|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Preparation** |  |  |  |
|  | Before proceeding with either the General Meeting or the written resolutions of members (if this is being used in the alternative), ensure that ***5 business days’*** notice has been given to any QFCH and the required notice period has elapsed or consent to proceed sooner has been received from the QFCH – CVL102 should have been issued where relevant as part of the engagement planning (Checklist 1) |  | s84 (2A & 2B) |  |
|  | Identify whether any restrictions notices have been issued to any members considered to have significant control over the Company (ie, hold more than 25% of the shares/voting rights). If issued, the members will be unable to exercise their voting rights which could have practical implications in terms of the winding up resolutions being properly passed – this is unlikely in small owner managed companies |  |  |  |
|  | Remember that the ***decision date*** for the creditors nomination of a liquidator must be no laterthan***14 days*** after the resolution to wind up the company has been passed by the members |  |  |  |
|  | Ensure that the SoA is verified and that a copy of the verified SoA is delivered to creditors by not later than on the business day before the planned creditors’ ***decision date*** – the SoA must be made up to a date not more than ***14 days*** before the date of the winding-up resolution |  | R6.14(7) s99 |  |
|  | Convene a meeting of the Directors to discuss and approve the draft SoA and deficiency account. Once agreed, arrange for the SoA to be verified by a statement of truth, by one of the directors  Advise the directors that there are penalties for making a false statement. The remaining directors may be requested to submit a statement of concurrence verified by a statement of truth if appropriate  ***Remember*** *-* Separate schedules of employee/former employee claims and claims of consumer creditors who have paid in advance for goods or services must be prepared, the total number of such creditors and the total of the debts due to each of these categories should then be reflected in the main body of the SoA  The schedules *should* be included in the SoA sent out to creditors but NOT with the copy of the SoA lodged at Companies House*)*  Ensure that the content of the SoA accurately reflects HMRC’s ***secondary preferential status*** in relation to any amount of VAT, PAYE income tax, employee NICs, construction industry scheme deductions and student loan deduction owed (from whatever date they were due) [Effective 1 December 2020]  Produce minutes of the directors’ meeting and ensure they are signed by the chairman | CVL301 - F | lnsolvency Act 1986 (HMRC Debts: Priority on lnsolvency) Regulations 2020 |  |
|  | If the liquidator thinks that disclosure of the whole or part of the SoA may prejudice the conduct of the liquidation or might reasonably expect to lead to violence against any person, he can apply to court for limited disclosure of it  If the court grants an order limiting disclosure, give notice to the Registrar with the restricted SoA and any statements of concurrence with LIQ05 | LIQ05 - F | R6.6 |  |
|  | If there is any change in the SoA between verification and the ***decision date***, note R6.17 requires that a report on any material transactions relating to the Company be reported. If a ***virtual meeting*** (or physical where requested) is being held, the director chairing the meeting (or another person with knowledge of the relevant matters) must make the report to creditors  If using the ***deemed consent*** procedure for the liquidator’s appointment instead, a report must be delivered to creditors as soon as the material transaction takes place and where the ***decision date*** is ***within 3 business days*** from the delivery of this report, R6.17 extends the ***decision date*** until the end of that period notwithstanding the requirement in R6.14(3) relating to the timing of the ***decision date*** |  | R6.17 |  |
|  | Practically speaking, if following the ***deemed consent*** procedure, it may be better to avoid setting the ***decision date***on a Friday, as creditors have until 23.59 hours on that date to object. If no objections are received by the day of the ***decision date***, it is likely the General Meeting will have been held (or written resolutions passed) and the company will be in liquidation by COB on Friday  The outcome of the creditors’ decision won’t realistically be known until the following Monday morning (ie, because of the potential for objections to be received after COB on the Friday by more than 10% of creditors entitled to vote). This would result in the requirement for a ***physical meeting*** to be convened and would create a Centrebind situation if members had passed the resolution to wind up on the Friday  If selecting a Friday, ensure that considerations such as insuring company assets over the weekend are dealt with |  |  |  |
|  | The liquidator’s appointment takes effect from the date of the passing of the resolution of the company or, where the creditors decide to appoint a person who is not the person appointed by the company, from the relevant ***decision date***  The certificate of appointment must not be signed until the proposed liquidator has given his consent to act |  | R6.20  R6.20(4) |  |
|  | **Fee considerations:**  If you are issuing the notices to creditors on the minimum notice required (3 clear business days from delivery to creditors), consider SIP9 provisions which require that sufficient time is given to facilitate creditors making an informed judgment about the reasonableness of the request (about the fees estimate). If the minimum notice is being given, a regulator may consider that insufficient time has been allowed as prescribed by the SIP  It may be prudent therefore, on minimum notice period cases to avoid seeking approval for the Liquidator’s fees estimate until after the appointment has been secured (regardless of whether the decision on the nomination of the liquidator is being sought by ***deemed consent*** or via a ***virtual meeting***). It may also depend on the type of case you are dealing with and the scope of the fee approval being sought (eg, deposit for cost cases) but consider this carefully before proceeding  Alternatives may include:   * Giving creditors more than the minimum 3 business days’ notice for the decisions being sought * Seeking approval for any unpaid pre-appointment costs only on the ***decision date***, where these have not already been paid by the company pre-appointment |  | SIP9 |  |
|  | **Convening a General Meeting of Members** |  |  |  |
