SCOTTISH STATUTORY INSTRUMENTS

2018 No. 347

The Insolvency (Scotland) (Receivership and Winding up) Rules 2018

PART 10

CREDITORS' AND LIQUIDATION COMMITTEES

CHAPTER 1

Introductory

Scope and interpretation

10.1.—(1) This Part applies to the establishment and operation of—

(a) a creditors' committee in a receivership;

(b) a liquidation committee in a creditors' voluntary winding up; and

(c) a liquidation committee in a winding up by the court.

(2) In this Part—

"contributory member" means a member of a liquidation committee appointed by the contributories; and

"creditor member" means a member of a liquidation committee appointed by the creditors.

CHAPTER 2

Functions of a committee

Functions of a committee

10.2. In addition to any functions conferred on a liquidation committee by any provision of the Act or any other provision of these Rules—

(a) a committee is to—

(i) assist the office-holder in discharging the office-holder's functions; and

(ii) act in relation to the office-holder in such manner as may from time to time be agreed; and

(b) a committee in a receivership is to represent to the receiver the views of the unsecured creditors.

CHAPTER 3

Membership and formalities of formation of a committee

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

Note: (2) see sections 215, 363, 365 and 371 of the Financial Services and Markets Act 2000 for the rights of persons appointed by a scheme manager, the Financial Conduct Authority and the Prudential Regulation Authority to attend committees and make representations.]

Number of members of a committee

[Note: section 101(1) provides that a liquidation committee in a creditors' voluntary winding up may not have more than 5 members.]

10.3.—(1) A committee in a receivership must have at least 3 members but not more than 5 members.

(2) A liquidation committee in a creditors' voluntary winding up appointed pursuant to section 101(**1**) must have at least 3 members.

(3) A liquidation committee in a winding up by the court established under section 142(**2**) must have—

(a) at least 3 and not more than 5 members elected by the creditors; and

(b) where the grounds on which the company was wound up do not include inability to pay its debts, and where the contributories so decide, up to 3 contributory members elected by the contributories.

Eligibility for membership of creditors' or liquidation committee

10.4.—(1) A creditor is eligible to be a member of a committee if—

(a) the person has submitted a statement of claim and, where not dispensed with under rules 7.16(2) or 8.28(2), documentary evidence of debt;

(b) the debt is not fully secured and the creditor has not agreed to surrender the creditor's security to the liquidator; and

(c) neither of the following apply—

(i) the claim has been wholly rejected for voting purposes, or

(ii) the claim has been wholly rejected for the purpose of distribution or dividend.

(2) No person can be a member as both a creditor and a contributory.

(3) A body corporate or a partnership may be a member of a committee, but it cannot act otherwise than by a representative appointed under rule 10.17.

Establishment of committees

10.5.—(1) Where the creditors, or where applicable, contributories, decide that a creditors' or liquidation committee should be established, the convener or chair of the decision procedure or the convener of the deemed consent process (if not the office-holder) must—

(a) as soon as reasonably practicable deliver a notice of the decision to the office-holder (or to the person appointed as office-holder); and

(b) where a decision has also been made as to membership of the committee, inform the office-holder of the names and addresses of the persons elected to be members of the committee.

(2) Before a person may act as a member of the committee that person must agree to do so.

(**1**) In section 101 subsection (1) was substituted by paragraph 25(2) of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act") and subsection (3) was amended by paragraph 25(3) of that schedule.

(**2**) In section 142 subsections (1) to (4) were substituted by paragraph 37(2) of schedule 9 to the 2015 Act and subsection (6) was amended by paragraph 37(3) of that schedule.

(3) A person's proxy-holder attending a meeting establishing the committee or, in the case of a body corporate or partnership, its duly appointed representative, may give such agreement (unless the proxy or instrument conferring authority contains a statement to the contrary).

(4) Where a decision has been made to establish a committee but not as to its membership, the office-holder must seek a decision from the creditors (about creditor members of the committee) and, where appropriate in a winding up by the court, a decision from contributories (about contributory members of the committee).

(5) The committee is not established (and accordingly cannot act) until the office-holder has delivered a notice of its membership in accordance with paragraph (9).

(6) The notice must contain the following—

(a) a statement that the committee has been duly constituted;

(b) identification details for any company that is a member of the committee;

(c) the full name and address of each member that is not a company.

(7) The notice must be authenticated and dated by the office-holder.

(8) The notice must be delivered as soon as reasonably practicable after the minimum number of persons required by rule 10.3 have agreed to act as members and been elected.

(9) The office-holder must, as soon as reasonably practicable, deliver the notice to AiB.

