
STATUTORY INSTRUMENTS

2003 No. 2109

The Insolvency (Scotland) Regulations 2003

**[^{F1}[^{F2}PART II
COMPANIES**

[^{F1}[^{F2}Amendments to the principal Rules in relation to Companies Winding up

27.—(1) In Rule 4.15 (submission of claims)—

(a) for paragraph (5) substitute—

“(5) Votes are calculated according to the amount of—

- (a) a creditor’s debt as at the date of the commencement of the winding up within the meaning of section 129, deducting any amount paid in respect of that debt after that date; or
- (b) in relation to a member State liquidator, the debt claimed to be due to creditors in proceedings in relation to which he holds office.”; and

(b) after paragraph (5) insert—

“(5A) No vote shall be cast by virtue of a debt more than once on any resolution put to the meeting.

(5B) Where a creditor—

- (a) is entitled to vote under this Rule (as read with Rule 7.9);
- (b) has lodged his claim in one or more sets of other proceedings; and
- (c) votes (either in person or by proxy) on a resolution put to the meeting,

only the creditor’s vote shall be counted.

(5C) Where—

- (a) a creditor has lodged his claim in more than one set of other proceedings; and
- (b) more than one member State liquidator seeks to vote by virtue of that claim,

the entitlement to vote by virtue of that claim is exercisable by the member State liquidator in main proceedings, whether or not the creditor has lodged his claim in the main proceedings.

(5D) For the purposes of paragraphs (5B) and (5C), “other proceedings” means main proceedings, secondary proceedings or territorial proceedings in another member State.”.

(2) In Rule 4.68 (application of the Bankruptcy Act)—

- (a) in paragraph (2), delete “and” at the end of sub-paragraph (b); and
- (b) at the end of paragraph (2)(c) insert—
 - (d) for subsection (11) substitute—

(“ Subject to any notification by the person entitled to a dividend given to the liquidator that he wishes the dividend to be paid to another person, or that he has assigned his entitlement to another person, where both a creditor and a member State liquidator have had a claim accepted in relation to the same debt, payment shall only be made to the creditor.”)

(3) After Rule 4.82 (leave to act as director – third excepted case) insert–

“CHAPTER 14

EC REGULATION - MEMBER STATE LIQUIDATOR

Interpretation of creditor and notice to member State liquidator

4.83.—(1) This Rule applies where a member State liquidator has been appointed in relation to the company.

(2) For the purposes of the provisions referred to in paragraph (3) the member State liquidator is deemed to be a creditor.

(3) The provisions referred to in paragraph (2) are–

(a) Rules 4.10(1) (report to creditors and contributories), 4.10(3) (summary of statement of affairs), 4.13 (other meetings of creditors), 4.15 (submission of claims), 4.17 (claims in foreign currency), 4.18(4) (appointment of liquidator by court), 4.23(2) and (4) (summoning of meeting for removal of liquidator), 4.31 (final meeting), 4.35 (creditors' claim that remuneration is excessive), 4.41(1), (2) and (3) (membership of liquidation committee), 4.52(3) (vacancy (creditor members)), 4.62(1) (membership of committee), 4.74 (notice of order for public examination), 7.3 (notice of meeting) (insofar as it applies to a notice of meeting of creditors under section 138(3) or (4) for the purposes of rule 4.12 and to a meeting requisitioned under rule 7.6 insofar as it applies in a winding up by the court), 7.6(2) (meetings requisitioned) (insofar as it applies in a winding up by the court) and 7.9 (entitlement to vote (creditors)) (insofar as it applies in a winding up by the court); and

(b) sections 48(5), (6) and (8) and 49 of the Bankruptcy Act as applied by Rule 4.16 and section 52(3) of that Act as applied by rule 4.68(1).

(4) Paragraphs (2) and (3) are without prejudice to the generality of the right to participate referred to in paragraph 3 of Article 32 of the EC Regulation (exercise of creditors' rights).

(5) Where the liquidator is obliged to give notice to, or provide a copy of a document (including an order of court) to, the court or the registrar of companies, the liquidator shall give notice or provide copies, as the case may be, to the member State liquidator.

(6) Paragraph (5) is without prejudice to the generality of the obligations imposed by Article 31 of the EC Regulation (duty to co operate and communicate information).

CHAPTER 15

EC REGULATION - CREDITORS' VOLUNTARY
WINDING UP - CONFIRMATION BY THE COURT

Application for confirmation

4.84.—(1) Where a company has passed a resolution for voluntary winding up, and no declaration under section 89 has been made, the liquidator may apply to the court for an order confirming the creditors' voluntary winding up for the purposes of the EC Regulation.

(2) The application shall be in writing in the form required by Rule 7.30 and Schedule 5 and verified by affidavit by the liquidator (using the same form) and shall state—

- (a) the name of the applicant;
- (b) the name of the company and its registered number;
- (c) the date on which the resolution for voluntary winding up was passed;
- (d) that the application is accompanied by all of the documents required under paragraph (3) which are true copies of the documents required; and
- (e) that the EC Regulation will apply to the company and whether the proceedings will be main proceedings, territorial proceedings or secondary proceedings.

(3) The liquidator shall lodge in court two copies of the application, together with one copy of the following:—

- (a) the resolution for voluntary winding up referred to by section 84(3);
- (b) evidence of his appointment as liquidator of the company; and
- (c) the statement of affairs required under section 99.

(4) It shall not be necessary to serve the application on, or give notice of it to, any person.

(5) On an application under this Rule the court may confirm the creditors' voluntary winding up.

(6) If the court confirms the creditor's voluntary winding up it may do so without a hearing.

(7) This Rule applies in relation to a UK insurer (within the meaning of the Insurers (Reorganisation and Winding Up) Regulations 2003 ^{M1}) with the modification specified in paragraph (8) below.

(8) For the purposes of paragraph (7), this Rule has effect as if there were substituted for paragraph (1) above—

“(1) Where a UK Insurer (within the meaning of the Insurers (Reorganisation and Winding Up) Regulations 2003) has passed a resolution for voluntary winding up, and no declaration under section 89 has been made, the liquidator may apply to court for an order confirming the creditors' voluntary winding up for the purposes of Articles 9 and 27 of Directive 2001/17/EC of the European Parliament and of the Council of 19th March 2001 on the reorganisation and winding up of insurance undertakings ^{M2}.”.

Notice to member State liquidator and creditors in member States

4.85. Where the court has confirmed the creditors' voluntary winding up, the liquidator shall forthwith give notice—

- (a) if there is a member State liquidator in relation to the company, to the member State liquidator;
- (b) in accordance with Article 40 of the EC Regulation (duty to inform creditors).”.]

- F1** Pt. II revoked in part (S.) (6.4.2019) by [The Insolvency \(Scotland\) \(Company Voluntary Arrangements and Administration\) Rules 2018 \(S.I. 2018/1082\)](#), rule 1, [Sch. 1 Table](#)
- F2** Pt. II revoked in part (S.) (6.4.2019) by [The Insolvency \(Scotland\) \(Receivership and Winding up\) Rules 2018 \(S.S.I. 2018/347\)](#), rule 1, [sch. 1 para. 1](#)

Marginal Citations

- M1** [S.I. 2003/1102](#).
- M2** O.J. No. L 110, 20.4.2001, p.28.

Changes to legislation:

There are currently no known outstanding effects for the The Insolvency (Scotland) Regulations 2003, Section 27.