" rather than the company or the directors • Rule 3.26(4) - should refer to "the appointor" rather than the company or the directors
3.28	2.28(2)	The heading of section 235 is "duty to cooperate with office-holder"
3.29	Form 2.14B	• Rule 3.29(2)(b): see our comments generally and as regards CVAs. Is it proportionate and necessary to include the address of each creditor in the statement of affairs which subsequently is a public document?
3.34	2.33	• The proposal should also identify the company. • Rule 3.34(1)(g): see above: is a full list of creditors with addresses proportionate and necessary and have data protection issues been considered? The list of company creditors should be qualified by "of whom, based on the information available at the date of the statement of proposals, the administrator is aware". • Rule 3.34(1)(g)(ii)(bb) – we would prefer that this says that the administrators believe, based on information available at the date of the statement of proposals, that the list is less than full. • Rule 3.34(1)(k) – the reasons for the belief that the proceedings are main, secondary, territorial or non EC proceedings should also be stated

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
3.36	2.33	• Rule 3.36(1)(b) – this drafting does not work. It could be fixed by specifying that current rule 3.36(1)(b) is in fact part of rule 3.36(1)(a) as new rule 3.36(1)(a)(iii). The rule would thus read: "(…) (a) deliver a notice of the extension containing the standard contents to: (i) every creditor of the company, (ii) every member of the company of whose address the administrator is aware; ***and (iii) the registrar of companies".*** • Rule 3.36(3) – is there a reason why the administrator should not also comply with paragraph (1)(a)(i) if a notice pursuant to rule 3.36(4) is published? [Is there a general provision allowing notice to creditors by advertisement?] • Rule 3.36(4)(a) – it would be clearer to use the wording in the previous rules "advertised in such manner as the administrator thinks fit" rather than "be published by advertisement" which is vague • Rule 3.36(4)(c)(i) – this should say "request in writing", not "write for". Writing could be defined as including requests via electronic means.
3.37	New	As a general point, we reiterate our comments made in our response to the Red Tape Challenge in relation to whether it is appropriate at all to use "deemed consent" in the context of the approval of the administrators' proposals. In this respect, the creditor democracy provided by the creditors' meeting process is vital to ensuring that creditor views are at least heard. For this reason, we would prefer that creditor approval, in writing is obtained the same way as present. If changes are to be made , notwithstanding our reservation expressed above, then we have the following comments to make on the current draft Rule: • Rule 3.37(2) this is a repeat of rule 3.37(3)(e). The sentence should stop after "must be accompanied by a notice to the creditors".

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		• Rule 3.37(3)(e) – the proposals should be adopted not "on that date" but "on or after the deadline". • Rule 3.37(5) – again, the proposals should be approved on or after the deadline, not "on that date". • Rule 3.37(6) –the text should read "where the administrator has received objections from 10% or more of the creditors by number or by value ***by or before the deadline…***" • Rule 3.37(8) – we would prefer that this subsection is deleted as it is clear that this will be an expense and other rules (rule 3.49) deal with the expense regime). However, if it is retained, then it should be made clear that the costs of correspondence are also an expense of the administration.
3.38	New	• Rule 3.38(1)(c) this should be qualified by "the creditors of whom, based on the information available at the date the statement of proposals or statement of revised proposals is deemed approved, the administrator is aware".
3.39	2.46	• Rules 3.39(2) and 3.39(4) – it should be a requirement that the administrator file / deliver a copy of the result of the meeting at the same time as they file / deliver a copy of the statement of proposals
3.40		• Rule 3.40(1) starts with "where paragraph 54 of Schedule B1 applies". Paragraph 54 refers to a statement of proposals that has been approved "at an initial creditors' meeting". It is therefore not clear whether it is possible to revise a statement of proposals that has been approved by correspondence (the same is true for the current version of the rules where it is not clear whether it is possible to revise statements of proposals which were deemed approved without a meeting). It would be helpful if this was clarified. • The proposal should also identify the company. • Rule 3.40(1) – the statement of the proposed revisions is sent to "creditors and members". It would

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		be helpful if it said that this was sent to "all the creditors" to tie in with rule 1.35 and to make clear that this is only sent to those creditors of whose address the administrator is aware. • Rule 3.40(2) – it is unclear why this refers to a "copy" being sent to the registrar of companies given that the notice is not authenticated and it will the same document that is sent to the creditors and members. For practical purposes it would be desirable if the Rules only refer to a "copy" where this is truly a copy of an authenticated document. • Rule 3.40(4)(a) – it would be clearer to use the wording in the previous rules "advertised in such manner as the administrator thinks fit" rather than "be published by advertisement" which is vague • Rule 3.40(4)(c) – this should read "request in writing" not "write for" – see our comments at rule 3.36
3.41	2.46	• Rule 3.41(2) and 3.41(4) – it should be a requirement that the administrators file / deliver a copy of the result of the meeting at the same time as they file / deliver a copy of the statement of proposals
3.42	2.33A	• See our general comments on disclosure in answer to Question 20 above and whether the threshold for limited disclosure is disproportionally high and not necessarily aligned with data protection issues.
3.43	2.30(1)-(3)	• Rule 3.43(2) – should this specifically say "as otherwise required by paragraph 49(4) or rule 3.38? • Rule 3.43(4) – should a copy of the order also be delivered to the creditors and members?
3.45	2.30(7)-(9)	• Rule 3.45(3) this should be qualified by " the creditors of whom, based on the information available at the date of the rescission or amendment of order for limited disclosure, the administrator is

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		aware".
3.46	2.30(1), 2.33(6)-(8)	• Rule 3.46(4)(c) – should this say "request in writing" rather than "write for" – see our comments at rule 3.36
3.47	2.66	• Rule 3.47(1) should be rephrased as follows: "This rule applies where the administrator applies to the court under paragraph 71 or 72 of Schedule B2 for authority to dispose of: a) property which is subject to a security other than a floating charge; or b) goods in the possession of the company under a hire purchase agreement." This is necessary because goods in the company's possession that are subject to a hire purchase agreement are not, strictly speaking, "property" of the company.
3.49	2.67	• It would be helpful to clarify the position in relation to amounts which are payable in advance e.g. rents. Given the decision in *Goldacre (Offices) Ltd v Nortel Networks UK Ltd (in administration)* [2009] EWHC 3389 (Ch), it is a matter which will otherwise need to be decided by the courts. The rules could for, example clarify that: (i) rent is paid as an expense on a daily rate, based on the period during which the administrator uses the property (for example, a definition of "using the property" based on the concept of occupying the property for the purposes of the administration might assist - this may mitigate the need for the current practice of appointments being timed to occur after quarter days); (ii) rent, service charge and other periodic charges would be paid as an expense, but not all sums falling due, such as end of lease restatement obligations; (iii) damage to the property caused by or "under the watch" of the administrator may rank as an expense. • It would also be helpful to clarify what type of liabilities under a (non-employment) contract 'adopted' by the administrator can constitute an expense of the administration. A similar reasoning to that set out above in relation to property regarding rent, service charge and periodic charges in comparison to end-of-lease obligations, applies to contracts more generally. For example, it would

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		be useful to clarify whether liabilities such as significant early termination liabilities in an 'adopted' contract constitute expenses of the administration. • This is a restatement of the existing rule 2.67. As a matter of principle, we believe that a re-write of this rule would be highly desirable for the following reasons: o There is an unfortunate interaction between paragraph 99 of Schedule B1 and the rule (current rule 2.67) which would be good to clarify. o It is unclear what "expenses properly incurred" are versus "necessary disbursements". We believe that this rule should be revised following *Re Nortel Companies [2013]* UKSC 52 to make clear that the "*mere fact that an event occurs during the administration of a company which a statute provides gives rise to a debt on the part of the company cannot, of itself, be enough to render payment of the debt an expense of the administration. It would be a debt payable "during the period of" the administration but it would not be "part of" the administration.*" [Para. 106]. We have provided some suggested drafting in this regard: [(1) The expenses of the administration are payable in the following order of priority (subject to an order of the court under paragraph (3)): (a) sums payable in respect of debts or liabilities arising out of contracts entered into by the administrator whether on their own behalf or as agent of the company, including a liability arising under a contract of employment which was adopted by the administrator under paragraph 99(5) of Schedule B1; (b) liabilities incurred by the administrator (whether on their own behalf or as agent of the

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		company) in performing his functions in the administration of the company; (c) the cost of any security provided by the administrator in accordance with the Act or the Rules; (d) where an administration order was made, the costs of the applicant and any person appearing on the hearing of the application; (e) where the administrator was appointed otherwise than by order of the court; (i) any costs and expenses of the appointor in connection with the making of the appointment; and (ii) the costs and expenses incurred by any other person in giving notice of intention to appoint an administrator; (f) any amount payable to a person employed or authorised, under Chapter 5 of this Part of the Rules, to assist in the preparation of a statement of affairs or statement of concurrence; (g) any allowance made by order of the court towards costs on an application for release from the obligation to submit a statement of affairs or statement of concurrence; (h) any expenses incurred by members of the creditors' committee or their representatives and allowed for by the administrator under [Rule 2.63] but not including any payment of corporation tax in circumstances referred to in sub-paragraph (k) below); (i) the remuneration of any person who has been employed by the administrator to perform any services for the company in administration, as required or authorised under the Act or the Rules; (j) the administrator's own remuneration (the basis of which has been fixed under Chapter 11 of this