Liquidation committee established by contributories

10.6.—(1) This rule applies where, under section 142, the creditors do not decide that a liquidation committee should be established, or decide that a committee should not be established.

(2) The contributories may decide to appoint one of their number to make application to the court for an order requiring the liquidator to seek a further decision from the creditors on whether to establish a liquidation committee; and—

(a) the court may, if it thinks that there are special circumstances to justify it, make such an order; and

(b) the creditors' decision sought by the liquidator in compliance with the order is deemed to have been a decision under section 142.

(3) If the creditors decide under paragraph (2)(b) not to establish a liquidation committee, the contributories may establish a committee.

(4) The committee must then consist of at least 3, and not more than 5, contributories elected by the contributories; and rule 10.5 applies, substituting for the reference to rule 10.3 in rule 10.5(8) a reference to this paragraph.

Notice of change of membership of a committee

10.7.—(1) If there is a change in membership of the committee, the office-holder must deliver a notice to AiB, as soon as reasonably practicable.

(2) The notice must contain—

(a) the date of the original notice in respect of the constitution of the committee and the date of the last notice of membership given under this rule (if any);

(b) a statement that this notice of membership replaces the previous notice;

(c) identification details for any company that is a member of the committee;

(d) the full name and address of any member that is not a company;

(e) a statement whether any member has become a member since the issue of the previous notice;

(f) the identification details for a company or otherwise the full name of any member named in the previous notice who is no longer a member and the date the membership ended.

(3) The notice must be authenticated and dated by the office-holder.

Vacancies: creditor members of creditors' or liquidation committee

10.8.—(1) This rule applies if there is a vacancy among the creditor members of a creditors' or liquidation committee or where the number of creditor members of the committee is fewer than the maximum allowed.

(2) A vacancy need not be filled if—

(a) the office-holder and a majority of the remaining creditor members agree; and

(b) the total number of creditor members does not fall below 3.

(3) The office-holder may appoint a creditor, who is qualified under rule 10.4 to be a member of the committee, to fill a vacancy or as an additional member of the committee, if—

(a) the remaining creditor members of the committee (provided there are at least 2) agree in accordance with paragraph (4) to the appointment; and

(b) the creditor agrees to act.

(4) Where there are only 2 remaining members of the committee, both must agree to the appointment, otherwise a majority must agree.

(5) Alternatively, the office-holder may seek a decision from creditors to appoint a creditor (with that creditor's consent) to fill the vacancy.

(6) Where the vacancy is filled by an appointment made by a decision of creditors which is not chaired or convened by the office-holder, the chair or convenor must report the appointment to the office-holder.

Vacancies: contributory members of liquidation committee

10.9.—(1) This rule applies if there is a vacancy among the contributory members of a liquidation committee or where the number of contributory members of the committee is fewer than the maximum allowed under rule 10.3(3)(b) or 10.6(4) as the case may be.

(2) A vacancy need not be filled if—

(a) the liquidator and a majority of the remaining contributory members agree; and

(b) in the case of a committee of contributories only, the number of members does not fall below 3.

(3) The liquidator may appoint a contributory to be a member of the committee, to fill a vacancy or as an additional member of the committee, if—

(a) a majority of the remaining contributory members of the committee (provided there are at least 2) agree to the appointment; and

(b) the contributory agrees to act.

(4) Alternatively, the office-holder may seek a decision from contributories to appoint a contributory (with that contributory's consent) to fill the vacancy.

(5) Where the vacancy is filled by an appointment made by a decision of contributories which is not convened or chaired by the office-holder, the convener or chair must report the appointment to the office-holder.

Resignation

10.10. A member of a committee may resign by informing the office-holder in writing.

Termination of membership

10.11. A person's membership of a committee is automatically terminated if that person—

(a) becomes bankrupt or that person's estate is sequestrated, as the case may be, in which case the trustee in bankruptcy or the trustee in the sequestration replaces the person bankrupt or sequestrated as a member of the committee;

(b) grants a trust deed for the benefit of creditors;

(c) makes a composition with creditors;

(d) is a person to whom a moratorium under a debt relief order applies;

(e) neither attends nor is represented at 3 consecutive meetings (unless it is resolved at the third of those meetings that this rule is not to apply in that person's case);

(f) has ceased to satisfy the criteria set out in rule 10.4 for eligibility to be a member of the committee;

(g) ceases to be a creditor or is found never to have been a creditor;

(h) ceases to be a contributory or is found never to have been a contributory.

