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PARTS 5 AND 6 INSOLVENCY OF INDIVIDUALS; BANKRUPTCY

PART 6

BANKRUPTCY

CHAPTER 11

THE CREDITORS' COMMITTEE

Membership of creditors' committee

6.147.—(1) The creditors' committee shall consist of at least three, and not more than five, members.

(2) All the members of the committee must be creditors of the bankrupt; and any creditor (other than one who is fully secured) may be a member, so long as—

- (a) he has lodged a proof of his debt, and
- (b) his proof has neither been wholly disallowed for voting purposes, nor wholly rejected for the purposes of distribution or dividend.

(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 6.153.

[E.R.6.150]

Formalities of establishment

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

(2) If the chairman of the creditors' meeting which resolves to establish the committee is not the trustee, he shall forthwith give notice of the resolution to the trustee (or, as the case may be, the person appointed as trustee by that same meeting), and inform him of the names and addresses of the persons elected to be members of the committee.

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

(4) The trustee's certificate of the committee's due constitution shall not issue before at least three persons elected to be members of the committee have agreed to act.

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

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

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

[E.R.6.151]

Obligations of trustee to committee

6.149.—(1) Subject to paragraphs (2) and (4), it is the duty of the trustee to report to the members of the creditors' committee all such matters as appear to him to be, or as they have indicated to him as being, of concern to them with respect to the bankruptcy.

(2) In the case of matters so indicated to him by the committee, the trustee need not comply with any request for information where it appears to him that—

- (a) the request is frivolous or unreasonable, or
- (b) the cost of complying would be excessive, having regard to the relative importance of the information, or
- (c) the estate is without funds sufficient for enabling him to comply.

(3) Where the committee has come into being more than 28 days after the appointment of the trustee, the latter shall report to them, in summary form, what actions he has taken since his appointment, and shall answer such questions as they may put to him regarding his conduct of the bankruptcy hitherto.

(4) A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report to him by the trustee, otherwise than in summary form, of any matters previously arising.

(5) Nothing in this Rule disentitles the committee, or any member of it, from having access to the trustee's records of the bankruptcy, or from seeking an explanation of any matter within the committee's responsibility.

[E.R.6.152]

Meetings of the committee

6.150.—(1) Subject to paragraph (2), meetings of the creditors' committee shall be held when and where determined by the trustee.

(2) The trustee shall call a first meeting of the committee to take place within 3 months of his appointment or of the committee's establishment (whichever is the later); 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 trustee), and
- (b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

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

(4) For the purpose of paragraph (3), waiver may be signified either at or before the meeting.

[E.R.6.153]

The chairman at meetings

6.151.—(1) The chairman at any meeting of the creditors' committee shall be the trustee, or a person appointed 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 bankrupt, or

(b) an employee of the trustee or his firm who is experienced in insolvency matters.

[E.R.6.154]

Quorum

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

[E.R.6.155]

Committee-members' representatives

6.153.—(1) A member of the creditors' 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 in relation to any meeting of creditors of the bankrupt shall, unless it contains a statement to the contrary, be treated as such 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 the representative of a committee-member signs any document on the latter's behalf, the fact that he so signs must be stated below his signature.

(7) The acts of the committee are valid notwithstanding any defect in the appointment or qualifications of any committee-member's representative.

[E.R.6.156]

Resignation

6.154. A member of the creditors' committee may resign by notice in writing delivered to the trustee.

[E.R.6.157]

Termination of membership

6.155.—(1) A person's membership of the creditors' committee is automatically terminated if—

(a) he becomes bankrupt or compounds or arranges with his creditors, or

(b) at 3 consecutive meetings of the committee he 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) he 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.6.158]

Removal

6.156. A member of the creditors' 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.6.159]

Vacancies

6.157.—(1) This Rule applies if there is a vacancy in the membership of the creditors' committee.

(2) The vacancy need not be filled if the trustee and a majority of the remaining committee-members so agree and if the number of members does not fall below the minimum required by Rule 6.147(1).

(3) The trustee 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.