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		Part of the Rules) and unpaid pre-administration costs approved under [Rule 2.67A]; (k) the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the company during the period of the administration (without regard to whether the realisation is effected by the administrator, a secured creditor, or a receiver or manager appointed to deal with a security). (2) Liabilities arising during the period of the administration are only an expense of the administration if they fall within paragraph (1) above and do not rank as expenses merely because they fell due in the administration period. (3) The administrator may agree with any creditor that liabilities arising under a contract, or parts thereof, (not being a contract of employment) with that creditor will not rank as an expense under paragraph (1) of this Rule. (4) Where the assets of the company in administration are or, in the administrator's opinion may be, insufficient to satisfy the expenses set out in paragraph (1), the administrator may apply to the court to vary the order of payment in such order of priority as the court thinks just. (5) For the purposes of paragraph 99(3) of Schedule B1, the former administrator's remuneration and expenses shall comprise all those items set out in paragraph (1) of this Rule." • Rule 3.49(2) this should make clear that it is only the liabilities in subsection (1)
3.50	2.67A	• Rule 3.50(4) – it should be clear that the administrators must deliver notice of the meeting ***to the creditors' committee or creditors***. • Rule 3.50(6) – this needs to say "where there is a creditors committee". It would also be clearer if

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		this section said "may nominate one or more members ***of the creditors' committee***" to make it clear that it is not members of the company. • Rule 3.50(7) – is there a reason why creditors can nominate one or more of their number to appear or to be represented but cannot be heard on the application (see rule 3.50(6))
3.51	2.110	• Paragraph (b) should be more flexible and refer to any "significant" amendments "or deviations from the original proposals" in keeping with the current wording as there may be instances where minor deviations have been made.
3.53	2.111	• Rule 3.53(4)(b) - if notice is to be given to the directors of the company, the rules should specify how that notice should be given. For example, there may be issues around locating directors and addresses for service. If the administrator is to incur personal liability for failure to comply, the scope of this duty should be made clear. It is also important to note that only if the first statutory objective of administration is achieved will control of the company pass back to the directors; where (far more commonly) the second or third objective is achieved, the directors will not regain control of the company and so will not necessarily require notice of the administration's end. • Rule 3.53(4) - consideration should be given as to whether a copy of the notice should be sent to all other persons who received a copy of the administrators' proposals. • Rule 3.53(5)- at present, the officeholder is guilty of a fine and a daily default fine but not of an offence. Is this intending to create criminal liability (the language in relation to "guilty of" implies criminal liability.
3.54	2.113	• Rule 3.54(1)(b)(vii) –this should mention that the administrator is filing the notice with the court and the registrar of companies (as this is the legal requirement) and both are referred to at the

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		beginning of the rule)? • Rule 3.54(3): the drafting of this rule is confusing. From a practical point of view, the administrator needs to be crystal clear when the administration ends. This would also solve the issues raised in a similar context (in relation to the conversion of administration to CVL by In Re Globespan Airways Ltd [2012] EWCA Civ 1159). The neatest solution would be to amend paragraph 83 of Schedule B1 to provide that the CVL takes effect on the date of the court endorsement as this creates absolute clarity. Alternatively, the CVL could take effect on the administrator **filing** the notice with the registrar of companies, rather than on the registrar actually registering the notice (as this created the difficulties addressed in Re Globespan Airways). If the first option is pursued we would suggest that the order of events is as follows: o One authenticated notice of the end of administration is filed with the court. In addition, a copy of the authenticated notice is taken to the court. o The court will endorse both the original and the copy. The court will keep the original and give the endorsed copy back to the administrator. The administration ends at the date and time of the court endorsement. This will be consistent with the commencement of the administration which is always timed and dated by the court. o The former administrator then delivers an endorsed copy of the notice to the registrar of companies for filing with the company's documents. If the endorsed copy is filed (including the date and time of the end of the administration) this will enable other parties in the future to know precisely when the administration ended. o The former administrator then also sends a copy of the endorsed notice to all the creditors within five business days.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		• Rule 3.54(5) –should be modified to read "all the creditors" as rule 1.35 qualifies this as to awareness • Rule 3.54(7)(a) – delivery to directors, see our comments to 3.5394)(b) above. • The order of events as remodelled above would enable the administrator to comply with rule 3.54(8). The administrator will know when the notice was filed with the court as this is instantaneous – therefore he will be able to insert this date into the notice and also send it out within five business days. If the relevant date for termination of the administration was a different one, such as when the Registrar files the document, he will not know when this has happened and this is likely to lead to a delay which may mean that the administrator could not comply with the subsection within five business days. • If there is no scope to amend paragraph 83 of Schedule B1, the rules should be amended to incorporate the decision in Re Globespan Airways into statute. This would provide that upon the administrator filing the notice with the registrar of companies, the duration of the administration would be automatically extended until such time as the registrar registers the notice.
3.55	2.114	• Rule 3.55(2)(ii) and rule 3.55(3 – it should say "all the creditors" to be sure to comply with rule 1.35 and therefore the carve out as per awareness.
3.56	2.115	• Rule 3.56(2) – it should say "Any of those persons listed in (1)…"
3.57	2.116	• Rule 3.57(b) – delivery to directors please see our comments to rule 3. 53(4)(b) above.
3.58	2.117A	• Rule 3.58(3) – the wording "send to all recipients of the report" is not clear. Can this be rephrased so that it is clear that the former administrator must: (i) file a revised report with the registrar of companies; (ii) then file the revised report to the court; and (iii) then send the revised report to all

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		other persons whom notice of the administrator's appointment was delivered (in addition to the creditors mentioned in paragraph 83(5)(b)) • It would be helpful if the rule stated whether the costs of delivery of an updated report are an expense of the subsequent liquidation. • The rule does not address the timing problem identified in *Re Globespan*. It would be useful if this could be specifically addressed as set out above. • This rule does not include Companies House guidance that once a form 2.34B (notice of move from administration to CVL) has been registered a further notice of the appointment of a liquidator must be submitted to Companies House by form 600 (appointment of liquidator).
3.59	2.118	• See comments to rule 3.58 as regards sending of updates to the reports and expense
3.61	2.120	• Rule 3.61(2)(c) – this should read "all the creditors" to tie in with rule 1.35 • Rule 3.61(2)(e)(ii) – Schedule B1 does not require notice to all holders of prior qualifying floating charge holders. This is currently in the Rules but this seems unnecessary. The notice must not be given to all those who would have been entitled to appoint an administrator (e.g. the FCA etc). Should it not capture either everyone who could have appointed or only the person who actually appointed? • Rule 3.61(2)(f) – where the appointment was made by directors, is it necessary to notify the all the qualifying floating charge holders? Again, this is currently in the rules but is this necessary? • The interaction between Schedule B1 paragraph 87 and the rules (rule 3.61 and 3.62) is unclear. The Schedule prescribes the actual resignation (notice of resignation), the rules prescribe that notice

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		of intention to resign must be given – but then do not address the actual resignation. It would be more helpful to spell this out. • *There is no prescribed content of the notice of intention to resign (see, by way of contrast rule 3.62 which provides for set content for a notice of resignation.*
3.62	2.121	• Rule 3.62(2)(b). Why must notice of the resignation be given to all those who received notice of intention to resign but not the appointor?
3.65	2.124	• Rule 3.65(2)- there should be an "or" between (a) and (b). • Rule 3.65(2)(b) – it should be "***the*** personal representative (not plural, nor "a") • Rule 3.65(3) - there is a potential inconsistency between the obligation on the personal representatives and partners within the firm of the deceased administrator to provide notice of the death ("*The notice **must** be filed...*") and the permission in paragraph (3) for any other person to file notice of the administrator's death once 28 days have elapsed and neither the personal representatives nor a partner in the deceased's firm have filed a notice. It is suggested that paragraph (3) could be redrafted to state that notwithstanding paragraph (2), any other person may file the notice at any time given that there is no stated sanction on the personal representatives/partners within the firm and no obvious reason for preventing another party from giving notice for 28 days.
3.68	2.129	• Rule 3.68(1)(a) - it would be helpful to clarify that the administrator vacating office should deliver up assets "of the company in his possession". • Rule 3.68(2) - it is unclear if this rule is supposed to create criminal liability – this should be

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		clarified.
Part 4: Receivership		
4.5	3.4(1) and Form 3.2	Query whether this provides a better method than referring to Form 3.2. The proposed rules state that the matters required by s.47(2) should be included, and list a number of additional requirements. These additional requirements almost exactly match the requirements of current Form 3.2, save that they do not ask for an estimate of the shortfall to floating charge holders, or an estimated deficiency/surplus as regards creditors (See bottom of page 3 of Form 3.2) – is there any policy reason not to include this information?
4.6	3.4(2)-(5))	Rule 4.6(1) - the requirement for a statement of affairs to be delivered by the nominated person (3.4(4)) has been removed. This is presumably covered by s.47(1) IA and by proposed rule 4.5(3). Rule 4.6(3)(b) - new requirement for a person making a statement of concurrence to "deliver both statements to the receiver together with a copy of them". Presumably "both statements" includes the statement of affairs (as well as the statement of concurrence). Please can you confirm.
4.10	3.5	It would be helpful to have an explanation of the interaction of proposed rule 4.10 with proposed rule 1.54 (Confidentiality of documents – grounds for refusing inspection). Under proposed rule 1.54 (which mirrors current rule 12A.51) the permission of the court is not needed for an office-holder to decline a person to inspect a document forming part of the records of the insolvency proceedings. The statement of affairs is part of the records of receivership so it seems inconsistent for Rule 4.10 to require an application to court to withhold all or part of the statement of affairs. This inconsistency appears to be in both the current and proposed insolvency rules.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
4.21(3)	3.39(2)-(5))	Rule 4.21(3): mistake in draft rules — should refer to paragraph 2(a) not 2(b)(i)
Part 5: Members' voluntary liquidation		
5.1	Form 4.70	• Rule 5.1(1)(a) Is it necessary to include the directors' postal address in the statutory declaration? It would make sense that there is an explicit acknowledgment that the directors can give the company's address, rather than their personal address. This would also be consistent with Companies House policy for directors. • Rule 5.1(2)(e) – it should read "the value of each of the following secured liabilities of the company ***expected*** to rank…."
5.2	4.139	• Rule 5.2(2): "The chair of the meeting". Where the liquidator is appointed at a physical meeting of members this provision works. However, liquidators in an MVL are often appointed by written resolution and it would be helpful if there is a reference as to who certifies the appointment in such a case, for example any director or the company secretary. • Rule 5.1(3) - This should be in the chapter on expenses and not in this chapter as the costs of security do not go to the appointment process as such. • Rule 5.2(4)(c) – the date ***and the time*** of the appointment should be clear from the certificate. As appointments are often made by way of written resolution it would be sensible to refer to the date and time of the resolution, rather than the date and time of the meeting.
5.3	4.140	• The court can appoint a liquidator under section 108. The application can be brought by anyone who the court considers proper – but there are no rules on the application itself, the mandatory content or on whom the application should be served. This would be helpful.

