
STATUTORY INSTRUMENTS

1986 No. 1915

The Insolvency (Scotland) Rules 1986

PART 4

WINDING UP BY THE COURT

CHAPTER 7

THE LIQUIDATION COMMITTEE

Preliminary

4.40. For the purposes of this Chapter -

- (a) an “insolvent winding up” takes place where a company is being wound up on grounds which include its inability to pay its debts, and
- (b) a “solvent winding up” takes place where a company is being wound up on grounds which do not include that one.

Membership of committee

4.41.—(1) Subject to Rule 4.43 below, the liquidation committee shall consist as follows:-

- (a) in the case of any winding up, of at least 3 and not more than 5 creditors of the company, elected by the meeting of creditors held under section 138 or 142 of the Act, and also
- (b) in the case of a solvent winding up where the contributories' meeting held under either of those sections so decides, up to 3 contributories, elected by that meeting.

(2) Any creditor of the company (other than one whose debt is fully secured and who has not agreed to surrender his security to the liquidator) is eligible to be a member of the committee, so long as -

- (a) he has lodged a claim of his debt in the liquidation, and
- (b) his claim has neither been wholly rejected for voting purposes, nor wholly rejected for the purposes of his entitlement so far as funds are available to a dividend.

(3) No person can be a member as both a creditor and a contributory.

(4) A body corporate or a partnership may be a member of the committee, but it cannot act as such otherwise than by a member's representative appointed under Rule 4.48 below.

(5) In this Chapter, members of the committee elected or appointed by a creditors' meeting are called “creditor members”, and those elected or appointed by a contributories' meeting are called “contributory members”.

(6) Where the Deposit Protection Board exercises the right (under section 28 of the Banking Act 1979(1)) to be a member of the committee, the Board is to be regarded as an additional creditor member.

Formalities of establishment

4.42.—(1) The liquidation committee shall not come into being, and accordingly cannot act, until the liquidator has issued a certificate of its due constitution.

(2) If the chairman of the meeting which resolves to establish the committee is not the liquidator, he shall forthwith give notice of the resolution to the liquidator (or, as the case may be, the person appointed as liquidator by the same meeting), and inform him of the names and addresses of the persons elected to be members of the committee.

(3) No person may act as a member of the committee unless and until he has agreed to do so; and the liquidator's certificate of the committee's due constitution shall not be issued until at least the minimum number of persons in accordance with Rule 4.41 who are to be members of it have agreed to act, but shall be issued forthwith thereafter.

(4) As and when the others (if any) agree to act, the liquidator shall issue an amended certificate.

(5) The certificate (and any amended certificate) shall be sent by the liquidator to the registrar of companies.

(6) If after the first establishment of the committee there is any change in its membership, the liquidator shall report the change to the registrar of companies.

Committee established by contributories

4.43.—(1) The following applies where the creditors' meeting under section 138 or 142 of the Act does not decide that a liquidation committee should be established or decides that a liquidation committee should not be established.

(2) A meeting of contributories under section 138 or 142 may appoint one of their number to make application to the court for an order to the liquidator that a further creditors' meeting be summoned for the purpose of establishing a liquidation committee; and -

(a) the court may, if it thinks that there are special circumstances to justify it, make that order, and

(b) the creditors' meeting summoned by the liquidator in compliance with the order is deemed to have been summoned under section 142.

(3) If the creditors' meeting so summoned does not establish a liquidation committee, a meeting of contributories may do so.

(4) The committee shall then consist of at least 3, and not more than 5, contributories elected by that meeting; and Rule 4.42 shall apply to such a committee with the substitution of references to contributories for references to creditors.

Obligations of liquidator to committee

4.44.—(1) Subject as follows, it is the duty of the liquidator to report to the members of the liquidation committee all such matters as appear to him to be, or as they have indicated to him as being, of concern to them with respect to the winding up.

(2) In the case of matters so indicated to him by the committee, the liquidator need not comply with any request for information where it appears to him that -

(a) the request is frivolous or unreasonable, or

(b) the cost of complying would be excessive, having regard to the relative importance of the information, or

(c) there are not sufficient assets to enable him to comply.

(3) Where the committee has come into being more than 28 days after the appointment of the liquidator, he shall report to them, in summary form, what actions he has taken since his appointment,

and shall answer all such questions as they may put to him regarding his conduct of the winding up hitherto.

(4) A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report to him by the liquidator, otherwise than in summary form, of any matters previously arising.

(5) Nothing in this Rule disentitles the committee, or any member of it, from having access to the liquidator's cash book and sederunt book, or from seeking an explanation of any matter within the committee's responsibility.

