
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE FIRST GROUP OF PARTS

PART 4

COMPANIES WINDING UP

CHAPTER 8

MEETINGS OF CREDITORS AND CONTRIBUTORIES

SECTION A: RULES OF GENERAL APPLICATION

First meetings

4.50. (NO CVL APPLICATION)

(1) If under section 136(5) the official receiver decides to summon meetings of the company's creditors and contributories for the purpose of nominating a person to be liquidator in place of himself, he shall fix a venue for each meeting, in neither case more than 4 months from the date of the winding-up order.

(2) When for each meeting a venue has been fixed, notice of the meetings shall be given to the court and—

- (a) in the case of the creditors' meeting, to every creditor who is known to the official receiver or is identified in the company's statement of affairs; and
- (b) in the case of the contributories' meeting, to every person appearing (by the company's books or otherwise) to be a contributory of the company.

(3) Notice to the court shall be given forthwith, and the other notices shall be given at least 21 days before the date fixed for each meeting respectively.

(4) The notice to creditors shall specify a time and date, not more than 4 days before the date fixed for the meeting, by which they must lodge proofs and (if applicable) proxies, in order to be entitled to vote at the meeting; and the same applies in respect of contributories and their proxies.

(5) Notice of the meetings shall also be given by public advertisement.

(6) Where the official receiver receives a request by creditors under section 136(5)(c) for meetings of creditors and contributories to be summoned, and it appears to him that the request is properly made in accordance with the Act, he shall—

- (a) withdraw any notices previously given by him under section 136(5)(b) (that he has decided not to summon such meetings),
- (b) fix the venue of each meeting for not more than 3 months from his receipt of the creditors' request, and
- (c) act in accordance with paragraphs (2) to (5) above, as if he had decided under section 136 to summon the meetings.

(7) Meetings summoned by the official receiver under this Rule are known respectively as “the first meeting of creditors” and “the first meeting of contributories”, and jointly as “the first meetings in the liquidation”.

(8) Where the company is a recognised bank or licensed institution under the Banking Act 1979, or an institution to which sections 16 and 18 of that Act apply as if it were a licensed institution, additional notices are required by Rule 4.72.

First meeting of creditors

4.51-CVL.—(1) This Rule applies in the case of a meeting of creditors summoned by the liquidator under section 95 (where, in what starts as a members' voluntary winding up, he forms the opinion that the company will be unable to pay its debts) or a meeting under section 98 (first meeting of creditors in a creditors' voluntary winding up).

(2) The notice summoning the meeting shall specify a venue for the meeting and the time (not earlier than 12.00 hours on the business day before the day fixed for the meeting) by which, and the place at which, creditors must lodge proofs and (if applicable) proxies.

(3) Where the company is a recognised bank or licensed institution under the Banking Act 1979, or an institution to which sections 16 and 18 of that Act apply as if it were a licensed institution, additional notices are required by Rule 4.72.

Business at first meetings in the liquidation

4.52. (NO CVL APPLICATION)

(1) At the first meeting of creditors, no resolutions shall be taken other than the following—

- (a) a resolution to appoint a named insolvency practitioner to be liquidator, or two or more insolvency practitioners as joint liquidators;
- (b) a resolution to establish a liquidation committee;
- (c) (unless it has been resolved to establish a liquidation committee) a resolution specifying the terms on which the liquidator is to be remunerated, or to defer consideration of that matter;
- (d) (if, and only if, two or more persons are appointed to act jointly as liquidator) a resolution specifying whether acts are to be done by both or all of them, or by only one;
- (e) (where the meeting has been requisitioned under section 136), a resolution authorising payment out of the assets, as an expense of the liquidation, of the cost of summoning and holding the meeting and any meeting of contributories so requisitioned and held;
- (f) a resolution to adjourn the meeting for not more than 3 weeks;
- (g) any other resolution which the chairman thinks it right to allow for special reasons.

(2) The same applies as regards the first meeting of contributories, but that meeting shall not pass any resolution to the effect of paragraph (1)(c) or (e).

(3) At neither meeting shall any resolution be proposed which has for its object the appointment of the official receiver as liquidator.

Business at meeting under s. 95 or 98

4.53-CVL. Rule 4.52(1), except sub-paragraph (e), applies to a creditors' meeting under section 95 or 98.