New rule	Derivation from existing rule in Insolvency Rnle 1986	Comment
		• Rule 5.3(3)(d) – it is unlikely that the court will know the "postal address" of the applicant. This should refer to the address for service but it would be helpful to have the application set out so that the court order could track the information required in the application. • Rule 5.3(3)(h) and 5.3(5) – the date ***and time*** should be clear on the order • Rule 5.3 does not make any reference to security for the office. This is currently provided for in rule 12A.56 which applies to any appointment. If there is no general section dealing with security then this should be picked up in this rule.
5.5	4.142	• Current rule 4.142(4A) [no quorum] and 4.142(5) [Section 171(5) notice] do not seem to be replicated in the new rules. • Rule 5.5(3) – the content that the notice may state (the replacement liquidator) should be in a new paragraph as the preceding items are items that must (rather than may) be included • Rule 5.5(6) – "in delivering a notice of appointment" – this is not clear. Please clarify who the notice is to be given to (is this the notice referred to in rule 5.2(7) or a notice to the registrar of companies? • Rule 5.5(7) – this mentions the release. Please clarify when the liquidator's appointment ceases as there does not seem to be a rule for this.
5.6		• Rule 5.6(3) – the language is not clear. It should say "… applies for a venue to be fixed for a hearing ***to determine*** whether sufficient cause is shown, the court will ***fix such a hearing*** without notice to any other party". • Rule 5.6(4) – the reference to "Otherwise" is not easy to follow. We would suggest that this rule is

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		phrased: "If the applicant does not apply for a venue to be fixed under rule 5.6(3)…" • Rule 5.6(5) – as drafted there is some overlap with rule 5.6(3). Is this sub rule intended only to capture those applications that the court thinks do have sufficient cause, if so, this should be made clearer. • Current rule 4.144(3) does not seem to be included in the new rule. • Rule 5.6(9)h) – this should state the date ***and time*** of the order.
5.7	4.144	• There is no prescribed content for notice of removal to the registrar. Would this make sense, for example the removal should include the date and time of removal.
5.11	4.148	• Rule 5.11(1)(a) – what are the "expenses properly incurred" here. There is scope for confusion that this could be limited to the rule 7.110(4)(a)(i). We believe that it would be clearer if it could specifically refer to rule 7.110(1) or pick up the language of that rule. • Rule 5.11(1)(b) – this should say "liquidation", not "administration". If the "administration or the liquidation" is meant then other terms would be preferable, such as the "conduct of" or at the very least "administration of the estate" to avoid confusion between the administration and the liquidation regime.
5.12		• Rule 5.12(4) – the time should also be stated on the release
5.20	4.192	• Rule 5.20(4) – typo: it should say "prevent ***or*** impede"
5.23	4.206	• Rule 5.23(3)(c) and (d) – the reference should be to address for service, not "postal address"

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		• Rule 5.23(3)(l) – the date and ***time*** of making the order should be specified • Rule 5.23(3)(k) and 5.23(5) – are these contradictory or is rule 5.23(5) a method for amending the special manager's remuneration after it was fixed for the first time? This should be made clear.
5.24	4.207	• If the appointment only comes into effect when security is given what is the relevance of the date of the order in rule 5.23(3)(l) – should there be a provision dealing with both rules? • Rule 5.24(5) – it would be helpful if the words picked up the relevant rule and sub rule in the liquidation expense rule regime and cross referred directly
5.26	4.209	• Rule 5.26(2)(b) – it is not clear that (b) applies only where the special managers' appointment is terminated before the expiry of 3 months sub rule (b) applies.
5.32		• Rule 5.32(5) – is it necessary to state that the calling of a meeting will be an expense? See our comments to rule 3.37 in relation to administration
Part 6: Creditors' voluntary winding up (a member of the committee is still reviewing this section and we will forward any further comments as soon as possible.)		
Part 7: Winding up by the court		
Chapter 1: Application of Part		
7.1 Application of Part 7	4.2(1) 4.2(3)	New rule 7.2(2) could be simplified further by deleting the words in brackets after "s123(1)(a)" and "s222(1)(a)".
Chapter 2: The statutory demand		

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
7.4 Further information to be given in statutory demand	4.6(1) 4.6(2)	New rule 7.4(3) should start with the word "Each" instead of "The".
Chapter 3: Petition for winding-up order (no application to petition by contributories)		
7.6 Contents of petition	Form 4.2 4.7(7)	New rules 7.6(h) and (i) require details of the company's objects. We agree that the nature of the company's business is more relevant than its objects and suggest that the requirement to list a company's principal objects and summarise the remainder be deleted. For companies incorporated under the Companies Act 1985 and previous Companies Acts, objects clauses were often very broadly drafted, to allow the company to carry out as wide a range of transactions as possible. The Companies Act 2006 recognised that such lengthy objects clauses were neither helpful nor desirable, and abolished the requirement for companies to have an objects clause. Similarly, requiring a petitioner to identify a company's principal objects and summarise the remainder (where an objects clause exists) is a time-consuming exercise which provides little useful information. New rule 7.6(h) could be amended to state "the nature of the company's business (if known)" and new rule 7.6(i) could be deleted. New rule 7.6(l) should refer to "statement of truth" rather than just a "statement". The numbering has gone wrong in new rule 7.6. New rule 7.6 should be renumbered as new rules 7.6(1); Rules 7.6(4) and (5) should be renumbered as Rules 7.6(2) and (3) respectively. New rule 7.6(4) refers to a petition filed by a company's administrator. A similar rule should be included for a petition filed by an administrative receiver. Section 124 lists persons entitled to bring a winding-up petition, but does not mention administrators or administrative receivers (despite Schedule 1 to the Act

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		giving those office holders the power to present or defend a winding-up petition). New rule 7.6(4) currently provides a partial solution for administrators only. As administrative receivers can be appointed to companies under sections 72B-W, it would be helpful to refer to them here. New rule 7.6 does not require the company's address to be provided, in contrast to the current form 4.2. It would be useful to retain the requirement to include the company's registered address, particularly in light of comments re new rule 7.11 and personal service.
7.7 Request to appoint former administrator or supervisor as liquidator (section 140)	4.7(10)	In new rule 7.7(2)(a), replace "that person's" with "the appointee's".
7.8 Verification of petition	r4.7(1) r4.12	Typo in new rule 7.9(2)(a) – should refer to the "official receiver".
7.10 Petition where the company is subject to a CVA or is in administration	r4.7(8) r4.7(9)	New rule 7.10(1) allows a petition in respect of a company subject to a CVA to be presented to the court where the documents for a moratorium under section 1A were filed as well as the court where the nominee's report under section 2 was submitted. The drafting of this rule could be simplified further by dealing with companies subject to a CVA in rule 7.10(1), companies in administration in rule 7.10(2) and renumbering the current rule 7.10(2) as rule 7.10(3).
7.11 Copies of petition to be	4.7(4) 4.8(1)	New rule 7.11(2): Service provisions are set out in Part 12, Chapter 5, rather than listed separately for each type of insolvency procedure. We do not agree with the proposal that the petition must be personally

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
served on company or delivered to other persons	4.10(1)-(3A) and (5)	served on the company. Personal service would require the winding-up petition, in respect of a registered company, to be served on a director, the treasurer, the secretary of the company, the chief executive, a manager or other officer of the company or corporation. This is more restrictive than the current rules, which permit the petition to be handed to a much wider range of recipients, deposited at the registered office, or at the last known place of business if service at the registered office is "not practicable". Moving away from this and requiring personal service would place a disproportionate burden on creditors, particularly if the registered office of the company is a "post-box" or the directors are abroad. Requiring personal service would make it more onerous and costly for creditors to serve a winding-up petition on a company, particularly where those creditors are small businesses or individuals. It would also give too much scope for mischief if a company is being used in an illegitimate manner. Due to the corporate personality of a company, it is not necessary or appropriate to require service of a winding-up petition to be carried out in the same way as for a bankruptcy petition. New rule 7.11(4) needs to be re-worded to refer to the Financial Conduct Authority (**"FCA"**) and the Prudential Regulation Authority (**"PRA"**). The draft rules do not fully reflect the roles that the FCA and PRA may have under FSMA s367 - 371: the regulators may bring a winding-up petition in respect of a regulated company and may participate in proceedings. It would be helpful if the new rules in Part 7 flagged more clearly the need to comply with these sections of FSMA. The current rule 4.7(4)(e) requires notification to the FCA and the PRA only if the company is a present or former authorised deposit-taker. New rule 7.11(4) requires notification if the company is regulated by (under) the Financial Services and Markets Act 2000 (**"FSMA"**) – a much broader category of financial services providers and insurers. This is a welcome change as it reflects section 371 FSMA. New rule 7.11(4) could be amended to read "If the Company is a regulated company, the petitioner must deliver a copy of the petition to the appropriate regulator". The terms "regulated company" and "appropriate regulator" are used in sections 4A(5) and (5A) of the Act and the definitions could be

