
STATUTORY INSTRUMENTS

2018 No. 1082

The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018

PART 2

COMPANY VOLUNTARY ARRANGEMENTS

CHAPTER 5

Consideration of the proposal by the company members and creditors

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

Consideration of proposal: common requirements (section 3)

2.24.—(1) The nominee must invite the members of the company to consider a proposal by summoning a meeting of the company as required by section 3.

(2) The nominee must invite the creditors to consider the proposal by way of a decision procedure.

(3) The nominee must examine whether there is jurisdiction to open the proceedings and must specify in the nominee's comments on the proposal required by paragraphs (4)(d)(iii) and (6)(a)(iii) whether the proceedings will be main, secondary, territorial or non-EU proceedings with the reasons for so stating.

(4) In the case of the members, the nominee must deliver to every person whom the nominee believes to be a member a notice which must—

- (a) identify the insolvency proceedings;
- (b) state the purpose of, and venue for, the meeting;
- (c) state the effect of the following—
 - (i) rule 2.34 about members' voting rights,
 - (ii) rule 2.35 about the requisite majority of members for passing resolutions, and
 - (iii) rule 5.32 about rights of appeal; and
- (d) be accompanied by—
 - (i) a copy of the proposal,
 - (ii) a copy of the statement of affairs, or if the nominee thinks fit, a summary including a list of creditors with the amounts of their debts,
 - (iii) the nominee's comments on the proposal, unless the nominee is the administrator or liquidator,
 - (iv) details of each resolution to be voted on and
 - (v) a blank proxy.

(5) In the case of the creditors, the nominee must deliver to each creditor a notice which complies with rule 5.8 so far as is relevant.

(6) The notice delivered under paragraph (5) must also—

(a) be accompanied by—

- (i) a copy of the proposal,
- (ii) a copy of the statement of affairs or, if the nominee thinks fit, a summary including a list of creditors with the amounts of their debts, and
- (iii) the nominee's comments on the proposal, unless the nominee is the administrator or liquidator; and

(b) state how a creditor may propose a modification to the proposal, and how the nominee will deal with such a proposal for a modification.

(7) A notice delivered under paragraph (4) or (5) may also state that the results of the consideration of the proposal will be made available for viewing and downloading on a website and that no other notice will be delivered to the creditors or members (as the case may be).

(8) Where the results of the consideration of the proposal are to be made available for viewing and downloading on a website the nominee must comply with the requirements for use of a website to deliver a document set out in rule 1.44(2)(a) to (c), (3) and (4) with any necessary adaptations and rule 1.44(5)(a) applies to determine the time of delivery of the results of the consideration of the proposal.

Members' consideration at a meeting

2.25.—(1) The nominee must have regard to the convenience of those invited to attend when fixing the venue for a meeting (including the resumption of an adjourned meeting).

(2) The date of the meeting (except where the nominee is the administrator or liquidator of the company) must not be more than 28 days from the date on which—

- (a) the nominee's report was lodged with the court under rule 2.8; or
- (b) the moratorium came into force.

Creditors' consideration by a decision procedure

2.26. Where the nominee is inviting the creditors to consider the proposal by a decision procedure, the decision date must be not less than 14 days from the date of delivery of the notice and not more than 28 days from the date on which—

- (a) the nominee's report is lodged with the court under rule 2.8; or
- (b) the moratorium came into force.

Timing of decisions on proposal

2.27.—(1) The decision date for the creditors' decision procedure may be on the same day as, or on a different day to, the meeting of the company.

(2) The creditors' decision on the proposal must be made before the members' decision.

(3) The members' decision must be made not later than five business days after the creditors' decision.

(4) For the purpose of this rule, the timing of the members' decision is either the date and time of the meeting of the company or, where the members are using the written resolution procedure, the deadline for receipt of members' votes.

Creditors' approval of modified proposal

2.28.—(1) This rule applies where a decision is sought from the creditors following notice to the nominee of proposed modifications to the proposal from the company's directors under paragraph 31(7)(1) of Schedule A1.

(2) The decision must be sought by a decision procedure with a decision date within 14 days of the date on which the directors gave notice to the nominee of the modifications.

(3) The creditors must be given at least seven days' notice of the decision date.

Notice of members' meeting and attendance of officers

2.29.—(1) A notice under rule 2.24(4) summoning a meeting of the company must be delivered at least 14 days before the day fixed for the meeting to all the members and to—

- (a) every officer or former officer of the company whose presence the nominee thinks is required; and
- (b) all other directors of the company.

(2) Every officer or former officer who receives such a notice stating that the nominee thinks that person's attendance is required, is required to attend the meeting.

Requisition of physical meeting by creditors

2.30.—(1) This rule applies where the creditors requisition a physical meeting to consider a proposal (with or without modifications) in accordance with section 246ZE(2) and rule 5.6.

(2) The meeting must take place within 14 days of the date on which one of the thresholds under section 246ZE(7) has been met or surpassed.

(3) A notice summoning a meeting of the creditors must be delivered to the creditors at least seven days before the day fixed for the meeting.