Removal

10.12. A creditor member of a committee may be removed by a decision of the creditors through a decision procedure and in the case of a liquidation committee a contributory member of the committee may be removed by a decision of contributories through a decision procedure.

Cessation of liquidation committee in a winding up when creditors are paid in full

10.13.—(1) Where the creditors have been paid in full together with interest in accordance with section 189, the liquidator must deliver to AiB a notice to that effect.

(2) On the delivery of the notice the liquidation committee ceases to exist.

(3) The notice must—

(a) identify the liquidator;

(b) contain a statement by the liquidator certifying that the creditors of the company have been paid in full with interest in accordance with section 189; and

(c) be authenticated and dated by the liquidator.

CHAPTER 4

Meetings of Committee

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

Meetings of committee

10.14.—(1) Meetings of the committee must be held when and where determined by the office-holder.

(2) The office-holder must call a first meeting of the committee to take place within 6 weeks of the committee's establishment.

(3) After the calling of the first meeting, the office-holder must call a meeting—

(a) if so requested by a member of the committee or a member's representative (the meeting then to be held within 21 days of the request being received by the office-holder); and

(b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

(4) The office-holder must give 5 business days' notice of the venue of a meeting to each member of the committee (or a member's representative, if designated for that purpose), except where the requirement for notice has been waived by or on behalf of a member.

(5) Waiver may be signified either at or before the meeting.

The chair at meetings

10.15. The chair at a meeting of a committee must be the office-holder or an appointed person.

Quorum

10.16. A meeting of a committee is duly constituted if due notice of it has been delivered to all the members, and at least 2 of the members are in attendance or represented.

Committee members' representatives

10.17.—(1) A member of the committee may, in relation to the business of the committee, be represented by another person duly authorised by the member for that purpose.

(2) A person acting as a committee member's representative must hold a letter of authority entitling that person to act (either generally or specifically) and authenticated by or on behalf of the committee member.

(3) A proxy or an instrument conferring authority (in respect of a person authorised to represent a body corporate or a partnership) is to be treated as a letter of authority to act generally (unless the proxy or instrument conferring authority contains a statement to the contrary).

(4) The chair at a meeting of the committee may call on a person claiming to act as a committee member's representative to produce a letter of authority, and may exclude that person if no letter of authority is produced at or by the time of the meeting or if it appears to the chair that the authority is deficient.

(5) A committee member may not be represented by—

(a) another member of the committee;

(b) a person who is at the same time representing another committee-member;

(c) a body corporate;

(d) a partnership;

(e) an undischarged bankrupt;

(f) a person whose estate has been sequestrated and who has not been discharged;

(g) a person who has granted a trust deed for the benefit of creditors;

(h) a person who has made a composition with creditors;

(i) a person to whom a moratorium period under a debt relief order applies;

(j) a person who is subject to a company directors disqualification order or a company directors disqualification undertaking; or

(k) a person who is subject to a bankruptcy restrictions order (including an interim order), a bankruptcy restrictions undertaking, a debt relief restrictions order (including an interim order) or a debt relief restrictions undertaking.

(6) Where a representative authenticates any document on behalf of a committee member the fact that the representative authenticates as a representative must be stated below the authentication.

Voting rights and resolutions

10.18.—(1) At a meeting of the committee, each member (whether the member is in attendance or is represented by a representative) has one vote.

(2) A resolution is passed when a majority of the members attending or represented have voted in favour of it.

(3) Every resolution passed must be recorded in writing and authenticated by the chair, either separately or as part of the minutes of the meeting.

Resolutions by correspondence

10.19.—(1) The office-holder may seek to obtain the agreement of the committee to a resolution by delivering to every member (or the member's representative designated for the purpose) details of the proposed resolution.

(2) The details must be set out in such a way that the recipient may indicate agreement or dissent and where there is more than one resolution may indicate agreement to or dissent from each one separately.

(3) A member of the committee may, within 5 business days from the delivery of details of the proposed resolution, require the office-holder to summon a meeting of the committee to consider the matters raised by the proposed resolution.

(4) In the absence of such a request, the resolution is passed by the committee if a majority of the members (excluding a member or member's representative who is to participate directly or indirectly in a transaction (see rule 10.25(4)) deliver notice to the office-holder that they agree with the resolution.

Remote attendance at meetings of committee

10.20.—(1) Where the office-holder considers it appropriate, a meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(2) A person attends such a meeting who is able to exercise that person's right to speak and vote at the meeting.

(3) A person is able to exercise the right to speak at a meeting when that person is in a position to communicate during the meeting to all those attending the meeting any information or opinions which that person has on the business of the meeting.