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		incorporated by reference in the new rules. In new rule 7.11(5), insert the word "copy" before "must be delivered".
7.15 Permission for the petitioner to withdraw	4.15 Form 4.8	New rule 7.15(2)(b) should refer to the address for service of the applicant, rather than the postal address.
7.16 Notice by persons intending to appear	4.16 Form 4.9	New rule 7.16(1) now refers to "creditors or contributories" rather than "every person who intends to appear on the hearing". This is consistent with the current approach under Form 4.9, which provides that only creditors and contributories are entitled to appear. However, other entities may be entitled to be heard on the petition, for example, the FCA and PRA in relation to a regulated company. Therefore, it would be better to retain the reference to "any person" and make consequential amendments to new rule 7.16(2).
7.19 Substitution of creditor or contributory for petitioner	7.19(1)(b)	In new rule 7.19(1)(b), the cross reference should be to r7.12, not r7.11.
7.20 Order for substitution	NEW	This new rule needs to reflect that a contributory can also be named as a substitute petitioner (see new rule 7.19). Drafting suggestions to new rule 7.20: • add the words ", contributory" after "creditor" in new rules 7.20(1)(c) and 7.20(1)(d); and • add the words ", contributory" after "named creditor" in new rules 7.20(1)(f)(iii) and (iv).

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
7.22 Order for winding up by the court	Form 4.11	If the winding up petition is required to contain the petitioner's address for service rather than postal address (see comments to new rule 7.6), this change should be reflected in new rule 7.22(1)(b). New rule 7.22(1)(c) should use the word "whether" instead of "that" and list all categories of person who can bring petitions, whether under Chapter 3 or under other legislation, e.g. Member State liquidators appointed in main proceedings in relation to the company, the FCA, the PRA (and administrative receivers, if the suggestions re new rule 7.6(4) are followed). Form 4.11 contains a note that the official receiver is liquidator by virtue of the court order (reflecting s136(2)). There is no requirement for this note to be part of the order under new rule 7.22. It would be useful from a practical perspective to retain this note, as the official receiver is a peculiarly English position and including the note will alert creditors, particularly overseas creditors, of his involvement.
7.24 Notice to Official Receiver of winding-up order	Form 4.13	If the winding up petition is required to contain the petitioner's address for service rather than postal address (see comments to new rule 7.6), this change should be reflected in new rule 7.24(2)(d).
7.25 Delivery and notice of the order	4.21	Drafting suggestions: • In new rule 7.25(4), use the phrase "in compliance with". • In new rule 7.25(6), replace "a notice" with "the notice".
7.26 Petition dismissed	4.21B	We would suggest that the rule may be able to be changed to allow the company (rather than the petitioner) to advertise / gazette the dismissal if it wished to do so (clearly, the company could do so anyway but it would be helpful to have that formal acknowledgment). That way, the company could decide whether,

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		depending on the circumstances, it would be helpful to make known to the world that the petition has been dismissed or whether it would prefer not to advertise this (and run more negative publicity).
Chapter 4: Petition by a contributory		
7.28 Contents of petition for winding-up order by contributories	4.22(1) Form 4.14	New rules 7.28(1)(b) and (q) should refer to "address for service" rather than "postal address" for consistency with new rule 1.34(j). Please see comments on new rule 7.6 regarding the company's objects, they apply equally to new rules 7.28(1)(h) and (i). New rule 7.28(1)(h) should refer to the nature of the company's business. New rule 7.28(1)(n) should refer to a statement of truth (rather than just a statement).
7.29 Verification of petition	NEW	New rule 7.29 is largely consistent with new rule 7.8. Is the difference between new rules 7.8(4)(b) and 7.29(3)(b) deliberate?
7.30 Presentation and service of petition	4.22	Please see the comments on rule 7.11 regarding the requirement for personal service on the company. Typo in new rule 7.30(2): should refer to the "official receiver". Cross-reference in new rule 7.30(3)(b)(i) is incorrect: it should refer to new rule 7.10. In new rule 7.30(6) there are no timing requirements for delivering copies to member State liquidators. Also, there is no equivalent of new rule 7.11(3)(a)-(c) or (4) for serving a copy of the petition on a

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		liquidator, administrator, CVA supervisor or (if relevant) the FCA or PRA. This wording should be added.
7.31 Return of petition	4.23	Cross-reference in new rule 7.31(1) should be to r7.10.
7.32 Application of rules in Chapter 3	4.24	This should also refer to new rule 7.23 (Order for winding up following the cessation of the appointment of an administrator).
Chapter 5: Provisional Liquidator		
7.33 *Application for* appointment of provisional liquidator	4.25	New rule 7.33(4) should be re-phrased as "the applicant must inform the official receiver" instead of "the *official receiver must be informed" to match the active voice used elsewhere in the new rules.*
7.36 Order of appointment	4.26 Form 4.15	New rule 7.36(1)(c) should refer to "address for service" rather than "postal address" for consistency with new rule 1.34(j).
7.39 Termination of appointment	4.31	New rule 7.39(3) should be re-written in the active voice. In new rule 7.39(4), the words "referred to in paragraph (3)" can be deleted (for consistency with advertisement of other notices).
Chapter 6: Statement of affairs and other information		

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
7.40 Notice requiring statement of affairs	4.32 Form 4.16	Further drafting changes are possible: New rule 7.40(1): re-word in the active voice as "If the official receiver requires a statement of the company's affairs to be made out in accordance with section 131, the official receiver must deliver a notice to one or more "nominated persons"."
7.41 Statement of affairs	4.33(1) Form 4.17	New rules 7.41(1)(c)(i) and (1)(g)(i): please see general comments regarding disclosure of creditors' and members' addresses in the statement of affairs. In new rule 7.41(1)(g), the words "including creditors" should be inserted before the words "under hire purchase".
7.42 Statement of affairs: verification and filing	4.33	New rules 7.42(4) and 7.42(5) should be re-written in the active voice.
7.43 Limited disclosure of statement of affairs	4.35(1) and (3)	New rule 7.43(1) allows the official receiver to apply for limited disclosure if he thinks that full disclosure "would be likely to prejudice the conduct of the winding up". The lowering of this threshold from "would prejudice" under r4.35(1) is welcome.
7.44 Release from duty to submit statement of affairs;	4.36	New rules 7.44(7) to (9) could be re-written in the active voice.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
extension of time		
7.45 Statement of affairs: expenses	4.37	New rule 7.45(4) refers to access to "relevant documents and other records" which is a welcome amendment from the wording in r4.37(4) of "books and other papers".
7.47 Further disclosure	4.42	In new rule 7.47(1), replace "a nominated person" with "one or more nominated persons".
Chapter 8: The Liquidator		
7.49 Appointment of liquidator by creditors or contributories by correspondence		New rule 7.49 is not yet drafted. The approach sounds sensible, but the detailed drafting will need to be reviewed. The detailed drafting should require notice to be sent to "all the creditors" to pick up the awareness provisions of new rule 1.35.
7.50 Appointment of liquidator by creditors or contributories by a meeting	4.100 Form 4.27 Form 4.28	Rule 7.50(4)(b) does not follow the wording in Form 4.28. The final words should be "the other" instead of "other persons".

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
Rule 7.51 Resolutions	4.63(2) 4.63(3)	If new rule 7.49 is adopted, the language in new rule 7.51(1)(c) and (2) will need to be adapted to refer to the procedure for appointing a liquidator by correspondence – in this situation there will be no "chair" of a meeting.
7.52 Appointment by the court	4.102 Form 4.29 Form 4.30	Re-write rule 7.52(2) in the active voice, e.g. "The court shall not make an order unless…" New rule 7.52(3)(c) should refer to "address for service" rather than "postal address" for consistency with new rule 1.34(j). New rule 7.52(4) should be drafted consistently with new rule 7.50(4). Re-write rule 7.52(5) to clarify that "The official receiver must deliver the sealed copy to the person appointed as liquidator". If new rule 7.49 is adopted, the language in new rule 7.52(8) will need to be amended to refer to the possibility of appointing a creditors' committee by correspondence.
7.55 Appointment to be gazetted and registered	4.106A(2)-(4)	It would be better to move the words "as soon as reasonably practicable after appointment" from r7.55(1) to 7.55(1)(a) because r7.55(1)(b) is permissive, so the time restriction does not sit well with it.
7.57 Liquidator's resignation	4.108 4.121	The language in new rule 7.57(1)(a)-(c) should be consistent with equivalent language relating to other insolvency procedures. See for example new rule 3.60(1) on the registration of an administrator. New rule 7.67(2) should refer to "all the creditors" to tie in with new rule 1.35. New rule 7.57(3): delete the words "must state" from the introductory wording and include them at the

