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STATUTORY INSTRUMENTS

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**1986 No. 1925**

**The Insolvency Rules 1986**

THE FIRST GROUP OF PARTS

PART 1

COMPANY VOLUNTARY ARRANGEMENTS

CHAPTER 5

PROCEEDINGS ON A PROPOSAL MADE BY THE DIRECTORS,  
OR BY THE ADMINISTRATOR, OR BY THE LIQUIDATOR

*SECTION A: MEETINGS OF COMPANY'S CREDITORS AND MEMBERS*

**Summoning of meetings**

**1.13.**—(1) Subject as follows, in fixing the venue for the creditors' meeting and the company meeting, the person summoning the meeting ("the convener") shall have regard primarily to the convenience of the creditors.

(2) Meetings shall in each case be summoned for commencement between 10.00 and 16.00 hours on a business day.

(3) The meetings shall be held on the same day and in the same place, but the creditors' meeting shall be fixed for a time in advance of the company meeting.

(4) With every notice summoning either meeting there shall be sent out forms of proxy.

**The chairman at meetings**

**1.14.**—(1) Subject as follows, at both the creditors' meeting and the company meeting, and at any combined meeting, the convener shall be chairman.

(2) If for any reason he is unable to attend, he may nominate another person to act as chairman in his place; but a person so nominated must be either—

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

**The chairman as proxy-holder**

**1.15.** 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.

**Attendance by company officers**

**1.16.**—(1) At least 14 days' notice to attend the meetings shall be given by the convener—

- (a) to all directors of the company, and
- (b) to any persons in whose case the convener thinks that their presence is required as being officers of the company, or as having been directors or officers of it at any time in the 2 years immediately preceding the date of the notice.

(2) The chairman may, if he thinks fit, exclude any present or former director or officer from attendance at a meeting, either completely or for any part of it; and this applies whether or not a notice under this Rule has been sent to the person excluded.

### *SECTION B: VOTING RIGHTS AND MAJORITIES*

#### **Voting rights (creditors)**

**1.17.**—(1) Subject as follows, every creditor who was given notice of the creditors' meeting is entitled to vote at the meeting or any adjournment of it.

(2) Votes are calculated according to the amount of the creditor's debt as at 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.

(3) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote.

(4) At any creditors' meeting the chairman has power to admit or reject a creditor's claim for the purpose of his entitlement to vote, and the power is exercisable with respect to the whole or any part of the claim.

(5) The chairman's decision on a creditor's entitlement to vote is subject to appeal to the court by any creditor or member of the company.

(6) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained.

(7) If on an appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order another meeting to be summoned, or make such other order as it thinks just.

The court's power to make an order under this paragraph is exercisable only if it considers that the matter is such as gives rise to unfair prejudice or material irregularity.

(8) An application to the court by way of appeal against the chairman's decision shall not be made after the end of the period of 28 days beginning with the first day on which each of the reports required by section 4(6) has been made to the court.

(9) The chairman is not personally liable for any costs incurred by any person in respect of an appeal under this Rule.

#### **Voting rights (members)**

**1.18.**—(1) Subject as follows, members of the company at their meeting vote according to the rights attaching to their shares respectively in accordance with the articles.

(2) Where no voting rights attach to a member's shares, he is nevertheless entitled to vote either for or against the proposal or any modification of it.

(3) References in this Rule to a person's shares include any other interest which he may have as a member of the company.

### **Requisite majorities (creditors)**

**1.19.**—(1) Subject as follows, at the creditors' meeting for any resolution to pass approving any proposal or modification there must be a majority in excess of three-quarters in value of the creditors present in person or by proxy and voting on the resolution.

(2) The same applies in respect of any other resolution proposed at the meeting, but substituting one-half for three-quarters.

(3) In the following cases there is to be left out of account a creditor's vote in respect of any claim or part of a claim—

- (a) where written notice of the claim was not given, either at the meeting or before it, to the chairman or convener of the meeting;
- (b) where the claim or part is secured;
- (c) 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 the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made (or in the case of a company, which has not gone into liquidation), as a security in his hands, and
  - (ii) to estimate the value of the security and (for the purpose of entitlement to vote, but not of any distribution under the arrangement) to deduct it from his claim.

(4) Any resolution is invalid if those voting against it include more than half in value of the creditors, counting in these latter only those—

- (a) to whom notice of the meeting was sent;
- (b) whose votes are not to be left out of account under paragraph (3); and
- (c) who are not, to the best of the chairman's belief, persons connected with the company.

(5) It is for the chairman of the meeting to decide whether under this Rule—

- (a) a vote is to be left out of account in accordance with paragraph (3), or
- (b) a person is a connected person for the purposes of paragraph (4)(c);

and in relation to the second of these two cases the chairman is entitled to rely on the information provided by the company's statement of affairs or otherwise in accordance with this Part of the Rules.

(6) If the chairman uses a proxy contrary to Rule 1.15, his vote with that proxy does not count towards any majority under this Rule.

(7) Paragraphs (5) to (9) of Rule 1.17 apply as regards an appeal against the decision of the chairman under this Rule.

