



AMENDMENTS TO THE BERMUDA COMPANIES (WINDING-UP) RULES

On 13 November 2020, the [Companies \(Winding-Up\) Amendment Rules 2020](#) (the “Amendment Rules”) came into effect and are the first substantive update to the Companies (Winding-Up) Rules 1982 (the “1982 Rules”). The Amendment Rules were developed by the executive committee of Bermuda’s Restructuring and Insolvency Specialists Association (“RISA”) (of which Kehinde George, Head of Insolvency and director of ASW Law Limited, is a member), in consultation with the former Bermuda Supreme Court (the “Court”) Chief Justice, Ian Kawaley, and the current Court Chief Justice, Narinder Hargun. RISA’s website is www.risa.bm.

The Amendment Rules incorporate and reflect changes in Bermuda’s insolvency practice that have developed over the years and intend to make the process in Bermuda winding-up proceedings more efficient. A summary of the key changes made to the 1982 Rules are as follows:

1. There is now a requirement that a sole liquidator, or at least one of joint liquidators, be resident in Bermuda.
2. The rule regarding eligibility to inspect the Court file in a liquidation has been amended to allow any creditor to inspect the Court file if they provide the Court with a sworn statement confirming they are a creditor. Previously, a creditor could only inspect the Court file after their debt had been proved and allowed, which does not usually occur until after the winding-up order is made. This change allows creditors to access the Court file at a much earlier stage in the proceedings.
3. The advertisement of the petition hearing may not be placed by a petitioner (other than the company itself), less than seven (7) clear days after service of the petition on the company. This gives the company a period within which it may take action against the petition, such as an application to restrain advertisement of the petition or to strike it out, before the petition is advertised; thus avoiding any damage that may be caused by notice of the proceedings being published.
4. Certain administrative amendments have been made to reflect current practice, such as the petitioner is now required to prepare and file the winding-up order and to arrange its service on the company and the Registrar of Companies, and its advertisement.
5. A liquidator is no longer required to examine proofs of debt if in his or her opinion there will be no assets available to declare a dividend, or if it is unclear whether there will be sufficient assets.
6. The provisions regarding the remuneration of the liquidator have been simplified to provide that the remuneration be fixed by the committee of inspection (i.e. creditors’ committee) if appointed.
7. The requirement for a liquidator to have the charges and expenses of attorneys and other professionals employed by the liquidator taxed (assessed) by the Registrar of the Court, has been removed. Going forward, expenses approved by the liquidator shall be paid out of the assets of the company, unless the Court otherwise directs.

Please contact ASW should you have any further questions relating to Amendment Rules or the insolvency process in Bermuda.

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