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STATUTORY INSTRUMENTS

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**2022 No. 1239**

The Payment and Electronic Money  
Institution Insolvency (Scotland) Rules 2022

PART 3

Process of Special Administration

CHAPTER 8

The creditors' committee

**Constitution of creditors' committee**

**67.**—(1) Where it is resolved by a meeting of creditors and customers to establish a creditors' committee (see paragraph 57) for the purposes of the special administration, the creditors' committee must consist of at least three and not more than five persons elected at the meeting.

(2) Where paragraph (1) applies, before receiving nominations for members of the creditors' committee, the administrator will set out the maximum number of members to be elected onto the creditors' committee by each class of voter so as to ensure that the make-up of the creditors' committee is a reflection of all parties with an interest in the achievement of the special administration objectives.

(3) The classes of voters mentioned in paragraph (2) are—

- (a) creditors,
- (b) customers.

(4) A person claiming to be a creditor is entitled to be a member of the committee provided that the following conditions are met—

- (a) that person's claim has not been—
  - (i) wholly disallowed for voting purposes, or
  - (ii) wholly rejected for the purpose of distribution or dividend,
- (b) the claim mentioned in sub-paragraph (a) is not fully secured.

(5) A person claiming to be a customer is entitled to be a member of the creditors' committee provided that that person's relevant funds claim has not been—

- (a) wholly disallowed for voting purposes, or
- (b) wholly rejected for the purpose of settling relevant funds claims.

(6) A body corporate may be a member of the creditors' committee, but it cannot act as such otherwise than by a representative appointed under rule 72.

### **Formalities of establishment**

**68.**—(1) The creditors’ committee does not come into being and accordingly cannot act until the administrator has issued a certificate of its due constitution.

(2) The certificate must state that the creditors’ committee of the institution has been duly constituted and must include the following—

- (a) a statement that the proceedings are being held in the court and the court reference number,
- (b) the full name, registered address and registered number of the institution,
- (c) the full name and business address of the administrator,
- (d) the full name and address of each member of the creditors’ committee.

(3) If the chair of the meeting of creditors and customers which resolves to establish the creditors’ committee is not the administrator, the chair must as soon as is reasonably practicable give notice of the resolution to the administrator and inform the administrator of the names and addresses of the persons elected to be members of the creditors’ committee.

(4) No person may act as a member of the creditors’ committee unless and until they have agreed to do so and, unless the relevant proxy or authorisation contains a statement to the contrary, such agreement may be given by their proxy-holder present at the meeting establishing the creditors’ committee or, in the case of a corporation, by its duly appointed representative.

(5) The administrator’s certificate of the creditors’ committee’s due constitution must not be issued before the persons elected to be members of the creditors’ committee in accordance with rule 67 have agreed to act and must be issued as soon as is reasonably practicable afterwards.

(6) If any further members are elected to the creditors’ committee at a later date, the administrator must issue an amended certificate as and when those persons have agreed to act.

(7) A copy of the certificate, and of any amended certificate, must be sent to the registrar of companies by the administrator, as soon as is reasonably practicable.

(8) If after the establishment of the creditors’ committee there is any change in its membership, the administrator must as soon as is reasonably practicable report the change to the registrar of companies by filing a copy of the amended certificate.

### **Functions and meetings of the creditors’ committee**

**69.**—(1) In addition to any functions conferred on the creditors’ committee by any provision of the Regulations, the creditors’ committee must assist the administrator in discharging the administrator’s functions and act in relation to the administrator in such manner as may be agreed from time to time.

(2) Subject to paragraphs (3) to (7), meetings of the creditors’ committee must be held at a time and place determined by the administrator.

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

(4) 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 the member’s representative (the meeting then to be held within twenty-one days of the request being received by the administrator),
- (b) for a specified date, if the creditors’ committee has previously resolved that a meeting be held on that date.

(5) Subject to paragraph (7), the administrator must give five business days’ written notice of the venue of any meeting to every member of the creditors’ committee (or their representative designated

for that purpose) unless in any case the requirement of notice has been waived by or on behalf of any member. Waiver may be signified either at or before the meeting.

(6) The FCA must also be given the notice in paragraph (5).

(7) Where the administrator has determined that a meeting should be conducted and held in the manner referred to in rule 78, the notice period mentioned in paragraph (5) is seven business days.

