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STATUTORY INSTRUMENTS

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**2016 No. 1024**

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

**PART 15**

**DECISION MAKING**

**CHAPTER 3**

Notices, voting and venues for decisions

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

**Notices to creditors of decision procedure**

**15.8.**—(1) This rule sets out the requirements for notices to creditors where a decision is sought by a decision procedure.

(2) The convener must deliver a notice to every creditor who is entitled to notice of the procedure.

(3) The notice must contain the following—

- (a) identification details for the proceedings;
- (b) details of the decision to be made or of any resolution on which a decision is sought;
- (c) a description of the decision procedure which the convener is using, and arrangements, including the venue, for the decision procedure;
- (d) a statement of the decision date;
- (e) except in the case of a decision in relation to a proposed CVA or IVA, a statement of by when the creditor must have delivered a proof in respect of the creditor's claim in accordance with these Rules failing which a vote by the creditor will be disregarded;
- (f) a statement that a creditor whose debt is treated as a small debt in accordance with rule 14.31(1) must still deliver a proof if that creditor wishes to vote;
- (g) a statement that a creditor who has opted out from receiving notices may nevertheless vote if the creditor provides a proof in accordance with paragraph (e);
- (h) in the case of a decision to remove a liquidator in a creditors' voluntary winding-up or a winding up by the court, a statement drawing the attention of creditors to section 173(2) or 174(4) (which relate to the release of the liquidator), as appropriate<sup>(1)</sup>;
- (i) in the case of a decision to remove a trustee in a bankruptcy, a statement drawing the attention of creditors to section 299(3)<sup>(2)</sup> (which relates to the release of the trustee);

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(1) Section 173(2)(d) is amended, (2)(a), (b) and (e) are substituted and (2A) is inserted by paragraph 44 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26) and section 174(4) is amended by paragraph 45 of Schedule 9 to the same Act.

(2) Section 299(3) is amended by paragraph 24(3) of Schedule 19 to the Enterprise and Regulatory reform Act 2013 (c.24) and paragraph 78(3) to (5) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015.

- (j) in the case of a decision in relation to a proposed CVA or IVA, a statement of the effects of the relevant provisions of the following—
    - (i) rule 15.28 about creditors’ voting rights,
    - (ii) rule 15.31 about the calculation of creditors’ voting rights, and
    - (iii) rule 15.34 about the requisite majority of creditors for making decisions;
  - (k) except in the case of a physical meeting, a statement that creditors who meet the thresholds in sections 246ZE(7) or 379ZA(7) may, within five business days from the date of delivery of the notice, require a physical meeting to be held to consider the matter;
  - (l) in the case of a meeting, a statement that any proxy must be delivered to the convener or chair before it may be used at the meeting;
  - (m) in the case of a meeting, a statement that, where applicable, a complaint may be made in accordance with rule 15.38 and the period within which such a complaint may be made; and
  - (n) a statement that a creditor may appeal a decision in accordance with rule 15.35, and the relevant period under rule 15.35 within which such an appeal may be made.
- (4) The notice must be authenticated and dated by the convener.
- (5) Where the decision procedure is a meeting the notice must be accompanied by a blank proxy complying with rule 16.3.
- (6) This rule does not apply if the court orders under rule 15.12 that notice of a decision procedure be given by advertisement only.

### **Voting in a decision procedure**

- 15.9.**—(1) In order to be counted in a decision procedure other than where votes are cast at a meeting, votes must—
- (a) be received by the convener on or before the decision date; and
  - (b) in the case of a vote cast by a creditor, be accompanied by a proof in respect of the creditor’s claim unless it has already been given to the convener.
- (2) In an administration, an administrative receivership, a creditors’ voluntary winding up, a winding up by the court or a bankruptcy a vote must be disregarded if—
- (a) a proof in respect of the claim is not received by the convener on or before the decision date or, in the case of a meeting, 4pm on the business day before the decision date unless under rule 15.26 or 15.28(1)(b)(ii) (as applicable) the chair is content to accept the proof later; or
  - (b) the convener decides, in the application of Chapter 8 of this Part, that the creditor is not entitled to cast the vote.
- (3) For the decision to be made, the convener must receive at least one valid vote on or before the decision date.

### **Venue for decision procedure**

**15.10.** The convener must have regard to the convenience of those invited to participate when fixing the venue for a decision procedure (including the resumption of an adjourned meeting).

### **Notice of decision procedures or of seeking deemed consent: when and to whom delivered**

[Note: when an office-holder is obliged to give notice to “the creditors”, this is subject to rule 1.37, which limits the obligation to giving notice to those creditors of whose address the office-holder is aware.]

**15.11.—(1)** Notices of decision procedures, and notices seeking deemed consent, must be delivered in accordance with the following table.