General power to call meetings

4.54.—(1) The official receiver or the liquidator may at any time summon and conduct meetings of creditors or of contributories for the purpose of ascertaining their wishes in all matters relating to the liquidation; and in relation to any meeting summoned under the Act or the Rules, the person summoning it is referred to as “the convener”.

(2) When (in either case) a venue for the meeting has been fixed, notice of it shall be given by the convener—

- (a) in the case of a creditors' meeting, to every creditor who is known to him or is identified in the company's statement of affairs; and
- (b) in the case of a meeting of contributories, to every person appearing (by the company's books or otherwise) to be a contributory of the company.

(3) Notice of the meeting shall be given at least 21 days before the date fixed for it, and shall specify the purpose of the meeting.

(4) The notice shall specify a time and date, not more than 4 days before the date fixed for the meeting, by which, and the place at which, creditors must lodge proofs and proxies, in order to be entitled to vote at the meeting; and the same applies in respect of contributories and their proxies.

(NO CVL APPLICATION)

(5-CVL) The notice shall specify a time and date, not more than 4 days before that fixed for the meeting, by which, and the place at which, creditors (if not individuals attending in person) must lodge proxies, in order to be entitled to vote at the meeting.

(6) Additional notice of the meeting may be given by public advertisement if the convener thinks fit, and shall be so given if the court orders.

The chairman at meetings

4.55. (NO CVL APPLICATION)

(1) This Rule applies both to a meeting of creditors and to a meeting of contributories.

(2) Where the convener of the meeting is the official receiver, he, or a person nominated by him, shall be chairman.

A nomination under this paragraph shall be in writing, unless the nominee is another official receiver or a deputy official receiver.

(3) Where the convener is other than the official receiver, the chairman shall be he, or a person nominated in writing by him.

A person nominated under this paragraph 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 liquidator or his firm who is experienced in insolvency matters.

The chairman at meetings

4.56-CVL.—(1) This Rule applies both to a meeting of creditors (except a meeting under section 98) and to a meeting of contributories.

(2) The liquidator, or a person nominated by him in writing to act, shall be chairman of the meeting.

A person nominated under this paragraph 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 liquidator or his firm who is experienced in insolvency matters.

Requisitioned meetings

4.57.—(1) Any request by creditors to the liquidator (whether or not the official receiver) for a meeting of creditors or contributories, or meetings of both, to be summoned shall be accompanied by—

- (a) a list of the creditors concurring with the request and the amount of their respective claims in the winding up;
- (b) from each creditor concurring, written confirmation of his concurrence; and
- (c) a statement of the purpose of the proposed meeting.

Sub-paragraphs (a) and (b) do not apply if the requisitioning creditor's debt is alone sufficient, without the concurrence of other creditors.

(2) The liquidator shall, if he considers the request to be properly made in accordance with the Act, fix a venue for the meeting, not more than 35 days from his receipt of the request.

(3) The liquidator shall give 21 days' notice of the meeting, and the venue for it, to creditors.

(4) Paragraphs (1) to (3) above apply to the requisitioning by contributories of contributories' meetings, with the following modifications—

- (a) for the reference in paragraph (1)(a) to the creditors' respective claims substitute the contributories' respective values (being the amounts for which they may vote at any meeting); and
- (b) the persons to be given notice under paragraph (3) are those appearing (by the company's books or otherwise) to be contributories of the company.

(NO CVL APPLICATION)

Attendance at meetings of company's personnel

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

(2) Whenever a meeting is summoned, the convener shall give at least 21 days' notice to such of the company's personnel as he thinks should be told of, or be present at, the meeting.

“The company's personnel” means the persons referred to in paragraphs (a) to (d) of section 235(3) (present and past officers, employees, etc.).

(3) If the meeting is adjourned, the chairman of the meeting shall, unless for any reason he thinks it unnecessary or impracticable, give notice of the adjournment to such (if any) of the company's personnel as he considers appropriate, being persons who were not themselves present at the meeting.

(4) The convener may, if he thinks fit, give notice to any one or more of the company's personnel that he is, or they are, required to be present at the meeting, or to be in attendance.

