

---

STATUTORY INSTRUMENTS

---

**2011 No. 2262**

**The Investment Bank Special  
Administration (Scotland) Rules 2011**

**PART 3**

**Process of Special Administration**

**CHAPTER 10**

**Proxies and corporate representation**

**Definition of “proxy”**

**101.**—(1) For the purposes of these Rules, a person (“the principal”) may authorise another person (“the proxy-holder”) to attend, speak and vote as their representative at meetings of creditors, clients, creditors and clients or contributories or members in a special administration and any such authority is referred to as a proxy.

(2) A proxy may be given either generally for all meetings in a special administration or specifically for any meeting or class of meetings.

(3) Only one proxy may be given by the principal for any one meeting; and it may only be given to one person, being an individual aged 18 or over. The principal may nevertheless nominate one or more other such persons to be proxy-holder in the alternative in the order in which they are named in the proxy.

(4) Without prejudice to the generality of paragraph (3), a proxy for a particular meeting may be given to whoever is to be the chair of the meeting and any person to whom any such proxy is given cannot decline to be proxy-holder in relation to that proxy.

(5) A proxy may require the holder to vote on behalf of the principal on matters arising for determination at any meeting, or to abstain, either as directed or in accordance with the holder’s own discretion; and it may authorise or require the holder to propose, in the principal’s name, a resolution to be voted on by the meeting.

**Form of proxy**

**102.**—(1) Forms of proxy shall be sent out with every notice summoning a meeting in the special administration.

(2) A form of proxy shall not be sent out with the name or description of any person inserted in it.

(3) A proxy shall be in the form sent out with the notice summoning the meeting or in a form substantially to the same effect.

(4) A form of proxy shall be filled out and signed by the principal, or by some person acting under the principal’s authority and, where it is signed by someone other than the principal, the nature of the signatory’s authority shall be stated on the form.

### **Use of proxy at a meeting**

**103.**—(1) A proxy given for a particular meeting may be used at any adjournment of that meeting.

(2) A proxy may be lodged at or before the meeting at which it is to be used.

(3) Where the administrator holds proxies to be used by the administrator as chair of the meeting, and some other person acts as chair, the other person may use the administrator's proxies as if the administrator were the proxy-holder.

(4) Where a proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person to be the administrator, the proxy-holder may, unless the proxy states otherwise, vote for or against (as they think fit) any resolution for the nomination or appointment of that person jointly with another or others.

(5) A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which the proxy-holder would be entitled to vote by virtue of the proxy.

(6) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy-holder from voting at their discretion on resolutions put to the meeting which are not dealt with in the proxy.

### **Retention of proxies**

**104.**—(1) Proxies used for voting at any meeting shall be retained by the chair of the meeting.

(2) The chair shall deliver the proxies forthwith after the meeting to the administrator (where the administrator was not the chair).

(3) The administrator shall retain all proxies in the sederunt book.

### **Right of inspection**

**105.**—(1) The administrator shall, so long as proxies lodged with the administrator are in the administrator's hands, allow them to be inspected at all reasonable times on any business day, by—

- (a) the creditors, in the case of proxies used at a meeting of creditors, or a meeting of creditors and clients;
- (b) the clients, in the case of proxies used at a meeting of clients, or a meeting of creditors and clients; and
- (c) the investment bank's members or contributories, in the case of proxies used at a meeting of the members of the investment bank or of its contributories.

(2) A reference in paragraph (1) to a creditor or a client is to a person who has submitted a claim in writing to the administrator but does not include a person whose claim has been wholly rejected for purposes of voting or otherwise.

(3) The right of inspection given by this rule is also exercisable by the directors of the investment bank in special administration.

(4) Any person attending a meeting in a special administration is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents (including claims)—

- (a) to be used in connection with that meeting; or
- (b) sent or given to the chair of that meeting or to any other person by a creditor, client, member or contributory for the purpose of that meeting, whether or not they are to be used at it.

### **Proxy holder with financial interest**

**106.**—(1) A proxy-holder (“P”) shall not vote in favour of any resolution which would directly or indirectly place P, or any associate of P’s, in a position to receive any remuneration out of the insolvent estate, unless the proxy specifically directs P to vote in that way.

(2) Where a P has signed the proxy as being authorised to do so by P’s principal and the proxy specifically directs P to vote in the way mentioned in paragraph (1), P shall nevertheless not vote in that way unless P produces to the chair of the meeting written authorisation from P’s principal sufficient to show that the proxy-holder was entitled so to sign the proxy.

(3) This rule applies also to any person acting as chair of a meeting and using proxies in that capacity in accordance with rule 103(3); and in the application of this rule to any such person, the proxy-holder is deemed an associate of that person.

### **Representation of corporations**

**107.**—(1) Where a person (“P”) is authorised under section 323 of the 2006 Act<sup>(1)</sup> (representation of corporations at meetings) to represent a corporation at a meeting held in a special administration, P shall produce to the chair of the meeting a copy of the resolution from which P’s authority is derived.

(2) The copy resolution must be signed or subscribed by or on behalf of the corporation in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995<sup>(2)</sup> or certified by the secretary or a director of the corporation to be a true copy.

(3) Nothing in this rule requires the authority of a person to sign a proxy on behalf of a principal which is a corporation to be in the form of a resolution of that corporation.

---

(1) 2006 c.46; section 323 was amended by S.I. 2009/1632.

(2) 1995 c.7.