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STATUTORY INSTRUMENTS

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**2018 No. 1082**

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

**PART 6**

**PROXIES AND CORPORATE REPRESENTATION**

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

**Application and interpretation**

**6.1.**—(1) This Part applies in any case where a proxy is given in relation to a meeting or insolvency proceedings under the Act or these Rules or where a corporation authorises a person to represent it.

(2) References in this Part to “the chair” are to the chair of the meeting for which a specific proxy is given or at which a continuing proxy is exercised.

**Specific and continuing proxies**

**6.2.**—(1) A proxy is a document made by a creditor or member which directs or authorises another person (a “proxy-holder”) to act as the representative of the creditor or member at a meeting, or meetings, by speaking, voting, abstaining or proposing resolutions.

(2) A proxy may be either—

- (a) a specific proxy which relates to a specific meeting; or
- (b) a continuing proxy for the insolvency proceedings.

(3) A specific proxy must—

- (a) direct the proxy-holder how to act at the meeting by giving specific instructions; or
- (b) authorise the proxy-holder to act at the meeting without specific instructions; or
- (c) contain both direction and authorisation.

(4) A proxy is to be treated as a specific proxy for the meeting which is identified in the proxy unless it states that it is a continuing proxy for the insolvency proceedings.

(5) A continuing proxy must authorise the proxy-holder to attend, speak, vote or abstain, or to propose resolutions without giving the proxy-holder any specific instructions.

(6) A continuing proxy may be superseded by a proxy for a specific meeting or withdrawn by a written notice to the office-holder.

(7) A creditor or member may appoint more than one person to be proxy-holder but if so—

- (a) their appointment is as alternates; and
- (b) only one of them may act as proxy-holder at the meeting.

(8) The proxy-holder must be an individual.

**Blank proxy**

**6.3.—**(1) A blank proxy is a document which—

- (a) complies with the requirements in this rule; and
- (b) when completed with the details specified in paragraph (3) will be a proxy as described in rule 6.2.

(2) A blank proxy must state that the creditor or member named in the document (when completed) appoints a person who is named or identified as the proxy-holder of the creditor or member.

(3) The specified details are—

- (a) the name and address of the creditor or member;
- (b) either the name of the proxy-holder or the identification of the proxy-holder (e.g. the chair of the meeting);
- (c) a statement that the proxy is either—
  - (i) for a specific meeting, which is identified in the proxy, or
  - (ii) a continuing proxy for the insolvency proceedings; and
- (d) if the proxy is for a specific meeting, instructions as to the extent to which the proxy holder is directed to vote in a particular way, to abstain or to propose any resolution.

(4) When it is delivered, a blank proxy must not have inserted in it—

- (a) the name or description of any person as proxy-holder or as a nominee for office-holder; or
- (b) instructions as to how a person appointed as proxy-holder is to act.

(5) A blank proxy must have a note to the effect that the proxy may be completed with the name of the person or the chair of the meeting who is to be proxy-holder.

**Use of proxies**

**6.4.—**(1) A proxy for a specific meeting must be delivered to the chair at or before the meeting.

(2) A continuing proxy must be delivered to the office-holder and may be exercised at any meeting which begins after the proxy is delivered.

(3) A proxy may be used at the resumption of the meeting after an adjournment, but if a different proxy is given for use at a resumed meeting, that proxy must be delivered to the chair before the start of the resumed meeting.

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

(5) A proxy-holder may propose a resolution which is one on which the proxy-holder could vote if someone else proposed it.

(6) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, prohibit the proxy-holder from exercising discretion as to how to vote on a resolution which is not dealt with by the proxy.

(7) The chair may require a proxy used at a meeting to be the same as or substantially similar to the blank proxy delivered for that meeting or to a blank proxy previously delivered which has been completed as a continuing proxy.

### **Use of proxies by the chair**

**6.5.—**(1) Where a proxy appoints the chair (however described in the proxy) as proxy-holder the chair may not refuse to be the proxy-holder.

(2) Where the office-holder is appointed as proxy-holder but another person acts as chair of the meeting, that other person may use the proxies as if that person were the proxy-holder.

(3) Where, in a meeting of creditors in an administration, the chair holds a proxy which requires the proxy-holder to vote for a particular resolution and no other person proposes that resolution the chair must propose it unless the chair considers that there is good reason for not doing so.

(4) If the chair does not propose such a resolution, the chair must as soon as reasonably practicable after the meeting deliver a notice of the reason why that was not done to the creditor or member.

### **Right of inspection and delivery of proxies**

**6.6.—**(1) A person attending a meeting is entitled, immediately before or in the course of the meeting, to inspect proxies or any statement of claim or documentary evidence of debt delivered to the chair or to any other person in accordance with the notice convening the meeting.

(2) Where the chair is not the office-holder, the chair must deliver all proxies used for voting at a meeting to the office-holder, as soon as reasonably practicable after the meeting.

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

**6.7.—**(1) A proxy-holder must not vote for a resolution which would—

- (a) directly or indirectly place the proxy-holder or any associate of the proxy-holder in a position to receive any remuneration, fees or expenses from the company's assets; or
- (b) fix or change the amount of or the basis of any remuneration, fees or expenses receivable by the proxy-holder or any associate of the proxy-holder out of the company's assets.

(2) However, a proxy-holder may vote for a resolution described in paragraph (1) if the proxy specifically directs the proxy-holder to vote in that way.

(3) Where an office-holder is appointed as proxy-holder and that proxy is used under rule 6.5(2) by another person acting as chair, the office-holder is deemed to be an associate of the person acting as chair.

### **Resolution conferring authorisation to represent corporation**

[Note: section 434B(1) makes provision for corporate representation in company insolvency proceedings.]

**6.8.—**(1) A person authorised to represent a corporation (other than as proxy-holder) at a meeting of creditors must produce to the chair—

- (a) the resolution conferring the authority; or
- (b) a copy of that resolution certified as a true copy by—
  - (i) two directors,
  - (ii) a director and the secretary, or
  - (iii) a director in the presence of a witness who attests the director's signature.

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(1) Section 434B is inserted by [S.I. 2008/948](#). The section heading is amended, and subsection (1)(a) is substituted, by paragraph 57 of Schedule 9 of the Small Business, Enterprise and Employment Act [2015 \(c.26\)](#).

(2) The resolution conferring the authority must have been signed or subscribed (or in the case of an electronic document, authenticated) by or on behalf of the company in accordance with the Requirements of Writing (Scotland) Act 1995(2).

(3) In this rule “authenticated” has the meaning given in the Requirements of Writing (Scotland) Act 1995.

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(2) [1995 c.7](#). See section 9B(2) and connected provision in regulation 5(4) of the Electronic Documents (Scotland) Regulations 2014 (S.S.I. 2014/83).