(5) In the case of any meeting, any one or more of the company's personnel, and any other persons, may be admitted, but—

- (a) they must have given reasonable notice of their wish to be present, and
- (b) it is a matter for the chairman's discretion whether they are to be admitted or not, and his decision is final as to what (if any) intervention may be made by any of them.

(6) If it is desired to put questions to any one of the company's personnel who is not present, the chairman may adjourn the meeting with a view to obtaining his attendance.

(7) Where one of the company's personnel is present at a meeting, only such questions may be put to him as the chairman may in his discretion allow.

Notice of meetings by advertisement only

4.59.—(1) In the case of any meeting of creditors or contributories to be held under the Act or the Rules, the court may order that notice of the meeting be given by public advertisement, and not by individual notice to the persons concerned.

(2) In considering whether to act under this Rule, the court shall have regard to the cost of public advertisement, to the amount of the assets available, and to the extent of the interest of creditors or of contributories, or any particular class of either of them.

Venue

4.60.—(1) In fixing the venue for a meeting of creditors or contributories, the convener shall have regard to the convenience of the persons (other than whoever is to be chairman) who are invited to attend.

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

(3) With every notice summoning a meeting of creditors or contributories there shall be sent out forms of proxy.

Expenses of summoning meetings

4.61.—(1) Subject as follows, the expenses of summoning and holding a meeting of creditors or contributories at the instance of any person other than the official receiver or the liquidator shall be paid by that person, who shall deposit with the liquidator security for their payment.

(2) The sum to be deposited shall be such as the official receiver or liquidator (as the case may be) determines to be appropriate; and neither shall act without the deposit having been made.

(3) Where a meeting of creditors is so summoned, it may vote that the expenses of summoning and holding it, and of summoning and holding any meeting of contributories requisitioned at the same time, shall be payable out of the assets, as an expense of the liquidation.

(4) Where a meeting of contributories is summoned on the requisition of contributories, it may vote that the expenses of summoning and holding it shall be payable out of the assets, but subject to the right of creditors to be paid in full, with interest.

(5) To the extent that any deposit made under this Rule is not required for the payment of expenses of summoning and holding a meeting, it shall be repaid to the person who made it.

Expenses of meeting under s. 98

4.62-CVL.—(1) Payment may be made out of the company's assets, either before or after the commencement of the winding up, of any reasonable and necessary expenses incurred in connection with the summoning, advertisement and holding of a creditors' meeting under section 98.

Any such payment is an expense of the liquidation.

(2) Where such payments are made before the commencement of the winding up, the director presiding at the creditors' meeting shall inform the meeting of their amount and the identity of the persons to whom they were made.

(3) The liquidator appointed under section 100 may make such a payment (subject to the next paragraph); but if there is a liquidation committee, he must give the committee at least 7 days' notice of his intention to make the payment.

(4) Such a payment shall not be made by the liquidator to himself, or to any associate of his, otherwise than with the approval of the liquidation committee, the creditors, or the court.

(5) This Rule is without prejudice to the powers of the court under Rule 4.219 (voluntary winding up superseded by winding up by the court).

Resolutions

4.63.—(1) At a meeting of creditors or contributories, a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of the resolution.

The value of contributories is determined by reference to the number of votes conferred on each contributory by the company's articles.

(2) 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 who obtains the most support is 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.

(3) 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 liquidator, or as proposed or former liquidator, the vote of that person, and 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 as proxy for a creditor or a contributory (but subject to Rule 8.6 in Part 8 of the Rules).

Chairman of meeting as proxy-holder

4.64. 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 himself propose it, 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 his principal of the reason why not.

Suspension and adjournment

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

(2) Once only in the course of any meeting, the chairman may, in his discretion and without an adjournment, declare the meeting suspended for any period up to one hour.

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

This is subject to Rule 4.113(3) in a case where the liquidator or his nominee is chairman, and a resolution has been proposed for the liquidator's removal.

(4) If within a period of 30 minutes from the time appointed for the commencement of a meeting a quorum is not present, then by virtue of this Rule the meeting stands adjourned to such time and place as may be appointed by the chairman.

(5) An adjournment under this Rule shall not be for a period of more than 21 days; and Rule 4.60(1) and (2) applies.

(6) If there is no person present to act as chairman, some other person present (being entitled to vote) may make the appointment under paragraph (4), with the agreement of others present (being persons so entitled).