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		beginning of rule 7.57(3)(a) and (b). Typo in new rule 7.57(5) – it should refer to the "date of the meeting".
7.59 Meeting of creditors to remove liquidator	4.113(4) Form 4.37 4.116(2)	Is it intended that the creditors would be able to vote by correspondence on whether to remove a liquidator, or will a physical meeting be required? In new rule 7.59(2), replace "that time" with "three business days".
7.62 Removal of liquidator by the court	4.119 Form 4.39	Should new rule 7.62(1) and (8)(g)(ii) refer to a decision by correspondence to remove the liquidator, or will a physical meeting be required in these circumstances? The reference to "otherwise" in new rule 7.62(4) is not easy to follow. We suggest that the start of this rule is phrased "if the applicant does not apply for a venue to be fixed under rule 7.62(3)…" New rule 7.62(8)(c) should refer to "address for service" rather than "postal address" for consistency with new rule 1.34(j). Regarding the numbers in square brackets in r7.62(10)(a): should a third copy be provided, which the former liquidator must pass to the new liquidator (if appointed) – see new rule 7.60? New rule 7.62(11) should start with "If".
7.64 Deceased liquidator	4.132	The numbering in new rule 7.64 has gone wrong. Please also see the comments regarding new rule 3.65 (Deceased Administrator) which apply to new rule 7.64.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
7.68 Vacation of office on completion of winding up (section 172(8))	New (replaces rule 4.125)	The new procedure in new rule 7.68 seems workable, but the detailed drafting would need to be reviewed. Note that changes would need to be made to s146 and 174, which require a liquidator (other than the official receiver) to hold a final meeting, and set out when a liquidator's release is effective. New rule 7.68(3)(b) could be re-worded more simply, ending with the words "liquidator's release". New rule 7.68(8) could then state "If more than 10% in value of the creditors object to the liquidator's release, the liquidator must apply to the Secretary of State for release and rule 7.66 will apply".
7.77 Notice of disclaimer to interested persons	4.188	New rules 7.77(3) and (4) should refer to notices being served (this is a requirement under s179 in relation to leasehold property) as well as delivered.
7.80 Application under section 178(5) for liquidator's decision whether to disclaim	4.191A	The cross-reference in new rule 7.80 should be to rule 1.48.
7.81 Invitation to person to declare interest in property	4.192 Form 4.55	Should new rule 7.81(2) require the notice to be authenticated and dated?

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
Chapter 12: Calls		
7.92 Control by creditors' committee	4.203	This should be re-worded to allow for resolutions by correspondence in accordance with new rule 16.18.
7.93 Application to court for permission to make a call (section 150)	4.204(1) and (2) Form 4.56	New rule 7.93(4)(h) should refer to an "amount" per share.
7.95 Making and enforcement of the call	4.205(1) Form 4.58	New rule 7.95(2)(c) duplicates new rule 7.95(2)(e). New rule 7.95(2)(g) should refer to the "date specified in the notice" and "interest at the specified rate". Under new rule 7.95, the liquidator is no longer required to attach a copy of the court order or resolution sanctioning the call. It would be better to continue to require that a copy of the court order or resolution be attached, as it provides evidence of the liquidator's authority to make the call. Without such evidence, contributories may be more likely to challenge the call, and in turn this could cause delays and costs.
7.96 Court order to enforce payment of call by a	4.205(2)	New rule 7.96(1)(a) could be split into two paragraphs, for consistency with rule 7.94(2)(a) and (b). Should new rule 7.96(2)(i) refer to the date on which payment of interest is to commence?

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
contributory		
Chapter 13: Special Manager		
7.98 Appointment and remuneration of special manager	4.206(1), (3)-(6)	New rule 7.98(3)(c) – the reference should be to "address for service" not "postal address". New rule 7.98(3)(l) – the date and time of making the order should be specified. New rules 7.98(3)(k) and 7.98(5) – are these contradicting or is rule 7.98(5) a method for amending the special manager's remuneration after it was fixed for the first time? This should be made clear.
7.99 Security	4.207	In new rule 7.99(5)(b) it would be helpful if the words picked up the relevant rule and subrule in the liquidation expense rule regime and cross referenced directly.
Chapter 14: Public examination of company officers and others		
7.103	4.211 Form 4.61	New rule 7.103(3) should require the order to state the date and time of the public examination. New rule 7.103(6): include the words "to be examined" after "person".
7.104 Notice of hearing	4.212(2)-(4)	New rule 7.104(2)(a): this should read "may be gazetted". It is odd to have "must be gazetted" and "if the official receiver thinks fit" in the same paragraph. New rule 7.104(4) should contain a cross-reference to paragraph (2).
7.105 Request by creditors or contributories	4.213 Form 4.62 Form 4.63	In new rule 7.105(5)(h), "contributories" should be replaced by "contributory's". "Requisitionists" should be replaced with "the creditors or contributories who requested the examination"

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
for a public examination		in new rule 7.105(7) (for consistency with r7.105(10)).
Rule 7.106 Examinee unfit for examination	4.214	New rules 7.106(4)(c) and (e) should refer to "address for service" rather than "postal address" for consistency with new rule 1.34(j).
Chapter 15: Order of payment of costs etc		
7.110 General rule as to priority	4.218 12.2(2)	The cross-reference in new rule 7.110(4)(c) should be to "paragraph (d)".
7.112 Litigation expenses and property subject to a floating charge – requirement for approval or authorisation	4.218B	New rule 7.112(2) could be deleted and a definition of "specified creditor" inserted in rule 7.111(1).
7.116 Winding up commencing as	4.219	The cross-reference in new rule 7.116 should be to r7.110(4)(a).

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
voluntary		
Part 12 – Court procedure and practice		
Chapters 1 to 12		
General	-	Use ";" at end of lists rather than "," (or vice-versa)
12.1	-	Chapter 1 seems unnecessary, since each chapter can simply state when it applies. By having Rule 12.1 there is potential for a mismatch between when it says a chapter applies and when each chapter says it applies. E.g. 12.1(a) says that chapter 2 applies "*to all civil proceedings under the Act and Rules*", whereas 12.2 says that it applies "*to all insolvency proceedings*". Similarly, 12.1(i) says that chapter 10 applies "*in all cases*", whereas 12.51 says it applies in "*insolvency proceedings*". Since "*insolvency proceedings*" is a defined term in the rules, it would seem more appropriate to use that phrase in 12.1(a). Alternatively, it is difficult to see what 12.1 really adds and could be deleted. Also, cf. 12.1(b)(c)(d)(e) and 12.1(g)(j) - "*as set out in that chapter*" and "*in the cases set out in that chapter*": the difference is unlikely to be significant, but should be avoided.
12.1(f)	-	Typo "administrative order" should be "administration order"
12.2	7.51A/12A.20	Note that CPR rules on service out of the jurisdiction (CPR 6.30 to 6.51) would be included. In the current Rule 12A.20, the court may direct modifications to CPR Part 6 rules on service out of the jurisdiction. Is that now encompassed by the general proviso that the CPR apply "*with any necessary modifications*" (12.2(1)).
12.5	7.12	Correct sub-paragraph lettering (should be (a), (b) and (c) rather than (d), (e) and (f))

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
12.10(7) and (9)	7.31A	Looks like duplication.
12.11		Could this be wrapped up into 12.10? There is a degree of duplication and query why 12.11(2) refers to "solicitor" whereas 12.10(5) refers to "someone authorised to so by that person". 12.11(2) is more restrictive and does not sit well with 12.10(5).
12.14(4)	7.7A	Should reference to "Rule 12.16" be "Rule 12.15" instead?
12.15	7.8	Delete ";" after "otherwise"
12.16(2)(b)		Should "*or the court otherwise orders*" be "*or the court otherwise directs*"?
12.17	12A.16	This replicates the current position that a notice of intention to appoint an administrator will not be a "*court document*". While the point is largely academic, we are aware of a matter where it was unclear what postal service rules might apply to service of a notice of intention to appoint on a QFC holder outside of the jurisdiction. The new rules clarify that a notice of intention to appoint must be served (3.15(4)), but it's not clear what rules would govern service out of the jurisdiction.
12.26(2)(c)	7.4	Delete "*Error! Reference source not found*"
12.27(1)		Words missing: "*on the respondent named in the application **unless** the court **otherwise** directs*"?
12.27(2)(c) and (3)		References to the "*application*" should presumably be to the "*sealed copy of the application*"
12.28(1)	7.4(6)	Remove bold

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
12.30(1)	7.5A	Remove bold Also, reference in the first line to service of the "*application*" should presumably be to the "*sealed copy of the application*"
12.34	7.3A	Should it refer to a "sealed copy of the application being served" in the first line?
12.35(2)		Insert "." at end of sentence Should the obligation here instead be to deliver "a copy of the sealed copy of the order" to each creditor rather than to deliver "*notice of the order*"? The wording would be a bit cumbersome, but since the court only delivers two sealed copies, clearly creditors could only be given a copy of those sealed copies. Or is the intention that the obligation is always just to deliver notice of the order to creditors, such obligation being satisfied by publication as per 12.35(3)?
12.35(5) and 12.38(5)		Insert "sealed" before "*copy of the order*" in the first line 12.38(5) – delete extra space before the "."
12.41(3)(a)	9.6	Section 236 can also apply in administration (and administrative receivership and provisional liquidation) – shouldn't the expenses also at least be administration expenses as well as winding-up expenses?
Before 12.42 and 12.46	-	Delete "Section 6" and "Section 7" headings
12.46	7.10A	"**12.46**In this…" Insert space
12.68(1)(a)(b)		Delete "or" at the end of each paragraph

