
STATUTORY INSTRUMENTS

2011 No. 2262

The Investment Bank Special
Administration (Scotland) Rules 2011

PART 3

Process of Special Administration

CHAPTER 8

The creditors' committee

Constitution of committee

81.—(1) Where it is resolved by a creditors and clients' meeting to establish a creditors' committee for the purposes of the special administration, the committee shall consist of at least 3 and not more than 5 persons elected at the meeting.

(2) In a special administration (bank insolvency), the FSCS shall be a member of the creditors' committee unless it informs the administrator prior to the meeting referred to in paragraph (1) that it does not wish to be a member.

(3) Where paragraph (1) applies, before receiving nominations for members of the committee, the administrator will set out the maximum number of members to be elected onto the committee by each class of voter so as to ensure that, subject to paragraph (2), the make-up of the committee is a reflection of all parties with an interest in the achievement of the special administration objectives.

(4) The classes of voters mentioned in paragraph (3) are—

- (a) creditors; and
- (b) clients.

(5) A person claiming to be a creditor is entitled to be a member of the committee provided that—

- (a) that person's claim has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distribution or dividend; and
- (b) the claim mentioned in sub-paragraph (a) is not fully secured.

(6) A person claiming to be a client is entitled to be a member of the committee provided that that person's claim in respect of client assets has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of returning client assets.

(7) A body corporate may be a member of the committee, but it cannot act as such otherwise than by a representative appointed under rule 107.

Formalities of establishment

82.—(1) The creditors' committee does not come into being and accordingly cannot act until the administrator has issued a certificate of its due constitution.

(2) The certificate shall state that the creditors' committee of the investment bank has been duly constituted and shall include the following—

- (a) a statement that the proceedings are being held in the 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; and
- (d) the full name and address of each member of the committee.

(3) If the chair of the creditors' meeting which resolves to establish the committee is not the administrator, the chair must as soon as reasonably practicable give notice of the resolution to the administrator and inform the administrator of the names and addresses of the persons elected to be members of the committee.

(4) No person may act as a member of the committee unless and until they have agreed to do so and, unless the relevant proxy or authorisation contains a statement to the contrary, such agreement may be given by their proxy-holder present at the meeting establishing the committee or, in the case of a corporation, by its duly appointed representative.

(5) The administrator's certificate of the committee's due constitution shall not be issued before the persons elected to be members of the committee in accordance with rule 81 have agreed to act and shall be issued as soon as reasonably practicable thereafter.

(6) If any further members are elected onto the committee at a later date, the administrator shall issue an amended certificate as and when those persons have agreed to act.

(7) The certificate shall be sent to the registrar of companies by the administrator, as soon as reasonably practicable.

(8) If after the establishment of the committee there is any change in its membership, the administrator shall as soon as reasonably practicable report the change to the registrar of companies by filing an amended certificate.

Functions and meetings of the committee

83.—(1) In addition to any functions conferred on the creditors' committee by any provision of the Regulations, the creditors' committee shall assist the administrator in discharging the administrator's functions, and act in relation to the administrator in such manner as may be agreed from time to time.

(2) Subject as follows, meetings of the committee shall be held at a time and place determined by the administrator.

(3) The administrator must call a first meeting of the committee to take place within 6 weeks of the committee's establishment.

(4) After the calling of the first meeting, the administrator must call a meeting—

- (a) if so requested by a member of the committee or the member's representative (the meeting then to be held within 21 days of the request being received by the administrator); and
- (b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

(5) Subject to paragraph (8), the administrator shall give 5 business days' written notice of the venue of any meeting to every member of the committee (or their representative designated for that purpose) unless in any case the requirement of notice has been waived by or on behalf of any member. Waiver may be signified either at or before the meeting.

(6) The FSA shall also be given the notice in paragraph (5).

(7) In a special administration (bank administration), if the meeting is to be held before the Bank of England has given the Objective A Achievement Notice, the Bank of England shall be given the notice in paragraph (5).

(8) Where the administrator has determined that a meeting should be conducted and held in the manner referred to in rule 92, the notice period mentioned in paragraph (5) is 7 business days.

The chair at meetings

84.—(1) The chair at any meeting of the creditors' committee must be the administrator, or a person appointed by the administrator in writing to act.

(2) A person so appointed must be either—

- (a) one who is qualified to act as an insolvency practitioner in relation to the investment bank; or
- (b) an employee of the administrator or the administrator's firm who is experienced in insolvency matters.

Quorum

85. A meeting of the creditors' committee is duly constituted if due notice of it has been given to all the members, and at least 2 members are present or represented.