|  | If a General Meeting (GM) of the members is being called to pass resolutions to place the company into liquidation and to appoint a liquidator, note that ordinarily ***14 days’*** notice is required unless the Company’s Articles dictate differently – check before proceeding but note this notice period can be waived by the agreement of 90% of members  In many cases, it is likely that the GM will be held on the same date as the ***decision date***for the creditors’ nomination of the liquidator via the ***deemed consent***procedure or ***virtual meeting*** route  If the ***decision date*** is set giving the minimum time-period allowed under the Rules and the GM is to take place on the same date, short notice consent will be required  Remember the ***decision date*** for creditors must be ***within 14 days***of the resolution to wind-up if a Centrebind is envisaged |  | s302 CA06  s307 CA06 |  |
|  | For practical reasons, it may be more appropriate to hold the GM in the afternoon of the ***decision date***, suchthat you will be aware of any objections to the ***deemed consent*** procedure (if this route being followed) that have been received on the ***decision date*** itself (but remembering that creditors have until 23.59 hours on the ***decision date*** to lodge an objection) as well as any received beforehand  Alternatively, if a ***virtual meeting*** is being held, hold the GM on the ***decision date*** but ahead of the ***virtual meeting*** |  |  |  |
|  | Issue formal notice of the GM to the members and send a copy to the directors with:   * Covering letter * Notice of the meeting * Proxy Form * Short notice consent form – if required   Complete a Certificate of issue to confirm how the notice was delivered | CVL302 - L  CVL303 – F  CVL304 – F  CVL305 - F  CVL000 - F | s307 CA06  s310 CA06  R1.52 |  |
|  | Issuing written resolutions to members |  |  |  |
|  | Written resolutions of the members may appropriate where there are common directors(s) and shareholder(s), or where all shareholders have an awareness of the company’s financial difficulties – this is an alternative to convening the General Meeting of members |  | s288 CA’06 |  |
|  | Care should be taken when issuing the written resolutions to members to ensure all members sign the resolutions but return them undated  This is because a written resolution is passed when the company receives the resolution from the requisite majority of members (75% for the special resolution to wind up)  Consequently, problems will arise if the members return the written resolutions signed and dated ahead of the creditors’ ***decision date*** (if a Centrebind was not intended) and the majority threshold is met – note that once a member has given agreement to the written resolution this may not be revoked  To avoid this, the written resolutions in this pack include the use of “suspensory” language which provides for the written resolutions to be left undated until such time as the director instructs them to be dated on behalf of the members – this will effectively be done on the creditors’ ***decision date*** unless a Centrebind is intended, or if postponed, as a result of a requirement to hold a ***physical meeting*** of creditors  If a ***physical meeting*** ensures because of creditor objection to the use of the ***deemed consent*** procedure, the undated members’ resolutions should be held over until the ***physical meeting*** date to avoid a Centrebind situation |  | s296 CA’06 |  |
|  | Send to each member:   * Covering letter which includes a written authority for the member’s agent (Nb, where there is more than one member) * The written resolutions * The proposed liquidator’s statement of qualification as an IP and consent to act – it may however be more appropriate to date this as at the ***decision date*** | CVL306 – L  CVL308 – F  CVL309 - F | R6.20 |  |
|  | If there is more than one member, confirm the above arrangements to the director who is to act as the members’ agent in agreeing to date the written resolutions at the appropriate date. If the director is also a shareholder of the company, enclose the documents in point 16 to the director at the same time  However, if the director is the sole member, discuss arrangements regarding the signing and returning of the resolutions (undated) and the subsequent dating on the appropriate ***decision date*** with him/her | CVL306A - L |  |  |
|  | It may be useful where there are a number of members to maintain a record of the return of the (undated) written resolutions to ensure that the voting majority has been reached | CVL306B - F |  |  |
|  | Where no objections to the ***deemed consent*** procedure (if used) or requests for a physical meeting have been received from the requisite level of creditors (the 10/10/10/rule) by the ***decision date***, the written resolutions will then be dated as at the ***decision date*** on the chair’s instruction – liaise with the director appointed chair to agree the dating of the resolutions  If a ***virtual meeting*** is being held and no requests for a physical meeting have been received ahead of it, the written resolutions should be dated before the ***virtual meeting*** takes place |  |  |  |
|  | **Nomination of Liquidator - by Deemed Consent procedure** |  |  |  |
|  | Set the ***decision date*** for the nomination of a liquidator by creditors. Remember the date must not be earlier than***3 (clear) business days***after the notice of it is delivered (ie, excluding the date of delivery of the notice and the decision date itself)  The Rules do not prescribe a period by which the ***decision date*** must be set, only that it must be set for a date ***not later than 14 days*** after the resolution to wind-up the company is passed by the members  The SoA must also be made up to a date within ***14 days*** of the resolution to wind-up date  In practice, the notice to creditors will be treated as delivered the 2nd business day after it is posted if using 1st class post – factor this timescale in  From a practical perspective, it may be appropriate to avoid the ***decision date*** being set on a Friday as objections to the ***deemed consent*** procedure can be lodged up to 23.59 hours on the ***decision date*** – consider insurance implications for assets over the weekend |  | R6.14(2)(a) & (3) R1.3 |  |
