
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE FIRST GROUP OF PARTS

PART 3

ADMINISTRATIVE RECEIVERSHIP

CHAPTER 4

THE CREDITORS' COMMITTEE

Constitution of committee

3.16.—(1) Where it is resolved by the creditors' meeting to establish a creditors' committee, the committee shall consist of at least 3 and not more than 5 creditors of the company elected at the meeting.

(2) Any creditor of the company is eligible to be a member of the committee, so long as his claim has not been rejected for the purpose of his entitlement to vote.

(3) A body corporate may be a member of the committee, but it cannot act as such otherwise than by a representative appointed under Rule 3.21 below.

Formalities of establishment

3.17.—(1) The creditors' committee does not come into being, and accordingly cannot act, until the administrative receiver has issued a certificate of its due constitution.

(2) No person may act as a member of the committee unless and until he has agreed to do so; and the receiver's certificate of the committee's due constitution shall not issue unless and until at least 3 of the persons who are to be members of it have agreed to act.

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

(4) The certificate, and any amended certificate, shall be sent by the receiver to the registrar of companies.

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

Functions and meetings of the committee

3.18.—(1) The creditors' committee shall assist the administrative receiver in discharging his functions, and act in relation to him in such manner as may be agreed from time to time.

(2) Subject as follows, meetings of the committee shall be held when and where determined by the receiver.

(3) The receiver shall call a first meeting of the committee not later than 3 months after its establishment; and thereafter he shall call a meeting—

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

(4) The receiver shall give 7 days' written notice of the venue of any meeting to every member (or his 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.

The chairman at meetings

3.19.—(1) Subject to Rule 3.28(3), the chairman at any meeting of the creditors' committee shall be the administrative receiver, or a person nominated by him in writing to act.

(2) A person so nominated must be either—

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

Quorum

3.20. A meeting of the committee is duly constituted if due notice has been given to all the members, and at least 2 members are present or represented.

Committee-members' representatives

3.21.—(1) A member of the 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 letter of authority 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 letter of authority, and may exclude him if it appears that his authority is deficient.

(4) No member may be represented by a body corporate, or by a person who is an undischarged bankrupt, or is subject to a composition or arrangement with his creditors.

(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

3.22. A member of the committee may resign by notice in writing delivered to the administrative receiver.

Termination of membership

3.23.—(1) Membership of the creditors' committee is automatically terminated if the member—

- (a) becomes bankrupt, or compounds or arranges with his creditors, or
- (b) at 3 consecutive meetings of the committee 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) ceases to be, or is found never to have been, a creditor.

(2) However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.

Removal

3.24. A member of the committee may be removed by resolution at a meeting of creditors, at least 14 days' notice having been given of the intention to move that resolution.

Vacancies

3.25.—(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 administrative receiver and a majority of the remaining members of the committee so agree, provided that the total number of members does not fall below the minimum required under Rule 3.16.

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

Procedure at meetings

3.26.—(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 members present or represented have voted in favour of it.

(2) Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting.

(3) A record of each resolution shall be signed by the chairman and kept as part of the records of the receivership.

Resolutions by post

3.27.—(1) In accordance with this Rule, the administrative receiver may seek to obtain the agreement of members of the creditors' 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 receiver 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 sent out in a separate document.

(3) Any member of the committee may, within 7 business days from the date of the receiver 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 receiver is notified in writing by a majority of the 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 with the records of the receivership.

Information from receiver

3.28.—(1) Where the committee resolves to require the attendance of the administrative receiver under section 49(2), the notice to him shall be in writing signed by the majority of the members of the committee for the time being. A member's representative may sign for him.

(2) The meeting at which the receiver's attendance is required shall be fixed by the committee for a business day, and shall be held at such time and place as he determines.

(3) Where the receiver so attends, the members of the committee may elect any one of their number to be chairman of the meeting, in place of the receiver or any nominee of his.

Expenses of members

3.29.—(1) Subject as follows, the administrative receiver shall out of the assets of the company defray any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in relation to their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the receivership.

(2) Paragraph (1) does not apply to any meeting of the committee held within 3 months of a previous meeting, unless the meeting in question is summoned at the instance of the administrative receiver.

Members' dealings with the company

3.30.—(1) Membership of the committee does not prevent a person from dealing with the company while the receiver is acting, provided that any transactions in the course of such dealings are entered into in good faith and for value.

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