Committee members' representatives

86.—(1) A member of the creditors' committee may, in relation to the business of the committee, be represented by another person duly authorised by the member for that purpose.

(2) A person acting as a committee member's representative must hold a mandate entitling that person so to act (either generally or specially) and authenticated by or on behalf of the committee member, and for this purpose any proxy in relation to any meeting of creditors, clients or creditors and clients of the investment bank shall, unless it contains a statement to the contrary, be treated as such a mandate to act generally authenticated by or on behalf of the committee member.

(3) The chair at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce a mandate and may exclude that person if it appears that the mandate is deficient.

(4) No member may be represented by—

- (a) another member of the committee;
- (b) a person who is at the same time representing another committee member;
- (c) a body corporate;
- (d) a partnership;
- (e) a person whose estate is currently sequestered;
- (f) an undischarged bankrupt;
- (g) a person who is subject to a bankruptcy restrictions order, bankruptcy restrictions undertaking or interim bankruptcy restrictions order; or
- (h) a disqualified director.

(5) Where a member's representative authenticates any document on the member's behalf, the fact that the representative so authenticates must be stated below the representative's signature.

Resignation

87. A member of the creditors' committee may resign by notice in writing delivered to the administrator.

Termination of membership

- 88.—(1) A person's membership of the creditors' committee is automatically terminated if—
- (a) the member's estate is sequestrated or the member becomes bankrupt or grants a trust deed for the benefit of, or makes a composition with, creditors;
 - (b) at 3 consecutive meetings of the committee, the member is neither present nor represented (unless at the third of those meetings it is resolved that this rule is not to apply in the member's case);
 - (c) subject to paragraph (2), the member, having been voted onto the committee under rule 81 by the creditors of the investment bank, ceases to be a creditor and a period of 3 months has elapsed from the date the member ceased to be a creditor, or is found never to have been a creditor; or
 - (d) subject to paragraph (3), the member, having been voted onto the committee under rule 81 by the clients of the investment bank, has had all client assets claimed for under Part 5 returned to them (subject to there being an identified shortfall in the assets to be returned to them or any assets being retained by the administrator under rule 120(2)(e)), or is found never to have been a client.
- (2) A person to whom paragraph (1)(c) applies shall not have their membership terminated if—
- (a) they are also a client of the investment bank; and
 - (b) they have not had all client assets claimed for under Part 5 returned to them (subject to there being an identified shortfall in the assets to be returned to them or any of their assets being retained by the administrator under rule 120(2)(e)),

but the administrator may require them to resign if the administrator thinks that the make-up of the committee does not reflect all parties with an interest in the achievement of the special administration objectives.

(3) A person to whom paragraph (1)(d) applies shall not have their membership terminated if they are also a creditor of the investment bank; but the administrator may require them to resign if the administrator thinks that the make-up of the committee does not reflect all parties with an interest in the achievement of the special administration objectives.

Removal

89.—(1) A member of the creditors' committee may be removed by resolution at a meeting of creditors and clients, at least 14 days' notice having been given of the intention to move that resolution.

(2) The resolution in paragraph (1) will be voted on only by the relevant class of voter under rule 81(4) in respect of the member to be removed.

Vacancies

90.—(1) The following applies if there is a vacancy in the membership of the creditors' committee.

(2) The vacancy need not be filled if the administrator and a majority of the remaining members of the committee so agree, provided that—

- (a) the total number of members does not fall below 3; and

- (b) the administrator thinks that the make-up of the committee will continue to reflect all parties with an interest in the achievement of the special administration objectives.
- (3) The administrator may appoint a person (being qualified under these Rules to be a member of the committee) from the same class of voters as the previous member to fill the vacancy, if—
 - (a) a majority of the other members of the committee agree to the appointment; and
 - (b) the person concerned consents to act.

Voting rights and resolutions

91.—(1) At any meeting of the creditors' committee, each member of it (whether present or represented) has one vote, and a resolution is passed when a majority of the members present or represented have voted in favour of it.

(2) Every resolution passed must be recorded in writing and authenticated by the chair, either separately or as part of the minutes of the meeting, and the record must be kept as part of the sederunt book.

Remote attendance at meetings of creditors' committee

92.—(1) This rule applies to any meeting of a creditors' committee held under these Rules.

(2) Where the administrator considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner referred to in paragraph (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this rule—

- (a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and
- (b) a person is able to exercise the right to vote at a meeting when—
 - (i) that person is able to vote, during the meeting, on resolutions or determinations put to the vote at the meeting, and
 - (ii) that person's vote can be taken into account in determining whether or not such resolutions or determinations are passed at the same time as the votes of all the other persons attending the meeting.

