
STATUTORY INSTRUMENTS

2018 No. 1082

The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018

PART 3

ADMINISTRATION

CHAPTER 13

Creditors' Committees

[Notes: (1) a document required by the Act or these Rules must also contain the standard contents set out in Part 1;

(2) see sections 215 and 362 of the Financial Services and Markets Act 2000⁽¹⁾ for the rights of persons appointed by a scheme manager, the Financial Conduct Authority and the Prudential Regulation Authority to attend committees and make representations.]

Scope

3.71. This Chapter applies to the establishment and operation of a creditors' committee in an administration ("creditors' committee").

Functions of a creditors' committee

3.72. In addition to any functions conferred on a creditors' committee by any provision of the Act or any other provision of these Rules, the creditors' committee is to—

- (a) assist the administrator in discharging the administrator's functions; and
- (b) act in relation to the administrator in such manner as may from time to time be agreed.

Number of members of a creditors' committee

3.73. A creditor's committee must have at least three members but not more than five members.

Eligibility for membership of creditors' committee

3.74.—(1) A creditor is eligible to be a member of a creditors' committee if—

- (a) the person has submitted a statement of claim and, where not dispensed with under rules 5.26(2) or 3.105(2), documentary evidence of debt;
- (b) the debt is not fully secured; and
- (c) neither of the following apply—
 - (i) the claim has been wholly rejected for voting purposes; or

(ii) the claim has been wholly rejected for the purpose of distribution or dividend.

(2) A body corporate or a partnership may be a member of a creditors' committee, but it cannot act otherwise than by a representative appointed under rule 3.84.

Establishment of creditors' committees

3.75.—(1) Where creditors decide that a creditors' committee should be established, the convener or chair of the decision procedure or the convener of the deemed consent process, if not the administrator, must—

- (a) as soon as reasonably practicable deliver a notice of the decision to the administrator; and
- (b) where a decision has also been made as to membership of the creditors' committee, inform the administrator of the names and addresses of the persons elected to be members of the creditors' committee.

(2) Before a person may act as a member of the creditors' committee that person must agree to do so.

(3) A person's proxy-holder attending a meeting establishing the creditors' committee or, in the case of a corporation or partnership, its duly appointed representative, may give such agreement (unless the proxy or instrument conferring authority contains a statement to the contrary).

(4) Where a decision has been made to establish a creditors' committee but not as to its membership, the administrator must seek a decision from the creditors as to membership of the creditors' committee.

(5) The creditors' committee is not established (and accordingly cannot act) until the administrator has sent a notice of its membership in accordance with paragraph (9).

(6) The notice must contain the following—

- (a) a statement that the creditors' committee has been duly constituted;
- (b) identification details for any company that is a member of the creditors' committee;
- (c) the full name and address of each member that is not a company.

(7) The notice must be authenticated and dated by the administrator.

(8) The administrator must, as soon as reasonably practicable, deliver the notice after the minimum number of persons required by rule 3.73 have agreed to act as members and been elected.

(9) The administrator must, as soon as reasonably practicable, deliver the notice to the registrar of companies.

Notice of change of membership of a committee

3.76.—(1) If there is a change in membership of the creditors' committee, the administrator must deliver a notice to the registrar of companies, as soon as reasonably practicable.

(2) The notice must contain—

- (a) the date of the original notice in respect of the constitution of the committee and the date of the last notice of membership given under this rule (if any);
- (b) a statement that this notice of membership replaces the previous notice;
- (c) identification details for any company that is a member of the committee;
- (d) the full name and address of any member that is not a company;
- (e) a statement whether any member has become a member since the issue of the previous notice;

- (f) the identification details for a company or otherwise the full name of any member named in the previous notice who is no longer a member and the date the membership ended.
- (3) The notice must be authenticated and dated by the administrator.

Vacancies: members of creditors' committee

3.77.—(1) This rule applies if there is a vacancy among the members of a creditors' committee or where the number of members of the committee is fewer than the maximum allowed.

- (2) A vacancy need not be filled if—
 - (a) the administrator and a majority of the remaining members agree; and
 - (b) the total number of members does not fall below three.
- (3) The administrator may appoint a creditor, who is qualified under rule 3.74 to be a member of the committee, to fill a vacancy or as an additional member of the committee, if—
 - (a) the remaining members of the committee (provided that there are at least two) agree in accordance with paragraph (4) to the appointment; and
 - (b) the creditor agrees to act.
- (4) Where there are only two remaining members of the committee, both must agree to the appointment, otherwise a majority must agree.
- (5) Alternatively, the administrator may seek a decision by creditors to appoint a creditor (with that creditor's consent) to fill the vacancy.
- (6) Where the vacancy is filled by an appointment made by a decision of creditors which is not chaired or convened by the administrator, the chair or convener must report the appointment to the administrator.