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
12.68(2)		NB square bracket reference to 'old' rule 12A.29
12.72(2)	7.49A(2)	Insert words "that the appellant wishes to appeal," before "*stating the appellant's intention to appeal*"
12.73	7.50(1)	Insert "the" before "*notice of the decision*" Also, would it be more accurate to say "within 28 days after the date of delivery of the notice of the decision"?
Part 13: Official Receivers (no comments)		
Part 14: Claims by and distributions to creditors		
Chapters 1 to 4		
General	-	Use ";" at end of lists rather than "," (or vice-versa) The concepts of "making a distribution" and "declaring a dividend" appear to be used interchangeably. Could the rules adopt consistent wording or refer to 'declaring and distributing a dividend' etc? Also it's not clear why there is a definition of "*dividend*" expressly for the purposes of MVLs?
14.1(1)	13.12	Consider whether to delete the words "*In this Part*" and replace with "In any provisions of the Act or these Rules" as that would be more consistent with the approach in, e.g., 14.1(3) and (4) and the current rule 13.12 is not so restricted. It may be necessary as a result to create a new 14.1(2) where the terms dividend, provable debt, relevant date are defined. Otherwise, insert space between "*Part*" and "*debt*"

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		Consider defining "any obligation incurred" – starting point would be the guidance on "obligation incurred" in para.77 of the Supreme Court's judgment in In the matter of the Nortel Companies, but this is potentially quite wide. Alternatively the law on how wide the category of contingent claims can be could be left to develop through case law. Whether the judgment in Nortel has widened this category of claim has yet to be tested before the courts.
14.1(5)	13.12(5)	This does not sit well with the revised approach in 14.1(1) to define the "*relevant date*" by reference to when the company has entered administration or gone into liquidation. A better approach would be just to add words such as "or administration" after "*winding up*", e.g., in 14.1(1), (2), (3) and (4) to clarify that the rule applies to winding up and administration.
14.2	12.3	The use of the term "*insolvency proceedings*" is wider than the scope of current rule 12.3 which refers only to administration, winding-up and bankruptcy. Since the concept of proving a debt does not apply in receivership or voluntary arrangements, it probably does not matter. However, consider whether it would be clearer not to use the defined term "*insolvency proceedings*" but refer to administration, winding-up and bankruptcy instead.
14.3		Any need to distinguish between a proof for voting at a creditors meeting and claiming in the proceedings?
14.4(1)(a)	4.75	Replace "*in that behalf*" with "on its behalf"
14.5	2.74	Consideration could be given to allowing rule 14.5 to be altered by contract, so that parties could specify as a contractual term that the cost of proving their debt was part of the provable debt in the relevant insolvency proceedings. This effectively happened in the Lehman Brothers administration.
14.6	2.75	Consideration could be given to allowing a party listed in rule 14.6 to receive a copy of a particular proof that has been delivered to the office-holder on terms that the relevant person keeps the information confidential and does not allow the proof of debt to be stored in anyway.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
14.7	4.80(3), 4.81(3) and 2.76(3)	It's not clear why the paragraphs of the current rules have not been replicated which state that "*From then on, all proofs of debt shall be sent to the* [office-holder] *and retained by him*". In practice, it is unlikely to be an issue, but it perhaps serves as useful clarification.
14.9(2) and (3)	4.83 and 2.78	Replace "*sent*" with "*delivered*" to be in accordance with the stated aim of the draft rules to use the single term "deliver"
14.13		Should this rule not also apply to a creditors' voluntary winding-up? Why restrict it to a winding up by the court only?
14.17(b)	4.88 and 2.83	Delete "a" before "*the general benefit of creditors*"
14.20(2)	4.97 and 2.92	Delete square brackets and "*in accordance with rule 14.18*" since that contradicts what is said in the brackets
14.20(4)	4.97(3) and 2.92(3)	As a general point, if a liquidator redeems the security, what are the costs of "*transferring*" it? Redemption presumably means payment of the secured debt (as valued by the secured creditor). Should this instead simply be the costs of "redemption"?
14.20(4)(a)	4.97(3) and 2.92(3)	Replace "*assets*" with "insolvent estate" The current wording is clearer that the relevant costs (whatever they may be) are liquidation expenses. Just saying that the costs are payable out of the assets/insolvency estate seems less clear.
14.20(5)		Clarify the way in which a secured creditor calls on the office-holder, e.g.: "A secured creditor may at any time deliver a notice calling on the office-holder…and the office-holder then has three months from the date of that notice…" i.e. add in more detail about the delivery of the notice.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
14.21	4.98 and 2.93	The words "*in a case falling within rule 14.20*" seem to restrict the application of 14.21 and should be deleted, as there is no such restriction in the existing rules.
14.24(1)	2.85(1)	To match the language used in 14.31, replace "*proposes*" with "intends" The trigger for 14.24 applying is where the administrator "*has delivered a notice under rule 14.31*" BUT under rule 14.31 the administrator only needs to deliver the notice in 14.31(1) if there are creditors who have not proved for their debts and the notice in 14.31(3) is not delivered, but is gazetted and advertised. So, albeit probably rare, there could be a scenario where set-off under 14.24 is not triggered despite a distribution being made. This could be corrected by reverting, in rule 14.31, to the current approach in rule 2.95 where notice is sent to all creditors known to the administrator and not just those who have not already proved.
14.24(4)	2.85(8)	Replace "*assets*" with "insolvent estate"
14.24(6)	2.85(2)	Definition of "*mutual dealings*". As drafted, it only includes where a creditor is "*proving for a debt in the administration*". This is narrower than current rule 2.85(2) ("any creditor of the company proving or claiming to prove for a debt"). Set-off does not depend on a creditor proving. Wording should be amended.
14.24(6)(h)		Remove bold
14.24(7)		Amend reference to "*paragraph 3*" to "paragraph 2"
14.25(1)	4.90(1)	Same comment re restriction to a creditor "*proving for a debt in the liquidation*" as on rule 14.24(6) above. This is narrower than the current rule 4.90(1) and should be amended.
14.25(7)	4.90(3)	Amend reference to "*paragraph 3*" to "paragraph 2"

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
14.26		Presumably to be updated by reference to the outcome of the red tape challenge (reference to a 'public source')?
14.27(2)	4.92(2) and 2.87(2)	Add "fallen" before "*due at that date*"
14.28		As a general point, should references to "*claim*" and "*claimed*" instead be "proof" and "proved"?
14.28(1)	4.93 and 2.88	Should "*insolvency proceedings*" instead refer to administration, winding-up and bankruptcy, as per the point made above?
14.28(4)(a) and (b)		The dates in (a) and (b) appear to be the "*relevant date*" as defined, so should that term not be used instead? Also, at the end of the sentence, include a reference to the rate of interest specified in paragraph 6.
Chapter 4		
This generally remains rather confusing. The notice requirements don't make much sense – in particular, why are there two notice requirements in 14.31 – could there not be just one notice, given that rule 14.32 makes clear that the content of the notices in (1) and (3) is the same and they would appear to apply at the same point in time (i.e. when intending to make a dividend and before declaring a dividend and asking for proof).		
14.29	2.68(1)	Rule 14.29(3) given that the rules set out the differences which will apply to preferential debts the language ", with such adaptions as are appropriate considering such creditors are of a limited class" would seem unnecessary.?
14.31(1), (3) and (4)	11.2 and 2.95	Clarify whether the notice in (1) is gazetted and advertised as per (4) or whether (4) only applies to the notice in (3)? Note the issue referred to above on administration set-off in 14.24.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
14.32		Amend reference to "(4)" to "(3)"
14.32(a)(ii)	2.95(4)	Consideration should be given to extending the minimum period by which creditors need to file their proof. 21 days can be short when you consider that a creditor may only find out of the cut-off date from the London Gazette. A minimum of not less than 28 days would seem more sensible. It should also be considered whether there should be a maximum period of time imposed (ie not less than 28 days and more than three calendar months). This would avoid a notice of intention to declare a dividend in administration proceedings being used to prevent the build up of set off (as appeared to be the case in the Lehman administration) rather than where there is a clear intention to declare a dividend in the short term. To some extent this is a policy call.
14.32(b), (e) and (f)		Are (e) and (f) really necessary given (b)? Also, why does (b) refer to "*make a distribution*", (e) to "*make a distribution*" and yet (f) to "*declare a dividend*"? Is the officeholder making a distribution within the two month period from the last date for proving, or are they declaring the dividend within that two month period (requiring a further notice in 14.34)? The drafting is unclear.
14.35(3)	11.6 and 2.98	Replace "*an insolvent*" with "a creditors' voluntary" and replace "*proposes*" with "intends"
14.38	2.68 & 11.7	Rule 14.38(2) the contents of the notice should be specifically referred to in the rule in order to provide certainty. Rule 14.38(3)(a) change "defray" to "pay" Rule 14.38(4) consider changing to read "The court may, on the application of any person interested in the administration or winding up, postpone the date specified in the notice."
14.38(3)	4.186	What is the purpose of this wording?