(5) Where a meeting is to be conducted and held in the manner referred to in paragraph (2), the administrator must make whatever arrangements the administrator considers appropriate to—

- (a) enable those attending the meeting to exercise their rights to speak or vote; and
- (b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(6) Where in the reasonable opinion of the administrator—

- (a) a meeting will be attended by persons who will not be present together at the same place; and
- (b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under these Rules to specify a place for the meeting may be satisfied by specifying the arrangements the administrator proposes to enable persons to exercise their rights to speak or vote.

(7) In making the arrangements referred to in paragraph (5) and in forming the opinion referred to in paragraph (6)(b), the administrator must have regard to the legitimate interests of the committee members or their representatives attending the meeting in the efficient despatch of the business of the meeting.

(8) If—

- (a) the notice of a meeting does not specify a place for the meeting;
- (b) the administrator is requested in accordance with rule 93 to specify a place for the meeting; and
- (c) that request is made by at least one member of the committee,

the administrator must specify a place for the meeting.

Procedure for requests that a place for a meeting should be specified

93.—(1) This rule applies to a request to the administrator of a meeting under rule 92 to specify a place for the meeting.

(2) The request must be made within 5 business days of the date on which the administrator sent the notice of the meeting in question.

(3) Where the administrator considers that the request has been properly made in accordance with 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) specify a time, date and place for the meeting, the date of which must be not later than 7 business days after the original date for the meeting; and
- (c) give 5 business days' notice of the time, date and place 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.

(4) 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.

Resolutions otherwise than at a meeting

94.—(1) In accordance with this rule, the administrator may seek to obtain the agreement of members of the creditors' committee to a resolution by sending to every member (or a member's representative designated for the purpose) a copy of the proposed resolution.

(2) Where the administrator makes use of the procedure allowed by this rule, the administrator shall send out to members of the committee or their representatives (as the case may be) a statement incorporating a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent.

(3) The FSA shall also be sent a statement under paragraph (2).

(4) In a special administration (bank administration), if the statement referred to in paragraph (2) is sent out before the Bank of England has given the Objective A Achievement Notice, the Bank of England shall also be sent the statement.

(5) Any member of the committee may, within 7 business days from the date of the administrator sending out a resolution, require the administrator to summon a meeting of the committee to consider the matters raised by the resolution.

(6) In the absence of such a requirement, the resolution is deemed to have been passed by the committee if and when the administrator is notified in writing by a majority of the members that they concur with it.

(7) A copy of every resolution passed under this rule, and a note that the committee's concurrence was obtained, shall be kept in the sederunt book.

Information from administrator

95.—(1) Where the creditors' committee resolves to require the attendance of the administrator under paragraph 57(3)(a), the notice to the administrator shall be in writing, authenticated by the majority of the members of the committee for the time being.

(2) A member's authentication under paragraph (1) may be made by that member's representative.

(3) The meeting at which the administrator's attendance is required shall be fixed by the committee for a business day, and shall be held at such time and place as the administrator determines.

(4) The administrator shall notify the FSA of the time and place of the meeting.

(5) In a special administration (bank administration), if the meeting is to be held before the Bank of England has given the Objective A Achievement Notice, the Bank of England shall be given the notice in paragraph (4).

(6) Where the administrator so attends, the members of the committee may elect any one of their number to be chair of the meeting, in place of the administrator or the administrator's nominee.

Expenses of members

96.—(1) Subject to paragraph (2), the administrator shall defray, out of the assets of the investment bank, any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in respect of their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the special administration.

(2) The administrator shall defray, out of the client assets held by the investment bank, any expenses referred to in paragraph (1) incurred by a client member of the committee.

(3) Paragraph (1) does not apply to any meeting of the committee held within 6 weeks of a previous meeting, unless the meeting in question is summoned at the instance of the administrator.

Members dealing with the investment bank

97.—(1) This rule applies to—

- (a) any member of a creditors' committee;
- (b) any committee member's representative;
- (c) any person who is an associate of—
 - (i) a member of the committee, or
 - (ii) a committee member's representative; and
- (d) any person who has been a member of the committee at any time in the last 12 months or who is an associate of such a member.

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(2) A person to whom this rule applies may deal with the investment bank while it is in special administration provided that any transactions in the course of such dealings are in good faith and for value.

Formal defects

98. The acts of the creditors' committee established for a special administration are valid despite any defect in the appointment, election or qualifications of any member of the committee or any committee member's representative or in the formalities of its establishment.