|  | If only the liquidator’s nomination is being dealt with (ie, no fee decisions at the same time), issue the following to all known creditors:   * Covering letter * Notice of ***deemed consent*** (which may include the liquidation committee invite – see CVL310 and CVL311 for further information) * Notice of decision by correspondence for liquidation committee invite - only if decision by ***deemed consent*** is not considered appropriate for this * Voting form - only if committee invite being dealt with as a decision by correspondence * Proof of debt form * Copy of the verified Statement of Affairs if ready**\*** * Financial information required by SIP6 if available**\***   **\****See point 21 below if not issuing with the notices above. The SIP6 report can be made available via a website if preferred, but due to the restrictions imposed by R1.50, the SoA cannot and consequently must be issued by post instead*  If approval is to be sought for fees (pre or post appointment) at the same time as the liquidator’s appointment, separate approval by way of a decision by correspondence will be necessary for this, as the ***deemed consent*** process cannot be used for remuneration decisions under the legislation (**see the note about fee considerations at point 10 above)** – issue the following to all known creditors instead:   * Covering letter * Notice of ***deemed consent*** (which may include the liquidation committee invite – see CVL310A and CVL311 for further information) * Notice of decisions by correspondence for fees approval and/or liquidation committee invite – see CVL310A and CVL311 for further information * Fees estimate/information for any post appointment remuneration approval being sought inc details of the firm’s Category 2 expenses policy where relevant * Voting form * Proof of debt form * Copy of the verified Statement of Affairs if ready**\*** * Financial information required by SIP6 if available**\***   **\****See point 23 below if not issuing with the notices above. The SIP6 report can be made available via a website if preferred, but due to the restrictions imposed by R1.50, the SoA cannot and consequently must be issued by post instead*  ***Note: The Insolvency Service consider pre-appointment fees to be ‘remuneration’ (unless being paid to a 3rd party) – R15.11 permits decisions on the liquidator’s remuneration and establishment of a liquidation committee to be made at the same time as the decision on the liquidator’s appointment - on 3 business days’ notice.***  ***However, should the deemed consent decision on the nomination of the liquidator be objected to, do not rely on any other decisions sought by correspondence at the same time. These should be sought again following appointment at the physical meeting that ensues***  Alternatively, the fees estimate/information can be issued following the liquidator’s appointment and approval sought at a later date via a ***decision procedure*** eg, by correspondence  Complete a Certificate of issue to confirm how the notices were delivered - see point 35 below re: notices to HMRC | CVL310 – L CVL311 - F  CVL312 – F   CVL313A - F  CVL307 – F  CVL319 - L  CVL310A – L CVL311 - F   CVL312 - F  CVL343 – F CVL344 - F CVL313 – F CVL307 - F  CVL319 - L      CVL000 – F | R6.19  R6.3/s99(2A) SIP6  R1.50  R15.7 R15.11    R6.19      R6.3/s99(2A) SIP6  R1.50      R1.52 |  |
|  | It is not mandatory to advertise the decision by deemed consent in the Gazette, but an IP may choose to do so. If the decision is taken to advertise, prepare a file note of the reasons for doing so | CVL19DC - F | R15.13 |  |
|  | The directors must deliver to the creditors a copy of the verified SoA and ensure the SIP6 financial information is available to them not later than on the business day before the ***decision date***  For commercial reasons, IPs may be reluctant to deliver these documents before they have a statutory obligation to do so  If the SoA and SIP6 information will not be ready to be issued with the notice of ***deemed consent*** procedure, ensure they are sent out in sufficient time to ensure delivery on the day before the decision date at the latest  *The SIP6 report can be made available via a website if preferred, but due to the restrictions imposed by R1.50, the SoA cannot and consequently must be issued by post instead* | CVL315A – L  CVL319 - L | R6.3/s99(2A) R6.14(7) SIP6  R1.50 |  |
|  | **Nomination of Liquidator – by Virtual Meeting** |  |  |  |
|  | A ***virtual meeting*** is a meeting where persons who are not invited to be physically present together, may participate in the meeting including communicating directly with all other participants in the meeting and voting (either directly or via a proxy-holder) – the nomination of a liquidator can be dealt with via a ***virtual meeting***  Where a ***virtual meeting*** is held, the chair of the meeting must be the convener (the appointed director) |  | R15.2  R6.14(2)  R15.21 |  |
|  | Set the ***decision date*** for the nomination of a liquidator via a ***virtual meeting***. Remember the date must not be earlier than***3 (clear) business days***after the notice of it is delivered (ie, excluding the date of delivery of the notice and the decision date itself)  The Rules do not prescribe a period by which the ***decision date*** must be set, only that it must be set for a date not later than 14 days after the resolution to wind-up the company is passed by the members (if not being passed by the members on the same date – ahead of the ***virtual meeting***)  The SoA must also be made up to a date within ***14 days*** of the resolution to wind-up date  In practice, the notice to creditors will be treated as delivered the 2nd business day after it is posted if using 1st class post – factor this timescale in |  | R6.14(2) & (3) |  |
|  | Issue the following to all known creditors:   * Covering letter * Notice of decision by ***virtual meeting*** – including any necessary information as to how to access the ***virtual meeting*\*\*\*** * Proof of debt form * Proxy form * Details of pre-appointment costs if seeking approval at the ***virtual meeting*** (nb, provided for in Notice above) * Fees estimate/information**\*** – if seeking approval for post appointment remuneration basis at the meeting * Details of the firm’s policy on Category 2 expenses if Category 2 approval also being sought * Copy of the verified Statement of Affairs if ready**\*\*** * Financial information required by SIP6 if available**\*\***   **\***Specimen fees estimates for time costs and fee information for set amount/percentage bases can be found at the appendices (**see the note about fee considerations at point 10 above)**  **\*\***See point 28 below if not issuing with the notices above. *The SIP6 report can be made available via a website if preferred, but due to the restrictions imposed by R1.50, the SoA cannot and consequently must be issued by post instead*  **\*\*\***If the decision notice is to provide a contact telephone number or email address for creditors to request access details for the meeting (which may be advisable to establish the creditors who are likely to attend at an early stage) – keep a record of requests made via the attendance register which can be updated as proxies and proofs of debt are received  See point 35 below re: notices to HMRC | CVL315 – L  CVL316 - F  CVL307 - F CVL317 – F    CVL343 – F CVL344 - F  CVL319 – L  CVL367 - F | R15.5  R15.11  R6.3/s99(2A) SIP6  R1.50 |  |
