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STATUTORY INSTRUMENTS

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**2013 No. 3208**

The Postal Administration Rules 2013

PART 4

MEETINGS AND REPORTS

CHAPTER 1

*Creditors Meetings*

**Creditors' meetings generally**

**22.**—(1) This Rule applies to creditors' meetings summoned by the postal administrator under paragraph 62 (general power to summon meetings of creditors).

(2) Notice of any meeting referred to in paragraph (1) of this Rule shall be in Form PA9.

(3) In fixing the venue for the meeting, the postal administrator shall have regard to the convenience of creditors and the meeting shall be summoned for commencement between 10.00 and 16.00 hours on a business day, unless the court otherwise directs.

(4) Subject to paragraphs (6) and (7) of this Rule, at least 14 days' notice of the meeting shall be given to all creditors who are known to the postal administrator and had claims against the company at the date when the company entered postal administration unless that creditor has subsequently been paid in full; and the notice shall—

- (a) specify the purpose of the meeting;
- (b) contain a statement of the effect of Rule 26 (entitlement to vote); and
- (c) contain the forms of proxy.

(5) As soon as reasonably practicable after notice of the meeting has been given, the postal administrator must have gazetted a notice which, in addition to the standard contents, must state—

- (a) that a creditors' meeting is to take place;
- (b) the venue fixed for the meeting;
- (c) the purpose of the meeting; and
- (d) a statement of the effect of Rule 26 (entitlement to vote).

(6) If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chair, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(7) If within 30 minutes from the time fixed for the commencement of the meeting those persons attending the meeting do not constitute a quorum, the chair may adjourn the meeting to such time and place as the chair may appoint.

(8) Once only in the course of the meeting the chair may, without an adjournment, declare the meeting suspended for any period up to 1 hour.

(9) The chair may, and must if the meeting so resolves, adjourn the meeting to such time and place as seems to the chair to be appropriate in the circumstances. An adjournment under this paragraph must not be for a period of more than 14 days, subject to the direction of the court.

(10) If there are subsequently further adjournments, the final adjournment must not be to a day later than 14 days after the date on which the meeting was originally held.

(11) Where a meeting is adjourned under this Rule, proofs and proxies may be used if lodged at any time up to 12.00 hours on the business day immediately before the adjourned meeting.

(12) Paragraph (3) of this Rule applies with regard to the venue fixed for a meeting adjourned under this Rule.

### **The chair at meetings**

**23.**—(1) At any meeting of creditors summoned by the postal administrator, either the postal administrator shall be chair, or a person nominated by the postal administrator in writing to act in their place.

(2) A person so nominated must be either—

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

(3) Where the chair holds a proxy which includes a requirement to vote for a particular resolution and no other person proposes that resolution—

- (a) the chair must propose it unless the chair considers that there is good reason for not doing so, and
- (b) if the chair does not propose it, the chair must as soon as reasonably practicable after the meeting notify the principal of the reason why not.

### **Creditors' meeting for nomination of alternative liquidator**

**24.**—(1) Where under Rules 20(4) or 33(2)(g) the postal administrator has proposed that the company enter creditors' voluntary liquidation once the postal administration has ended, the postal administrator must, in the circumstances detailed in paragraph (2) of this Rule, call a meeting of creditors for the purpose of nominating a person other than the person named as proposed liquidator in the postal administrator's proposals or revised proposals.

(2) The postal administrator must call a meeting of creditors where such a meeting is requested by creditors of the company whose debts amount to at least 10 per cent of the total debts of the company.

(3) The request for a creditors' meeting for the purpose set out in paragraph (1) of this Rule must be in Form PA10. A request for such a meeting must be made within 8 business days of the date on which the postal administrator's statement of proposals is sent out.

(4) A request under this Rule must include—

- (a) a list of creditors concurring with the request, showing the amounts of the respective debts in the postal administration; and
- (b) from each creditor concurring, written confirmation of the creditor's concurrence;

but this paragraph does not apply if the requesting creditor's debt is alone sufficient without the concurrence of other creditors.

(5) A meeting requested under this Rule must be held within 28 days of the postal administrator's receipt of the notice requesting the meeting.

### **Notice of meetings by advertisement only**

**25.**—(1) The court may order that notice of any meeting be given by advertisement and not by individual notice to the persons concerned.

(2) In considering whether to act under this Rule, the court must have regard to the cost of advertisement, the amount of assets available and the extent of the interest of creditors, members or any particular class of either.

