Insolvency (Scotland) (Receivership and Winding up) Rules 2018 - Transitional and Savings Arrangements

The general position is that the procedural changes in the rules will also apply to liquidations and receiverships begun before 6 April 2019, save where specifically provided for in schedule 2 of the rules or related orders.

It is important to read the transitional and savings arrangements in schedule 2 of I(S)RWUR18 alongside the arrangements for bringing into force section 122(2) and schedule 9 in particular of the Small Business, Enterprise and Employment Act 2015 (“SBEE Act”) for Scotland; the Small Business, Enterprise and Employment Act 2015 (Commencement No. 7, Consequential, Transitional and Savings Provisions) Regulations 2019 and the regulatory reform measures for Scotland in the Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141 as amended by S.S.I. 2017/209).

Schedule 2 – Transitional and savings provisions

Paragraph 5 - Savings in respect of meetings taking place on or after the commencement date and resolutions by post

This paragraph applies the old Insolvency (Scotland) Rules 1986 (“the 1986 Rules”) to a meeting rather than the new Rules where on or after the commencement date:

paragraph 5(1)(a) – a creditors’ or contributories’ meeting is to be held as a result of a notice issued before that date in relation to a meeting for which provision is made by the 1986 Rules or the Act

The effect of this is that where action has been taken to convene a meeting before 6 April 2019 by issuing a notice to the parties entitled to attend the meeting, the meeting is held under the 1986 Rules. If, however, a trigger has occurred where a meeting may be required, for example, an annual meeting, a section 138 meeting etc., but no notice has been issued to the intended recipients prior to the commencement of I(S)RWUR18, the reporting requirements, or decision procedures under Part 8 of the I(S)RWUR18 should be followed.

paragraph 5(1)(b) – a meeting is to be held as a result of a requisition by a creditor or contributory before 6 April, where the requisition was made before 6 April 2019.
**paragraph 5(1)(c)** – a meeting at year’s end is required by section 105(a) of the Insolvency Act 1986 in the winding up of a company where the resolution to wind up was passed before 6 April.

Year-end meetings under section 105 (Creditors’ Voluntary Liquidation (CVL)) are mentioned, but not those under section 93 (Members’ Voluntary Liquidation (MVL)). However, savings in the Public Sector Reform Orders (article 16 of the Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141 inserted by SSI 2017/209) preserves section 93 and section 105 for any end year meeting requirement which arises before 6 April 2019. As noted in the Explanatory note for the Order, this -

- provides for particular annual ‘progress’ meetings to be held under section 93 and 105 of the 1986 Act where the liquidator’s obligation to summon those particular meetings has arisen before the coming into force of the relevant amendments made by that Order (i.e. articles 5(2) and 6(2) of that Order repealing those sections). [i.e. before 6 April 2019]. This does not however save obligations which otherwise may have arisen in relation to holding future annual ‘progress’ meetings in the same winding-up.

The 1986 Rules for MVLs have not been saved, as it was viewed as unnecessary to save anything in the 1986 Rules applying to MVLs. Accordingly, although the new decision-making rules in Part 8, Chapter 12 of the I(S)RWUR18 “apply” in principle to such a saved meeting, rules 8.42 on remote attendance, 8.43 on the location of the company meeting, and 8.44-8.46 (action where persons excluded etc.) will not apply because section 246A of the Act does not apply to MVLs (per s.246A(1) as amended by paragraph 54 of schedule 9 of the SBEE Act.

For annual meetings in a CVL where the resolution was passed before 6 April 2019, paragraph 5(1)(c) only saves the 1986 Rules where a meeting is **required** before 6 April 2019 - effectively for the first meeting or anniversary meeting where the trigger requirement to hold the meeting occurs before 6 April 2019, due to the PSR Orders as noted above. Thereafter, progress reports and the I(S)RWUR18 apply.

(It is also worth noting that for MVLs the ‘trigger’ requirement in section 93 of the 1986 Act itself will be repealed anyway where it would have arisen after 6 April 2019, subject only to the Public Service Reform Order saving – i.e. where the Winding up continues for more than 1 year and the 2019 end-year meeting requirement arose before 6 April but has not taken place before 6 April (article 16 of the PSR Order).

**Paragraph 7(1) & (2) – Progress reports and statements to the registrar of companies**

This provides the arrangements for progress reports and any obligation to prepare one arising before and after the commencement date.
Para 7(1) saves the relevant 1986 Rules where a requirement to report has arisen before 6 April 2019.

The intention of para 7(2) was - in these circumstances - to disapply the equivalent provisions on reporting in the I(S)RWUR18, so if these requirements to report had not arisen before the commencement of the I(S)RWUR18, reporting would follow the new rules irrespective of the date of appointment/petition. Paragraph 7(2) should be read in that light, given the conflict with paragraph 7(1). It is intended to bring forward an amendment to paragraph 7(2) in due course to clarify this.

Statutory Interest in MVL

The issue of the application of statutory interest in MVLs has been the subject of debate in the 1986 Rules, in view of the fact that Schedule 2 of the 1986 Rules does not apply Rules 4.16E or 4.66. The I(S)RWUR18 introduces provisions which make clear that statutory interest applies to MVLs. As no transitional/savings provisions are made, the new interest rate provisions will apply from 6 April 2019. For Scottish MVLs in progress at the commencement date, interest will therefore accrue at the new specified rate from 6 April 2019 through to date of payment. It is not considered that interest will accrue retrospectively.