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
14.39	2.96 & 11.3	Rule 14.39(1) consideration should be given to extending the period of time from 5 business days. In large complex administrations in particular the administrator will, for good reasons, struggle to comply with the 5 business day rule (in fact in the Lehman administration this provision was not always complied with). It would be sensible to allow the 5 business days to be extended with the permission of the court. Rule 14.39(2) where the officeholder refuses to deal with a proof filed after the last date for proving, the creditor affected should be able to appeal the officeholder's decision to the court.
14.39(1)	11.3 and 2.96	This refers to "*5 business days*". The rules tend to use "days" rather than "business days". Is there a reason why one is used over the other?
14.40	2.70(1)	Rule 14.40(a) given that proofs will be filed by electronic means in ever greater numbers consideration should be given as to whether this rule is required at all. However, in the ILA's view a better solution would be to re-word the rule as follows "any debts which appear to be due to persons who may not have had sufficient time to deliver their proofs;". This will cover those situations where a creditor's claim is particularly complex and more time is needed to be able to file a reasonably accurate proof.
14.41		Is there a difference between a "*payment of any dividend*" and the "*making of any distribution*"? Isn't it the same thing, in which case, is this duplication in 14.41(1) and similarly in (2) and (3) where similar wording appears? See also general comment about Rule 14 above and its use of the terms "distribution" and "dividend".
14.41(1)(b)		Replace "*insolvent*" with "a creditors' voluntary"
14.42(2)	11.9 and 2.109	Delete "*administration or of the*" in line 3?
Part 15: Making decisions: Correspondence and meetings (including proxies and corporate representation)		

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
General comments: the provisions of Part 15 do not apply to CVAs (which retain their own rules) If these rules are supposed to be a sweep up and given the "where the rules provide otherwise" wording in Clause 15.1 why is this the case? Specific rules relating to other procedures do still remain in other parts of the rules. We note what you say in the consultation about "balance" and that this has not been settled. We are concerned that some clauses may overlap. We are not sure the wording discussed above, though aimed at dealing with this, is sufficient at least without further cross reference? We anticipate that much of this Part will change quite a bit on a re-draft as a result. We understand you intend to prescribe the format of certain forms in a separate instrument. We would welcome this. We agree the ability to file forms electronically is necessary but would prefer forms of notices etc. to be prescribed (see our introductory comment).		
Chapter 1: Interpretation and Time		
15.1(1) and (2)	N/A	See our general comments above about CVAs and "balance".
15.1(3)	N/A	We suggest this be redrafted or removed.
Chapter 2:		
15.2	2.48, 4.63A	We continue to welcome the ability to make decisions by correspondence. It would, in our view, save time and costs. This concept did already exist in liquidations. The wording in (4)(b) and at the beginning of (5) appears repetitive and we suggest could be removed from (5) and the remainder redrafted. The new concept of statement of entitlement does not include administration. Is it conceivable that a meeting by correspondence in administration could involve distributions and therefore have required creditors to have submitted details of their claims? You might consider making it clear that para 10 is subject to any requirements as to requisite majorities for voting in the various insolvency procedures which appear elsewhere in the Act and Rules (e.g. new Rule

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		15.34). The wording in existing 4.63A was similarly unclear.
Chapter 3:		
15.3	2.35(3), 2.49(1), 3.9, 4.60(1)	Removing the need to hold meetings outside the hours of 10am and 4pm suits our creditor clientele (particularly for administrations) but might not suit other (small/trade) creditors. Having regard to convenience should deal with this in many instances – so that it is clear that meetings cannot be held at times that would not work for the respective creditor body.
15.4	2.35(2), 2.35(4)	Given the change is to assist administrations we only comment on how the new wording works in the context of administrations. Clarity on contents of meeting notice to be welcomed. The clarity of the drafting is lost generally because other provisions also apply to the notice e.g. New 3.37(3) vs. New 15.4(a). Ideally they would be all in one place. Form 2.20B is to be displaced for administrations. We would prefer a specific form (this is also a general comment). Error reference in 15.4(2).
15.4(3)		We agree the procedure should be aligned for administrative receiverships.
15.5	Part 2, Chapter 6	Is the table intended to cover all those notices required under the Act/Rules or is the initial wording in 15.5(1) intended to refer to other notices? If so this should be made more explicit. We suggest the table needs more detail/cross- referencing - see below. Administration - we suggest the wording in existing rule 2.35(1) is included after the words "creditors meeting" in the table.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
	3.9(5) 4.50(2)	We understand the form of notice Form 2.20B is to be displaced (see our comments above). Is the removal of the words "who are known to the administrator" from existing 2.35(4) intentional? We note that the administrator cannot give notice to a creditor about which they have no knowledge but believe the original wording added clarity. Same comment applies to administrative receivership and liquidation below. Administrative receivership - we note that the intention is for secured creditors to be present and get notice of creditors meetings. Obviously section 48(2) of the Act would also need amending to make this clear. Liquidation - table appears a repetition in part of new rule 6.10. Further consideration needed as to how this table fits with new rule 6.21. Winding up by the court - add the word replace (as well as remove).
15.6	2.37A, 4.59	We agree the procedure should be aligned for administrative receiverships.
15.7	2.34(1), 2.35(4A), 4.126, 12A.33	For administrations, should there be a cross reference to this section in new Rule 3.37?
15.8		Reference in 15.8(1) should be to 95(1)(c).
15.9		We suggest subsections (1) and (2) be included in the administrations section rather than the general section.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
15.10		Omit the words "all those".
Chapter 4:		
15.11	2.34(3)	We understand the form of notice Form 2.18B is to be displaced. (See our comments above regarding prescribed forms.)
15.12	4.50(1); 4.51; 4.52; 4.53; 4.54(1); 6.79(1); 6.80; 6.81(1)	We agree that it is sensible to bring together and standardise common provisions in relation to liquidation and bankruptcy.
15.13	4.50(8); 4.72	We agree that these provisions are better placed here.
Chapter 5:		
15.14	2.37; 4.50(6); 4.114; 679(6);	We agree that it is sensible to bring together and standardise common provisions in relation to administration, liquidation and bankruptcy. Should the reference in paragraph 8 be to "paragraph (2) of rule 15.5" rather than "paragraph (3) of rule 15.5?
15.15	2.37; 4.52(1)(e); 4.61; 6.80(1)(e); 6.87	We agree that it is sensible to bring together and standardise common provisions in relation to administration, liquidation and bankruptcy.
Chapter 6		
15.16	3.14; 12A.21	Noted the change in paragraph 1(a) of "present" in current rule 12A.21(1) to "in attendance" - we agree this is consistent with the wording of paragraph (3), which is in the same terms as current rule 12A.21(4), and

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		the new general rule 1.4 regarding the meaning of "attendance" at a meeting.
15.17	2.53 3.19	We think the proposed repeal of the section 95 and section 98 exceptions are sensible and reflect business practice. Extraneous bracket after "bankruptcy" in paragraph (1) - or, possibly should be an opening bracket after "contributories".
15.18	4.58; 6.84	We agree that it is sensible to bring together and standardise common provisions in relation to liquidation and bankruptcy, although this paragraph also appears to apply to administration where there are currently no equivalent provisions.
Chapter 7:		
15.19	2.34; 2.35; 4.52; 4.58; 6.80; 6.84	We agree that it is sensible to bring together and standardise common provisions in relation to administration, liquidation and bankruptcy.
15.21	4.113; 4.114; 6.129	We agree that it is sensible to bring together and standardise common provisions in relation to liquidation and bankruptcy.
15.22	2.35; 2.49; 4.65; 6.91	We agree that it is sensible to bring together and standardise common provisions in relation to administration, liquidation and bankruptcy. Paragraph (3) appears to be new but adds a sensible clarification.
15.23	2.35(6E); 4.65(7); 6.91(5)	We agree that it is sensible to bring together and standardise common provisions in relation to administration, liquidation and bankruptcy.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
15.24	3.14	Query whether chair's discretion in paragraph (2) to adjourn is sufficient - words "date, time and place" in current rule 3.14(1) have been replaced with solely "venue".
15.25	2.35(6B); 3.14(2A); 4.65(2); 6.90	We agree that it is sensible to bring together and standardise common provisions in relation to administration, administrative receivership, liquidation and bankruptcy.
Chapter 8:		
15.26		We welcome this suggested amendment. It would, in our view, save time and costs.
15.27	2.38, 4.67	Remove "or" at the end of 15.27(1) (c) and replace with "and" then let rest of paragraph follow on in (c) or become a new (d). We have no objection to the removal of the court's power in existing 4.67(2).
15.27(3)		Administrative receivership - maybe this should go in receivership section of the rules?
15.30	2.38(4)	Principle of clause reflects the current position in practice. However, though the rules as currently drafted (included as amended) produce the following anomalies in larger administrations where there may be a series of declarations of dividend. New information can have come to light which means the office holder has had to alter the set off adjustment made to a creditor's claim. In these cases presumably the office holder would take his most recent adjustment for voting purposes in (ii)(bb). Certainly the way it is drafted using the words "any adjustment" he would have a discretion. Where a creditor comes to light at a later date after, say, an initial declaration and payment of a dividend which the new creditor was not party to, he would have (subject to an adjustment for set off) a larger claim for voting purposes under (bb) than those who have already received payment under an initial dividend.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		Again, this seems correct but we wanted to point out that this is the effect of the wording in (bb) as drafted.
15.30	4.67(5)	We have no experience of the application of the old rules regarding promissory notes and bills of exchange in practice and so cannot comment on whether they are no longer used.
15.30(5)		We agree the new wording reflects the decision in *Polly Peck*. We suggest the following wording be added at the end "provided that [the creditor] does not exceed the total debt in respect of which he is qualified to vote under this rule".
15.31(1)	2.42(1) 2.42(2)	No comment. Agree with use of defined term "hire purchase agreement".
15.33	2.39(3) 4.63(A)	See above comments re voting by correspondence.
15.34		See comments above.
15.35	2.39(2), (4), (5), (6)	No changes of substance. No comment.
Chapter 9:		
15.36	4.63(1); 4.69	Appears to be no equivalent existing provision in administration - seems sensible that this provision applies to both liquidation and administration.
Chapter 10:		
Rule		
15.37	2.44A, 3.15, 4.71, 6.95	We agree that it is sensible to bring together and standardise common provisions in relation to administration, administrative receivership, liquidation and bankruptcy.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
Chapter 11		
These new Rules follow, in general, old Part 8 with plain language amendments. We only comment where there is a new provision/something different in substance. *It is difficult to state exactly the origination as the old rules have been re-ordered and split up to create the new rules.* NB. We believe current Part 8 applies to CVAs/IVAs.		
15.39	8.2(1)	This section is unclear. Requires further thought, error in cross reference.
15.40(1)		Agree this additional wording required.
15.40(2) and (3)	8.3(1)	Old wording clearer.
15.43		15.43(b) appears new. It seems consistent with the principle behind (a).
Chapter 12		
15.46	12A.22 [12A.26]	Need to pick up remote attendance for creditors/liquidation committee meetings in 12A.26. In 15.46 (4)(c) - not sure it makes sense to "deliver" notice but note intended universal use of delivery in new Rules in general.
15.48	12A.24	15.48(4) unclear ("or on which"?) and needs redrafting.
15.49		15.49(3) new rules have removed the concept of 4pm on the following business day elsewhere and replaced with 3 Business Days. Same here?
Chapter 13		