(4) A person is able to exercise the right to vote at a meeting when—

(a) that person is able to vote, during the meeting, on resolutions or determinations put to the vote at the meeting; and

(b) that person's vote can be taken into account in determining whether or not such resolutions or determinations are passed at the same time as the votes of all the other persons attending the meeting.

(5) Where such a meeting is to be held the office-holder must make whatever arrangements the office-holder considers appropriate to—

(a) enable those attending the meeting to exercise their rights to speak or vote; and

(b) verify the identity of those attending the meeting and to ensure the security of any electronic means used to enable attendance.

(6) A requirement in these Rules to specify a place for the meeting may be satisfied by specifying the arrangements the office-holder proposes to enable persons to exercise their rights to speak or vote where in the reasonable opinion of the office-holder—

(a) a meeting will be attended by persons who will not be present together at the same place; and

(b) it is unnecessary or inexpedient to specify a place for the meeting.

(7) In making the arrangements referred to in paragraph (6) and in forming the opinion referred to in paragraph (6)(b), the office-holder must have regard to the legitimate interests of the committee members or their representatives attending the meeting in the efficient despatch of the business of the meeting.

(8) Where the notice of a meeting does not specify a place for the meeting the office-holder must specify a place for the meeting if at least one member of the committee requests the office-holder to do so in accordance with rule 10.21.

Procedure for requests that a place for a meeting should be specified

10.21.—(1) This rule applies to a request to the office-holder under rule 10.20(8) to specify a place for the meeting.

(2) The request must be made within 3 business days of the date on which the office-holder delivered the notice of the meeting in question.

(3) Where the office-holder considers that the request has been properly made in accordance with this rule, the office-holder must—

(a) deliver notice to all those previously given notice of the meeting—

(i) that it is to be held at a specified place; and

(ii) as to whether the date and time are to remain the same or not;

(b) fix a venue for the meeting, the date of which must be not later than 7 business days after the original date for the meeting; and

(c) give 3 business days' notice of the venue to all those previously given notice of the meeting.

(4) The notices required by sub-paragraphs (a) and (c) may be delivered at the same or different times.

(5) Where the office-holder has specified a place for the meeting in response to the request under rule 10.20(8), the chair of the meeting must attend the meeting by being present in person at that place.

CHAPTER 5

Supply of information by the office-holder to the committee

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

Notice requiring office-holder to attend the creditors' committee (receivership: section 68(2))

[Note: in a receivership section 68(2) enables the creditors' committee to require the receiver to attend the committee or provide the committee with information.]

10.22.—(1) This rule applies where a committee in a receivership resolves under section 68(2) to require the attendance of the receiver.

(2) The notice delivered to the office-holder requiring the receiver's attendance must be—

(a) accompanied by a copy of the resolution; and

(b) authenticated by a member of the committee.

(3) A member's representative may authenticate the notice for the member.

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

(5) Where the receiver so attends, the committee may elect one of their number to be chair of the meeting in place of the receiver or the appointed person.

Office-holder's obligation to supply information to the committee (winding up)

10.23.—(1) This rule applies in relation to a creditors' voluntary winding up and a winding up by the court.

(2) The liquidator must deliver a report to every member of the liquidation committee containing the information required by paragraph (3)—

(a) not less than once in every period of 6 months (unless the committee agrees otherwise); and

(b) when directed to do so by the committee.

(3) The required information is a report setting out—

(a) the position generally in relation to the progress of the insolvency proceedings; and

(b) any matters arising in connection with them to which the office-holder considers the committee's attention should be drawn.

(4) The liquidator must, as soon as reasonably practicable after being directed by the committee—

(a) deliver any report directed under paragraph (2)(b);

(b) comply with a request by the committee for information.

(5) However the liquidator need not comply with such a direction where it appears to the office-holder that—

(a) the direction is frivolous or unreasonable;

(b) the cost of complying would be excessive, having regard to the relative importance of the information; or

(c) there are insufficient assets to enable the liquidator to comply.

(6) Where the committee has come into being more than 28 days after the appointment of the liquidator, the liquidator must make a summary report to the members of the committee of what actions the liquidator has taken since the liquidator's appointment, and must answer such questions as they may put to the liquidator relating to the liquidator's conduct of the proceedings so far.

(7) A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report under this rule by the liquidator of any matters previously arising, other than a summary report.

(8) Nothing in this rule disentitles the committee, or any member of it, from having access to the liquidator's sederunt book, or from seeking an explanation of any matter within the committee's responsibility.

CHAPTER 6

Miscellaneous

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

Expenses of members etc.

