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STATUTORY INSTRUMENTS

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**2021 No. 1178**

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

PART 3

Process of Special Administration

CHAPTER 5

Entitlement to vote at meetings

**Entitlement to vote (creditors)**

**52.**—(1) A creditor is entitled to vote at a meeting of creditors, or at a meeting of creditors and customers, only if—

- (a) the administrator has been given written details of the debt which is claimed as due to that person from the institution, including any calculation for the purposes of rule 53 or rule 54,
- (b) the details were given to the administrator—
  - (i) not later than 12.00 hours on the business day before the day fixed for the meeting, or
  - (ii) later than that time but the chair of the meeting is satisfied that that was due to circumstances beyond that person's control,
- (c) the claim has been admitted for the purposes of entitlement to vote, and
- (d) there has been lodged with the administrator any proxy intended to be used on behalf of that person.

(2) Where under rule 56(4) the administrator has become aware that a customer has a shortfall claim:

- (a) the administrator shall treat the customer as having provided details of the shortfall claim under paragraphs (1)(a) and (b);
- (b) the claim shall be admitted under paragraph 1(c) for the purposes of entitlement to vote, and
- (c) the customer does not need to submit a separate claim under paragraph (1) in order to be entitled to vote as a creditor at a meeting of creditors and customers in respect of its shortfall claim but a customer should if relevant lodge a proxy in accordance with paragraph (1)(d).

(3) For the purposes of this Chapter, written details of a claim, once lodged or given in accordance with this rule, need not be lodged or given again.

(4) The chair of a meeting of creditors, or of a meeting of creditors and customers, may call for any document or other evidence to be produced if the chair thinks it necessary for the purpose of substantiating the whole or any part of a claim.

**Calculation of voting rights (creditors)**

**53.**—(1) Votes are calculated according to the amount of each creditor's claim as at the date on which the institution entered special administration, less any payments that have been made to the creditor after that date in respect of the claim and any adjustment by way of set-off in accordance with rule 132 as if that rule were applied on the date on which the votes are counted.

(2) A creditor may vote in respect of a debt which is for an unliquidated amount or the value of which is not ascertained if the chair decides to put upon it an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

(3) Paragraph (2) does not apply to a shortfall claim.

(4) A creditor may not vote in respect of any claim or part of a claim—

(a) where the claim or part is secured, except where the vote is cast in respect of the balance (if any) of the debt after deduction of the value of the security as estimated by the creditor, or

(b) where the claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing—

(i) to treat as a security in the creditor's hands the liability on the bill or note of every person who is liable on it antecedently to the institution, and—

(aa) in the case of a company, has not gone into liquidation, or

(bb) in the case of an individual, against whom a bankruptcy order has not been made or whose estate has not been sequestered, and

(ii) to estimate the value of the security and for the purposes of voting (but not otherwise) to deduct it from the claim.

**Calculation of voting rights: special cases (creditors)**

**54.**—(1) An owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable by the institution on the date on which it entered special administration.

(2) In calculating the amount of any debt (2) for the purpose of paragraph (1), no account is to be taken of any amount attributable to the exercise of any right under the relevant agreement so far as the right has become exercisable solely by virtue of—

(a) the making of a special administration application, or

(b) the institution entering special administration.

**Procedure for admitting creditors' claims for voting**

**55.**—(1) At a meeting of creditors, the chair must ascertain the entitlement of persons wishing to vote as creditors and admit or reject their claims accordingly.

(2) The chair may admit or reject a claim in whole or in part.

(3) If the chair is in any doubt whether a claim should be admitted or rejected, the claim must be marked as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

**Entitlement to vote (customers)**

**56.**—(1) A customer is entitled to vote at a meeting of creditors and customers, or customers only if—

(a) the administrator has been given written details of the customer's relevant funds claim in accordance with rule 102,

- (b) the details were given to the administrator—
    - (i) not later than 12.00 hours on the business day before the day fixed for the meeting, or
    - (ii) later than that time but the chair of the meeting is satisfied that the delay was due to circumstances beyond that customer's control,
  - (c) the relevant funds claim has been admitted for the purposes of entitlement to vote, and
  - (d) there has been lodged with the administrator any proxy intended to be used on behalf of that person.
- (2) Subject to paragraph (4), for the purposes of this Chapter, written details of a relevant funds claim, once lodged or given in accordance with this rule, need not be lodged or given again.
- (3) The chair at a meeting of customers, or creditors and customers, may call for any document or other evidence to be produced if the chair thinks it necessary for the purpose of substantiating the whole or any part of a relevant funds claim.
- (4) If at any time prior to the initial meeting or to a meeting of creditors and customers, or customers only, the administrator has become aware that a customer has a shortfall claim, the administrator must—
- (a) adjust the relevant funds claim submitted under paragraph (1), subtracting the value of the shortfall claim from that relevant funds claim,
  - (b) submit a claim under rule 52(1)(c) on behalf of the customer as to the shortfall claim,
  - (c) take this shortfall into account in calculating the customer's entitlement to vote, and
  - (d) as soon as is reasonably practicable, notify the customer—
    - (i) of the amended relevant funds claim and the shortfall claim, and
    - (ii) that a claim for the shortfall claim has been submitted under rule 52.
- (5) For the purposes of this Chapter, a customer's voting rights are calculated according to the value of the customer's relevant funds claim submitted under this rule, taking into account any shortfall claim identified prior to the meeting.

#### **Procedure for admitting customers' relevant funds claims for voting**

57.—(1) At a meeting of creditors and customers, or customers only, the chair must ascertain the entitlement of persons wishing to vote as customers and admit or reject their relevant funds claims accordingly.

(2) The chair may admit or reject a relevant funds claim in whole or in part.

(3) If the chair is in any doubt whether a relevant funds claim should be admitted or rejected, the relevant funds claim must be marked as objected to and votes allowed to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the relevant funds claim is sustained.

#### **Voting at meetings of creditors and customers**

58.—(1) This rule applies to meetings of creditors and customers.

(2) If the administrator thinks it appropriate, the creditors and customers may vote on the same resolution at the meeting, however the creditors and the customers must vote in separate classes on the resolution.

### **Requisite majorities**

**59.**—(1) Subject to paragraph (2), at a meeting of creditors or customers, or of creditors and customers, a resolution is passed when a majority (in value) of those present and voting in each class, in person or by proxy, have voted at the relevant meeting in favour of it.

(2) Any resolution is invalid if those voting against it include more than half in value of the creditors, or, as the case may be, customers, to whom notice of the meeting was sent and who are not, to the best of the chair's belief, persons connected with the institution.

(3) "Persons connected with the institution" has the same meaning in respect of the institution as a person connected with a company in accordance with section 249 of the IA 1986.

### **Requisite majorities at contributories' meetings**

**60.** At a meeting of contributories, voting rights are as at a general meeting of the institution, subject to any provision of the articles affecting entitlement to vote, either generally or at a time when the institution is in liquidation.

### **Appeals against decisions under this Chapter**

**61.**—(1) The chair's decisions under this Chapter are subject to appeal to the court by any creditor, customer, contributory or member.

(2) If the chair's decision is reversed or varied, or votes are declared invalid, the court may order another meeting to be summoned or make such order as it thinks just.

(3) An appeal under this rule may not be made later than twenty-one days after the date of the meeting.

(4) The chair is not personally liable for costs incurred by any person in respect of an appeal under this rule unless the court makes an order to that effect.