New rule	***Derivation from existing rule in Insolvency Rule 1986***	***Comment***
15.50	2.49(5A); 2.49(7)	Appears to be no equivalent existing provision in liquidation - seems sensible that this provision applies to both administration and liquidation.
Part 16: Creditors' Committees		
Generally, the redraft of the rules on creditors' committees is a vast improvement on the existing rules and it is helpful to have all the rules on creditors' committees in one place. There are a number of areas, noted below, where we thought it should be possible to iron out yet further inconsistencies across the insolvency procedures.		
16.4(2)		Refer to the FCA or the PRA, as appropriate rather than the FSA. This rule should also refer to the other sections under FSMA entitling the FCA/PRA to sit on creditors' committees (eg s 362, 362, 365 and 374).
16.6	4.171A	This new rule largely mirrors existing r. 4.171A (save for references to contributories), applicable only to liquidations. However, there seems no reason in principle why the rule should not be extended to bankruptcies and administration (even though there is no equivalent of s 189).
16.7(5)		Change "chairman" to "chair" and delete last two words ("the appointment"). For consistency, we suggest the appointment should be reported "as soon as reasonably practicable".
16.9		Membership should also terminate upon a debt relief order being made.
16.11(7)(b)		We are not clear how a creditors' committee would arise separately in the context of a BRO (which we believe this rule is referring to).
16.13 (6)		We appreciate this replicates the existing rule but we are not sure why, in the context of a modernisation exercise, more notice (7 days as opposed to 5) is required for a meeting held remotely as opposed to a meeting attended in person.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
16.16 (3) and (5)		Rule 16.16(5) should refer to a "committee-member" rather than a "person": "*No committee-member* may be represented…"
16.18		Rule 16.18(2) seems unnecessary/duplication; suggest deleted. We suggest r. 16.18(3) is reworded as follows: "*…and where there is more than one resolution may indicate agreement to or dissent from each resolution separately*"
16.20		Rule 16.20(2) should refer to the date on which the office-holder "delivered" the notice (rather than "sent") and, in (5), refer to "chair" rather than "chairman"
16.22		Again, we recognise this replicates the existing rules but there seems no reason in principle why the reporting obligations applicable in liquidations and bankruptcies should not apply equally to administrations and administrative receiverships (ie every 6 months). Rule 16.22(2): insert a new (a) "deliver to the office-holder;"
16.23		Again, there seems no good reason why a different time period (3 months) should apply in a receivership as opposed to 6 weeks in other insolvency proceedings, particularly as the opportunity is being taken to extend the application of this rule to liquidations and bankruptcy (previously just applicable to administrations) (ie (2) and (3) should be consolidated into a single rule). Now that the reference to paying the expenses "in the prescribed order of priority" has been taken out (wrong in the case of administrative receiverships), there seems no practical reason why the two sub-rules shouldn't be equalised/consolidated.
16.24(6) and (7)		Rule 16.24(6): the exception should only apply to an associate of a committee-member (and an associate of a member's representative); not to a representative of a member. Rule 16.24(7): would be clearer/more consistent as: "The costs of an application to the court for permission under this rules *are not payable out of* the insolvent estate…".

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
16.25 (2)		We suggest: "…provided that a transaction *entered into with the company* is in good faith and for value".
16.26		It would be clearer if r. 16.26(1) was deleted and the words "in any other case" were removed from the beginning of r. 16.26(2) so that a single rule applies. We appreciate two sub-rules were drafted because of the separate wording in s 377 but it would be helpful if it was self-apparent from the rule itself that the position in respect of formal defects is the same across all insolvency proceedings, (ie there would seem no harm in effectively replicating s 377). In any event, as presently drafted, there is an inconsistency between bankruptcy and other insolvency proceedings – only r. 16.26(2) extends to defects in the formalities of the committee's establishment, which does not seem justified.
16.27(1)		It would be clearer if the meaning of the phrase "otherwise than enabling the committee to require a report as to any matter" was set out expressly. This could perhaps read as follows: "*save that the office-holder will be required to deliver any report or comply with any information requested by the committee in accordance with these Rules*".
16.30		For consistency, r 16.30(3)(c) and r 16.31(2)(e) should read: "state the full name and postal address of a member which is not a company". Plus the liquidator should be required to deliver the certificate of continuance and any amended certificate of continuance to the registrar of companies "as soon as reasonably practicable".
Part 17: Progress Reports and Remuneration		
17.1(2)(b)	2.47(1)(b)	Progress reports were previously required to set out the company's name, address of registered office and registered number. Rule 17(1) requires only "the identity of the company" which would probably necessitate those details anyway but it would be helpful to make that clear.
17.1(2)(h)		Useful to add a cross reference at the end to the receipts and payments account in the form required in rule

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
		17.1(4).
17.5		Note for CLLS/ILA consultation group: The explanatory notes state: • Rule 17.5 has been revised following stakeholder enquiries regarding the interpretation of current rule 4.49C(3). Where a voluntary liquidator leaves office within the first twelve months of the liquidation, the wording of Sections 92A and 104A means that no progress report is required in that first year. Instead, the activity of the departing liquidator will be rolled up into the first progress report under those sections by the new and/or continuing liquidators. This appears acceptable, does anyone have any objections?
17.5(7) and (8)		As these appear identical in form, could they be combined?
17.5(11)		"who is prescribed for the purposes of…." may sound better as "who is a prescribed person for the purposes of…"
17.6(2)(b)(i) and (ii)	4.49E(2)(a) and (b)	The reference to "seven business days" should for consistency be "7 business days". Although these periods derive from the existing rules, should they both be general or business day references?
17.6(3)(b)		Helpful to add "all of the information *requested*" in the last line?
17.12	4.126(1E)	The detailed list of receipts and payments has been taken away and the new rules require only "a summary of the office-holder's receipts and payments, including details of the office-holder's remuneration", this seems a little over simplified?
17.15		This provision limits the trustee's remuneration calculated on the realisation scale but the provision is not

New rule	Derivation from existing *rule in Insolvency Rule* 1986	Comment
		applied to liquidators, should it be?
Part 18: Persons at risk of violence and non-disclosure of addresses		
18.2(2)		Cross reference should be to rule 18.1(1)
18.2(4)		Cross reference should be to rule 18.1(1)
18.3(2)		Cross reference should be to rule 18.1(1)
18.5(2)		Cross reference should be to rule 18.1(1)
Part 19: The EC Regulation		
General comments		These rules will need considerable revision when the amendments to the EC Insolvency Regulation come into force. Consideration should be given to including an equivalent rule to rules 19.5, 19.6 and 19.7 where an administrator has been appointed out of court. Currently there is some debate as to whether Member States will recognise an out of court administration despite the fact that it is listed in the Annexes to the EC *Insolvency Regulation. The addition of such a rule should help with this issue.* Consideration should be given to providing rules to support the ÉCLAIR register (the register companies house maintains for companies registered in the EU (other than England, Wales, Northern Ireland or Scotland) that are placed into UK insolvency proceedings. In addition it would be useful to include specific rules concerning the registration of information with companies house where UK registered companies have been placed into insolvency proceedings in another EU Member State.

New rule	Derivation from existing rule in Insolvency Rule 1986	Comment
19.1(b)		Add "of Schedule B1" after "paragraph 3(1)(a)"
19.6		See general comments above. In addition, the fact that no official court hearing is required and that the confirmation by the court is an administrative matter may give Member States grounds to refuse to recognise a CVL. While it would take up valuable court time, it would be better if such confirmation was provided by a registrar.
19.9(a)		Amend reference to rule 7.31A(3) to 12.10(3)
19.9(a)		Amend reference to rule 7.31A(1) to 12.10(1)
19.9(2)	2.133	The wording "is deemed to be a creditor for the purposes of these Rules listed in Schedule ?" needs to be amended to refer to the Rules currently set out in Rule 2.133(3) with their new references.
19.9(4)		Cross reference to "Article 32.3" should be "Article 32(3)"
Part 20: Permission to act as director etc. of company with a prohibited name (Section 216)		
20.3(5)		Add "required" before "notice".

24 January 2014