|  | Alternatively, the fees estimate/information can be issued following the liquidator’s appointment and approval sought via a ***decision procedure*** at a later date eg, by correspondence |  |  |  |
|  | The directors must deliver to the creditors a copy of the verified SoA and ensure the SIP6 financial information is available to them not later than on the business day before the ***decision date***  For commercial reasons, IPs may be reluctant to deliver these documents before they have a statutory obligation to do so  If the SoA and SIP6 information will not be ready to be issued with the notice of the ***virtual meeting***, ensure they are sent out in sufficient time to ensure delivery on the day before the decision date at the latest  *The SIP6 report can be made available via a website if preferred, but due to the restrictions imposed by R1.50, the SoA cannot and consequently must be issued by post instead* | CVL315A – L  CVL319 - L | R6.3/s99(2A)R6.14(7)  SIP6  R1.50 |  |
|  | The ***virtual meeting*** must be advertised in the London Gazette. Other discretionary advertising may be placed if felt appropriate by the directors - liaise as appropriate)  Instruct advertising agency to place advertisement in the Gazette  The notice of the ***virtual meeting*** must be gazetted ***before*** or ***as soon as reasonably practicable after*** notice of the meeting is delivered to creditors | CVL318 - F  CVL17VM - F | R15.13 |  |
|  | The liquidator**\*** nominated by the members must attend the ***virtual meeting*** and report on any exercise of his powers under section 112,165 or 166 of the Act  **\***or a person experienced in insolvency matters who is an employee of the office holder or the office holder’s firm – in which case an authority appointing them should be prepared  The chair of the meeting, however, must be the convener (ie, the appointed director) | CVL314 - F | R6.14(12)  R1.2(3)  R15.21(2) |  |
|  | **Other notifications** |  |  |  |
|  | Request the company’s bankers to provide financial information relating to the company. Get the directors to write – freezing the account | CVL321 - L  CVL322 - L |  |  |
|  | Notify the company’s auditors – this may already have occurred if they are assisting with the SoA | CVL323 - L | s502 CA06 |  |
|  | Notify the company’s solicitors | CVL324 - L |  |  |
|  | Give notice of the meetings by hand or send by registered post to:   * High Court Enforcement Officers (at NICEsheriffs) * County Courts * Solicitors who have issued writs * Judgement creditors | CVL325 - L  CVL326 - L  CVL327 - L | s183 & s184 |  |
|  | HMRC has a designated mailbox for the submission of initial pre-appointment notifications for deemed consent or virtual meeting procedures for all CVLs – a copy of the notices should be emailed to [hmrccvlnotifications@hmrc.gov.uk](mailto:hmrccvlnotifications@hmrc.gov.uk) – HMRC have requested that the subject line includes the company name, CRN and the decision date  From **1 June 2022,** if you are aware that HMRC is already dealing with the company on a compliance matter, any initial notification of the CVL should be sent directly to the HMRC officer handling that correspondence and not to the central mailbox.  A compliance matter could be an ongoing compliance check or other correspondence regarding determination of the amount of any of the company’s tax liabilities. In all other scenarios involving initial notifications of a CVL, the mailbox address noted above should still be used.  It is unclear whether the separate notifications below are still required, but it may be prudent to issue these also  Notify HM Revenue & Customs (re: VAT) of the meeting  Notice HM Revenue & Customs (re PAYE/NIC) of the meeting  Notice to HM Revenue & Customs (re Corporation Tax) of the meeting | CVL328 – L  CVL329 – L  CVL330 - L | Dear IP79 – December 2017  Dear IP145 – April 2022 |  |
|  | Produce an alphabetical list of creditors’ names and addresses to be available for inspection at the IP firm’s offices prior to the meeting |  | R6.14(8) |  |
|  | **Passing the Members’ Resolutions – at a General Meeting (GM)** |  |  |  |
|  | If using ***deemed consent***, monitor objections and if the threshold has been reached, or if a ***physical meeting*** has been requested by the appropriate threshold of creditors (using the 10/10/10 rule principles) before the ***decision date***, consider whether the members’ resolutions to wind up and appoint a liquidator should be postponed until the ***physical meeting*** date | CVL345 - F |  |  |
|  | Creditors have until 23.59 hours on the ***decision date*** to object to the ***deemed consent*** procedure (if proposed)  The Insolvency Service have indicated the policy intention for any ***physical meeting*** request, is that it must arrive **before** the ***decision date*** |  | Dear IP76 – April 2017 |  |
|  | If a ***physical meeting*** is requisitioned, it may be necessary to re-date and re-verify the SoA if the winding-up resolution will now be passed outside of the 14-day period between the date the SoA is made up to and the resolution date - the Rules don’t prescribe for this to be re-sent to creditors, however consider that a report under R6.17 may need to be given to creditors at the physical meeting if there have been any material transactions between the date the original SoA was made up to and the physical meeting date |  | R6.17 |  |
|  | The GM may take place before the ***decision date*** (ie, a Centrebind) or on it  Assuming it is not a Centrebind, if no objections to the nomination of a liquidator by ***deemed consent*** have been received (or are below the required threshold) and a ***physical meeting*** has not been requisitioned, the GM will take place on the ***decision date***  The same applies where the nomination of a liquidator is being decided on at a ***virtual meeting*** except that the GM will take place ahead of the ***virtual meeting*** on the ***decision date*** |  |  |  |
|  | Ensure a quorum is present – at least 2 members present in person or by proxy, or all, if the number of shareholders is 2 or less  Maintain an attendance register and proxy summary | CVL335 – F CVL336 - F | s318 CA06 |  |
|  | Provide the chair with the IPs statement of qualification as an IP and consent to act  File a copy of this with the minutes | CVL309 - F | R6.20 |  |
|  | Hold the meeting by reference to the agenda | CVL337 - F |  |  |
|  | Produce minutes of the General Meeting and ensure they are signed | CVL338 - F | R15.40 |  |
|  | **Passing the Members’ Resolutions – by written resolution** |  |  |  |
|  | If passing the members’ resolutions by written resolution rather than at a General Meeting, consider **points 37-39** above before proceeding |  |  |  |
