
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 347

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

PART 8

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 required as set out in Part 1.]

Creditors' voting rights

8.28.—(1) In a receivership, a creditors' voluntary winding up or a winding up by the court, 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 delivered to the convener a statement of claim and documentary evidence of debt, including any calculation for the purposes of rule 8.31 or 8.32;
- (b) the statement of claim and documentary evidence of debt was received by the convener not later than the decision date, or in the case of a meeting, at or before the meeting; and
- (c) the statement of claim and documentary evidence of debt has been admitted for the purposes of entitlement to vote.

(2) The convener or chair may dispense with the requirement to produce documentary evidence of debt in paragraph (1)(a) and (b) in respect of any debt or any class or debt.

(3) 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.

Scheme manager's voting rights

8.29.—(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⁽¹⁾ is entitled to be represented under rule 8.17 (but not for any other purpose), the manager may deliver, instead of a statement of claim and documentary evidence of debt, 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.

(1) 2000 c.8.

(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

8.30.—(1) Where in a creditors' voluntary winding up or a winding up by the court—

- (a) a creditor is entitled to vote under rule 8.28(1) (as determined, where that be the case, in accordance with rule 8.35);
- (b) that creditor has made the claim in other proceedings;
- (c) that creditor votes on a resolution in a decision procedure; and
- (d) 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 a creditors' voluntary winding up or a winding up by the court—

- (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" means main, secondary or territorial proceedings in another member State.

Calculation of voting rights

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

- (a) in a 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;
- (b) in a creditors' voluntary winding up or a winding up by the court, as set out in the creditor's statement of claim and documentary evidence of debt to the extent that it has been admitted.

(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) Where a debt is wholly secured its value for voting purposes is nil.

(4) Where a debt is partly secured its value for voting purposes is the value of the unsecured part.

(5) 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.

(6) A vote cast in a decision procedure which is not a meeting may not be changed.

(7) Paragraph (5) 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: winding up of authorised deposit-taker

8.32. 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 8.29, is entitled to exercise voting rights.

Procedure for admitting creditors' claims for voting

8.33.—(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

8.34. A decision is made by creditors when a majority (in value) of those voting have voted in favour of the proposed decision.

Appeals against decisions under this Chapter

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

(2) 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.

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

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