### **The chair at meetings**

**70.**—(1) The chair at any meeting of the creditors' committee must be the administrator, or a person appointed by the administrator in writing to act.

(2) A person so appointed must be—

- (a) one who is qualified to act as an insolvency practitioner in relation to the institution, or
- (b) an employee of the administrator or the administrator's firm who is experienced in insolvency matters.

### **Quorum**

**71.** A meeting of the creditors' committee is duly constituted if due notice of it has been given to all the members, and at least two members are present or represented.

### **Creditors' committee members' representatives**

**72.**—(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 representative of a creditors' committee member must hold a letter of authority entitling them so to act (either generally or specially) and authenticated by or on behalf of the creditors' committee-member.

(3) For the purpose of paragraph (2), any proxy in relation to any meeting of creditors, or customers, or creditors and customers must, unless it contains a statement to the contrary, be treated as a letter of authority to act generally, authenticated by or on behalf of the creditors' committee-member.

(4) The chair at any meeting of the creditors' committee may call on a person claiming to act as a creditors' committee-member's representative to produce the letter of authority, and may exclude that person if it appears that their authority is deficient.

(5) No member may be represented by—

- (a) another member of the creditors' committee,
- (b) a person who is at the same time representing another creditors' committee member,
- (c) a body corporate,
- (d) an undischarged bankrupt,
- (e) a disqualified director,
- (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 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 member's representative authenticates any document on the member's behalf, the fact that the representative so authenticates must be stated below the authentication.

### **Resignation**

73. A member of the creditors' committee may resign by notice in writing delivered to the administrator.

### **Termination of membership**

- 74.—(1) Membership of the creditors' committee is automatically terminated if the member—
- (a) becomes bankrupt or that person's estate is sequestrated,
  - (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) at three consecutive meetings of the creditors' committee is neither present nor represented (unless at the third of those meetings it is resolved that this rule is not to apply in that member's case),
  - (f) subject to paragraph (3), if voted onto the creditors' committee under rule 67 by the creditors of the institution, ceases to be a creditor and a period of three months has elapsed from the date that that member ceased to be a creditor or is found never to have been a creditor, or
  - (g) subject to paragraph (4), if voted onto the creditors' committee under rule 67 by the customers of the institution, has had all relevant funds claims settled (subject to there being an identified shortfall claim or any amounts being retained by the administrator under rule 109(2)(d)), or is found never to have been a customer.

(2) If the cause of termination is the member's bankruptcy or their estate is sequestrated, their trustee in bankruptcy or the trustee in sequestration must replace them as a member of the creditors' committee.

(3) A person to whom paragraph (1)(f) applies must not have their membership terminated if the following conditions are met—

- (a) that person is also a customer of the institution,
- (b) that person has not had all relevant funds claims settled (subject to there being an identified shortfall claim or any amount being retained by the administrator under rule 109(2)(d)),

but the administrator may require that person to resign if the administrator thinks that the make-up of the creditors' committee does not reflect all parties with an interest in the achievement of the special administration objectives.

(4) A person to whom paragraph (1)(g) applies must not have their membership terminated if they are also a creditor of the institution but the administrator may require them to resign if the administrator thinks that the make-up of the creditors' committee does not reflect all parties with an interest in the achievement of the special administration objectives.

### **Removal**

75.—(1) A member of the creditors' committee may be removed by resolution at a meeting of creditors and customers, provided that at least fourteen days' notice has been given of the intention to move that resolution.

(2) The resolution in paragraph (1) will be voted on only by the relevant class of voter in respect of the member to be removed.

## **Vacancies**

76.—(1) The following applies if there is a vacancy in the membership of the creditors' committee.

(2) The vacancy need not be filled if the administrator and a majority of the remaining members of the creditors' committee so agree, provided that—

- (a) the total number of members does not fall below three,
- (b) the administrator thinks that the make-up of the creditors' committee will continue to reflect all parties with an interest in the achievement of the special administration objectives.

(3) The administrator may appoint a person (being qualified under these Rules to be a member of the creditors' committee) from the same class of voters as the previous member to fill the vacancy, if—

- (a) a majority of the other members of the creditors' committee who are from the same class of voters agree to the appointment,
- (b) the person concerned consents to act.

## **Procedure at meetings**

77.—(1) At any meeting of the creditors' committee, each member of it (whether present or represented) has one vote, and a resolution is passed when a majority of the members present or represented have voted in favour of it.

