
STATUTORY INSTRUMENTS

2018 No. 1082

The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018

PART 5

DECISION MAKING

CHAPTER 10

Company meetings

Company meetings in administration

- 5.37.**—(1) This rule applies to company meetings in an administration.
- (2) Unless the Act or these Rules provide otherwise, a company meeting must be called and conducted, and records of the meeting must be kept—
- (a) in accordance with the law of Scotland, including any applicable provision in or made under the Companies Act, in the case of a company incorporated—
 - (i) in Scotland, or
 - (ii) outside the United Kingdom other than in a EEA state;
 - (b) in accordance with the law of that state applicable to meetings of the company in the case of a company incorporated in an EEA state other than the United Kingdom.
- (3) Reference to a company meeting called and conducted to resolve, decide or determine a particular matter includes a reference to that matter being resolved, decided or determined by written resolution.
- (4) In summoning any company meeting the administrator must have regard to the convenience of the members when fixing the venue.
- (5) The chair of a company meeting in an administration must be either the administrator or an appointed person.

Remote attendance: notification requirements

- 5.38.** When a meeting is to be summoned and held in accordance with section 246A(3)(1), the convener must notify all those to whom notice of the meeting is being given of—
- (a) the ability of a person claiming to be an excluded person to request an indication in accordance with rule 5.41;
 - (b) the ability of a person within rule 5.42(1) to make a complaint in accordance with that rule; and
 - (c) in either case, the period within which a request or complaint must be made.

Location of company meetings

5.39.—(1) This rule applies to a request to the convener of a meeting under section 246A(9)(2) to specify a place for the meeting.

(2) The request must be accompanied by—

- (a) a list of the members making or concurring with the request and their voting rights, and
- (b) from each person concurring, confirmation of that person's concurrence.

(3) The request must be delivered to the convener within seven business days of the date on which the convener delivered the notice of the meeting in question.

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

- (a) deliver 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) deliver 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 delivered at the same or different times.

(5) Where the convener 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.

Action where person excluded

5.40.—(1) In this rule and rules 5.41 and 5.42, an "excluded person" means a person who has taken all steps necessary to attend a company meeting under the arrangements which—

- (a) have been put in place by the convener of the meeting under section 246A(6); but
- (b) do not enable that person 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; or
- (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 5.42 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, at the chair's discretion and without an adjournment, declare the meeting suspended for any period up to one hour.

Indication to excluded person

5.41.—(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.

(2) A request under paragraph (1) must be made in accordance with paragraph (3) as soon as reasonably practicable, and in any event, not later than 4pm 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 meeting; or
- (b) the convener where it is made after 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 deliver the requested indication to the excluded person as soon as reasonably practicable, and in any event, not later than 4pm on the business day following the day on which the request was made under paragraph (1).

Complaint

5.42.—(1) A person may make a complaint who—

- (a) is, or claims to be, an excluded person; or
- (b) attends the meeting and claims to have been adversely affected by the actual, apparent or claimed exclusion of another person.

(2) A complaint under paragraph (1) must be made to the appropriate person who is—

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

(3) The complaint must be made as soon as reasonably practicable and, in any event, not later than 4pm 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 5.41, the day on which the complainant received the indication.

(4) The appropriate person must, as soon as reasonably practicable following receipt of the complaint,

- (a) consider whether there is an excluded person;
- (b) where satisfied that there is an excluded person, consider the complaint; and
- (c) where satisfied that there has been prejudice, take such action as the appropriate person considers fit to remedy the prejudice.

(5) Paragraph (6) applies where the appropriate person is satisfied that the complainant is an excluded person and—

- (a) a resolution was voted on at the meeting during the period of the person’s exclusion; and
- (b) the excluded person asserts how the excluded person intended to vote on the resolution.

(6) Where the appropriate person is satisfied that if the excluded person had voted as that person intended it would have changed the result of the resolution, then the appropriate person must, as soon as reasonably practicable—

- (a) count the intended vote as having been cast in that way;
- (b) amend the record of the result of the resolution;

- (c) where notice of the result of the resolution has been delivered to those entitled to attend the meeting, deliver notice to them of the change and the reason for it; and
 - (d) where notice of the result of the resolution has yet to be delivered to those entitled to attend the meeting, the notice must include details of the change and the reason for it.
- (7) Where satisfied that more than one complainant is an excluded person, the appropriate person must have regard to the combined effect of the intended votes.
- (8) The appropriate person must deliver notice to the complainant of any decision as soon as reasonably practicable.
- (9) A complainant who is not satisfied by the action of the appropriate person may apply to the court for directions and any application must be made no more than two business days from the date of receiving the decision of the appropriate person.