Meetings of the committee

4.45.—(1) Subject as follows, meetings of the liquidation committee shall be held when and where determined by the liquidator.

(2) The liquidator shall call a first meeting of the committee to take place within 3 months of his appointment or of the committee's establishment (whichever is the later); and thereafter he shall call a meeting -

- (a) if so requested by a creditor member of the committee or his representative (the meeting then to be held within 21 days of the request being received by the liquidator), and
- (b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

(3) The liquidator shall give 7 days' written notice of the time and place of any meeting to every member of the committee (or his representative, if designated for that purpose), unless in any case the requirement of the notice has been waived by or on behalf of any member. Waiver may be signified either at or before the meeting.

The chairman at meetings

4.46.—(1) The chairman at any meeting of the liquidation committee shall be the liquidator, or a person nominated by him to act.

(2) A person so nominated must be either -

- (a) a person who is qualified to act as an insolvency practitioner in relation to the company, or
- (b) an employee of the liquidator or his firm who is experienced in insolvency matters.

Quorum

4.47. A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least 2 creditor members or, in the case of a committee of contributories, 2 contributory members are present or represented.

Committee members' representatives

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

(2) A person acting as a committee-member's representative must hold a mandate entitling him so to act (either generally or specially) and signed by or on behalf of the committee-member.

(3) The chairman at any meeting of the committee may call on a person claiming to act as a committee-member's representative to produce his mandate and may exclude him if it appears that his mandate is deficient.

(4) No member may be represented by a body corporate or by a partnership, or by an undischarged bankrupt.

(5) No person shall -

(a) on the same committee, act at one and the same time as representative of more than one committee-member, or

(b) act both as a member of the committee and as representative of another member.

(6) Where a member's representative signs any document on the member's behalf, the fact that he so signs must be stated below his signature.

Resignation

4.49. A member of the liquidation committee may resign by notice in writing delivered to the liquidator.

Termination of membership

4.50. Membership of the liquidation committee of any person is automatically terminated if -

(a) his estate is sequestrated or he becomes bankrupt or grants a trust deed for the benefit of or makes a composition with his creditors, or

(b) at 3 consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this Rule is not to apply in his case), or

(c) that creditor being a creditor member, he ceases to be, or is found never to have been a creditor.

Removal

4.51. A creditor member of the committee may be removed by resolution at a meeting of creditors; and a contributory member may be removed by a resolution of a meeting of contributories.

Vacancy (creditor members)

4.52.—(1) The following applies if there is a vacancy among the creditor members of the committee.

(2) The vacancy need not be filled if the liquidator and a majority of the remaining creditor members so agree, provided that the total number of members does not fall below the minimum required by Rule 4.41(1).

(3) The liquidator may appoint any creditor, who is qualified under the Rules to be a member of the committee, to fill the vacancy, if a majority of the other creditor members agrees to the appointment, and the creditor concerned consents to act.

(4) Alternatively, a meeting of creditors may resolve that a creditor be appointed (with his consent) to fill the vacancy. In this case, at least 14 days' notice must have been given of the resolution to make such an appointment (whether or not of a person named in the notice).

(5) Where the vacancy is filled by an appointment made by a creditors' meeting at which the liquidator is not present, the chairman of the meeting shall report to the liquidator the appointment which has been made.

Vacancy (contributory members)

4.53.—(1) The following applies if there is a vacancy among the contributory members of the committee.

(2) The vacancy need not be filled if the liquidator and a majority of the remaining contributory members so agree, provided that, in the case of a committee of contributory members only, the total number of members does not fall below the minimum required by Rule 4.41(1) or, as the case may be, 4.59(4).

(3) The liquidator may appoint any contributory member (being qualified under the Rules to be a member of the committee) to fill the vacancy, if a majority of the other contributory members agree to the appointment, and the contributory concerned consents to act.

(4) Alternatively, a meeting of contributories may resolve that a contributory be appointed (with his consent) to fill the vacancy. In this case, at least 14 days' notice must have been given of the resolution to make such an appointment (whether or not of a person named in the notice).

(5) Where the vacancy is filled by an appointment made by a contributories' meeting at which the liquidator is not present, the chairman of the meeting shall report to the liquidator the appointment which has been made.

Voting rights and resolutions

4.54.—(1) At any meeting of the committee, each member of it (whether present himself, or by his representative) has one vote; and a resolution is passed when a majority of the creditor members present or represented have voted in favour of it.

(2) Subject to the next paragraph, the votes of contributory members do not count towards the number required for passing a resolution, but the way in which they vote on any resolution shall be recorded.

(3) Paragraph (2) does not apply where, by virtue of Rule 4.43(4) or 4.59, the only members of the committee are contributories. In that case the committee is to be treated for voting purposes as if all its members were creditors.