### **Entitlement to vote**

**26.**—(1) Subject as follows, at a meeting of creditors in postal administration proceedings a person is entitled to vote only if—

- (a) they have given to the postal administrator, not later than 12.00 hours on the business day before the day fixed for the meeting, details in writing of the debt which they claim to be due to them from the company;
- (b) the claim has been duly admitted under Rule 27 or this Rule; and
- (c) there has been lodged with the postal administrator any proxy which they intend to be used on their behalf,

and details of the debt must include any calculation for the purposes of Rules 28 to 30.

(2) The chair of the meeting may allow a creditor to vote, notwithstanding that the creditor has failed to comply with paragraph (1)(a) of this Rule, if satisfied that the failure was due to circumstances beyond the creditor's control.

(3) The chair of the meeting may call for any document or other evidence to be produced to them, where the chair thinks it necessary for the purpose of substantiating the whole or any part of the claim.

(4) Votes are calculated according to the amount of a creditor's claim as at the date on which the company entered postal administration, less any payments that have been made to them after that date in respect of their claim and any adjustment by way of set-off in accordance with Rule 55 as if that Rule were applied on the date that the votes are counted.

(5) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chair agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

(6) No vote shall be cast by virtue of a claim more than once on any resolution put to the meeting.

### **Admission and rejection of claims**

**27.**—(1) At any creditors' meeting the chair has power to admit or reject a creditor's claim for the purpose of their entitlement to vote; and the power is exercisable with respect to the whole or any part of the claim.

(2) The chair's decision under this Rule, or in respect of any matter arising under Rule 26, is subject to appeal to the court by any creditor.

(3) If the chair is in doubt whether a claim should be admitted or rejected, the chair shall mark it as objected to and allow the creditor to vote, subject to their vote being subsequently declared invalid if the objection to the claim is sustained.

(4) If on an appeal the chair's 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.

(5) An application to the court by way of appeal under this Rule against a decision of the chair must be made not later than 21 days after the date of the meeting.

(6) Neither the postal administrator nor any person nominated by the postal administrator to be chair is personally liable for costs incurred by any person in respect of an appeal to the court under this Rule, unless the court makes an order to that effect.

### **Secured creditors**

**28.** At a meeting of creditors a secured creditor is entitled to vote only in respect of the balance (if any) of their debt after deducting the value of their security as estimated by them.

### **Holders of negotiable instruments**

**29.** A creditor shall not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing—

- (a) to treat the liability to them on the bill or note of every person who is liable on it antecedently to the 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 their hands; and
- (b) to estimate the value of the security and, for the purpose of their entitlement to vote (but not for dividend), to deduct it from their claim.

### **Hire-purchase, conditional sale and chattel leasing agreements**

**30.—(1)** Subject as follows, 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 them by the company on the date that the company entered postal administration.

(2) In calculating the amount of any debt for this purpose, no account shall be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the making of a postal administration application or any matter arising as a consequence, or of the company entering postal administration.

### **Resolutions**

**31.—(1)** Subject to paragraph (2) of this Rule, at a creditors' meeting in postal administration proceedings, 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) Any resolution is invalid if those voting against it include more than half in value of the creditors to whom notice of the meeting was sent and who are not, to the best of the chair's belief, persons connected with the company.

(3) In the case of a resolution for the nomination of a person to act as liquidator once the postal administration has ended—

- (a) subject to paragraph (4) of this Rule, if on any vote there are two persons put forward by creditors for nomination as liquidator, the person who obtains the most support is nominated as liquidator;
- (b) if there are three or more persons put forward by creditors for nomination as liquidator, and one of them has a clear majority over both or all the others together, that one is nominated as liquidator;
- (c) in any other case, the chair of the meeting must continue to take votes (disregarding at each vote any person who has withdrawn and, if no person has withdrawn, the person who obtained the least support last time), until a clear majority is obtained for any one person.

(4) The support referred to in paragraph (3)(a) of this Rule must represent a majority in value of all those present (in person or by proxy) at the meeting and entitled to vote.

(5) Where on such a resolution no person is nominated as liquidator, the person named as proposed liquidator in the postal administrator's proposals or revised proposals shall be the liquidator once the postal administration has ended.

(6) The chair may at any time put to the meeting a resolution for the joint appointment of any two or more persons put forward by creditors for nomination as liquidator.

(7) In this Rule "connected with the company" has the same meaning as "connected with a company" in section 249 of the 1986 Act.

### **Minutes**

**32.**—(1) The chair of the meeting must cause minutes of its proceedings to be kept.

(2) The minutes must be authenticated by the chair, and be retained by the chair as part of the records of the postal administration.

(3) The minutes must include—

- (a) a list of the names of creditors who attended (personally or by proxy) and their claims; and
- (b) a record of every resolution passed.