|  | The members’ resolutions will be signed on the ***decision date*** and ahead of the ***virtual meeting*** where a meeting is being held |  |  |  |
|  | Ensure that the requisite majorities have been reached and that the written resolutions are held undated. Maintaining a schedule of votes where there are a number of members may be useful here  If no objections have been received by the morning of the ***decision date*** for the ***deemed consent*** procedure (if proposed) and no ***physical meeting*** requests have been received either, liaise with the director who is acting as convener and agree that the resolutions can be dated  There is a risk in that a late objection to the ***deemed consent*** procedure is received after the members’ resolutions have been dated which will create a Centrebind procedure until the ***physical meeting*** is convened and held  Alternatively, if a ***virtual meeting*** has been convened and if no ***physical meeting*** requests have been received ahead of it, liaise with the director who is acting as convener and agree with him/her that the resolutions can be dated ahead of the ***virtual meeting*** | CVL306B - F |  |  |
|  | **Evidencing the members’ resolutions** |  |  |  |
|  | Arrange for the convener/chair to sign copies of the members’ resolutions for submission to the Registrar and for advertising in the Gazette | CVL339 - F  CVL11 – F |  |  |
|  | Prepare a certificate of appointment by the members and arrange for this to be signed by the chair/director  If this is a joint appointment, use CVL346 instead  *Note that the liquidator’s appointment takes effect from the date of the passing of the resolution of the company unless creditors decide to appoint a person who is not the person appointed by the company, in which case it will take effect from the relevant creditors’ decision date* | CVL340 – F  CVL346 - F | R6.20 |  |
|  | The Creditors’ Nomination |  |  |  |
|  | Remember, where the SoA sent to creditors does not, or will not, state the company’s affairs at the ***decision date***, the directors must cause a written or oral report to be made to creditors on any material transactions relating to the company between the date of the SoA and the ***decision date***  If a meeting - virtual or physical (due to a request) is being held, the report must be made at the meeting by the director or another person with knowledge of relevant matters  If the ***deemed consent*** procedure is being followed, the report must be delivered to creditors ***as soon as reasonably practicable*** after the material transaction takes place in the same manner as the ***deemed consent*** procedure – see below  Note that where the ***decision date*** is within the period of  ***3 business days*** from delivery of the above report, the ***decision date*** is extended until the end of that period – this should be communicated to creditors with the material transaction report |  | R6.17  R6.17(2)  R6.17(3)  R6.17(4) |  |
|  | **Appointment by Deemed Consent** |  |  |  |
|  | If the ***deemed consent*** procedure is being followed, the threshold**\*** for objection should have been being monitored since notice of it was delivered – complete a schedule as any objections are received  **\***Remember the relevant threshold is 10% or more (in value) of creditors entitled to vote had the decision been taken by way of a ***decision procedure*** rather than by ***deemed consent***  Creditors objecting must have delivered a notice stating they object to the convener together with their proof – R1.2 confirms the requirement for a proof for voting purposes is satisfied by notification in writing of a claim ie, not necessarily a proof of debt  If no objections are received by 23.59 hours on the ***decision date*** and no requests for a ***physical meeting*** (under s246ZE) have been made by the requisite number of creditors (the 10/10/10 Rule), the decision on the liquidator’s appointment will be treated as having been made and the certificate of appointment can be signed the day after the ***decision date*** by the convener (the appointed director) BUT dated as at the ***decision date*** | CVL345 - F  CVL341 – F  CVL347 - F | R15.28  R1.2 R15.31 |  |
|  | Produce a record of the decision on the nomination of the liquidator by ***deemed consent*** & append the **Schedule of Deemed Consent Objections** to it as part of the record  If decisions by correspondence (ie, by a ***decision procedure***) were also sought to agree matters such as the liquidator’s pre-appointment fees, post appointment remuneration & Category 2 expenses basis and the committee invite, a record of these decisions must be prepared  The records should be signed by the director who acted as the convener and be kept with the case records | CVL348 – F CVL345 – F  CVL350 – F CVL351 - F | R15.40(5) |  |
|  | If more than 10% of creditors entitled to vote**\*** object to the ***deemed consent*** procedure, then the directors must seek a decision on the nomination of a liquidator from creditors by holding a ***physical meeting*** instead  Where more than the specified number of creditors do object, the decision cannot be treated as having been made. Therefore, as soon as the objecting threshold is met, a ***physical meeting*** should be convened  **\***This is defined as those creditors who would have been entitled to vote if the decision had been sought by a ***decision procedure***. Whilst secured creditors are entitled to vote in a ***decision procedure***, they can only vote for any unsecured part of their debt unless they relinquish their security |  | R6.14(4) s246ZF  s246ZE  s246ZF R15.7 R15.31(4) & (5) |  |
|  | Alternatively, if before the ***decision date***, creditors who meet the 10/10/10 rule threshold, request in writing that the decision on the nomination of a liquidator be considered at a ***physical meeting***, this should be convened as soon as the threshold is met |  | R6.14(6) s246ZE |  |
|  | If holding undated written resolutions from the members, then liaise with the members’ appointed agent (or sole member if only one member) and agree that these resolutions will be held over until the ***physical meeting*** date to avoid a Centrebind situation. Prepare a file note of that discussion and agree to liaise with the members’ agent (or sole member) again on the date of the physical meeting – the resolutions should be dated ahead of the physical meeting itself |  |  |  |