(4) Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting. The record shall be signed by the chairman and kept as part of the sederunt book.

Resolutions by post

4.55.—(1) In accordance with this Rule, the liquidator may seek to obtain the agreement of members of the liquidation committee to a resolution by sending to every member (or his representative designated for the purpose) a copy of the proposed resolution.

(2) Where the liquidator makes use of the procedure allowed by this Rule, he shall send out to members of the committee or their representatives (as the case may be) a statement incorporating the resolution to which their agreement is sought, each resolution (if more than one) being set out in a separate document.

(3) Any creditor member of the committee may, within 7 business days from the date of the liquidator sending out a resolution, require him to summon a meeting of the committee to consider the matters raised by the resolution.

(4) In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the liquidator is notified in writing by a majority of the creditor members that they concur with it.

(5) A copy of every resolution passed under this Rule, and a note that the committee's concurrence was obtained, shall be kept in the sederunt book.

Liquidator's reports

4.56.—(1) The liquidator shall, as and when directed by the liquidation committee (but not more often than once in any period of 2 months), send a written report to every member of the committee

setting out the position generally as regards the progress of the winding up and matters arising in connection with it, to which the liquidator considers the committee's attention should be drawn.

(2) In the absence of such directions by the committee, the liquidator shall send such a report not less often than once in every period of 6 months.

(3) The obligations of the liquidator under this Rule are without prejudice to those imposed by Rule 4.44.

Expenses of members, etc.

4.57.—(1) The liquidator shall defray any reasonable travelling expenses directly incurred by members of the liquidation committee or their representatives in respect of their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the liquidation.

(2) Paragraph (1) does not apply to any meeting of the committee held within 3 months of a previous meeting.

Dealings by committee-members and others

4.58.—(1) This Rule applies to -

- (a) any member of the liquidation committee;
- (b) any committee-member's representative;
- (c) any person who is an associate of a member of the committee or of a committee-member's representative; and
- (d) any person who has been a member of the committee at any time in the last 12 months.

(2) Subject as follows, a person to whom this Rule applies shall not enter into any transaction whereby he -

- (a) receives out of the company's assets any payment for services given or goods supplied in connection with the liquidation, or
- (b) obtains any profit from the liquidation, or
- (c) acquires any part of the company's assets.

(3) Such a transaction may be entered into by a person to whom this Rule applies -

- (a) with the prior leave of the court, or
- (b) if he does so as a matter of urgency, or by way of performance of a contract in force before the date on which the company went into liquidation, and obtains the court's leave for the transaction, having applied for it without undue delay, or
- (c) with the prior sanction of the liquidation committee, where it is satisfied (after full disclosure of the circumstances) that the transaction will be on normal commercial terms.

(4) Where in the committee a resolution is proposed that sanction be accorded for a transaction to be entered into which, without that sanction or the leave of the court, would be in contravention of this Rule, no member of the committee, and no representative of a member, shall vote if he is to participate directly or indirectly in the transaction.

(5) The court may, on the application of any person interested, -

- (a) set aside a transaction on the ground that it has been entered into in contravention of this Rule, and
- (b) make with respect to it such other order as it thinks fit, including (subject to the following paragraph) an order requiring a person to whom this Rule applies to account for any profit obtained from the transaction and compensate the company's assets for any resultant loss.

(6) In the case of a person to whom this Rule applies as an associate of a member of the committee or of a committee-member's representative, the court shall not make any order under paragraph (5), if satisfied that he entered into the relevant transaction without having any reason to suppose that in doing so he would contravene this Rule.

(7) The expenses of an application to the court for leave under this Rule are not payable as an expense of the liquidation, unless the court so orders.

Composition of committee when creditors paid in full

4.59.—(1) This Rule applies if the liquidator issues a certificate that the creditors have been paid in full, with interest in accordance with section 189.

(2) The liquidator shall forthwith send a copy of the certificate to the registrar of companies.

(3) The creditor members of the liquidation committee shall cease to be members of the committee.

(4) The committee continues in being unless and until abolished by decision of a meeting of contributories, and (subject to the next paragraph) so long as it consists of at least 2 contributory members.

(5) The committee does not cease to exist on account of the number of contributory members falling below 2, unless and until 28 days have elapsed since the issue of the liquidator's certificate under paragraph (1), but at any time when the committee consists of less than 2 contributory members, it is suspended and cannot act.

(6) Contributories may be co-opted by the liquidator, or appointed by a contributories' meeting, to be members of the committee; but the maximum number of members is 5.

(7) The foregoing Rules in this Chapter continue to apply to the liquidation committee (with any necessary modifications) as if all the members of the committee were creditor members.