(4) Alternatively, a meeting of creditors may resolve that a creditor be appointed (with his consent) to fill the vacancy. In this case at least 14 days' notice must have been given of a resolution to make such an appointment (whether or not of a person named in the notice).

(5) Where the vacancy is filled by an appointment made by a creditors' meeting at which the trustee is not present, the chairman of the meeting shall report to the trustee the appointment which has been made.

[E.R.6.160]

Voting rights and resolutions

6.158.—(1) At any meeting of the committee, each member (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. The record shall be signed by the chairman and kept with the records of the bankruptcy.

[E.R.6.161]

Resolutions by post

6.159.—(1) In accordance with this Rule, the trustee 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 trustee 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 trustee sending out a resolution, require the trustee 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 carried in the committee if and when the trustee 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 concurrence of the committee was obtained, shall be kept with the records of the bankruptcy.

[E.R.6.162]

Trustee's reports

6.160.—(1) The trustee shall, as and when directed by the creditors' committee (but not more often than once in any period of 2 months), send a written report to every member of the committee setting out the position generally as regards the progress of the bankruptcy and matters arising in connection with it, to which he (the trustee) considers the committee's attention should be drawn.

(2) In the absence of any such directions by the committee, the trustee shall send such a report not less often than once in every period of 6 months.

(3) The obligations of the trustee under this Rule are without prejudice to those imposed by Rule 6.149.

[E.R.6.163]

Expenses of members, etc.

6.161. The trustee shall defray out of the estate, in the prescribed order of priority, any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in respect of their attendance at the committee's meetings, or otherwise on the committee's business.

[E.R.6.164]

Dealings by committee-members and others

6.162.—(1) This Rule applies to—

- (a) any member of the creditors' committee,
- (b) any committee-member's representative,
- (c) any person who is an associate, or who has been an associate at any time in the last 12 months, of a member of the committee or of a committee-member's representative, and
- (d) any person who has been a member of the committee or a committee-member's representative at any time in the last 12 months or who is, or has been at any time in the last 12 months, an associate of such a person.

(2) Subject to paragraphs (3) and (4), a person to whom this Rule applies shall not enter into any transaction whereby he—

- (a) receives out of the estate any payment for services given or goods supplied in connection with the estate's administration, or
- (b) obtains any profit from the administration, or
- (c) acquires any asset forming part of the estate.

(3) Such a transaction may be entered into by a person to whom this Rule applies—

- (a) with the prior leave of the court, or
- (b) if he does so as a matter of urgency, or by way of performance of a contract in force before the commencement of the bankruptcy, and obtains the court's leave for the transaction, having applied for it without undue delay, or

- (c) with the prior sanction of the creditors' committee, where it is satisfied (after full disclosure of the circumstances) that the person will be giving full value in the transaction.
- (4) Where in the committee a resolution is proposed that sanction be accorded for a transaction to be entered into which, without that sanction or the leave of the court, would be in contravention of this Rule, no member of the committee, and no representative of a member, shall vote if he is to participate directly or indirectly in the transaction.
- (5) The court may, on the application of any person interested—
 - (a) set aside a transaction on the ground that it has been entered into in contravention of this Rule, and
 - (b) make with respect to it such other order as it thinks fit, including (subject to paragraph (6)) an order requiring a person to whom this Rule applies to account for any profit obtained from the transaction and compensate the estate for any resultant loss.
- (6) In the case of a person to whom this Rule applies as an associate of a member of the committee or of a committee-member's representative, the court shall not make any order under paragraph (5), if satisfied that he entered into the relevant transaction without having any reason to suppose that in doing so he would contravene this Rule.
- (7) The costs of an application to the court for leave under this Rule do not fall on the estate, unless the court so orders.

[E.R.6.165]

Committee's functions vested in Department

6.163.—(1) At any time when the functions of the creditors' committee are vested in the Department under Article 275(1) or (2), requirements of the Order or the Rules about notices to be given, or reports to be made, to the committee by the trustee do not apply, otherwise than as enabling the committee to require a report as to any matter.

(2) Where the committee's functions are so vested under Article 275(2), they may be exercised by the official receiver.

[E.R.6.166]