
STATUTORY INSTRUMENTS

2011 No. 1301

The Investment Bank Special Administration
(England and Wales) Rules 2011

PART 3

Process of Special Administration

CHAPTER 6

Correspondence and remote attendance

Correspondence instead of meetings

97.—(1) The administrator, when convening a meeting, may seek to obtain the passing by creditors, clients or contributories of a written resolution by sending a notice to that effect to every creditor, client or contributory (as the case may be) who would be entitled to be notified of (or in the case of clients, the administrator thinks it appropriate that they are summoned to) a meeting at which the resolution could be passed.

(2) Notice under paragraph (1) must contain the following information—

- (a) a statement that the proceedings are being held in the High Court and the court reference number;
- (b) the full name, registered address and registered number of the investment bank;
- (c) the full name and business address of the administrator;
- (d) the resolution to be voted on; and
- (e) the closing date by which the recipient must respond to the administrator.

(3) In order to be counted, votes must—

- (a) be received by the administrator by 12.00 hours on the closing date specified in the notice;
- (b) in the case of a vote cast by a creditor or by a client, be accompanied by a statement of entitlement to vote on the resolution unless one has already been lodged with or given to the administrator.

(4) A statement of entitlement is written details of the creditor's claim or the client's claim in respect of client assets.

(5) The closing date is to be set at the discretion of the administrator, but must be not less than 14 days from the date of issue of the notice.

(6) Votes must be disregarded if—

- (a) the requisite statement of entitlement had not accompanied them or previously been lodged with or given to the administrator, or
- (b) in the application of Chapter 5 of this Part, the administrator decides that the creditor or client is not entitled to cast the votes.

(7) For the resolution to be passed, the administrator must receive at least one valid vote in favour by the closing date specified in the notice.

(8) If no valid vote is received by the closing date, the creditor must call a meeting of creditors, clients or contributories (as the case may be) to consider the resolution.

(9) Creditors the debts of whom amount to at least 10% of the total debts of the investment bank may, within 5 business days from the date of issue of the notice, require the administrator to call a meeting of creditors to consider the resolution.

(10) Clients asserting claims over at least 10% of the total value of client assets held by the investment bank may, within 5 business days from the date of issue of the notice, require the administrator to call a meeting of clients to consider the resolution.

(11) Contributories representing at least 10% of the total voting rights of all contributories having the right to vote at a meeting of contributories may, within 5 business days from the date of issue of the notice, require the administrator to call a meeting of contributories to consider the resolution.

(12) A reference in these Rules to anything done or required to be done at, or in connection with, or in consequence of, a meeting of creditors, clients or contributories extends to anything done in the course of correspondence in accordance with this rule.

Remote attendance at meetings conducted in accordance with section 246A

98.—(1) This Rule applies to a request to the administrator for a meeting under section 246A(9) of the 1986 Act⁽¹⁾ to specify a place for the meeting.

(2) The request must be accompanied by—

- (a) in the case of a request by creditors, a list of the creditors making or concurring with the request and the amounts of their respective debts in the special administration;
- (b) in the case of a request by clients, a list of the clients making or concurring with the request and the amounts of their respective claims in respect of client assets in the special administration;
- (c) in the case of a request by contributories, a list of the contributories making or concurring with the request and their respective values (being the amounts for which they may vote at the meeting);
- (d) in the case of a request by members, a list of the members making or concurring with the request and their voting rights; and
- (e) from each person concurring, written confirmation of that person's concurrence.

(3) The request must be made within 7 business days of the date on which the administrator sent the notice of the meeting in question.

(4) Where the administrator considers that the request has been properly made in accordance with the Regulations and this rule, the administrator must—

- (a) give 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) set a venue (including specification of a place) for the meeting, the date of which must be not later than 28 days after the original date for the meeting; and
- (c) give at least 14 days' notice of that venue to all those previously given notice of the meeting,

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

(1) Section 246A was inserted by [S.I. 2010/18](#).

