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STATUTORY INSTRUMENTS

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**1986 No. 1915**

**The Insolvency (Scotland) Rules 1986**

**PART 7**

**PROVISIONS OF GENERAL APPLICATION**

**CHAPTER 1**

**MEETINGS**

**Scope of Chapter 1**

**7.1.—**(1) This Chapter applies to any meetings held in insolvency proceedings other than meetings of a creditors' committee in administration or receivership, or of a liquidation committee.

(2) The Rules in this Chapter shall apply to any such meeting subject to any contrary provision in the Act or in the Rules, or to any direction of the court.

**Summoning of meetings**

**7.2.—**(1) In fixing the date, time and place for a meeting, the person summoning the meeting ("the convenor") shall have regard to the convenience of the persons who are to attend.

(2) Meetings shall in all cases be summoned for commencement between 10.00 and 16.00 hours on a business day, unless the court otherwise directs.

**Notice of meeting**

**7.3.—**(1) The convenor shall give not less than 21 days' notice of the date, time and place of the meeting to every person known to him as being entitled to attend the meeting.

(2) In paragraph (1), for the reference to 21 days, there shall be substituted a reference to 14 days in the following cases: -

- (a) any meeting of the company or of its creditors summoned under section 3 (to consider directors' proposal for voluntary arrangement);
- (b) a meeting of the creditors under section 23(1)(b) or 25(2)(b) (to consider administrator's proposals or proposed revisions); and
- (c) a meeting of creditors under section 67(2) (meeting of unsecured creditors in receivership).

(3) The convenor may also publish notice of the date, time and place of the meeting in a newspaper circulating in the area of the principal place of business of the company or in such other newspaper as he thinks most appropriate for ensuring that it comes to the notice of the persons who are entitled to attend the meeting. In the case of a creditors' meeting summoned by the administrator under section 23(1)(b), the administrator shall publish such a notice.

(4) Any notice under this Rule shall state -

- (a) the purpose of the meeting;

- (b) the persons who are entitled to attend and vote at the meeting;
- (c) the effects of Rule 7.9 or, as the case may be, 7.10 (Entitlement to Vote) and of the relevant provisions of Rule 7.12 (Resolutions);
- (d) in the case of a meeting of creditors or contributories, that proxies may be lodged at or before the meeting and the place where they may be lodged; and
- (e) in the case of a meeting of creditors, that claims may be lodged by those who have not already done so at or before the meeting and the place where they may be lodged.

Where a meeting of creditors is summoned specially for the purpose of removing the liquidator in accordance with section 171(2) or 172(2), or of receiving his resignation under Rule 4.28, the notice summoning it shall also include the information required by Rule 4.23(2) or, as the case may be, 4.28(2).

(5) With the notice given under paragraph (1), the convenor shall also send out a proxy form.

(6) In the case of any meeting of creditors or contributories, the court may order that notice of the meeting be given by public advertisement in such form as may be specified in the order and not by individual notice to the persons concerned. In considering whether to make such an order, the court shall have regard to the cost of the public advertisement, to the amount of the assets available and to the extent of the interest of creditors or contributories or any particular class of either.

#### **Additional notices in certain cases**

**7.4.—**(1) This Rule applies where a company goes, or proposes to go, into liquidation and it is -

- (a) a recognised bank or licensed institution within the meaning of the Banking Act 1979(1), or
- (b) an institution to which sections 16 and 18 of that Act apply as if it were a licensed institution.

(2) Notice of any meeting of the company at which it is intended to propose a resolution for its voluntary winding up shall be given by the directors to the Bank of England (“the Bank”) and to the Deposit Protection Board (“the Board”) as such notice is given to members of the company.

(3) Where a creditors' meeting is summoned by the liquidator under section 95 or 98, the same notice of meeting must be given to the Bank and Board as is given to the creditors under this Chapter.

(4) Where the company is being wound up by the court, notice of the first meetings of creditors and contributories within the meaning of Rule 4.12 shall be given to the Bank and the Board by the liquidator.

(5) Where in any winding up a meeting of creditors or contributories is summoned for the purpose of -

- (a) receiving the liquidator's resignation, or
- (b) removing the liquidator, or
- (c) appointing a new liquidator,

the person summoning the meeting and giving notice of it shall also give notice to the Bank and the Board.