|  | Remember, R15.11 confirms that any decisions on the liquidator’s remuneration and on the establishment of a liquidation committee made at the same time as the creditors’ decision on the nomination of the liquidator requires 3 business days’ notice rather than the usual 14 days  Should the ***deemed consent*** decision on the nomination of the liquidator be objected to, do not rely on any other decisions sought by correspondence at the same time. These should be sought again following appointment at the ***physical meeting*** that ensues  If approval for additional fees relating to the convening of the physical meeting is to be sought from creditors (to be paid from the estate), remember that details of these fees will need to be given to all creditors ahead of the physical meeting – this is included in the letter providing notice of the meeting |  | R15.11  R6.7 SIP9 |  |
|  | See **points 71 to 88** below for information on convening and holding ***physical meetings*** |  |  |  |
|  | **Appointment at Virtual Meeting** |  |  |  |
|  | Creditors have the right to vote at the ***virtual meeting*** where their proof was lodged by 4pm**\*** on the business day immediately before the meeting date. Proxies can be lodged at any time up to the ***virtual meeting***– ensure a proxy schedule is maintained & that proofs and proxies are date stamped  For the purpose of voting at the meeting, the requirements of a proof are satisfied by the notification by the creditor in writing of a debt  Secured creditors are entitled to vote, but only for any unsecured part of their debt  **\***If submitted later, the chair has discretion to accept it  Remember the chair must be the director who acted as the convener | CVL336 - F | R15.28 R15.31  R1.2  R15.31(4) & (5)  R15.28(1)(b) R15.21 |  |
|  | Alternatively, if before the ***decision date***, creditors who meet the 10/10/10 rule threshold, request in writing that the decision on the nomination of a liquidator be considered at a ***physical meeting***, this should be convened as soon as the threshold is met – maintain the record | CVL356 - F | R6.14(6) s246ZE |  |
|  | See **points 71 to 88** below for information on convening and holding ***physical meetings*** |  |  |  |
|  | Complete checklist for ***virtual meeting*** in good time for the meeting  Ensure the ***virtual meeting*** is quorate – at least one creditor entitled to vote is a quorum  One person present and holding the requisite number of proxies constitutes a quorum - the chair alone is sufficient | CVL357 - C | R15.20 |  |
|  | Hold the ***virtual meeting*** in accordance with the agenda – the chair may decide what questions may be put to any present or former officer of the company  Seek approval for the decisions proposed including the nomination of the liquidator, approval for fees & Category 2 expenses & the committee invite | CVL358 - F | R15.22(c)(i) |  |
|  | The chair many suspend the meeting (without an adjournment) for one or more periods not exceeding one hour in total (or longer total period at the chair’s discretion) |  | R15.27 |  |
|  | The chair may adjourn a meeting for not more than ***14 days*** – further adjournments are possible but not to a day later than  ***14 days*** after the date on which the virtual meeting was originally held  If no-one attends to act as chair within 30 minutes of the time fixed for it to start, the meeting is adjourned to the same time the following week, or if not a business day, the business day immediately after it. If this situation is repeated a second time, the meeting comes to an end  Proofs may be used if delivered not later than 4pm on the business day immediately before resumption of the adjourned meeting (or later if chair accepts) – write to creditors to advise of the adjournment should this happen. Any proofs and proxies lodged for the original meeting will remain valid |  | R15.23  R15.25  R15.26 |  |
|  | Part 16 of the Rules deals with proxies and corporate representation – proxies can be specific or continuing |  | Part 16 R16.2 |  |
|  | Chapter 9 of Part 15 of the Rules deals with exclusions from meetings and will apply here where it becomes clear during the meeting that there is an ***excluded person*\***  The steps open to the chair are:   * Continue the meeting; * Declare it void and convene it again; or * Declare it valid up to the point where the person was excluded and adjourn the meeting   If continued, the meeting is valid unless the chair decides in consequence of a complaint under R15.38 to declare the meeting void and hold it again or the court directs otherwise – remember the meeting can be suspended for up to 1 hour to resolve any exclusion  ***\*****Means a person who has taken all steps necessary to attend a virtual meeting or has been permitted to attend a physical meeting remotely under arrangements put in place by the convener but which do not enable that person to attend the whole or part of that meeting* |  | R15.36  R15.37 |  |
|  | A person who is, or claims to be, an excluded person or a person who attends and claims to have been adversely affected by the actual, apparent or claimed exclusion of another person can make a complaint no later than 4pm on the business day following exclusion – see R15.38 for full details should this arise |  | R15.38 |  |
|  | Produce minutes of the meeting and ensure they are signed by the chair and retained as part of the records of the case – see point 84 onwards if a decision was taken to form a creditors’ committee at the meeting  Ensure any action taken by the chair in respect of excluded persons is reflected in the minutes | CVL359 - F  CVL360 - F | R15.40 |  |
|  | Ensure a certificate of appointment is signed by the chair of the meeting  If this is a joint appointment, use CVL347 instead  *Note that the liquidator’s appointment takes effect from the date of the passing of the resolution of the company unless creditors decide to appoint a person who is not the person appointed by the company, in which case it will take effect from the relevant creditors’ decision date (which may be the same date where a virtual meeting is held)* | CVL341 - F  CVL347 - F |  |  |
|  | If a joint appointment with another firm results - complete the schedule of division of responsibilities between the two firms | CVL361 - F |  |  |
|  | **Physical meetings** |  |  |  |
|  | Whether a decision on the nomination of a liquidator by creditors has been sought via the ***deemed consent*** procedure or by way of a ***virtual meeting***, creditors who meet any of the thresholds in s246ZE   * 10% in value * 10% in number * 10 creditors   may request that a ***physical meeting*** be convened instead to consider the decision. The threshold for ***objecting*** to a decision by ***deemed consent*** may not be reached (10% of creditors entitled to vote in a decision procedure) but the threshold for ***requesting*** a ***physical meeting*** may be, if for example 10 creditors request one – consider employees/small trade creditors, etc |  | S246ZE R6.14(6) |  |