<i>Proceedings</i>	<i>Decisions</i>	<i>Persons to whom notice must be delivered</i>	<i>Minimum notice required</i>
administration	decisions of creditors	the creditors who had claims against the company at the date when the company entered administration (except for those who have subsequently been paid in full)	14 days
administrative receivership	decisions of creditors	the creditors	14 days
creditors' voluntary winding up	decisions of creditors for appointment of liquidator (including any decision made at the same time on the liquidator's remuneration or the establishment of a liquidation committee)	the creditors	14 days on conversion from members' voluntary liquidation, 7 days on conversion from member's voluntary liquidation where deemed consent has been objected to and in other cases, 3 business days
creditors' voluntary winding up or a winding up by the court	decisions of creditors to consider whether a replacement should be appointed after a liquidator's resignation	the creditors	28 days
winding up by the court	decisions of creditors to consider whether to remove or replace the liquidator (other than after a liquidator's resignation)	the creditors and the official receiver	14 days
creditors' voluntary winding up or a winding up by the court	other decisions of creditors	the creditors	14 days
winding up by the court	decisions of contributories	every person appearing (by the company's records or otherwise) to be a contributory	14 days
proposed CVA	decisions of creditors	the creditors	7 days for a decision on proposed

<i>Proceedings</i>	<i>Decisions</i>	<i>Persons to whom notice must be delivered</i>	<i>Minimum notice required</i>
			modifications to the proposal from the company's directors under paragraph 31(7) of Schedule A1(3); 7 days for consideration of proposal where physical meeting requisitioned; in other cases, 14 days
proposed IVA	decisions of creditors	the creditors	14 days
bankruptcy	decisions of creditors to consider whether a replacement should be appointed after the resignation of a trustee	the creditors and the official receiver	28 days
bankruptcy	decisions of creditors to consider removing the trustee	the creditors and the official receiver	14 days
bankruptcy	decisions of creditors on appointment of new trustee following removal of previous trustee (including any decision made at the same time on the establishment of a creditors' committee)	the creditors	7 days
bankruptcy	other decisions of creditors	the creditors	14 days

(2) This rule does not apply where the court orders under rule 15.12 that notice of a decision procedure be given by advertisement only.

#### **Notice of decision procedure by advertisement only**

**15.12.**—(1) The court may order that notice of a decision procedure is to be given by advertisement only and not by individual notice to the persons concerned.

(2) In considering whether to make such an order, the court must have regard to the relative cost of advertisement as against the giving of individual notices, the amount of assets available and the extent of the interest of creditors, members and contributories or any particular class of them.

(3) Paragraph 31(7) is amended by paragraph 9(18) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015 (c.26).

(3) The advertisement must meet the requirements for a notice under rule 15.8(3), and must also state—

- (a) that the court ordered that notice of the decision procedure be given by advertisement only; and
- (b) the date of the court's order.

#### **Gazetting and advertisement of meeting**

**15.13.**—(1) In an administration, a creditors' voluntary winding up, a winding up by the court, or a bankruptcy, where a decision is being sought by a meeting the convener must gazette a notice of the procedure stating—

- (a) that a meeting of creditors or contributories is to take place;
- (b) the venue for the meeting;
- (c) the purpose of the meeting; and
- (d) the time and date by which, and place at which, those attending must deliver proxies and proofs (if not already delivered) in order to be entitled to vote.

(2) The notice must also state—

- (a) who is the convener in respect of the decision procedure; and
- (b) if the procedure results from a request of one or more creditors, the fact that it was so summoned and the section of the Act under which it was summoned.

(3) The notice must be gazetted before or as soon as reasonably practicable after notice of the meeting is delivered in accordance with these Rules.

(4) Information to be gazetted under this rule may also be advertised in such other manner as the convener thinks fit.

(5) The convener may gazette other decision procedures or the deemed consent procedure in which case the equivalent information to that required by this rule must be stated in the notice.

#### **Notice to company officers, bankrupts etc. in respect of meetings**

**15.14.**—(1) In a proposal for a CVA, an administration, a creditors' voluntary winding up or a winding up by the court notice to participate in a creditors' meeting must be delivered to every present or former officer of the company whose presence the convener thinks is required and that person is required to attend the meeting.

(2) In a bankruptcy, notice of a meeting must be delivered to the bankrupt who is required to attend the meeting unless paragraph (3) applies.

(3) In a bankruptcy, where the bankrupt is not required to attend the meeting, the notice must state—

- (a) that the bankrupt is not required to attend the meeting;
- (b) that if the bankrupt wishes to attend, the bankrupt should tell the convener as soon as reasonably practicable;
- (c) that whether the bankrupt will be allowed to participate in the meeting is at the discretion of the chair; and
- (d) that the decision of the chair as to what intervention, if any, the bankrupt may make is final.

(4) Notices under this rule must be delivered in compliance with the minimum notice requirements set out in rule 15.2(2) or in compliance with an order of the court under rule 15.12.

### **Non-receipt of notice of decision**

**15.15.** Where a decision is sought by a notice in accordance with the Act or these Rules, the decision procedure or deemed consent procedure is presumed to have been duly initiated and conducted, even if not everyone to whom the notice is to be delivered has received it.

### **Decisions on remuneration and conduct**

**15.16.—**(1) This rule applies in relation to a decision or resolution which is proposed in an administration, a creditors' voluntary winding up, a winding up by the court or a bankruptcy and which affects a person in relation to that person's remuneration or conduct as administrator, liquidator or trustee (actual, proposed or former).

(2) The following may not vote on such a decision or resolution whether as a creditor, contributory, proxy-holder or corporate representative, except so far as permitted by rule 16.7 (proxy-holder with financial interest)—

- (a) that person;
- (b) the partners and employees of that person; and
- (c) the officers and employees of the company of which that person is a director, officer or employee.