
STATUTORY INSTRUMENTS

2009 No. 2477

The Water Industry (Special Administration) Rules 2009

PART 5

Meetings

CHAPTER 1

Creditors' meetings

Application of Chapter

43. This Chapter applies to a meeting of the creditors of a water company summoned by the special administrator of the company, whether under section 14(2)(b) of the Insolvency Act or by direction of the court under section 17(3)(b) of that Act.

Venue and notice of creditors' meetings

44.—(1) In fixing the venue for a meeting, the special administrator must have regard to the convenience of creditors.

(2) The time fixed for the start of a meeting must be between 10.00 a.m. and 4.00 p.m. on a business day, unless the court directs otherwise.

(3) The special administrator must give at least 21 days' written notice of a meeting to each creditor known to the special administrator who had a claim against the water company at the date of the special administration order.

(4) The notice of a meeting—

(a) must be in Form WAT19;

(b) must specify the purpose of the meeting; and

(c) must contain a statement of the effect of rule 48 (entitlement to vote).

(5) A form of proxy must be sent with each notice.

Non-receipt of notice of meeting

45. If in accordance with the Insolvency Act or these Rules a meeting of creditors is called or summoned by notice, the meeting is taken to have been properly summoned and held, even if not all those to whom the notice is to be given have received it.

Who presides at meetings

46.—(1) At a meeting, the chair is either the special administrator, or a person nominated by the special administrator in writing to act as the chair.

(2) Any person nominated must be—

- (a) a person who is qualified to act as an insolvency practitioner in relation to the water company; or
- (b) an employee of the special administrator or a member of the special administrator's firm who is experienced in insolvency matters.

Adjournment

47.—(1) If within 30 minutes from the time fixed for the commencement of a meeting neither the special administrator nor a person nominated under rule 46 to preside is present, the meeting stands adjourned to the same time and place in the following week or, if that day is not a business day, to the business day immediately after it.

(2) A meeting may be adjourned from time to time, if the person presiding thinks fit, but not for more than 14 days from the date on which it was fixed to commence, unless the court directs otherwise.

(3) If a meeting is adjourned, the special administrator must, as soon as reasonably practicable, notify the creditors of the venue of the adjourned meeting.

Entitlement to vote: meetings of creditors

48.—(1) Subject to paragraphs (3) and (6), a person may only vote at a meeting if—

- (a) the person has given the special administrator, not later than noon on the business day before the day fixed for the meeting, details in writing of the debt that the person claims is due to the person from the water company;
- (b) the claim has been admitted under this Part; and
- (c) any proxy to be used on the person's behalf has been lodged with the special administrator.

(2) The details of the debt must set out any calculation for the purposes of rules 49 to 53.

(3) The person presiding at the meeting may allow a creditor to vote even if the creditor has failed to comply with paragraph (1)(a), if the person presiding is satisfied that the failure was due to circumstances beyond the creditor's control.

(4) The person presiding may require the production of any document or other evidence necessary for the purpose of substantiating the whole or any part of the claim.

(5) Votes are to be calculated according to the amount of each creditor's debt as at the date of the special administration order, deducting any amounts paid in respect of the debt after that date.

(6) A creditor must not vote in respect of a debt for an unliquidated amount, or a debt whose value is not ascertained, unless the person presiding agrees to put an estimated minimum value on the debt for the purpose of entitlement to vote and admits the claim for that purpose.

(7) A creditor is not entitled to vote more than once on any resolution put to the meeting.

(8) A creditor may appeal to the court against a decision, under this rule, of the person presiding.

Admission and rejection of claims

49.—(1) At a creditors' meeting the person presiding may admit or reject a creditor's claim for the purpose of the creditor's entitlement to vote, and may do so with respect to the whole or any part of the claim.

(2) If the person presiding is in doubt whether a creditor's claim should be admitted or rejected, the person presiding must mark it as objected to and allow the creditor to vote.

(3) However, the creditor's vote is invalid if the objection to the claim is sustained.

(4) A creditor may appeal to the court against a decision, under this rule, of the person presiding.

(5) If on appeal the decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that another meeting be summoned, or make such other order as it thinks just.

(6) Neither the special administrator nor a person nominated by the special administrator to preside at a meeting is personally liable for costs incurred by a person in respect of an appeal to the court under this rule, unless the court so orders.

Voting by secured creditors

50. At a meeting of creditors, a secured creditor is entitled to vote only in respect of the balance (if any) of the creditor's debt after deducting the value of the creditor's security as estimated by the creditor.