### **Requisite majorities (members)**

**1.20.**—(1) Subject as follows, and to any express provision made in the articles, at a company meeting any resolution is to be regarded as passed if voted for by more than one-half of the members present in person or by proxy and voting on the resolution.

(2) In determining whether a majority for any resolution has been obtained, there is to be left out of account any vote cast in accordance with Rule 1.18(2).

(3) If the chairman uses a proxy contrary to Rule 1.15, his vote with that proxy does not count towards any majority under this Rule.

### **Proceedings to obtain agreement on the proposal**

**1.21.**—(1) On the day on which the meetings are held, they may from time to time be adjourned; and if the chairman thinks fit for the purpose of obtaining the simultaneous agreement of the meetings to the proposal (with the same modifications, if any), the meetings may be held together.

(2) If on that day the requisite majority for the approval of the voluntary arrangement (with the same modifications, if any) has not been obtained from both creditors and members of the company, the chairman may, and shall if it is so resolved, adjourn the meetings for not more than 14 days.

(3) If there are subsequently further adjournments, the final adjournment shall not be to a day later than 14 days after the date on which the meetings were originally held.

(4) There shall be no adjournment of either meeting unless the other is also adjourned to the same business day.

(5) In the case of a proposal by the directors, if the meetings are adjourned under paragraph (2), notice of the fact shall be given by the nominee forthwith to the court.

(6) If following any final adjournment of the meetings the proposal (with the same modifications, if any) is not agreed by both meetings, it is deemed rejected.

### *SECTION C: IMPLEMENTATION OF THE ARRANGEMENT*

### **Resolutions to follow approval**

**1.22.**—(1) If the voluntary arrangement is approved (with or without modifications) by the two meetings, a resolution may be taken by the creditors, where two or more insolvency practitioners are appointed to act as supervisor, on the question whether acts to be done in connection with the arrangement may be done by any one of them, or must be done by both or all.

(2) A resolution under paragraph (1) may be passed in anticipation of the approval of the voluntary arrangement by the company meeting if that meeting has not then been concluded.

(3) If at either meeting a resolution is moved for the appointment of some person other than the nominee to be supervisor of the arrangement, there must be produced to the chairman, at or before the meeting—

- (a) that person's written consent to act (unless he is present and then and there signifies his consent), and
- (b) his written confirmation that he is qualified to act as an insolvency practitioner in relation to the company.

### **Hand-over of property etc. to supervisor**

**1.23.**—(1) After the approval of the voluntary arrangement—

- (a) the directors, or
- (b) where the company is in liquidation or is subject to an administration order, and a person other than the responsible insolvency practitioner is appointed as supervisor of the voluntary arrangement, the insolvency practitioner,

shall forthwith do all that is required for putting the supervisor into possession of the assets included in the arrangement.

(2) Where the company is in liquidation or is subject to an administration order, the supervisor shall on taking possession of the assets discharge any balance due to the insolvency practitioner by way of remuneration or on account of—

- (a) fees, costs, charges and expenses properly incurred and payable under the Act or the Rules, and
  - (b) any advances made in respect of the company, together with interest on such advances at the rate specified in section 17 of the Judgments Act 1838 at the date on which the company went into liquidation or (as the case may be) became subject to the administration order.
- (3) Alternatively, the supervisor must, before taking possession, give the responsible insolvency practitioner a written undertaking to discharge any such balance out of the first realisation of assets.
- (4) The insolvency practitioner has a charge on the assets included in the voluntary arrangement in respect of any sums due as above until they have been discharged, subject only to the deduction from realisations by the supervisor of the proper costs and expenses of such realisations.
- (5) The supervisor shall from time to time out of the realisation of assets discharge all guarantees properly given by the responsible insolvency practitioner for the benefit of the company, and shall pay all the insolvency practitioner's expenses.
- (6) References in this Rule to the responsible insolvency practitioner include, where a company is being wound up by the court, the official receiver, whether or not in his capacity as liquidator; and any sums due to the official receiver take priority over those due to a liquidator.

### **Report of meetings**

- 1.24.**—(1) A report of the meetings shall be prepared by the person who was chairman of them.
- (2) The report shall—
- (a) state whether the proposal for a voluntary arrangement was approved or rejected and, if approved, with what (if any) modifications;
  - (b) set out the resolutions which were taken at each meeting, and the decision on each one;
  - (c) list the creditors and members of the company (with their respective values) who were present or represented at the meetings, and how they voted on each resolution; and
  - (d) include such further information (if any) as the chairman thinks it appropriate to make known to the court.
- (3) A copy of the chairman's report shall, within 4 days of the meetings being held, be filed in court; and the court shall cause that copy to be endorsed with the date of filing.
- (4) In respect of each of the meetings, the persons to whom notice of its result is to be sent by the chairman under section 4(6) are all those who were sent notice of the meeting under this Part of the Rules.
- The notice shall be sent immediately after a copy of the chairman's report is filed in court under paragraph (3).
- (5) If the voluntary arrangement has been approved by the meetings (whether or not in the form proposed), the supervisor shall forthwith send a copy of the chairman's report to the registrar of companies.

