
STATUTORY RULES OF NORTHERN IRELAND

1991 No. 364

The Insolvency Rules (Northern Ireland) 1991

PARTS 1 TO 4 COMPANY INSOLVENCY; COMPANIES WINDING UP

PART 2

ADMINISTRATION PROCEDURE

CHAPTER 4

THE CREDITORS' COMMITTEE

Constitution of committee

2.35.—(1) Where it is resolved by a creditors' meeting to establish a creditors' committee for the purposes of the administration, the committee shall consist of at least three and not more than five creditors of the company elected at the meeting.

(2) Any creditor of the company is eligible to be a member of the committee, so long as his claim has not been rejected for the purpose of his entitlement to vote.

(3) A body corporate may be a member of the committee, but it cannot act as such otherwise than by a representative appointed under Rule 2.40.

[E.R.2.32]

Formalities of establishment

2.36.—(1) The creditors' committee does not come into being, and accordingly cannot act, until the administrator has issued a certificate of its due constitution.

(2) No person may act as a member of the committee unless and until he has agreed to do so and, unless the relevant proxy or authorisation contains a statement to the contrary, such agreement may be given by his proxy-holder or representative under Article 383 of the Companies Order present at the meeting establishing the committee.

(3) The administrator's certificate of the committee's due constitution shall not issue unless and until at least three of the persons who are to be members of the committee have agreed to act.

(4) As and when the others (if any) agree to act, the administrator shall issue an amended certificate.

(5) The certificate, and any amended certificate, shall be filed in court by the administrator.

(6) If after the first establishment of the committee there is any change in its membership, the administrator shall report the change to the court.

[E.R.2.33]

Functions and meetings of the committee

2.37.—(1) The creditors' committee shall assist the administrator in discharging his functions, and act in relation to him in such manner as may be agreed from time to time.

(2) Subject to paragraph (3) meetings of the committee shall be held when and where determined by the administrator.

(3) The administrator shall call a first meeting of the committee not later than 3 months after its first establishment; and thereafter he shall call a meeting—

- (a) if so requested by a member of the committee or his representative (the meeting then to be held within 21 days of the request being received by the administrator), and
- (b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

(4) The administrator shall give 7 days' written notice of the venue of any meeting to every member of the committee (or his representative designated for that purpose), unless in any case the requirement of notice has been waived by or on behalf of any member.

(5) For the purpose of paragraph (4), waiver may be signified either at or before the meeting.

[E.R.2.34]

The chairman at meetings

2.38.—(1) Subject to Rule 2.47(3), the chairman at any meeting of the creditors' committee shall be the administrator or a person nominated by him in writing to act.

(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 administrator or his firm who is experienced in insolvency matters.

[E.R.2.35]

Quorum

2.39. A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least two members are present or represented.

[E.R.2.36]

Committee-members' representatives

2.40.—(1) A member of the committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.

(2) A person acting as a committee-member's representative must hold a letter of authority entitling him so to act (either generally or specially) and signed by or on behalf of the committee-member, and for this purpose any proxy or any authorisation under Article 383 of the Companies Order in relation to any meeting of creditors of the company shall, unless it contains a statement to the contrary, be treated as a letter of authority to act generally signed by or on behalf of the committee-member.

(3) The chairman at any meeting of the committee may call on a person claiming to act as a committee-member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

(4) No member may be represented by a body corporate, or by a person who is an undischarged bankrupt, or is subject to a composition or arrangement with his creditors.

(5) No person shall—

- (a) on the same committee, act at one and the same time as representative of more than one committee-member, or
- (b) act both as a member of the committee and as representative of another member.

(6) Where a member's representative signs any document on the member's behalf, the fact that he so signs must be stated below his signature.

[E.R.2.37]

Resignation

2.41. A member of the committee may resign by notice in writing delivered to the administrator.

[E.R.2.38]

Termination of membership

2.42.—(1) Membership of the creditors' committee is automatically terminated if the member—

- (a) becomes bankrupt, or compounds or arranges with his creditors, or
- (b) at 3 consecutive meetings of the committee is neither present nor represented (unless at the third of those meetings it is resolved that this Rule is not to apply in his case), or
- (c) ceases to be, or is found never to have been, a creditor.

(2) However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.

[E.R.2.39]

Removal

2.43. A member of the committee may be removed by resolution at a meeting of creditors, at least 14 days' notice having been given of the intention to move that resolution.

[E.R.2.40]

Vacancies

2.44.—(1) Paragraphs (2) and (3) apply if there is a vacancy in the membership of the creditors' committee.

(2) The vacancy need not be filled if the administrator and a majority of the remaining members of the committee so agree and if the total number of members does not fall below the minimum required under Rule 2.35.

(3) The administrator may appoint any creditor (being qualified under the Rules to be a member of the committee) to fill the vacancy, if a majority of the other members of the committee agree to the appointment, and the creditor concerned consents to act.

[E.R.2.41]

Procedure at meetings

2.45.—(1) At any meeting of the creditors' committee, each member of it (whether present himself, or by his representative) has one vote; and a resolution is passed when a majority of the members present or represented have voted in favour of it.

(2) Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting.

(3) A record of each resolution shall be signed by the chairman and placed in the company's minute book.

[E.R.2.42]

Resolutions by post

2.46.—(1) In accordance with this Rule, the administrator may seek to obtain the agreement of members of the creditors' committee to a resolution by sending to every member (or his representative designated for the purpose) a copy of the proposed resolution.

(2) Where the administrator makes use of the procedure allowed by this Rule, he shall send out to members of the committee or their representatives (as the case may be) a copy of any proposed resolution on which a decision is sought, which shall be set out in such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent.

(3) Any member of the committee may, within 7 business days from the date of the administrator sending out a resolution, require him to summon a meeting of the committee to consider the matters raised by the resolution.

(4) In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the administrator is notified in writing by a majority of the members that they concur with it.

(5) A copy of every resolution passed under this Rule, and a note that the committee's concurrence was obtained, shall be placed in the company's minute book.

[E.R.2.43]

Information from administrator

2.47.—(1) Where the committee resolves to require the attendance of the administrator under Article 38(2), the notice to him shall be in writing signed by the majority of the members of the committee for the time being. A member's representative may sign for him.

(2) The meeting at which the administrator's attendance is required shall be fixed by the committee for a business day, and shall be held at such time and place as he determines.

(3) Where the administrator so attends, the members of the committee may elect any one of their number to be chairman of the meeting, in place of the administrator or a nominee of his.

[E.R.2.44]

Expenses of members

2.48.—(1) Subject to paragraph (2), the administrator shall out of the assets of the company defray any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in relation to their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the administration.

(2) Paragraph (1) does not apply to any meeting of the committee held within 3 months of a previous meeting, unless the meeting in question is summoned at the instance of the administrator.

[E.R.2.45]

Members' dealings with the company

2.49.—(1) Subject to paragraph (2), membership of the committee does not prevent a person from dealing with the company while the administration order is in force.

(2) Transactions in the course of the dealings mentioned in paragraph (1) shall be in good faith and for value.

(3) The court may, on the application of any person interested, set aside any transaction which appears to it to be contrary to the requirements of this Rule, and may give such consequential directions as it thinks fit for compensating the company for any loss which it may have incurred in consequence of the transaction.

[E.R.2.46]

Formal defects

2.50. The acts of the creditors' committee established for any administration are valid notwithstanding any defect in the appointment, election or qualifications of any member of the committee or any committee-member's representative or in the formalities of its establishment.

[E.R.2.46A]