
STATUTORY INSTRUMENTS

1986 No. 1925

The Insolvency Rules 1986

THE SECOND GROUP OF PARTS

PART 5

INDIVIDUAL VOLUNTARY ARRANGEMENTS

SECTION B: ACTION ON THE PROPOSAL; CREDITORS' MEETING

Consideration of nominee's report

5.12.—(1) At the hearing by the court to consider the nominee's report, any of the persons who have been given notice under Rule 5.5(4) may appear or be represented.

(2) Rule 5.7 applies to any order made by the court at the hearing.

Summoning of creditors' meeting

5.13.—(1) If in his report the nominee states that in his opinion a meeting of creditors should be summoned to consider the debtor's proposal, the date on which the meeting is to be held shall be not less than 14, nor more than 28, days from that on which the nominee's report is filed in court under Rule 5.10.

(2) Notices calling the meeting shall be sent by the nominee, at least 14 days before the day fixed for it to be held, to all the creditors specified in the debtor's statement of affairs, and any other creditors of whom the nominee is otherwise aware.

(3) Each notice sent under this Rule shall specify the court to which the nominee's report on the debtor's proposal has been delivered and shall state the effect of Rule 5.18(1), (3) and (4) (requisite majorities); and with it there shall be sent—

- (a) a copy of the proposal,
- (b) a copy of the statement of affairs or, if the nominee thinks fit, a summary of it (the summary to include a list of the creditors and the amounts of their debts), and
- (c) the nominee's comments on the proposal.

Creditors' meeting, supplementary

5.14.—(1) Subject as follows, in fixing the venue for the creditors' meeting, the nominee shall have regard to the convenience of creditors.

(2) The meeting shall be summoned for commencement between 10.00 and 16.00 hours on a business day.

(3) With every notice summoning the meeting there shall be sent out forms of proxy.

The chairman at the meeting

5.15.—(1) Subject as follows, the nominee shall be chairman of the creditors' meeting.

(2) If for any reason the nominee is unable to attend, he may nominate another person to act as chairman in his place; but a person so nominated must be either—

- (a) a person qualified to act as an insolvency practitioner in relation to the debtor, or
- (b) an employee of the nominee or his firm who is experienced in insolvency matters.

The chairman as proxy-holder

5.16. The chairman shall not by virtue of any proxy held by him vote to increase or reduce the amount of the remuneration or expenses of the nominee or the supervisor of the proposed arrangement, unless the proxy specifically directs him to vote in that way.

Voting rights

5.17.—(1) Subject as follows, every creditor who was given notice of the creditors' meeting is entitled to vote at the meeting or any adjournment of it.

(2) In Case 1, votes are calculated according to the amount of the creditor's debt as at the date of the bankruptcy order, and in Case 2 according to the amount of the debt as at the date of the meeting.

(3) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the chairman agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote.

(4) The chairman has power to admit or reject a creditor's claim for the purpose of his entitlement to vote, and the power is exercisable with respect to the whole or any part of the claim.

(5) The chairman's decision on entitlement to vote is subject to appeal to the court by any creditor, or by the debtor.

(6) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained.

(7) If on an appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the court may order another meeting to be summoned, or make such other order as it thinks just.

The court's power to make an order under this paragraph is exercisable only if it considers that the matter is such as to give rise to unfair prejudice or a material irregularity.

(8) An application to the court by way of appeal under this Rule against the chairman's decision shall not be made after the end of the period of 28 days beginning with the day on which the chairman's report to the court is made under section 259.

(9) The chairman is not personally liable for any costs incurred by any person in respect of an appeal under this Rule.

Requisite majorities

5.18.—(1) Subject as follows, at the creditors' meeting for any resolution to pass approving any proposal or modification there must be a majority in excess of three-quarters in value of the creditors present in person or by proxy and voting on the resolution.

(2) The same applies in respect of any other resolution proposed at the meeting, but substituting one-half for three-quarters.

(3) In the following cases there is to be left out of account a creditor's vote in respect of any claim or part of a claim—

- (a) where written notice of the claim was not given, either at the meeting or before it, to the chairman or the nominee;
- (b) where the claim or part is secured;
- (c) where the claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing—
 - (i) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the debtor, and against whom a bankruptcy order has not been made (or, in the case of a company, which has not gone into liquidation), as a security in his hands, and
 - (ii) to estimate the value of the security and (for the purpose of entitlement to vote, but not of any distribution under the arrangement) to deduct it from his claim.

(4) Any resolution is invalid if those voting against it include more than half in value of the creditors, counting in these latter only those—

- (a) to whom notice of the meeting was sent;
- (b) whose votes are not to be left out of account under paragraph (3); and
- (c) who are not, to the best of the chairman's belief, associates of the debtor.

(5) It is for the chairman of the meeting to decide whether under this Rule—

- (a) a vote is to be left out of account in accordance with paragraph (3); or
- (b) a person is an associate of the debtor for the purposes of paragraph (4)(c);

and in relation to the second of these two cases the chairman is entitled to rely on the information provided by the debtor's statement of affairs or otherwise in accordance with this Part of the Rules.

(6) If the chairman uses a proxy contrary to Rule 5.16, his vote with that proxy does not count towards any majority under this Rule.

(7) Paragraphs (5) to (9) of Rule 5.17 apply as regards an appeal against the decision of the chairman under this Rule.

Proceedings to obtain agreement on the proposal

5.19.—(1) On the day on which the creditors' meeting is held, it may from time to time be adjourned.

(2) If on that day the requisite majority for the approval of the voluntary arrangement (with or without modifications) has not been obtained, the chairman may, and shall if it is so resolved, adjourn the meeting for not more than 14 days.

(3) If there are subsequently further adjournments, the final adjournment shall not be to a day later than 14 days after that on which the meeting was originally held.

(4) If the meeting is adjourned under paragraph (2), notice of the fact shall be given by the chairman forthwith to the court.

(5) If following any final adjournment of the meeting the proposal (with or without modifications) is not agreed to, it is deemed rejected.