|  | If a request for a ***physical meeting*** is made in writing before the ***decision date*** by creditors who meet one of the thresholds above, or if the threshold for objection to the decision on the liquidator’s appointment by ***deemed consent*** is met, a decision on the nomination of a liquidator should then be sought at a ***physical meeting*** instead – maintain a schedule of written requests  The ***General Meeting*** of members should be postponed, or if using ***written resolutions***, the undated resolutions should be held over until the ***physical meeting*** date on agreement with the members’ appointed agent (or the sole member if only one member)  The liquidator**\*** nominated by the members must attend the ***physical meeting*** and report on any exercise of his powers under section 112,165 or 166 of the Act  **\***or a person experienced in insolvency matters who is an employee of the office holder or the office holder’s firm – in which case an authority appointing them should be prepared  The chair of the meeting however, must be the convener (ie, the appointed director) | CVL356 – F  CVL314 - F | R6.14(6) s246ZE  R6.14(12)  R1.2(3)  R15.21(2) |  |
|  | If this occurs, send creditors notice of the ***physical meeting*** not later than ***3 business days*** after one of the thresholds has been met or surpassed with:   * Covering letter * Notice of decision by ***physical meeting*** * Proof of debt form * Proxy form   Consider whether the following (if approval is being sought at the same time) has already been adequately sent to all known creditors:   * Details of the firm’s outstanding pre-appointment costs *(Nb, remember that this may now include additional costs for the convening of the physical meeting)* * Fees estimate/information– if seeking approval for post appointment remuneration basis at the meeting * The firm’s Category 2 expenses policy where relevant   The ***physical meeting*** must not be held earlier than ***3 business days*** after the notice of it is delivered to creditors and not later than ***14 days*** after the level of requests has met one of the required thresholds | CVL365 – L CVL366 - F CVL307 – F CVL317 - F | R15.6(5) |  |
|  | Note that the convener can allow a creditor to attend any ***physical meeting*** remotely if the convener receives a request to do so in advance of the meeting – the notice of the meeting must include a statement to this effect |  | R15.6(6) |  |
|  | If the SoA has already been delivered to creditors, consider whether there will be a delay in passing the winding-up resolution as a consequence of the ***physical meeting*** request  If this results in the SoA being made up to a date which is more than ***14 days*** before the winding-up resolution date, it will need re-dating and verifying again  The Rules do not prescribe that any re-dated SoA must be sent to creditors if already issued, but this version will be the version to be filed with the Registrar  Consider whether a material transaction report to creditors will need to be made at the ***physical meeting*** under R6.17 if the company’s SoA has changed between the making up of it and the meeting date |  | R6.17 |  |
|  | If the SoA has not yet been sent to creditors, remember this must be delivered at the latest by the business day immediately before the ***physical meeting*** date (the ***decision date***) – consider whether the SoA will need re-dating and verifying again |  | R6.14(7) |  |
|  | The ***physical meeting*** must be advertised in the London Gazette. Other discretionary advertising may be placed if felt appropriate by the directors - liaise as appropriate)  Instruct advertising agency to place advertisement in the Gazette  The notice of the ***physical meeting*** must be gazetted ***before*** or ***as soon as reasonably practicable after*** notice of the meeting is delivered to creditors | CVL318 – F CVL17PM - F | R15.13 |  |
|  | Maintain a proxy schedule up to the ***decision date*** | CVL336 – F |  |  |
|  | Creditors have the right to vote at the ***physical meeting*** where their proof was lodged by 4pm**\*** on the business day immediately before the meeting date. Proxies can be lodged at any time up to the ***physical meeting***– ensure a proxy schedule is maintained & that proofs and proxies are date stamped  For the purpose of voting at the meeting, the requirements of a proof are satisfied by the notification by the creditor in writing of a debt  Secured creditors are entitled to vote, but only for any unsecured part of their debt  **\***If submitted later, the chair has discretion to accept it  Remember the chair must be the director who acted as the convener |  | R15.28 R15.31  R1.2  R15.31(4) & (5)  R15.28(1)(b)  R15.21 |  |
|  | Complete checklist for the ***physical meeting*** in good time for the meeting  Ensure the ***physical meeting*** is quorate – at least one creditor entitled to vote is a quorum. One person present and holding the requisite number of proxies constitutes a quorum - the chair alone is sufficient. Complete the attendance register | CVL357 – C  CVL367 - F | R15.20 |  |
|  | Unless the members have already passed the necessary resolutions to wind-up the Company and a Centrebind has ensued, hold the reconvened ***General Meeting*** of members to pass the necessary resolutions ahead of the ***physical meeting*** of creditors, or if holding undated ***written resolutions*** from the members, then liaise with the members’ appointed agent (or sole member if only one member) and agree that these resolutions can now be dated – ensure this is done ahead of the creditors’ meeting |  |  |  |
|  | Hold the ***physical meeting*** of creditors in accordance with the agenda – the chair may decide what questions may be put to any present or former officer of the company  Seek approval for the decisions proposed including the nomination of the liquidator and approval for fees & Category 2 expenses (if being sought) | CVL358 - F | R15.22(c)(i) |  |
|  | The chair many suspend the meeting (without an adjournment) for one or more periods not exceeding one hour in total (or longer total period at the chair’s discretion) |  | R15.27 |  |
|  | The chair may adjourn a meeting for not more than ***14 days*** – further adjournments are possible but not to a day later than ***14 days*** after the date on which the ***physical meeting*** was originally held  If no-one attends to act as chair within 30 minutes of the time fixed for it to start, the meeting is adjourned to the same time the following week, or if not a business day, the business day immediately after it  If this situation is repeated a second time, the meeting comes to an end  Proofs may be used if delivered not later than 4pm on the business day immediately before resumption of the adjourned meeting (or later if chair accepts) – write to creditors to advise of the adjournment should this happen  Any proofs and proxies lodged for the original meeting will remain valid |  | R15.23  R15.25  R15.26 |  |