Resignation

3.78. A member of a creditors' committee may resign by informing the administrator in writing.

Termination of membership

3.79. A person's membership of a creditors' committee is automatically terminated if that person—

- (a) becomes bankrupt or that person's estate is sequestrated, in which case the trustee in bankruptcy or the trustee in sequestration, as the case may be, replaces the person bankrupt or sequestrated as a member of the committee;
- (b) grants a trust deed for the benefit of creditors;
- (c) makes a composition with creditors;
- (d) is a person to whom a moratorium under a debt relief order applies;
- (e) neither attends nor is represented at three consecutive meetings (unless it is resolved at the third of those meetings that this rule is not to apply in that person's case);
- (f) has ceased to satisfy the criteria set out in rule 3.74 for eligibility to be a member of the creditors' committee; or
- (g) ceases to be a creditor or is found never to have been a creditor.

Removal

3.80. A member of a creditors' committee may be removed by a decision of the creditors through a decision procedure.

Meetings of creditors' committee

3.81.—(1) Meetings of the creditors' committee must be held when and where determined by the administrator.

(2) The administrator must call a first meeting of the creditors' committee to take place within six weeks of the creditors' committee's establishment.

(3) After the calling of the first meeting, the administrator must call a meeting—

(a) if so requested by a member of the creditors' committee or a member's representative (the meeting then to be held within 21 days of the request being received by the administrator); and

(b) for a specified date, if the creditors' committee has previously resolved that a meeting be held on that date.

(4) The administrator must give five business days' notice of the venue of a meeting to each member of the creditors' committee (or a member's representative, if designated for that purpose), except where the requirement for notice has been waived by or on behalf of a member.

(5) Waiver may be signified either at or before the meeting.

The chair at meetings

3.82. The chair at a meeting of a creditors' committee must be the administrator or an appointed person.

Quorum

3.83. A meeting of a creditors' committee is duly constituted if due notice of it has been delivered to all the members, and at least two of the members are in attendance or represented.

Committee members' representatives

3.84.—(1) A member of the creditors' committee may, in relation to the business of the creditors' committee, be represented by another person duly authorised by the member for that purpose.

(2) A person acting as a committee member's representative must hold a letter of authority entitling that person to act (either generally or specifically) and authenticated by or on behalf of the committee member.

(3) A proxy or an instrument conferring authority (in respect of a person authorised to represent a body corporate or a partnership) is to be treated as a letter of authority to act generally (unless the proxy or instrument conferring authority contains a statement to the contrary).

(4) The chair at a meeting of the committee may call on a person claiming to act as a committee member's representative to produce a letter of authority, and may exclude that person if no letter of authority is produced at or by the time of the meeting or it appears to the chair that the authority is deficient.

(5) A committee member may not be represented by—

(a) another member of the committee;

(b) a person who is at the same time representing another committee member;

(c) a body corporate;

(d) a partnership;

(e) an undischarged bankrupt;

(f) a person whose estate has been sequestrated and who has not been discharged;

- (g) a person who has granted a trust deed for the benefit of creditors;
- (h) a person who has made a composition with creditors;
- (i) a person to whom a moratorium period under a debt relief order applies;
- (j) a person who is subject to a company directors disqualification order or a company directors disqualification undertaking; or
- (k) a person who is subject to a bankruptcy restrictions order (including an interim order), a bankruptcy restrictions undertaking, a debt relief restrictions order (including an interim order) or a debt relief restrictions undertaking.

(6) Where a representative authenticates any document on behalf of a committee member the fact that the representative authenticates as a representative must be stated below the authentication.

Voting rights and resolutions

3.85.—(1) At a meeting of the committee, each member (whether the member is in attendance or is represented by a representative) has one vote.

(2) A resolution is passed when a majority of the members attending or represented have voted in favour of it.

(3) Every resolution passed must be recorded in writing and authenticated by the chair, either separately or as part of the minutes of the meeting.

Resolutions by correspondence

3.86.—(1) The administrator may seek to obtain the agreement of the creditors' committee to a resolution by delivering to every member (or the member's representative designated for the purpose) details of the proposed resolution.

(2) The details must be set out in such a way that the recipient may indicate agreement or dissent and where there is more than one resolution may indicate agreement to or dissent from each one separately.

(3) A member of the creditors' committee may, within five business days from the delivery of details of the proposed resolution, require the administrator to summon a meeting of the creditors' committee to consider the matters raised by the proposed resolution.

