
STATUTORY INSTRUMENTS

2021 No. 1178

The Payment and Electronic Money Institution
Insolvency (England and Wales) Rules 2021

PART 3

Process of Special Administration

CHAPTER 10

Proxies and corporate representation

Definition of proxy

89.—(1) For the purposes of these Rules, a “proxy” is a document made by a creditor, customer, member or contributory (the “principal”) which directs or authorises another person (“the proxy-holder”) to act as the representative of the principal at one or more meetings by speaking, voting on, abstaining from, or proposing resolutions.

(2) A proxy-holder must be an individual aged 18 or over.

(3) Proxies are for use at meetings summoned or called under the Regulations or these Rules.

(4) Only one proxy-holder may be appointed by a principal for any one meeting at which the principal wants to be represented, but the principal may specify one or more proxy-holders in the alternative, in the order in which they are named in the proxy.

(5) Without prejudice to paragraph (4), a proxy for a particular meeting may be given to whoever is to be the chair of the meeting.

(6) Where a proxy appoints the chair (howsoever described in the proxy) as proxy-holder, the chair may not refuse to be the proxy-holder.

(7) A proxy may be either—

(a) a specific proxy which relates to a specific meeting, or

(b) a continuing proxy for the duration of the special administration.

(8) A proxy is to be treated as a specific proxy for the meeting which is identified in the proxy unless it states that it is a continuing proxy for the duration of the special administration.

(9) A specific proxy must—

(a) direct the proxy-holder how to act at the meeting by giving specific instructions,

(b) authorise the proxy-holder to act at the meeting without specific instructions, or

(c) contain both direction and authorisation.

(10) A continuing proxy must authorise the proxy-holder to attend, speak, vote on or abstain from voting on, or propose resolutions without giving the proxy-holder any specific instructions how to do so.

(11) A continuing proxy may be superseded by a proxy for a specific meeting or withdrawn by a written notice to the administrator.

Issue and use of forms

90.—(1) When notice is given of a meeting to be held in the course of the special administration and a form of proxy is sent out with the notice, such form must be a “blank proxy”.

(2) A “blank proxy” is a document which—

- (a) complies with the requirements in this rule, and
- (b) when completed with the details specified in paragraph (4) will be a proxy as described in rule 89.

(3) A blank proxy must state that the principal named in the document (when completed) appoints a person who is named or identified as the proxy-holder of the principal.

(4) The specified details are—

- (a) the name and address of the creditor, customer, member or contributory,
- (b) either the name of the proxy-holder or the identification of the proxy-holder (such as the chair of the meeting or the administrator),
- (c) a statement that the proxy is either—
 - (i) for a specific meeting, which is identified in the proxy, or
 - (ii) a continuing proxy for the proceedings, and
- (d) if the proxy is for a specific meeting, instructions as to the extent to which the proxy-holder is directed to vote in a particular way, to abstain or to propose any resolution.

(5) When it is delivered to the principal, a blank proxy must not contain the name or description of any person as proxy-holder, or instructions as to how a proxy-holder is to act.

(6) A blank proxy must have a note to the effect that the proxy may be completed with the name of the person or the chair of the meeting who is to be proxy-holder.

(7) A form of proxy must be authenticated by the principal, or by some person authorised by that principal (either generally or with reference to a particular meeting).

(8) If the form is authenticated by a person other than the principal, the nature of the person’s authority must be stated.

Use of proxies at meetings

91.—(1) A proxy for a specific meeting must be delivered to the chair before the meeting.

(2) A continuing proxy must be delivered to the administrator and may be exercised by the proxy-holder at any meeting which begins after the proxy is delivered.

(3) A proxy given for a particular meeting may be used at any adjournment of that meeting but if a different proxy is given for use at a resumed meeting, that proxy must be delivered to the chair before the start of the resumed meeting.

(4) Where the administrator holds proxies to be used by the administrator as chair of a meeting, and some other person acts as chair, the other person may use the administrator’s proxies as if that person was the proxy-holder.

(5) Where a proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person as the administrator, the proxy-holder may, unless the proxy states otherwise, vote for or against (as they think fit) any resolution for the nomination or appointment of that person jointly with another or others.

(6) A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which by virtue of the proxy they would be entitled to vote.

(7) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy-holder from voting at their discretion on resolutions put to the meeting which are not dealt with in the proxy.

Retention of proxies

92.—(1) Subject to paragraph (2), proxies used for voting at any meeting must be retained by the chair of the meeting.

(2) The chair must deliver the proxies, as soon as is reasonably practicable after the meeting, to the administrator (where the administrator is someone other than the chair).

Right of inspection

93.—(1) So long as proxies lodged with the administrator are in the administrator's hands, the administrator must allow them to be inspected, at all reasonable times on any business day, by—

- (a) the creditors, in the case of proxies used at a meeting of creditors or at a meeting of creditors and customers;
- (b) the customers, in the case of proxies used at a meeting of customers or at a meeting of creditors and customers, and
- (c) the institution's members or contributories, in the case of proxies used at a meeting of the institution or of its contributories.

(2) The reference in paragraph (1) to creditors or to customers is to persons who have submitted in writing a claim to be creditors or, as the case may be, customers of the institution, but does not include a person whose proof or claim has been wholly rejected for purposes of voting, dividend or otherwise.

(3) The right of inspection given by this rule is also exercisable by the directors of the institution in special administration.

(4) Any person attending a meeting in the course of the special administration is entitled, immediately before or during the meeting, to inspect proxies and associated documents (including proofs) sent or given, in accordance with directions contained in any notice convening the meeting, to the chair of that meeting or to any other person by a creditor, customer, member or contributory for the purpose of that meeting.

(5) This rule is subject to rule 281.

Proxy-holder with financial interest

94.—(1) A proxy-holder ('P') must not vote in favour of any resolution which would directly or indirectly place P, or any associate of P's, in a position to receive any remuneration out of the insolvent estate or the asset pool, unless the proxy specifically directs P to vote in that way.

(2) Where P has authenticated the proxy as being authorised to do so by P's principal and the proxy specifically directs P to vote in the way mentioned in paragraph (1), P must nevertheless not vote in that way unless P produces to the chair of the meeting written authorisation from P's principal sufficient to show that P was entitled so to authenticate the proxy.

(3) This rule applies also to any person acting as chair of a meeting and using proxies in that capacity under rule 89 and in its application to the chair, P is deemed an associate of that person.

Corporate representation

95.—(1) Where a person is authorised to represent a corporation (other than as proxy-holder) at a meeting held under the Regulations or these Rules, that person must produce to the chair of the meeting a copy of the resolution from which that person's authority is derived.

(2) The copy resolution must be under the seal of the corporation, or certified by the secretary or a director of the corporation to be a true copy.

(3) Nothing in this rule requires the authority of a person to authenticate a proxy on behalf of a principal which is a corporation to be in the form of a resolution of that corporation.