Non-receipt of notice by members

2.31. Where in accordance with the Act or these Rules the members are invited to consider a proposal, the consideration is presumed to have taken place even if not everyone to whom the notice is to be delivered receives it.

Proposal for alternative supervisor

2.32.—(1) If, in response to a notice inviting the creditors to consider the proposal other than at a meeting, a creditor proposes that a person other than the nominee be appointed as supervisor, that person's consent to act and confirmation that that person is qualified to act as an insolvency practitioner in relation to the company must be delivered to the nominee by the decision date.

(2) Where the members of the company are using the written resolution procedure and a member proposes that a person other than the nominee be appointed as supervisor, that person's consent to act and confirmation that that person is qualified to act as an insolvency practitioner in relation to the company must be delivered to the nominee by the deadline for receipt of members' votes.

(3) If, at either a meeting of the company or the creditors to consider the proposal, a resolution is moved for the appointment of a person other than the nominee to be supervisor, the person moving the resolution must produce to the chair at or before the meeting—

(1) Paragraph 31(7) is amended by paragraph 9(18) and (19) of Schedule 9 to the 2015 Act.

(2) Section 246ZE is inserted by section 122 of the 2015 Act.

- (a) confirmation that the person proposed as supervisor is qualified to act as an insolvency practitioner in relation to the company; and
- (b) that person's written consent to act (unless that person is present at the meeting and there signifies consent to act).

Chair at meetings

2.33. The chair of a meeting under this Part must be the nominee or an appointed person.

Members' voting rights

2.34.—(1) A member is entitled to vote according to the rights attaching to the member's shares in accordance with the articles of the company.

(2) A member's shares include any other interest that person may have as a member of the company.

(3) The value of a member for the purposes of voting is determined by reference to the number of votes conferred on that member by the company's articles.

Requisite majorities of members

2.35.—(1) A resolution is passed by members by the written resolution procedure or at a meeting of the company when a majority (in value) of those voting have voted in favour of it.

(2) This is subject to any express provision to the contrary in the company's articles.

(3) A resolution is not passed by written resolution unless at least one member has voted in favour of it.

Notice of order made under section 4A(6) or paragraph 36(5) of Schedule A1

2.36.—(1) This rule applies where the court makes an order under section 4A(6)(3) or paragraph 36(5)(4) of Schedule A1.

(2) The member who applied for the order must deliver a copy of it certified by the court to—

- (a) the proposer; and
- (b) the supervisor (if different).

(3) If the directors are the proposer a single certified copy may be delivered to the company at its registered office.

(4) The supervisor, or the proposer where there is no supervisor, must as soon as reasonably practicable deliver a notice that the order has been made to every person who had received a notice to vote on the matter or who is affected by the order.

(5) The member who applied for the order must, within five business days of the date the order is made, deliver a copy of the certified copy to the registrar of companies.

(3) Section 4A was added by the Insolvency Act 2000 (c.45), Schedule 2, paragraph 5. Subsections (2), (3), (4)(a) and (6)(a) are relevantly amended by paragraph 5 of Schedule 9 to the 2015 Act.

(4) Paragraph 36 is amended by paragraph 9(28) and (29) of Schedule 9 to the 2015 Act.

Report of consideration of proposal under section 4(6) and (6A) or paragraph 30(3) and (4) of Schedule A1

2.37.—(1) A report, or reports as the case may be, must be prepared of the consideration of a proposal under section 4(6) and (6A)(5) or paragraph 30(3)(6) and (4) of Schedule A1 by the convener or, in the case of a meeting, the chair.

(2) The report must—

- (a) state whether the proposal was approved or rejected and whether by the creditors alone or by both the creditors and members and, in either case, whether any approval was met with any modifications;
- (b) list the creditors and members who voted or attended or who were represented at a meeting or decision procedure (as applicable) used to consider the proposal, setting out (with their respective values) how they voted on each resolution or whether they abstained;
- (c) identify which of those creditors were considered to be connected with the company;
- (d) if the proposal was approved, state with reasons whether the proceedings are main, secondary, territorial or non-EU proceedings; and
- (e) include such further information as the nominee or the chair thinks it appropriate to make known to the court.

(3) A copy of the report must be lodged with the court within four business days of the date of the company meeting.

(4) The court must endorse the copy of the report with the date of lodging.

(5) The chair (in the case of a company meeting) or otherwise the convener must give notice of the result of the consideration of the proposal to everyone who was invited to consider the proposal or to whom notice of a decision procedure or meeting was delivered as soon as reasonably practicable after a copy of the report is lodged with the court.

(6) Where the decision approving the CVA has effect under section 4A or paragraph 36 of Schedule A1 with or without modifications, the supervisor must as soon as reasonably practicable deliver a copy of the convener's report or, in the case of a meeting, the chair's report, to the registrar of companies.

(5) Section 4(6) is amended by paragraph 4(4) of Schedule 9 to the 2015 Act and section 6A is inserted by paragraph 4(7) of that Schedule.

(6) Paragraph 30(3) is amended by paragraph 9(12) of Schedule 9 to the 2015 Act and paragraph 30(4) is inserted by paragraph 9(13) of that Schedule.