Failing agreement, the adjournment shall be to the same time and place in the next following week or, if that is not a business day, to the business day immediately following.

(7) Where a meeting is adjourned under this Rule, proofs and proxies may be used if lodged at any time up to midday on the business day immediately before the adjourned meeting.

Quorum

4.66.—(1) A meeting is not competent to act, in the absence of a quorum, for any purpose except—

- (a) the election of a chairman,
- (b) in the case of a creditors' meeting, the admission by the chairman of proofs for the purpose of entitlement of creditors to vote, and
- (c) the adjournment of the meeting.

(NO CVL APPLICATION)

(2-CVL) A meeting is not competent to act, in the absence of a quorum, for any purpose except the election of a chairman, or the adjournment of the meeting.

(3) Subject to paragraph (4), a quorum is—

- (a) in the case of a creditors' meeting, at least 3 creditors entitled to vote, or all the creditors so entitled, if their number does not exceed 3;
- (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.

The references to creditors and contributories are to those present in person or by proxy, or duly represented under section 375 of the Companies Act.

(4) One person present constitutes a quorum if—

- (a) he is himself a creditor or representative under section 375 of the Companies Act or (as the case may be) a contributory with entitlement to vote and he holds a number of proxies sufficient to ensure that, with his own vote, paragraph (3) is complied with, or
- (b) being the chairman or any other person, he holds that number of proxies.

Entitlement to vote (creditors)

4.67.—(1) Subject as follows in this Rule and the next, at a meeting of creditors a person is entitled to vote as a creditor only if—

- (a) there has been duly lodged (in a winding up by the court by the time and date stated in the notice of the meeting) a proof of the debt claimed to be due to him from the company, and the claim has been admitted under Rule 4.70 for the purpose of entitlement to vote, and
- (b) there has been lodged, by the time and date stated in the notice of the meeting, any proxy requisite for that entitlement.

(2) The court may, in exceptional circumstances, by order declare the creditors, or any class of them, entitled to vote at creditors' meetings, without being required to prove their debts.

Where a creditor is so entitled, the court may, on the application of the liquidator, make such consequential orders as it thinks fit (as for example an order treating a creditor as having proved his debt for the purpose of permitting payment of dividend).

(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 and admits his proof for that purpose.

(4) A secured creditor is entitled to vote only in respect of the balance (if any) of his debt after deducting the value of his security as estimated by him.

(5) A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing—

- (a) 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
- (b) to estimate the value of the security and (for the purpose of entitlement to vote, but not for dividend) to deduct it from his proof.

Chairman's discretion to allow vote

4.68-CVL. At a creditors' meeting, the chairman may allow a creditor to vote, notwithstanding that he has failed to comply with Rule 4.67(1)(a), if satisfied that the failure was due to circumstances beyond the creditor's control.

Entitlement to vote (contributories)

4.69. At a meeting of contributories, voting rights are as at a general meeting of the company, subject to any provision in the articles affecting entitlement to vote, either generally or at a time when the company is in liquidation.

Admission and rejection of proof (creditors' meeting)

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

(2) The chairman's decision under this Rule, or in respect of any matter arising under Rule 4.67, is subject to appeal to the court by any creditor or contributory.

(3) If the chairman is in doubt whether a proof 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 proof is sustained.

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

(5) Neither the official receiver, nor any person nominated by him to be chairman, is personally liable for costs incurred by any person in respect of an application under this Rule; and the chairman (if other than the official receiver or a person so nominated) is not so liable unless the court makes an order to that effect.

(NO CVL APPLICATION)

(6-CVL) The liquidator or his nominee as chairman is not personally liable for costs incurred by any person in respect of an application under this Rule, unless the court makes an order to that effect.

Record of proceedings

4.71.—(1) At any meeting, the chairman shall cause minutes of the proceedings to be kept. The minutes shall be signed by him, and retained as part of the records of the liquidation.

(2) The chairman shall also cause to be made up and kept a list of all the creditors or, as the case may be, contributories who attended the meeting.

(3) The minutes of the meeting shall include a record of every resolution passed.

(4) It is the chairman's duty to see to it that particulars of all such resolutions, certified by him, are filed in court not more than 21 days after the date of the meeting.

(NO CVL APPLICATION)