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STATUTORY INSTRUMENTS

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**2016 No. 1024**

**The Insolvency (England and Wales) Rules 2016**

**PART 17**

**CREDITORS' AND LIQUIDATION COMMITTEES**

**CHAPTER 3**

**Membership and formalities of formation of a committee**

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

(2) see sections 215, 362, 363, 365, 371 and 374 of the Financial Services and Markets Act 2000 (c.8) for the rights of persons appointed by a scheme manager, the Financial Conduct Authority and the Prudential Regulation Authority to attend committees and make representations.]

**Number of members of a committee**

[Note: section 101(1) provides that a liquidation committee in a creditors' voluntary winding up may not have more than five members.]

**17.3.**—(1) A committee in an administration, administrative receivership or a bankruptcy must have at least three members but not more than five members.

(2) A liquidation committee in a creditors' voluntary winding up appointed pursuant to section 101(1) must have at least three members.

(3) A liquidation committee in a winding up by the court established under section 141(2) must have—

- (a) at least three and not more than five members elected by the creditors; and
- (b) where the grounds on which the company was wound up do not include inability to pay its debts, and where the contributories so decide, up to three contributory members elected by the contributories.

**Eligibility for membership of creditors' or liquidation committee**

**17.4.**—(1) This rule applies to a creditors' committee in an administration, an administrative receivership, and a bankruptcy and to a liquidation committee in a creditors' voluntary winding up and a winding up by the court.

(2) A creditor is eligible to be a member of such a committee if—

- (a) the person has proved for a debt;
- (b) the debt is not fully secured; and

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(1) In section 101 subsection (1) was substituted by paragraph 25(2) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26) and subsection (3) was amended by paragraph 25(3) of that Schedule.  
(2) In section 141 subsections (1) to (3C) were substituted by paragraph 36 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

- (c) neither of the following apply—
  - (i) the proof has been wholly disallowed for voting purposes, or
  - (ii) the proof has been wholly rejected for the purpose of distribution or dividend.
- (3) No person can be a member as both a creditor and a contributory.
- (4) A body corporate may be a member of a creditors' committee, but it cannot act otherwise than by a representative appointed under rule 17.17.

### **Establishment of committees**

**17.5.**—(1) Where the creditors, or where applicable, contributories, decide that a creditors' or liquidation committee should be established, the convener or chair of the decision procedure (if not the office-holder) must—

- (a) as soon as reasonably practicable deliver a notice of the decision to the office-holder (or to the person appointed as office-holder); and
  - (b) where a decision has also been made as to membership of the committee, inform the office-holder of the names and addresses of the persons elected to be members of the committee.
- (2) Before a person may act as a member of the committee that person must agree to do so.
- (3) A person's proxy-holder attending a meeting establishing the committee or, in the case of a corporation, its duly appointed representative, may give such agreement (unless the proxy or instrument conferring authority contains a statement to the contrary).
- (4) Where a decision has been made to establish a committee but not as to its membership, the office-holder must seek a decision from the creditors (about creditor members of the committee) and, where appropriate in a winding up by the court, a decision from contributories (about contributory members of the committee).
- (5) The committee is not established (and accordingly cannot act) until the office-holder has delivered a notice of its membership in accordance with paragraph (9) or (10).
- (6) The notice must contain the following—
- (a) a statement that the committee has been duly constituted;
  - (b) identification details for any company that is a member of the committee;
  - (c) the full name and address of each member that is not a company.
- (7) The notice must be authenticated and dated by the office-holder.
- (8) The notice must be delivered as soon as reasonably practicable after the minimum number of persons required by rule 17.3 have agreed to act as members and been elected.
- (9) Where the notice relates to a liquidation committee or a creditors' committee other than in a bankruptcy the office-holder must, as soon as reasonably practicable, deliver the notice to the registrar of companies.
- (10) Where the notice relates to a creditors' committee in a bankruptcy the office-holder must, as soon as reasonably practicable—
- (a) in bankruptcy proceedings based on a petition file the notice with the court; and
  - (b) in bankruptcy proceedings based on a bankruptcy application deliver the notice to the official receiver.

### **Liquidation committee established by contributories**

**17.6.**—(1) This rule applies where, under section 141, the creditors do not decide that a liquidation committee should be established, or decide that a committee should not be established.

(2) The contributories may decide to appoint one of their number to make application to the court for an order requiring the liquidator to seek a further decision from the creditors on whether to establish a liquidation committee; and—

- (a) the court may, if it thinks that there are special circumstances to justify it, make such an order; and
- (b) the creditors' decision sought by the liquidator in compliance with the order is deemed to have been a decision under section 141.

(3) If the creditors decide under paragraph (2)(b) not to establish a liquidation committee, the contributories may establish a committee.

