
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 15

DECISION MAKING

CHAPTER 8

Creditors' voting rights and majorities

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

Creditors' voting rights

15.28.—(1) In an administration, an administrative receivership, a creditors' voluntary winding up, a winding up by the court and a bankruptcy, a creditor is entitled to vote in a decision procedure or to object to a decision proposed using the deemed consent procedure only if—

- (a) the creditor has, subject to rule 15.29, delivered to the convener a proof of the debt claimed in accordance with paragraph (3), including any calculation for the purposes of rule 15.31 or 15.32, and
- (b) the proof was received by the convener—
 - (i) not later than the decision date, or in the case of a meeting, 4pm on the business day before the meeting, or
 - (ii) in the case of a meeting, later than the time given in sub-paragraph (i) where the chair is content to accept the proof; and
- (c) the proof has been admitted for the purposes of entitlement to vote.

(2) In the case of a meeting, a proxy-holder is not entitled to vote on behalf of a creditor unless the convener or chair has received the proxy intended to be used on behalf of that creditor.

(3) A debt is claimed in accordance with this paragraph if it is—

- (a) claimed as due from the company or bankrupt to the person seeking to be entitled to vote; or
- (b) in relation to a member State liquidator, claimed to be due to creditors in proceedings in relation to which that liquidator holds office.

(4) The convener or chair may call for any document or other evidence to be produced if the convener or chair thinks it necessary for the purpose of substantiating the whole or any part of a claim.

(5) In a decision relating to a proposed CVA or IVA every creditor, secured or unsecured, who has notice of the decision procedure is entitled to vote in respect of that creditor's debt.

(6) Where a decision is sought in an administration under rule 3.52(3)(b) (pre-administration costs), rule 18.18(4) (remuneration: procedure for initial determination in an administration) or rule 18.26(2) (first exception: administrator has made statement under paragraph 52(1)(b) of Schedule B1), creditors are entitled to participate to the extent stated in those paragraphs.

Scheme manager's voting rights

15.29.—(1) For the purpose of voting in a creditors' voluntary winding up or a winding up by the court of an authorised deposit-taker at which the scheme manager established under section 212(1) of the Financial Services and Markets Act 2000 is entitled to be represented under rule 15.17 (but not for any other purpose), the manager may deliver, instead of a proof, a statement containing—

- (a) the names of the creditors of the company in relation to whom an obligation of the scheme manager has arisen or may reasonably be expected to arise;
- (b) the amount of each such obligation; and
- (c) the total amount of all such obligations.

(2) The manager may from time to time deliver a further statement; and each such statement supersedes any previous statement.

Claim made in proceedings in other member States

15.30.—(1) Where a creditor in an administration, a creditors' voluntary winding up, a winding up by the court or a bankruptcy—

- (a) is entitled to vote under rule 15.28(1) (as determined, where that be the case, in accordance with rule 15.35);
- (b) has made the claim in other proceedings; and
- (c) votes on a resolution in a decision procedure;

and a member State liquidator casts a vote in respect of the same claim, only the creditor's vote is to be counted.

(2) Where in an administration, a creditors' voluntary winding up, a winding up by the court or a bankruptcy—

- (a) a creditor has made a claim in more than one set of other proceedings; and
- (b) more than one member State liquidator seeks to vote in respect of that claim;

the entitlement to vote in respect of that claim is exercisable by the member State liquidator in the main proceedings, whether or not the creditor has made the claim in the main proceedings.

(3) In this rule, "other proceedings" mean main, secondary or territorial proceedings in another member State.

Calculation of voting rights

15.31.—(1) Votes are calculated according to the amount of each creditor's claim—

- (a) in an administration, as at the date on which the company entered administration, less—
 - (i) any payments that have been made to the creditor after that date in respect of the claim, and
 - (ii) any adjustment by way of set-off which has been made in accordance with rule 14.24 or would have been made if that rule were applied on the date on which the votes are counted;
- (b) in an administrative receivership, as at the date of the appointment of the receiver, less any payments that have been made to the creditor after that date in respect of the claim;
- (c) in a creditors' voluntary winding up, a winding up by the court or a bankruptcy, as set out in the creditor's proof to the extent that it has been admitted;
- (d) in a proposed CVA—
 - (i) at the date the company went into liquidation where the company is being wound up,

- (ii) at the date the company entered into administration (less any payments made to the creditor after that date in respect of the claim) where it is in administration,
 - (iii) at the beginning of the moratorium where a moratorium has been obtained (less any payments made to the creditor after that date in respect of the claim), or
 - (iv) where (i) to (iii) do not apply, at the decision date;
- (e) in a proposed IVA—
- (i) where the debtor is not an undischarged bankrupt—
 - (aa) at the date of the interim order, where there is an interim order in force,
 - (bb) otherwise, at the decision date,
 - (ii) where the debtor is an undischarged bankrupt, at the date of the bankruptcy order.
- (2) A creditor may vote in respect of a debt of an unliquidated or unascertained amount if the convener or chair decides to put upon it an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.
- (3) But in relation to a proposed CVA or IVA, a debt of an unliquidated or unascertained amount is to be valued at £1 for the purposes of voting unless the convener or chair or an appointed person decides to put a higher value on it.
- (4) Where a debt is wholly secured its value for voting purposes is nil.
- (5) Where a debt is partly secured its value for voting purposes is the value of the unsecured part.
- (6) However, the value of the debt for voting purposes is its full value without deduction of the value of the security in the following cases—
- (a) where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1 and the administrator has been requested to seek a decision under paragraph 52(2); and
 - (b) where, in a proposed CVA, there is a decision on whether to extend or further extend a moratorium or to bring a moratorium to an end before the end of the period of any extension.
- (7) No vote may be cast in respect of a claim more than once on any resolution put to the meeting; and for this purpose (where relevant), the claim of a creditor and of any member State liquidator in relation to the same debt are a single claim.
- (8) A vote cast in a decision procedure which is not a meeting may not be changed.
- (9) Paragraph (7) does not prevent a creditor or member State liquidator from—
- (a) voting in respect of less than the full value of an entitlement to vote; or
 - (b) casting a vote one way in respect of part of the value of an entitlement and another way in respect of some or all of the balance of that value.

