
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 16

PROXIES AND CORPORATE REPRESENTATION

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

Application and interpretation

16.1.—(1) This Part applies in any case where a proxy is given in relation to a meeting or proceedings under the Act or these Rules, or where a corporation authorises a person to represent it.

(2) References in this Part to “the chair” are to the chair of the meeting for which a specific proxy is given or at which a continuing proxy is exercised.

Specific and continuing proxies

16.2.—(1) A “proxy” is a document made by a creditor, member or contributory which directs or authorises another person (“the proxy-holder”) to act as the representative of the creditor, member or contributory at a meeting or meetings by speaking, voting, abstaining, or proposing resolutions.

(2) A proxy may be either—

- (a) a specific proxy which relates to a specific meeting; or
- (b) a continuing proxy for the insolvency proceedings.

(3) A specific proxy must—

- (a) direct the proxy-holder how to act at the meeting by giving specific instructions;
- (b) authorise the proxy-holder to act at the meeting without specific instructions; or
- (c) contain both direction and authorisation.

(4) A proxy is to be treated as a specific proxy for the meeting which is identified in the proxy unless it states that it is a continuing proxy for the insolvency proceedings.

(5) A continuing proxy must authorise the proxy-holder to attend, speak, vote or abstain, or to propose resolutions without giving the proxy-holder any specific instructions how to do so.

(6) A continuing proxy may be superseded by a proxy for a specific meeting or withdrawn by a written notice to the office-holder.

(7) A creditor, member or contributory may appoint more than one person to be proxy-holder but if so—

- (a) their appointment is as alternates; and
- (b) only one of them may act as proxy-holder at a meeting.

(8) The proxy-holder must be an individual.

Blank proxy

- 16.3.**—(1) A “blank proxy” is a document which—
- (a) complies with the requirements in this rule; and
 - (b) when completed with the details specified in paragraph (3) will be a proxy as described in rule 16.2.
- (2) A blank proxy must state—
- (a) that the creditor, member or contributory named in the document (when completed) appoints a person who is named or identified as the proxy-holder of the creditor, member or contributory; and
 - (b) whether the proxy is—
 - (i) for a specific meeting which is identified in the proxy, or
 - (ii) a continuing proxy for the proceedings.
- (3) The specified details are—
- (a) the name and address of the creditor, member or contributory;
 - (b) either the name of the proxy-holder or the identification of the proxy-holder (e.g. the chair of the meeting or the official receiver); and
 - (c) if the proxy is for a specific meeting, instructions as to the extent to which the proxy-holder is directed to vote in a particular way, to abstain or to propose any resolution.
- (4) A blank proxy must not have inserted in it the name or description of any person as proxy-holder or instructions as to how a person appointed as proxy-holder is to act.
- (5) A blank proxy must have a note to the effect that the proxy may be completed with the name of the person or the chair of the meeting who is to be proxy-holder.

Use of proxies

- 16.4.**—(1) A proxy for a specific meeting must be delivered to the chair before the meeting.
- (2) A continuing proxy must be delivered to the office-holder and may be exercised at any meeting which begins after the proxy is delivered.
- (3) A proxy may be used at the resumption of the meeting after an adjournment, but if a different proxy is given for use at a resumed meeting, that proxy must be delivered to the chair before the start of the resumed meeting.
- (4) Where a specific proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person as office-holder, the proxy-holder may, unless the proxy states otherwise, vote for or against (as the proxy-holder thinks fit) a resolution for the nomination or appointment of that person jointly with another or others.
- (5) A proxy-holder may propose a resolution which is one on which the proxy-holder could vote if someone else proposed it.
- (6) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, prohibit the proxy-holder from exercising discretion how to vote on a resolution which is not dealt with by the proxy.
- (7) The chair may require a proxy used at a meeting to be the same as or substantially similar to the blank proxy delivered for that meeting or to a blank proxy previously delivered which has been completed as a continuing proxy.