(4) The committee must then consist of at least three, and not more than five, contributories elected by the contributories; and rule 17.5 applies, substituting for the reference to rule 17.3 in rule 17.5(8) a reference to this paragraph.

#### **Notice of change of membership of a committee**

**17.7.**—(1) The office-holder must deliver or file a notice if there is a change in membership of the committee.

(2) The notice must contain the following—

- (a) the date of the original notice in respect of the constitution of the committee and the date of the last notice of membership given under this rule (if any);
- (b) a statement that this notice of membership replaces the previous notice;
- (c) identification details for any company that is a member of the committee;
- (d) the full name and address of any member that is not a company;
- (e) a statement whether any member has become a member since the issue of the previous notice;
- (f) the identification details for a company or otherwise the full name of any member named in the previous notice who is no longer a member and the date the membership ended.

(3) The notice must be authenticated and dated by the office-holder.

(4) Where the notice relates to a liquidation committee or a creditors' committee other than in a bankruptcy the office-holder must, as soon as reasonably practicable, deliver the notice to the registrar of companies.

(5) Where the notice relates to a creditors' committee in a bankruptcy the office-holder must, as soon as reasonably practicable—

- (a) in bankruptcy proceedings based on a petition file the notice with the court; and
- (b) in bankruptcy proceedings based on a bankruptcy application deliver the notice to the official receiver.

#### **Vacancies: creditor members of creditors' or liquidation committee**

**17.8.**—(1) This rule applies if there is a vacancy among the creditor members of a creditors' or liquidation committee or where the number of creditor members of the committee is fewer than the maximum allowed.

(2) A vacancy need not be filled if—

- (a) the office-holder and a majority of the remaining creditor members agree; and
- (b) the total number of creditor members does not fall below three.

(3) The office-holder may appoint a creditor, who is qualified under rule 17.4 to be a member of the committee, to fill a vacancy or as an additional member of the committee, if—

- (a) a majority of the remaining creditor members of the committee (provided there are at least two) agree to the appointment; and
- (b) the creditor agrees to act.

(4) Alternatively, the office-holder may seek a decision from creditors to appoint a creditor (with that creditor's consent) to fill the vacancy.

(5) Where the vacancy is filled by an appointment made by a decision of creditors which is not convened or chaired by the office-holder, the convener or chair must report the appointment to the office-holder.

### **Vacancies: contributory members of liquidation committee**

**17.9.**—(1) This rule applies if there is a vacancy among the contributory members of a liquidation committee or where the number of contributory members of the committee is fewer than the maximum allowed under rule 17.3(3)(b) or 17.6(4) as the case may be.

(2) A vacancy need not be filled if—

- (a) the liquidator and a majority of the remaining contributory members agree; and
- (b) in the case of a committee of contributories only, the number of members does not fall below three.

(3) The liquidator may appoint a contributory to be a member of the committee, to fill a vacancy or as an additional member of the committee, if—

- (a) a majority of the remaining contributory members of the committee (provided there are at least two) agree to the appointment; and
- (b) the contributory agrees to act.

(4) Alternatively, the office-holder may seek a decision from contributories to appoint a contributory (with that contributory's consent) to fill the vacancy.

(5) Where the vacancy is filled by an appointment made by a decision of contributories which is not convened or chaired by the office-holder, the convener or chair must report the appointment to the office-holder.

### **Resignation**

**17.10.** A member of a committee may resign by informing the office-holder in writing.

### **Termination of membership**

**17.11.** A person's membership of a committee is automatically terminated if that person—

- (a) becomes bankrupt, in which case the person's trustee in bankruptcy replaces the bankrupt as a member of the committee;
- (b) is a person to whom a moratorium period under a debt relief order applies;
- (c) neither attends nor is represented at three consecutive meetings (unless it is resolved at the third of those meetings that this rule is not to apply in that person's case);
- (d) has ceased to be eligible to be a member of the committee under rule 17.4;
- (e) ceases to be a creditor or is found never to have been a creditor;
- (f) ceases to be a contributory or is found never to have been a contributory.

## **Removal**

**17.12.**—(1) A creditor member of a committee may be removed by a decision of the creditors through a decision procedure and in the case of a liquidation committee a contributory member of the committee may be removed by a decision of contributories through a decision procedure.

(2) At least 14 days' notice must be given of a decision procedure under this rule.

## **Cessation of liquidation committee in a winding up when creditors are paid in full**

**17.13.**—(1) Where the creditors have been paid in full together with interest in accordance with section 189, the liquidator must deliver to the registrar of companies a notice to that effect.

(2) On the delivery of the notice the liquidation committee ceases to exist.

(3) The notice must—

- (a) identify the liquidator;
- (b) contain a statement by the liquidator certifying that the creditors of the company have been paid in full with interest in accordance with section 189; and
- (c) be authenticated and dated by the liquidator.