### **Revision of the postal administrator's proposals**

**33.**—(1) The postal administrator shall, as soon as reasonably practicable, under paragraph 54, make a statement setting out the proposed revisions to their proposals which they shall send to all those to whom they are required to send a copy of their revised proposals and to the registrar of companies.

(2) The statement of revised proposals shall include—

- (a) details of the court where the proceedings are and the relevant court reference number;
- (b) the full name, registered address, registered number and any other trading names of the company;
- (c) details relating to their appointment as postal administrator, including the date of appointment and whether the postal administration application was made by the Secretary of State or OFCOM;
- (d) the names of the directors and secretary of the company and details of any shareholdings in the company they may have;
- (e) a summary of the initial proposals and the reason(s) for proposing a revision;
- (f) details of the proposed revision including details of the postal administrator's assessment of the likely impact of the proposed revision upon creditors generally or upon each class of creditors (as the case may be);
- (g) where a proposed revision relates to the ending of the postal administration by a creditors' voluntary liquidation and the nomination of a person to be the proposed liquidator of the company—
  - (i) details of the proposed liquidator,
  - (ii) where applicable, the declaration required by section 231 of the 1986 Act, and
  - (iii) a statement that the creditors may nominate a different person as liquidator in accordance with paragraph 83(7)(a) and Rule 81(3); and
- (h) any other information that the postal administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions.

(3) Subject to paragraph 54(4), within 5 business days of sending out the statement in paragraph (1) of this Rule, the postal administrator shall send a copy of the statement to every member of the company.

(4) Any notice to be published by the postal administrator acting under paragraph 54(4) shall be advertised in such manner as the postal administrator thinks fit.

(5) The notice must be published as soon as reasonably practicable after the postal administrator sends the statement to the creditors and in addition to the standard contents must state—

- (a) that members can write for a copy of the statement of revised proposals for the postal administration; and
- (b) the address to which to write.

### **Reports to creditors**

**34.**—(1) The postal administrator must prepare a report (“the progress report”) which includes—

- (a) details of the court where the proceedings are and the relevant court reference number;
- (b) full details of the company’s name, address of registered office and registered number;
- (c) full details of the postal administrator’s name and address, date of appointment and name and address of applicant for the postal administration application, including any changes in the postal administrator, and, in the case of joint postal administrators, their functions as set out in the statement made for the purposes of section 72(5) of the 2011 Act;
- (d) details of progress during the period of the report, including a receipts and payments account (as detailed in paragraph (2) of this Rule);
- (e) details of any assets that remain to be realised; and
- (f) any other relevant information for the creditors.

(2) A receipts and payments account must be in the form of an abstract showing receipts and payments during the period of the report and, where the postal administrator has ceased to act, must also include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A of the 1986 Act.

(3) The progress report must, except where paragraph (4) of this Rule applies, cover the period of 6 months commencing on the date on which the company entered postal administration and every subsequent period of 6 months.

(4) The period to be covered by a progress report ends on the date when a postal administrator ceases to act, and the period to be covered by each subsequent progress report of a new postal administrator is each successive period of 6 months beginning immediately after that date (subject to the further application of this paragraph when another postal administrator ceases to act).

(5) The postal administrator must send a copy of the progress report within 1 month of the end of the period covered by the report, to —

- (a) the Secretary of State;
- (b) OFCOM;
- (c) the creditors, and
- (d) the registrar of companies;

(6) The court may, on the postal administrator’s application, extend the period of 1 month mentioned in paragraph (5) of this Rule, or make such other order in respect of the content of the report as it thinks just.

(7) If the postal administrator makes default in complying with this Rule, the postal administrator is liable to a fine and, for continued contravention, to a daily default fine.

## CHAPTER 2

### *Company Meetings*

#### **Venue and conduct of company meeting**

**35.**—(1) Where the postal administrator summons a meeting of members of the company, the postal administrator shall fix a venue for it having regard to the postal administrator's convenience.

(2) The chair of the meeting shall be the postal administrator or a person nominated by the postal administrator in writing to act in the postal administrator's place.

(3) A person so nominated must be either—

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

(4) If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chair, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(5) Subject to anything to the contrary in the 1986 Act and the Rules, the meeting must be summoned and conducted—

- (a) in the case of a company incorporated—
  - (i) in England and Wales, or in Wales, or
  - (ii) outside the United Kingdom other than in an EEA state,

in accordance with the law of England and Wales, including any applicable provision in or made under the Companies Act;

- (b) in the case of a company incorporated in an EEA state other than the United Kingdom, in accordance with the law of that state applicable to meetings of the company.

(6) The chair of the meeting shall cause minutes of its proceedings to be entered in the company's minute book.