(5) Where the administrator has specified a place for the meeting in response to a request to which this rule applies, the chair of the meeting must attend the meeting by being present in person at that place.

(6) Rule 77 (expenses of requisitioned meetings) does not apply to the summoning and holding of a meeting at a place specified in accordance with section 246A(9).

Action where person excluded

99.—(1) In this rule and rules 100 and 101, an “excluded person” means a person who —

- (a) has taken all steps necessary to attend a meeting under the arrangements put in place to do so by the administrator under section 246A(6) of the 1986 Act; and
- (b) is not permitted by those arrangements to attend the whole or part of that meeting.

(2) Where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may—

- (a) continue the meeting;
- (b) declare the meeting void and convene the meeting again;
- (c) declare the meeting valid up to the point where the person was excluded and adjourn the meeting.

(3) Where the chair continues the meeting, the meeting is valid unless—

- (a) the chair decides in consequence of a complaint under rule 101 to declare the meeting void and hold the meeting again; or
- (b) the court directs otherwise.

(4) Without prejudice to paragraph (2), where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may, in the chair’s discretion and without an adjournment, declare the meeting suspended for any period up to 1 hour.

Indication to excluded person

100.—(1) A person who claims to be an excluded person may request an indication of what occurred during the period of that person’s claimed exclusion (an “indication”).

(2) A request under paragraph (1) must be made as soon as reasonably practicable and, in any event, no later than 16.00 hours on the business day following the day on which the exclusion is claimed to have occurred.

(3) A request under paragraph (1) must be made to—

- (a) the chair, where it is made during the course of the business of the meeting; or
- (b) the administrator where it is made after the conclusion of the business of the meeting.

(4) Where satisfied that the person making the request is an excluded person, the person to whom the request is made under paragraph (3) must give the indication as soon as reasonably practicable and, in any event, no later than 16.00 hours on the business day following the day on which the request was made under paragraph (1).

Complaint

101.—(1) Any person who—

- (a) is, or claims to be, an excluded person; or
- (b) attends the meeting (in person or by proxy) and considers that they have been adversely affected by a person’s actual, apparent or claimed exclusion,

(“the complainant”) may make a complaint.

(2) The person to whom the complaint must be made (“the relevant person”) is—

- (a) the chair, where it is made during the course of the meeting; or
- (b) the administrator where it is made after the meeting.

(3) The relevant person must—

- (a) consider whether there is an excluded person; and
- (b) where satisfied that there is an excluded person, consider the complaint,

and, where satisfied that there has been prejudice, take such action as the relevant person considers fit to remedy the prejudice.

(4) Paragraph (5) applies where—

- (a) the relevant person is satisfied that the complainant is an excluded person;
- (b) during the period of the person’s exclusion, a resolution was put to the meeting and was voted on; and —
- (c) the excluded person asserts how the excluded person intended to vote on the resolution.

(5) Subject to paragraph (6), where satisfied that the effect of the intended vote in paragraph (4), if cast, would have changed the result of the resolution, the relevant person must—

- (a) count the intended vote as being cast in accordance with the complainant’s stated intention;
- (b) amend the record of the result of the resolution; and
- (c) where those entitled to attend the meeting have been notified of the result of the resolution, notify them of the change.

(6) Where satisfied that more than one complainant in paragraph (4) is an excluded person, the relevant person must have regard to the combined effect of the intended votes.

(7) The relevant person must notify the complainant in writing of any decision.

(8) A complaint must be made as soon as reasonably practicable and, in any event, no later than 16.00 hours on the business day following—

- (a) the day on which the person was, appeared or claimed to be excluded; or
- (b) where an indication is sought under rule 100, the day on which the complainant received the indication.

(9) A complainant who is not satisfied by the action of the relevant person may apply to the court for directions and any application must be made within 2 business days of the date of receiving the decision of the relevant person.