(6) The Board is entitled to be represented at any meeting of which it is required by this Rule to be given notice; and Schedule 3 has effect with respect to the voting rights of the Board at such a meeting.

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(1) 1979 c.37.

### **Chairman of meetings**

**7.5.**—(1) The chairman at any meeting of creditors in insolvency proceedings shall be the responsible insolvency practitioner, or a person nominated by him in writing.

(2) A person nominated under this Rule 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 administrator, receiver or liquidator, as the case may be, or his firm who is experienced in insolvency matters.

(3) This Rule also applies to meetings of contributories in a liquidation.

(4) At the first meeting of creditors or contributories in a winding up by the court, the interim liquidator shall be the chairman except that, where a resolution is proposed to appoint the interim liquidator to be the liquidator, another person may be elected to act as chairman for the purpose of choosing the liquidator.

(5) This Rule is subject to Rule 4.23(3) (meeting for removal of liquidator).

### **Meetings requisitioned**

**7.6.**—(1) Subject to paragraph (8), this Rule applies to any request by a creditor or creditors for a meeting of creditors -

- (a) to an administrator under section 17(3), or
- (b) to a liquidator under section 142(3), 171(3) or 172(3),

or under any other provision of the Act or the Rules.

(2) Any such request shall be accompanied by -

- (a) a list of any creditors concurring with the request, showing the amounts of the respective claims against the company of the creditor making the request and the concurring creditors;
- (b) from each creditor concurring, written confirmation of his concurrence; and
- (c) a statement of the purpose of the proposed meeting.

(3) If the administrator or, as the case may be, the liquidator considers the request to be properly made in accordance with the Act or the Rules, he shall summon a meeting of the creditors to be held on a date not more than 35 days from the date of his receipt of the request.

(4) Expenses of summoning and holding a meeting under this Rule shall be paid by the creditor or creditors making the request, who shall deposit with the administrator caution for their payment.

(5) The sum to be deposited shall be such as the administrator or, as the case may be, the liquidator may determine and he shall not act without the deposit having been made.

(6) The meeting may resolve that the expenses of summoning and holding it are to be payable out of the assets of the company as an expense of the administration or, as the case may be, the liquidation.

(7) To the extent that any caution deposited under this Rule is not required for the payment of expenses of summoning and holding the meeting, it shall be repaid to the person or persons who made it.

(8) This Rule applies to requests by a contributory or contributories for a meeting of contributories, with the modification that, for the reference in paragraph (2) to the creditors' respective claims, there shall be substituted a reference to the contributories' respective values (being the amounts for which they may vote at any meeting).

(9) This Rule is without prejudice to the powers of the court under Rule 4.67(2) (voluntary winding up succeeded by winding up by the court).

## **Quorum**

7.7.—(1) Subject to the next paragraph, a quorum is -

- (a) in the case of a creditors' meeting, at least one creditor entitled to vote;
- (b) in the case of a meeting of contributories, at least 2 contributories so entitled, or all the contributories, if their number does not exceed 2.

(2) For the purposes of this Rule, the reference to the creditor or contributories necessary to constitute a quorum is not confined to those persons present or duly represented under section 375 of the Companies Act but includes those represented by proxy by any person (including the chairman).

## **Adjournment**

7.8.—(1) This Rule applies to meetings of creditors and to meetings of contributories.

(2) If, within a period of 30 minutes from the time appointed for the commencement of a meeting, a quorum is not present, then, unless the chairman otherwise decides, the meeting shall be adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(3) In the course of any meeting, the chairman may, in his discretion, and shall, if the meeting so resolves, adjourn it to such date, time and place as seems to him to be appropriate in the circumstances.

(4) Paragraph (3) is subject to Rule 4.23(3) where the liquidator or his nominee is chairman and a resolution has been proposed for the liquidator's removal.

(5) An adjournment under paragraph (1) or (2) shall not be for a period of more than 21 days.

(6) Where a meeting is adjourned, any proxies given for the original meeting may be used at the adjourned meeting.

## **Entitlement to vote (creditors)**

7.9.—(1) This Rule applies to a creditors' meeting in any insolvency proceedings.

(2) A creditor is entitled to vote at any meeting if he has submitted his claim to the responsible insolvency practitioner and his claim has been accepted in whole or in part.