|  | Part 16 of the Rules deals with proxies and corporate representation – proxies can be specific or continuing |  | Part 16 R16.2 |  |
|  | Produce minutes of the meeting and ensure they are signed by the chair and retained as part of the records of the case – see point 88 below if a decision was taken to form a creditors’ committee at the meeting | CVL359 – F  CVL360 - F |  |  |
|  | Ensure a certificate of appointment is signed by the chair of the meeting  If this is a joint appointment, use CVL347 instead  *Note that the liquidator’s appointment takes effect from the date of the passing of the resolution of the company unless creditors decide to appoint a person who is not the person appointed by the company, in which case it will take effect from the relevant creditors’ decision date (which may be a different date)* | CVL341 – F   CVL347 - F |  |  |
|  | If a joint appointment with another firm results - complete the schedule of division of responsibilities between the two firms | CVL361 - F |  |  |
|  | **Liquidation Committee – formation and constitution** |  |  |  |
|  | If creditors decide a committee should be formed and a decision has also been made on the membership of the committee, ensure a consent to act from each member has been/is obtained  ***Nb, a decision is made by creditors to form a committee when a majority (in value) of those voting have voted in favour of the proposed decision***  If a decision to establish a committee has been made but not of its membership, a further decision on the election of creditor members of the committee must be sought from the creditors – most likely by correspondence. Remember that the minimum number of committee members is three and the maximum is five. If there are ***less than*** 3 members elected when the decision to form a committee is reached, then a further decision on membership should also be sought from all creditors. If no further nominations are then received, the committee cannot be established as there will be insufficient creditors willing to act on it  If, however, ***more than*** five nominations are received when the decision to form a committee is made (or subsequently when nominations for membership are sought), further communications with creditors to decide on its membership will be necessary if all those nominated confirm they do wish to act in this regard. The proposed members with the greatest number of votes (by value) on the date set for the subsequent membership decision would then be elected (Nb, remember the committee can have between three and five members)  The committee is not established (and therefore cannot act) until the liquidator has sent a notice of its membership to the Registrar – COM1  This notice must be dealt with ***as soon as reasonably practicable*** after the **minimum number** of persons required (three) have agreed to act as members and have been elected | CVL370 - L CVL371 – F  CVL374 – L CVL374A – F CVL374B – F CVL371 – F  CVL382 - L CVL372 – F | R17.5  R15.34(1)  R17.5(4)    R17.3    R17.5(8) & (9) |  |
|  | Notify the Registrar of any change of membership on ***as soon as reasonably practicable*** – COM2 | CVL382 - L CVL373 - F | R17.7 |  |
|  | **Liquidation Committee – first meeting** |  |  |  |
|  | The first meeting must be held within 6 weeks of the committees’ establishment (on sending the notice of membership with the Registrar under R17.5 (as amended) therefore in theory, could be held immediately after any *virtual* or *physical meeting* at which a decision is taken to establish a committee, providing the notice of membership is sent to the Registrar on the same date) The liquidator must give ***5 business days’*** notice of the venue of the meeting unless this is waived by any member (which may be signified either at or before the meeting)  Where appropriate the meeting may be conducted and held in such a way that the members can attend remotely, but a place for the meeting must be specified if requested by at least one member of the committee ***within 3 business days*** of the date on which the liquidator delivered notice of the remote meeting  The liquidator or a member of his staff suitably experienced in insolvency matters must chair the meeting |  | R17.14  R17.14  R17.20 R17.21  R17.15 R1.2 |  |
|  | Send the following to all members of the committee:   * Covering letter * Notice of establishment of liquidation committee * Proxy Form * R3 Committee Guide**\*** * ‘A Creditors’ Guide to Liquidators’ Fees’   **\***Committee members should have already received a link to the R3 committee guide when the decision about the committees’ establishment was requested but CVL375 provides for a copy to be issued again with it – a link in the alternative may be given  Obtain authority for the basis of the liquidator’s pre-appointment fees, post-appointment remuneration basis & Category 2 expenses (if relevant) – provide the committee members with a fees estimate (where time cost resolution is being proposed) or details of set amount/% basis or bases proposed in the alternative, together with details of the work the liquidator anticipates will be done in the liquidation and expenses likely to be incurred  *Note: this is only possible where creditors have already received details of the proposed basis of remuneration and a fees estimate if applicable, failing which details will need to be issued to creditors before the committee can pass a valid resolution*  *Remember that even if creditors have already approved the basis of the liquidator’s fees (ie, at the same time as the liquidator’s nomination), it will now fall to the committee to agree these before any fees are drawn (after the notice of membership has been delivered to the Registrar – see point 89)*  ***R6.7(4) also requires that at least 5 business days’ notice is given to the committee of the Liquidator’s intention to discharge any unpaid pre-appointment fees***  ***Notice of the intention to discharge these once approved, should be included in the minutes of the meeting which will be circulated to all members – see below*** | CVL375 – L  CVL372 – F  CVL376 – F  CVL378 – F  CVL379 – F | Part 17 SIP9 SIP15 SIP2  Part 18, Ch 4  R6.7(4) |  |
|  | Ensure minutes of all meetings are prepared and circulated to committee members for approval. Where separate resolutions are proposed, ensure each is stated and that each member is able to indicate agreement or dissent Resolutions must not be passed until the notice of membership has been sent to the Registrar |  | R17.5 – as amended |  |
|  | Circulate 2 copies of minutes of the initial meeting to the committee requesting they sign and return a copy as evidence of approval | CVL380 - F  CVL381 - L |  |  |
| **Manager review of checklist** | | | | |
| Name: | | | | |
| Signature: | | | | |
| Date: | | | | |
| Comments: | | | | |