
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 15

DECISION MAKING

CHAPTER 5

Requisitioned decisions

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Requisitions of decision

[Note: this rule is concerned with requests by creditors or contributories for a decision, rather than requests for decisions to be made by way of a physical meeting under sections 246ZE(3) or 379ZA(3)(1).]

15.18.—(1) In this Chapter, “requisitioned decision” means a decision on nominations requested to be sought under section 136(5)(c) or a decision requested to be sought under section 168(2)(2), 171(2)(b), 171(3A)(3), 172(3), 298(4)(c)(4) or 314(7)(5) or paragraph 52(2) or 56(1) of Schedule B1(6).

(2) A request for a decision to be sought under paragraph 52(2) of Schedule B1 must be delivered within 8 business days of the date on which the administrator’s statement of proposals is delivered.

(3) The request for a requisitioned decision must include a statement of the purpose of the proposed decision and either—

- (a) a statement of the requesting creditor’s claim or contributory’s value, together with—
 - (i) a list of the creditors or contributories concurring with the request and of the amounts of their respective claims or values, and
 - (ii) confirmation of concurrence from each creditor or contributory concurring; or
- (b) a statement of the requesting creditor’s debt or contributory’s value and that that alone is sufficient without the concurrence of other creditors or contributories.

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- (1) Section 246ZE is inserted by section 122 of the Small Business, Enterprise and Employment Act 2015 (c.26) and section 379ZA is inserted by section 123 of that Act.
 - (2) Section 136(5)(c) is amended by paragraph 31(3) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26) and section 168(2) is substituted by paragraph 41 of Schedule 9 to that Act.
 - (3) Section 171(2)(b) is amended, subsections (3) and (6) are substituted and subsections (3A) and (7) are inserted by paragraph 42 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 and section 171(3A) is inserted by paragraph 42(3) of that Act.
 - (4) Section 172(3) is amended by paragraph 43(3) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 and section 298(4)(c) is amended by paragraph 77(3)(c) of Schedule 9 to that Act.
 - (5) Section 314(7) is amended by paragraph 81 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015.
 - (6) Paragraph 52(20) is amended by paragraph 10(6) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 and paragraph 56(1) is amended by paragraph 10(19) of Schedule 9 to that Act.

(4) A decision procedure must be instigated under section 171(2)(b) for the removal of the liquidator, other than a liquidator appointed by the court under section 108, if 25% in value of the company's creditors, excluding those who are connected with the company(7), request it.

(5) Where a decision procedure under section 171(2)(b), 171(3), 171(3A) or 298(4)(c) is to be instigated, or is proposed to be instigated, the court may, on the application of any creditor, give directions as to the decision procedure to be used and any other matter which appears to the court to require regulation or control.

(6) Where the official receiver receives a request under section 136(5)(c) and it appears that it is properly made, the official receiver must withdraw any notices previously given under section 136(5)(b) and act in accordance with Chapter 2 as if the official receiver had decided under section 136 to seek nominations.

Expenses and timing of requisitioned decision

15.19.—(1) The convener must, not later than 14 days from receipt of a request for a requisitioned decision, provide the requesting creditor with itemised details of the sum to be deposited as security for payment of the expenses of such procedure.

(2) The convener is not obliged to initiate the decision procedure or deemed consent procedure (where applicable) until either—

- (a) the convener has received the required sum; or
- (b) the period of 14 days has expired without the convener having informed the requesting creditor or contributory of the sum required to be deposited as security.

(3) A requisitioned decision must be made—

- (a) where requested under section 136(5)(c), within three months; or
- (b) in any other case, within 28 days;

of the date on which the earlier of the events specified in paragraph (2) of this rule occurs.

(4) The expenses of a requisitioned decision must be paid out of the deposit (if any) unless—

- (a) the creditors decide that they are to be payable as an expense of the administration, winding up or bankruptcy, as the case may be; and
- (b) in the case of a decision of contributories, the creditors are first paid in full, with interest.

(5) The notice of a requisitioned decision of creditors must contain a statement that the creditors may make a decision as in paragraph (4)(a) of this rule.

(6) Where the creditors do not so decide, the expenses must be paid by the requesting creditor or contributory to the extent that the deposit (if any) is not sufficient.

(7) To the extent that the deposit (if any) is not required for payment of the expenses, it must be repaid to the requesting creditor or contributory.

(7) "Connected with a company" is defined in section 249 of the Act.