(3) Chapter 5 of Part 4 (claims in liquidation) shall apply for the purpose of determining a creditor's entitlement to vote at any creditors' meeting in any insolvency proceedings as it applies for the purpose of determining a creditor's entitlement to vote at a meeting of creditors in a liquidation, subject to the modifications specified in the following paragraphs and to any other necessary modification.

(4) For any reference in the said Chapter 5, or in any provision of the Bankruptcy Act as applied by Rule 4.16(1), to -

- (a) the liquidator, there shall be substituted a reference to the supervisor, administrator or receiver, as the case may be;
- (b) the liquidation, there shall be substituted a reference to the voluntary arrangement, administration or receivership as the case may be;
- (c) the date of commencement of winding up, there shall be substituted a reference -
  - (i) in the case of a meeting in a voluntary arrangement, to the date of the meeting or, where the company is being wound up or is subject to an administration order, the date of its going into liquidation or, as the case may be, of the administration order;and

- (ii) in the case of a meeting in the administration or receivership, to the date of the administration order or, as the case may be, the date of appointment of the receiver;
- (5) In the application to meetings of creditors other than in liquidation proceedings of Schedule 1 to the Bankruptcy Act, paragraph 5(2) and (3) (secured creditors) shall not apply.
- (6) This Rule is subject to Rule 7.4(6) and Schedule 3.

#### **Entitlement to vote (members and contributories)**

- 7.10.**—(1) Members of a company or contributories at their meetings shall vote according to their rights attaching to their shares respectively in accordance with the articles of association.
- (2) In the case of a meeting of members of the company in a voluntary arrangement, where no voting rights attach to a member's share, he is nevertheless entitled to vote either for or against the proposal or any modification of it.
- (3) Reference in this Rule to a person's share include any other interests which he may have as a member of the company.

#### **Chairman of meeting as proxy holder**

- 7.11.**—(1) Where the chairman at a meeting of creditors or contributories holds a proxy which requires him to vote for a particular resolution and no other person proposes that resolution -
- (a) he shall propose it himself, unless he considers that there is good reason for not doing so, and
  - (b) if he does not propose it, he shall forthwith after the meeting notify the person who granted him the proxy of the reason why he did not do so.
- (2) At any meeting in a voluntary arrangement, the chairman shall not, by virtue of any proxy held by him, vote to increase or reduce the amount of the remuneration or expenses of the nominee or the supervisor of the proposed arrangement, unless the proxy specifically directs him to vote in that way.

#### **Resolutions**

- 7.12.**—(1) Subject to any contrary provision in the Act or the Rules, at any meeting of creditors, contributories or members of a company, a resolution is passed when a majority in value of those voting, in person or by proxy, have voted in favour of it.
- (2) In a voluntary arrangement, at a creditors' meeting for any resolution to pass approving any proposal or modification, there must be at least three quarters in value of the creditors present or represented and voting, in person or by proxy, in favour of the resolution.
- (3) In a liquidation, in the case of a resolution for the appointment of a liquidator -
- (a) if, on any vote, there are two nominees for appointment, the person for whom a majority in value has voted shall be appointed;
  - (b) if there are three or more nominees, and one of them has a clear majority over both or all the others together, that one is appointed; and
  - (c) in any other case, the chairman of the meeting shall continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time), until a clear majority is obtained for any one nominee.

The chairman may, at any time, put to the meeting a resolution for the joint appointment of any two or more nominees.

(4) Where a resolution is proposed which affects a person in respect of his remuneration or conduct as a responsible insolvency practitioner, the vote of that person, or of his firm or of any partner or employee of his shall not be reckoned in the majority required for passing the resolution. This paragraph applies with respect to a vote given by a person either as creditor or contributory or member or as proxy for a creditor, contributory, or member.

### **Report of meeting**

**7.13.**—(1) The chairman at any meeting shall cause a report to be made of the proceedings at the meeting which shall be signed by him.

(2) The report of the meeting shall include -

- (a) a list of all the creditors or, as the case may be, contributories who attended the meeting, either in person or by proxy;
- (b) a copy of every resolution passed; and
- (c) if the meeting established a creditors' committee or a liquidation committee, as the case may be, a list of the names and addresses of those elected to be members of the committee.

(3) The chairman shall keep a copy of the report of the meeting as part of the sederunt book in the insolvency proceedings.