Use of proxies by the chair

16.5.—(1) Where a proxy appoints the chair (however described in the proxy) as proxy-holder the chair may not refuse to be the proxy-holder.

(2) Where the office-holder is appointed as proxy-holder but another person acts as chair of the meeting, that other person may use the proxies as if that person were the proxy-holder.

(3) Where, in a meeting of creditors in an administration, creditors' voluntary winding up, winding up by the court or a bankruptcy, the chair holds a proxy which requires the proxy-holder to vote for a particular resolution and no other person proposes that resolution the chair must propose it unless the chair considers that there is good reason for not doing so.

(4) If the chair does not propose such a resolution, the chair must as soon as reasonably practicable after the meeting deliver a notice of the reason why that was not done to the creditor, member or contributory.

Right of inspection and retention of proxies

16.6.—(1) A person attending a meeting is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents delivered to the chair or to any other person in accordance with the notice convening the meeting.

(2) The chair must—

- (a) retain the proxies used for voting at a meeting where the chair is the office-holder, or
- (b) deliver them as soon as reasonably practicable after the meeting to the office-holder.

(3) The office-holder must allow proxies, so long as they remain in the office-holder's hands, to be inspected at all reasonable times on any business day by—

- (a) a creditor, in the case of proxies used at a meeting of creditors;
- (b) a member of the company or a contributory, in the case of proxies used at a meeting of the company, or a meeting of contributories;
- (c) a director of the company in the case of corporate insolvency proceedings; or
- (d) the debtor or the bankrupt in the case of personal insolvency proceedings.

(4) A creditor in paragraph (3)(a) is a person who has delivered a proof in the proceedings, but does not include a person whose claim has been wholly rejected.

(5) However the right of inspection is subject to rule 1.58 (confidentiality of documents – grounds for refusing inspection).

Proxy-holder with financial interest

16.7.—(1) A proxy-holder must not vote for a resolution which would—

- (a) directly or indirectly place the proxy-holder or any associate of the proxy-holder in a position to receive any remuneration, fees or expenses from the insolvent estate; or
- (b) fix or change the amount of or the basis of any remuneration, fees or expenses receivable by the proxy-holder or any associate of the proxy-holder out of the insolvent estate.

(2) However a proxy-holder may vote for such a resolution if the proxy specifically directs the proxy-holder to vote in that way.

(3) Where an office-holder is appointed as proxy-holder and that proxy is used under rule 16.5(2) by another person acting as chair, the office-holder is deemed to be an associate of the person acting as chair.

Corporate representation: bankruptcy and IVA

[Note: section 434B(1) makes similar provision for corporate representation in company insolvency proceedings.]

16.8.—(1) If a corporation is a creditor in a bankruptcy or an IVA, it may by resolution of its directors or other governing body authorise a person or persons to act as its representative or representatives in relation to any decision procedure of the bankrupt or debtor’s creditors held in pursuance of the Act or of these Rules.

(2) Where the corporation authorises only one person, that person is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual creditor.

(3) Where the corporation authorises more than one person, any one of them is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual creditor.

(4) Where the corporation authorises more than one person and more than one of them purport to exercise a power under paragraph (3)—

- (a) if they purport to exercise the power in the same way, the power is treated as exercised in that way; but
- (b) if they do not purport to exercise the power in the same way, the power is treated as not exercised.

Instrument conferring authorisation to represent corporation

16.9.—(1) A person authorised to represent a corporation (other than as a proxy-holder) at a meeting of creditors or contributories must produce to the chair—

- (a) the instrument conferring the authority; or
- (b) a copy of it certified as a true copy by—
 - (i) two directors,
 - (ii) a director and the secretary, or
 - (iii) a director in the presence of a witness who attests the director’s signature.

(2) The instrument conferring the authority must have been executed in accordance with section 44(1) to (3) of the Companies Act(2) unless the instrument is the constitution of the corporation.

(1) Section 434B(1)(a) is substituted by paragraph 57 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(2) 2006 c.46.