10.24.—(1) The office-holder must pay, as an expense of the insolvency proceedings, the reasonable travelling expenses directly incurred by members of the committee or their representatives in attending the committee's meetings or otherwise on the committee's business.

(2) The requirement for the office-holder to pay the expenses does not apply to a meeting of the committee held within 6 weeks of a previous meeting, unless the meeting is summoned by the office-holder.

Dealings by committee members and others: winding up

10.25.—(1) This rule applies in a creditors' voluntary winding up and a winding up by the court to a person who is, or has been in the preceding 12 months—

(a) a member of the committee;

(b) a member's representative; or

(c) an associate of a member, or of a member's representative.

(2) Such a person must not enter into a transaction as a result of which that person would—

(a) receive out of the company's assets any payment for services given or goods supplied in connection with the liquidation;

(b) obtain a profit from the liquidation; or

(c) acquire any part of the company's assets.

(3) However such a transaction may be entered into—

(a) with the prior sanction of the committee, where it is satisfied (after full disclosure of the circumstances) that the person will be giving full value in the transaction;

(b) with the prior permission of the court; or

(c) if that person does so as a matter of urgency, or by way of performance of a contract in force before the date on which the company went into liquidation, and that person obtains the court's permission for the transaction, having applied for it without undue delay.

(4) Neither a member nor a representative of a member who is to participate directly or indirectly in a transaction may vote on a resolution to sanction that transaction.

(5) The court may, on the application of an interested person—

(a) set aside a transaction which appears to it to be contrary to this rule; and

(b) make such other order about the transaction as it thinks just, including an order requiring a person to whom this rule applies to account for any profit obtained from the transaction and compensate the insolvent estate for any resultant loss.

(6) The court will not make an order under the previous paragraph in respect of an associate of a member of the committee or an associate of a member's representative, if satisfied that the associate or representative entered into the relevant transaction without having any reason to suppose that in doing so the associate or representative would contravene this rule.

(7) The costs of the application are not payable as an expense of the liquidation unless the court orders otherwise.

Dealings by committee members and others: receivership

10.26.—(1) This rule applies in a receivership.

(2) Membership of the committee does not prevent a person from dealing with the company provided that a transaction is in good faith and for value.

(3) The court may, on the application of an interested person—

(a) set aside a transaction which appears to it to be contrary to this rule; and

(b) make such other order about the transaction as it thinks just including an order requiring a person to whom this rule applies to account for any profit obtained from the transaction and compensate the company for any resultant loss.

Formal defects

10.27. The acts of a creditors' committee or a liquidation committee are valid notwithstanding any defect in the appointment, election or qualifications of a member of the committee or a committee member's representative or in the formalities of its establishment.

Special rule for winding up by the court: functions vested in the court

10.28. At any time when the functions of a committee in a winding up by the court are vested in the court under section 142(5), requirements of the Act or these Rules about notices to be delivered, or reports to be made, to the committee by the liquidator do not apply, otherwise than as enabling the committee to require a report as to any matter.

CHAPTER 7

Winding up by the court following an administration

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

Continuation of creditors' committee

[Note: paragraph 83(8)(f) of schedule B1 makes provision for the liquidation committee to continue where the administration is followed by a creditors' voluntary winding up.]

10.29.—(1) This rule applies where—

(a) a winding-up order has been made by the court on the application of the administrator under paragraph 79 of schedule B1(**3**);

(b) the court makes an order under section 140(1) appointing the administrator as the liquidator; and

(c) a creditors' committee was in existence immediately before the winding-up order was made.

(2) The creditors' committee shall continue in existence after the date of the order as if appointed as a liquidation committee under section 142(**4**).

(3) However, subject to rule 10.8(3)(a), the committee cannot act until—

(a) the minimum number of persons required by rule 10.3 have agreed to act as members of the liquidation committee (including members of the former creditors' committee and any other who may be appointed under rule 10.8); and

(b) the liquidator has delivered a notice of continuance of the committee to AiB.

(4) The notice must be delivered as soon as reasonably practicable after the minimum number of persons required have agreed to act as members or, if applicable, been appointed.

(5) The notice must contain—

(**3**) Paragraph 79(2)(c) is prospectively amended by paragraph 10(29) of schedule 9 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act").

(**4**) Section 142, subsections (1) to (4) are prospectively substituted by paragraph 37 of schedule 9 of the 2015 Act.

(a) a statement that the former creditors' committee is continuing in existence;
(b) identification details for any company that is a member of the committee; and
(c) the full name and address of each member that is not a company.

(6) The notice must be authenticated and dated by the liquidator.