(4) In the absence of such a request, the resolution is passed by the creditors' committee if a majority of the members (excluding a member or member's representative who is to participate directly or indirectly in a transaction) deliver notice to the administrator that they agree with the resolution.

Remote attendance at meetings of creditors' committee

3.87.—(1) Where the administrator considers it appropriate, a meeting of a creditors' committee may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(2) A person attends such a meeting who is able to exercise that person's right to speak and vote at the meeting.

(3) A person is able to exercise the right to speak at a meeting when that person is in a position to communicate during the meeting to all those attending the meeting any information or opinions which that person has on the business of the meeting.

(4) A person is able to exercise the right to vote at a meeting when—

- (a) that person is able to vote, during the meeting, on resolutions or determinations put to the vote at the meeting; and

- (b) that person’s vote can be taken into account in determining whether or not such resolutions or determinations are passed at the same time as the votes of all the other persons attending the meeting.
- (5) Where such a meeting is to be held the administrator must make whatever arrangements the administrator considers appropriate to—
 - (a) enable those attending the meeting to exercise their rights to speak or vote; and
 - (b) verify the identity of those attending the meeting and to ensure the security of any electronic means used to enable attendance.
- (6) A requirement in these Rules to specify a place for the meeting may be satisfied by specifying the arrangements the administrator proposes to enable persons to exercise their rights to speak or vote where in the reasonable opinion of the administrator—
 - (a) a meeting will be attended by persons who will not be present together at the same place; and
 - (b) it is unnecessary or inexpedient to specify a place for the meeting.
- (7) In making the arrangements referred to in paragraph (6) and in forming the opinion referred to in paragraph (6)(b), the administrator must have regard to the legitimate interests of the creditors’ committee members or their representatives attending the meeting in the efficient despatch of the business of the meeting.
- (8) Where the notice of a meeting does not specify a place for the meeting the administrator must specify a place for the meeting if at least one member of the creditors’ committee requests the administrator to do so in accordance with rule 3.88.

Procedure for requests that a place for a meeting should be specified

- 3.88.**—(1) This rule applies to a request to the administrator under rule 3.87 to specify a place for the meeting.
- (2) The request must be made within three business days of the date on which the administrator delivered the notice of the meeting in question.
 - (3) Where the administrator considers that the request has been properly made in accordance with this rule, the administrator must—
 - (a) deliver notice to all those previously given notice of the meeting—
 - (i) that it is to be held at a specified place, and
 - (ii) as to whether the date and time are to remain the same or not;
 - (b) fix a venue for the meeting, the date of which must be not later than seven business days after the original date for the meeting; and
 - (c) give three business days’ notice of the venue to all those previously given notice of the meeting.
 - (4) The notices required by sub-paragraphs (a) and (c) may be delivered at the same or different times.
 - (5) Where the administrator has specified a place for the meeting in response to a request under rule 3.87(8), the chair of the meeting must attend the meeting by being present in person at that place.

Notice requiring administrator to attend the creditors’ committee (paragraph 57(3)(a) of Schedule B1)

[Note: in an administration paragraph 57(3) of Schedule B1 enables the creditors’ committee to require the administrator to provide the committee with information]

3.89.—(1) This rule applies where a creditors' committee in an administration resolves under paragraph 57(3)(a) of Schedule B1 to require the attendance of the administrator.

(2) The notice delivered to the administrator requiring the administrator's attendance must be—

- (a) accompanied by a copy of the resolution; and
- (b) authenticated by a member of the creditors' committee.

(3) A member's representative may authenticate the notice for the member.

(4) The meeting at which the administrator's attendance is required must be fixed by the committee for a business day, and must be held at such time and place as the administrator determines.

(5) Where the administrator so attends, the creditors' committee may elect one of their number to be chair of the meeting in place of the administrator or the appointed person.

Expenses of members etc.

3.90.—(1) The administrator must pay, as an expense of the administration, the reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in attending the creditors' committee's meetings or otherwise on the creditors' committee's business.

(2) The requirement for the administrator to pay the expenses does not apply to a meeting of the committee held within six weeks of a previous meeting, unless the meeting is summoned by the administrator.

Dealings by creditors' committee members and others

3.91.—(1) Membership of the creditors' committee does not prevent a person from dealing with the company provided that a transaction is in good faith and for value.

(2) The court may, on the application of an interested person—

- (a) set aside a transaction which appears to it to be contrary to this rule; and
- (b) make such other order about the transaction as it thinks just, including an order requiring a person to whom this rule applies to account for any profit obtained from the transaction and compensate the company for any resultant loss.

Formal defects

3.92. The acts of a creditors' committee are valid notwithstanding any defect in the appointment, election or qualifications of a member of the creditors' committee or a committee member's representative or in the formalities of its establishment.