
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 347

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

PART 8

DECISION MAKING

CHAPTER 5

Requisitioned decisions

[Note: a document required by the Act or these Rules must also contain the standard contents required as 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 section 246ZE(3)(1).]

8.18.—(1) In this Chapter, “requisitioned decision” means—

- (a) a decision requested to be sought under section 142(4)(2), 171(2)(b), 171(3A)(3) or 172(3)(4);
- (b) any other decision sought by a liquidator in a winding up by the court following a request to seek a decision on any matter from—
 - (i) one-tenth in value of a company’s creditors; or
 - (ii) one-tenth in value of a company’s contributories.

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

- (a) a copy of the requesting creditor’s statement of claim or a statement of the requesting 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 copy of the requesting creditor’s statement of claim or a statement of the requesting contributory’s value and a statement that that alone is sufficient without the concurrence of other creditors or contributories.

(1) Section 246ZE is prospectively inserted by section 122 of the Small Business, Enterprise and Employment Act 2015 (c.26) (“the 2015 Act”).

(2) Section 142 is prospectively amended by paragraph 37 of schedule 9 of the 2015 Act.

(3) Section 171(2)(b) is prospectively amended, subsections (3) and (6) substituted and subsections (3A) and (7) inserted by paragraph 42 of schedule 9 of the 2015 Act.

(4) Section 172(3) is prospectively amended by paragraph 43(3) of schedule 9 of the 2015 Act.

(3) 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⁽⁵⁾, request it.

(4) Where a decision procedure under 171(2)(b), 171(3) or 171(3A) 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.

Expenses and timing of requisitioned decision

8.19.—(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 caution 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 caution.

(3) A requisitioned decision must be made 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 liquidation; 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.

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