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

## **Remote attendance at meetings of creditors' committee**

78.—(1) This rule applies to any meeting of a creditors' committee held under these Rules.

(2) Where the administrator considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner referred to in paragraph (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this rule—

- (a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting,
- (b) a person is able to exercise the right to vote at a meeting when—
  - (i) that person is able to vote, during the meeting, on resolutions or determinations put to the vote at the meeting,
  - (ii) 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 a meeting is to be conducted and held in the manner referred to in paragraph (2), 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,

- (b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.
- (6) Any requirement under 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,
  - (b) it is unnecessary or inexpedient to specify a place for the meeting.
- (7) In making the arrangements referred to in paragraph (5) 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) The administrator must specify a place for the meeting if—
  - (a) the notice of a meeting does not specify a place for the meeting,
  - (b) the administrator is requested in accordance with rule 79 to specify a place for the meeting,
  - (c) that request is made by at least one member of the creditors' committee.

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

- 79.**—(1) This rule applies to a request to the administrator of a meeting under rule 78 to specify a place for the meeting.
- (2) The request must be made within five business days of the date on which the administrator sent 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) give notice to all those previously given notice of the meeting—
      - (i) that it is to be held at a specified place,
      - (ii) as to whether the date and time are to remain the same or not,
    - (b) set a venue (including specification of a place) for the meeting, the date of which must be not later than seven business days after the original date for the meeting,
    - (c) give five business days' notice of the venue to all those previously given notice of the meeting.
  - (4) The notices required by paragraphs (3)(a) and (3)(c) may be given at the same or different times.
  - (5) Where the administrator has specified a place for the meeting in response to a request to which this rule applies, the chair of the meeting must attend the meeting by being present in person at that place.

#### **Resolutions of creditors' committees by post**

- 80.**—(1) The administrator may seek to obtain the agreement of members of the creditors' committee to a resolution by delivering to every member of the creditors' committee (or designated representative) a copy of the proposed resolution.
- (2) Where the administrator makes use of this procedure, the administrator must notify each member or their representative of each proposed resolution on which a decision is sought.
  - (3) The FCA must also be notified of each proposed resolution under this rule.

(4) Any member of the creditors' committee may, within seven business days of the date of the administrator notifying them of a resolution, require the administrator to call a meeting of the creditors' committee to consider matters raised by the resolution.

(5) In the absence of such a request, the resolution is deemed to have been passed by the creditors' committee if and when the administrator is notified in writing by a majority of the members that they agree with the resolution.

(6) A copy of every resolution passed under this rule and a note that the creditors' committee's concurrence was obtained must be filed in the sederunt book.

### **Information from administrator**

**81.**—(1) Where the creditors' committee resolves to require the attendance of the administrator under paragraph 57(3)(a), the notice to the administrator must be in writing, authenticated by the majority of the members of the creditors' committee for the time being.

(2) A member's authentication under paragraph (1) may be made by that member's representative.

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

(4) The administrator must notify the FCA of the time and place of the meeting.

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

### **Expenses of members**

**82.**—(1) The administrator must pay any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in relation to their attendance at the creditors' committee's meetings, or otherwise on the creditors' committee's business.

(2) Where the expenses referred to in paragraph (1) are incurred by a creditor member of the creditors' committee, the expenses will be paid out of assets of the institution as an expense of the special administration in the order of priority of payments laid down by rule 95.

(3) Where the expenses referred to in paragraph (1) are incurred by a customer member of the creditors' committee, the expenses will be paid out of the relevant funds as an expense of the special administration in the order of priority of payments laid down by rule 96.

(4) Paragraph (1) does not apply to any meeting of the creditors' committee held within six weeks of a previous meeting, unless the meeting in question is called at the instance of the administrator.

### **Members dealing with the institution**

**83.**—(1) Membership of the creditors' committee does not prevent a person from dealing with the institution while it is in special administration, provided that any transactions in the course of such dealings are in good faith and for value.

(2) The court may, on the application of any person interested, set aside any transaction which appears to it to be contrary to the requirements of this rule, and may give such consequential directions as it thinks just for compensating the institution for any loss which it may have incurred in consequence of the transaction.

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### **Formal defects**

**84.** The acts of the creditors' committee established for a special administration are valid despite any defect in the appointment, election or qualifications of any member of the creditors' committee or any creditors' committee-member's representative or in the formalities of its establishment.