
STATUTORY INSTRUMENTS

2018 No. 1082

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

PART 5

DECISION MAKING

CHAPTER 7

Creditors' voting rights and majorities

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Creditors' voting rights

5.26.—(1) In an administration, a creditor is entitled to vote in a decision procedure or to object to a decision proposed using the deemed consent procedure only if—

- (a) the creditor has delivered to the convener a statement of claim and documentary evidence of debt, including any calculation for the purposes of rule 5.28 or 5.29;
- (b) the statement of claim and documentary evidence of debt were received by the convener not later than the decision date, or in the case of a meeting, at or before the meeting; and
- (c) the statement of claim and documentary evidence of debt has been admitted for the purposes of entitlement to vote.

(2) The convener or chair may dispense with the requirement to produce documentary evidence of debt in paragraph (1)(a).

(3) In the case of a meeting, a proxy-holder is not entitled to vote on behalf of a creditor unless the convener or chair has received the proxy intended to be used on behalf of that creditor.

(4) In a decision relating to a proposed CVA every creditor, secured or unsecured, who has notice of the decision procedure is entitled to vote in respect of that creditor's debt.

(5) Where a decision is sought in an administration under rule 3.52(3)(b), rule 3.96(5) or rule 3.96(6), creditors are entitled to participate to the extent stated in those rules.

Claim made in proceedings in other member States

5.27.—(1) Where, in an administration,—

- (a) a creditor is entitled to vote under rule 5.26 (as determined, where that is the case, in accordance with rule 5.32);
- (b) that creditor has made the claim in other proceedings;
- (c) that creditor votes on a resolution in a decision procedure; and
- (d) a member State liquidator casts a vote in respect of the same claim,

only the creditor's vote is to be counted.

(2) Where, in an administration,—

(a) a creditor has made a claim in more than one set of other proceedings; and

(b) more than one member State liquidator seeks to vote in respect of that claim,

the entitlement to vote in respect of that claim is exercisable by the member State liquidator in the main proceedings, whether or not the creditor has made the claim in the main proceedings.

(3) In this rule, "other proceedings" mean main, secondary or territorial proceedings in another member State.

Calculation of voting rights

5.28.—(1) Votes are calculated according to the amount of each creditor's claim—

(a) in an administration, as at the date on which the company entered administration, less—

(i) any payments that have been made to the creditor after that date in respect of the claim, and

(ii) any adjustment by way of set-off which has been made in accordance with that principle or would have been made if that principle were applied on the date on which the votes are counted;

(b) in a proposed CVA—

(i) at the date the company went into liquidation where the company is being wound up,

(ii) at the date the company entered administration (less any payments made to the creditor after that date in respect of the claim) where it is in administration,

(iii) at the beginning of the moratorium where a moratorium has been obtained (less any payments made to the creditor after that date in respect of the claim), or

(iv) where (i) to (iii) do not apply, at the decision date.

(2) A creditor may vote in respect of a debt of an unliquidated or unascertained amount if the convener or chair decides to put upon it an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

(3) In relation to a proposed CVA, a debt of an unliquidated or unascertained amount is to be valued at £1 for the purposes of voting unless the convener or chair or an appointed person decides to put a higher value on it.

(4) Where a debt is wholly secured its value for voting purposes is nil.

(5) Where a debt is partly secured its value for voting purposes is the value of the unsecured part.

(6) The value of the debt for voting purposes is its full value without deduction of the value of the security in the following cases—

(a) where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1 and the administrator has been requested to seek a decision under paragraph 52(2) of that Schedule; and

(b) where, in a proposed CVA, there is a decision on whether to extend or further extend a moratorium or to bring a moratorium to an end before the end of the period of any extension.

(7) No vote may be cast in respect of a claim more than once on any resolution put to the meeting and for this purpose (where relevant), the claim of a creditor and of any member State liquidator in relation to the same debt are a single claim.

(8) A vote cast in a decision procedure which is not a meeting may not be changed.

- (9) Paragraph (7) does not prevent a creditor or member State liquidator from—
- (a) voting in respect of less than the full value of an entitlement to vote; or
 - (b) casting a vote one way in respect of part of the value of an entitlement and another way in respect of some or all of the balance of that value.

Calculation of voting rights: hire-purchase agreements

5.29.—(1) In an administration, a creditor under a hire-purchase agreement is entitled to vote in respect of the amount of the debt due and payable by the company on the date on which the company entered administration.

(2) In calculating the amount of any debt for the purpose of paragraph (1), no account is to 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—

- (a) the making of an administration application;
- (b) a notice of intention to appoint an administrator or any matter arising as a consequence of the notice; or
- (c) the company entering administration.

Procedure for admitting creditors' claims for voting

5.30.—(1) The convener or chair in respect of a decision procedure must ascertain entitlement to vote and admit or reject claims accordingly.

(2) The convener or chair may admit or reject a claim in whole or in part.

(3) If the convener or chair is in any doubt whether a claim should be admitted or rejected, the convener or chair must mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

Requisite majorities

5.31.—(1) A decision is made by creditors when a majority (in value) of those voting have voted in favour of the proposed decision, except where this rule provides otherwise.

(2) In the case of an administration, a decision is not made if those voting against it include more than half in value of the creditors to whom notice of the decision procedure was delivered who are not, to the best of the convener's or chair's belief, persons connected with the company.

(3) Each of the following decisions in a proposed CVA is made when 75% or more (in value) of those responding vote in favour of it—

- (a) a decision approving a proposal or a modification;
- (b) a decision extending or further extending a moratorium; or
- (c) a decision bringing a moratorium to an end before the end of the period of any extension.

(4) In a proposed CVA a decision is not made if more than half of the total value of the unconnected creditors vote against it.

(5) For the purposes of paragraph (4)—

- (a) a creditor is unconnected unless the convener or chair decides that the creditor is connected with the company;
- (b) in deciding whether a creditor is connected reliance may be placed on the information provided in the company's statement of affairs or otherwise in accordance with these Rules; and

- (c) the total value of the unconnected creditors is the total value of those unconnected creditors whose claims have been admitted for voting.

Appeals against decisions under this Chapter

5.32.—(1) A decision of the convener or chair under this Chapter is subject to appeal to the court by a creditor.

(2) In a proposed CVA, an appeal to the court against a decision under this Chapter may also be made by a member of the company.

(3) If the decision is reversed or varied, or votes are declared invalid, the court may order another decision procedure to be initiated or make such order as it thinks just but, in a CVA, the court may only make an order if it considers that the circumstances which led to the appeal give rise to unfair prejudice or material irregularity.

(4) An appeal under this rule may not be made after the end of the period of 21 days beginning with the decision date.

(5) However, the previous paragraph does not apply in a proposed CVA where an appeal may not be made after the end of the period of 28 days beginning with the day on which the first of the reports required by section 4(6) or paragraph 30(3) of Schedule A1 was lodged with the court.

(6) The person who made the decision is not personally liable for costs incurred by any person in relation to an appeal under this rule unless the court makes an order to that effect.