Calculation of voting rights: special cases

15.32.—(1) In an administration, a creditor under a hire-purchase agreement is entitled to vote in respect of the amount of the debt due and payable by the company on the date on which the company entered administration.

(2) In calculating the amount of any debt for the purpose of paragraph (1), no account is to be taken of any amount attributable to the exercise of any right under the relevant agreement so far as the right has become exercisable solely by virtue of—

- (a) the making of an administration application;
- (b) a notice of intention to appoint an administrator or any matter arising as a consequence of the notice; or

(c) the company entering administration.

(3) Any voting rights which a creditor might otherwise exercise in respect of a claim in a creditors' voluntary winding up or a winding up by the court of an authorised deposit-taker are reduced by a sum equal to the amount of that claim in relation to which the scheme manager, by virtue of its having delivered a statement under rule 15.29, is entitled to exercise voting rights.

Procedure for admitting creditors' claims for voting

15.33.—(1) The convener or chair in respect of a decision procedure must ascertain entitlement to vote and admit or reject claims accordingly.

(2) The convener or chair may admit or reject a claim in whole or in part.

(3) If the convener or chair is in any doubt whether a claim should be admitted or rejected, the convener or chair must mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

Requisite majorities

15.34.—(1) A decision is made by creditors when a majority (in value) of those voting have voted in favour of the proposed decision, except where this rule provides otherwise.

(2) In the case of an administration, a decision is not made if those voting against it—

(a) include more than half in value of the creditors to whom notice of the decision procedure was delivered; and

(b) are not, to the best of the convener or chair's belief, persons connected with the company.

(3) Each of the following decisions in a proposed CVA is made when three-quarters or more (in value) of those responding vote in favour of it—

(a) a decision approving a proposal or a modification;

(b) a decision extending or further extending a moratorium; or

(c) a decision bringing a moratorium to an end before the end of the period of any extension.

(4) In a proposed CVA a decision is not made if more than half of the total value of the unconnected creditors vote against it.

(5) For the purposes of paragraph (4)—

(a) a creditor is unconnected unless the convener or chair decides that the creditor is connected with the company;

(b) in deciding whether a creditor is connected reliance may be placed on the information provided by the company's statement of affairs or otherwise in accordance with these Rules; and

(c) the total value of the unconnected creditors is the total value of those unconnected creditors whose claims have been admitted for voting.

(6) In a case relating to a proposed IVA—

(a) a decision approving a proposal or a modification is made when three-quarters or more (in value) of those responding vote in favour of it;

(b) a decision is not made if more than half of the total value of creditors who are not associates of the debtor vote against it.

(7) For the purposes of paragraph (6)—

(a) a creditor is not an associate of the debtor unless the convener or chair decides that the creditor is an associate of the debtor;

- (b) in deciding whether a creditor is an associate of the debtor, reliance may be placed on the information provided by the debtor's statement of affairs or otherwise in accordance with these Rules; and
- (c) the total value of the creditors who are not associates of the debtor is the total value of the creditors who are not associates of the debtor whose claims have been admitted for voting.

Appeals against decisions under this Chapter

15.35.—(1) A decision of the convener or chair under this Chapter is subject to appeal to the court by a creditor, by a contributory, or by the bankrupt or debtor (as applicable).

(2) In a proposed CVA, an appeal against a decision under this Chapter may also be made by a member of the company.

(3) If the decision is reversed or varied, or votes are declared invalid, the court may order another decision procedure to be initiated or make such order as it thinks just but, in a CVA or IVA, the court may only make an order if it considers that the circumstances which led to the appeal give rise to unfair prejudice or material irregularity.

(4) An appeal under this rule may not be made later than 21 days after the decision date.

(5) However, the previous paragraph does not apply in a proposed CVA or IVA, where an appeal may not be made after the end of the period of 28 days beginning with the day—

(a) in a proposed CVA, on which the first of the reports required by section 4(6) or paragraph 30(3) of Schedule A1 was filed with the court⁽¹⁾; or

(b) in a proposed IVA—

(i) where an interim order has not been obtained, on which the notice of the result of the consideration of the proposal required by section 259(1)(a) has been given, or

(ii) otherwise, on which the report required by section 259(1)(b)⁽²⁾ is made to the court.

(6) The person who made the decision is not personally liable for costs incurred by any person in relation to an appeal under this rule unless the court makes an order to that effect.

(7) The court may not make an order under paragraph (6) if the person who made the decision in a winding up by the court or a bankruptcy is the official receiver or a person nominated by the official receiver.

(1) Section 4(6) is amended by paragraph 4(6) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26) and paragraph 30(3) is amended by paragraph 9(12) and (13) of Schedule 9 to the same Act.

(2) Section 259(1) is substituted by paragraph 66(2) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015.