### **Revocation or suspension of the arrangement**

- 1.25.**—(1) This Rule applies where the court makes an order of revocation or suspension under section 6.
- (2) The person who applied for the order shall serve sealed copies of it—
- (a) on the supervisor of the voluntary arrangement, and
  - (b) on the directors of the company or the administrator or liquidator (according to who made the proposal for the arrangement).

Service on the directors may be effected by service of a single copy of the order on the company at its registered office.

(3) If the order includes a direction by the court under section 6(4)(b) for any further meetings to be summoned, notice shall also be given (by the person who applied for the order) to whoever is, in accordance with the direction, required to summon the meetings.

(4) The directors or (as the case may be) the administrator or liquidator shall—

- (a) forthwith after receiving a copy of the court's order, give notice of it to all persons who were sent notice of the creditors' and company meetings or who, not having been sent that notice, appear to be affected by the order;
- (b) within 7 days of their receiving a copy of the order (or within such longer period as the court may allow), give notice to the court whether it is intended to make a revised proposal to the company and its creditors, or to invite re-consideration of the original proposal.

(5) The person on whose application the order of revocation or suspension was made shall, within 7 days after the making of the order, deliver a copy of the order to the registrar of companies.

### **Supervisor's accounts and reports**

**1.26.**—(1) Where the voluntary arrangement authorises or requires the supervisor—

- (a) to carry on the business of the company or trade on its behalf or in its name, or
- (b) to realise assets of the company, or
- (c) otherwise to administer or dispose of any of its funds,

he shall keep accounts and records of his acts and dealings in and in connection with the arrangement, including in particular records of all receipts and payments of money.

(2) The supervisor shall, not less often than once in every 12 months beginning with the date of his appointment, prepare an abstract of such receipts and payments, and send copies of it, accompanied by his comments on the progress and efficacy of the arrangement, to—

- (a) the court,
- (b) the registrar of companies,
- (c) the company,
- (d) all those of the company's creditors who are bound by the arrangement,
- (e) subject to paragraph (5) below, the members of the company who are so bound, and
- (f) if the company is not in liquidation, the company's auditors for the time being.

If in any period of 12 months he has made no payments and had no receipts, he shall at the end of that period send a statement to that effect to all those specified in sub-paragraphs (a) to (f) above.

(3) An abstract provided under paragraph (2) shall relate to a period beginning with the date of the supervisor's appointment or (as the case may be) the day following the end of the last period for which an abstract was prepared under this Rule; and copies of the abstract shall be sent out, as required by paragraph (2), within the 2 months following the end of the period to which the abstract relates.

(4) If the supervisor is not authorised as mentioned in paragraph (1), he shall, not less often than once in every 12 months beginning with the date of his appointment, send to all those specified in paragraph (2)(a) to (f) a report on the progress and efficacy of the voluntary arrangement.

(5) The court may, on application by the supervisor—

- (a) dispense with the sending under this Rule of abstracts or reports to members of the company, either altogether or on the basis that the availability of the abstract or report to members is to be advertised by the supervisor in a specified manner;

- (b) vary the dates on which the obligation to send abstracts or reports arises.

### **Production of accounts and records to Secretary of State**

**1.27.**—(1) The Secretary of State may at any time during the course of the voluntary arrangement or after its completion require the supervisor to produce for inspection—

- (a) his records and accounts in respect of the arrangement, and
- (b) copies of abstracts and reports prepared in compliance with Rule 1.26.

(2) The Secretary of State may require production either at the premises of the supervisor or elsewhere; and it is the duty of the supervisor to comply with any requirement imposed on him under this Rule.

(3) The Secretary of State may cause any accounts and records produced to him under this Rule to be audited; and the supervisor shall give to the Secretary of State such further information and assistance as he needs for the purposes of his audit.

### **Fees, costs, charges and expenses**

**1.28.**—(1) The fees, costs, charges and expenses that may be incurred for any of the purposes of the voluntary arrangement are—

- (a) any disbursements made by the nominee prior to the approval of the arrangement, and any remuneration for his services as such agreed between himself and the company (or, as the case may be, the administrator or liquidator);
- (b) any fees, costs, charges or expenses which—
  - (i) are sanctioned by the terms of the arrangement, or
  - (ii) would be payable, or correspond to those which would be payable, in an administration or winding up.

### **Completion of the arrangement**

**1.29.**—(1) Not more than 28 days after the final completion of the voluntary arrangement, the supervisor shall send to all the creditors and members of the company who are bound by it a notice that the voluntary arrangement has been fully implemented.

(2) With the notice there shall be sent to each creditor and member a copy of a report by the supervisor summarising all receipts and payments made by him in pursuance of the arrangement, and explaining any difference in the actual implementation of it as compared with the proposal as approved by the creditors' and company meetings.

(3) The supervisor shall, within the 28 days mentioned above, send to the registrar of companies and to the court a copy of the notice to creditors and members under paragraph (1), together with a copy of the report under paragraph (2).

(4) The court may, on application by the supervisor, extend the period of 28 days under paragraphs (1) and (3).