Voting by holders of negotiable instruments

51. A creditor must not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless the creditor agrees—

- (a) to treat the liability to the creditor on the bill or note of every person who is liable on it antecedent to the water company, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in the creditor's hands; and
- (b) to estimate the value of that security and, for the purpose of calculating the creditor's entitlement to vote, to deduct it from the creditor's claim.

Voting by retention of title creditors

52. For the purpose of calculating entitlement to vote at a creditors' meeting, a creditor of the water company who is a seller of goods to the water company under a retention of title agreement must deduct from the claim the value, as estimated by the creditor, of any rights arising under that agreement in respect of goods in the possession of the water company.

Voting by creditors under hire-purchase, conditional sale and chattel leasing agreements

53.—(1) Subject to paragraph (2), a creditor of the water company who is an owner of goods under a hire-purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to the creditor by the water company as at the date of the special administration order.

(2) In calculating the amount of a debt for this purpose, no account is to be taken of any amount attributable to the exercise of any right under the relevant agreement in so far as the right has become exercisable solely because of the presentation of the petition for a special administration order or any matter arising in consequence of that presentation, or the making of the order.

Quorum at meetings

54.—(1) A meeting of creditors called or summoned by a special administrator is competent to act if a quorum is present.

(2) One creditor entitled to vote is a quorum.

(3) For the purposes of this rule, the reference to the creditor necessary to constitute a quorum is to those persons present or represented by proxy by any person (including the chair) and includes persons duly represented under section 323 (representation of corporations at meetings) of the Companies Act 2006(1) as applied by rule 67.

(1) 2006 c. 46.

(4) If at a meeting of creditors—

- (a) a quorum is present because only the person presiding at the meeting, or that person and one other person, are present, and
- (b) the person presiding is aware, because of proofs and proxies received or otherwise, that an additional person or persons would, if attending, be entitled to vote,

the meeting must not commence until at least 15 minutes after the time appointed for its commencement.

(5) In this rule “proof” means a document in which a creditor seeks to establish a claim.

Resolutions

55.—(1) Subject to paragraph (2), at a creditors’ meeting a resolution is passed when a majority (in value) of those present and voting, in person or by proxy, have voted in favour of it.

(2) A resolution is invalid if those voting against it include more than half in value of the creditors—

- (a) to whom notice of the meeting was sent; and
- (b) who are not, so far as the person presiding knows, connected with the water company (within the meaning given by section 249 of the Insolvency Act).

Minutes

56.—(1) The person presiding at a meeting must ensure that minutes of its proceedings are entered in the water company’s minute book.

(2) The minutes must include a list of the creditors who attended (personally or by proxy).

Report to creditors

57.—(1) Within 14 days of the end of every period of 6 months beginning with the date of a special administrator’s appointment, the special administrator must send each creditor of the water company concerned a report on the progress of the administration.

(2) On vacating office, the special administrator must send each creditor a report on the administration up to that time.

(3) Paragraph (2) does not apply if—

- (a) the water company goes into liquidation immediately after the special administration ends; or
- (b) the special administrator is removed from office by the court or ceases to be qualified as an insolvency practitioner.

CHAPTER 2

Members’ meetings

Venue and conduct of members’ meeting

58.—(1) If the special administrator of a water company summons a meeting of members of the company, the special administrator must have regard to their convenience in fixing a venue for it.

(2) Subject to paragraphs (2) to (5) and Part 6, the meeting must be summoned and conducted—

- (a) as if it were a general meeting of the water company summoned under the company’s articles of association; and

- (b) in accordance with the Companies Act 2006.
- (3) The special administrator, or a person nominated by the special administrator in writing, is to preside at the meeting.
- (4) To be eligible for nomination, a person must be—
 - (a) qualified to act as an insolvency practitioner in relation to the water company; or
 - (b) an employee of the special administrator or the special administrator’s firm and experienced in insolvency matters.
- (5) If within 30 minutes from the time fixed for the start of the meeting there is no person present to preside, the meeting stands adjourned to the same time and place in the following week or, if that day is not a business day, to the next business day after it.
- (6) The person presiding at the meeting must ensure that minutes of its proceedings are entered in the water company’s minute book.

CHAPTER 3

Meetings generally

Evidence of proceedings at meeting

59.—(1) A minute of proceedings at a meeting of the creditors or members of a water company called or summoned by the special administrator, and signed by a person described as having, or appearing to have, presided at the meeting (for example, by being described as chair or chairman of the meeting), is admissible in special administration proceedings without further proof.

- (2) The minute is prima facie evidence that—
 - (a) the meeting was duly convened and held;
 - (b) resolutions passed at the meeting were properly passed; and
 - (c) the proceedings recorded in the minutes took place.