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44. Decision procedures

This chapter gives advice to official receivers on carrying out a decision-making process under the insolvency legislation, in particular the process to effect the appointment of an insolvency practitioner as liquidator or trustee in place of the official receiver.

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Introduction

44.1 General

Under the Insolvency Act 1986 a liquidator or trustee has powers to seek decisions from creditors. These powers can be exercised at the discretion of the liquidator or trustee or in circumstances where the liquidator or trustee is compelled to do so by the creditors.

This chapter deals with decision procedures convened by the official receivers for the purpose of choosing an insolvency practitioner to be liquidator or trustee in place of the official receiver. The circumstances where the official receiver will seek a decision on another matter using the general provisions to seek a decision will be very rare.

Decision procedures generally and notice to creditors

44.2 Background

Historically, where a liquidator or trustee wished, or was required, to seek a decision from creditors a physical meeting of creditors (or contributories) was arranged. From 2010¹ provisions were introduced whereby an office-holder could convene a meeting on a remote basis or creditors (or contributories) could attend remotely. This removed the necessity for everyone to be present together in the same place. The facility was not widely used.

One of the policy objectives of the Insolvency (England and Wales) Rules 2016 was to inhibit and reduce the number of physical meetings of creditors held in insolvency cases. The Rules now provide five qualifying decision procedures by which creditors can be asked to make decisions. One of those procedures is a physical meeting of creditors. The liquidator or trustee cannot choose for the decision to be made at a physical meeting but might only convene a physical meeting of creditors if requested to do so by the creditors.

1. The Legislative Reform (Insolvency)(Miscellaneous Provisions) Order 2010

44.3 Decision procedures

The five qualifying decision procedures are¹:

- a) correspondence
- b) electronic voting (any electronic system which enables a person to vote at any time without the need to attend at a particular location, for example Outlook voting buttons)
- c) virtual meeting (a meeting where participants are not physically present at the same location but may participate and communicate directly with all the other participants in the meeting, for example, a telephone conference)

d) physical meeting

e) any other decision making procedure which enables all creditors who are entitled to participate to participate equally in making the decision

The official receivers will, by default, use the correspondence procedure but have discretion to choose any of the other options (except a physical meeting).

1. Rule 15.3

44.4 Deemed consent

A decision can also be made by deemed consent¹. The deemed consent process cannot be used to make a decision on the liquidator's or trustee's remuneration or where any provision in legislation, or the court, requires a decision to be made by a qualifying decision procedure. Under the deemed consent procedure relevant creditors are given notice of the matter they are being asked to make a decision on, the proposed decision and the procedure for objecting to the proposed decision. Unless the appropriate number of relevant creditors object by the decision date, the decision is deemed to have been made.

The relevant creditors are those creditors who are entitled to vote in a decision procedure (generally, the unsecured creditors). If 10% in value of those creditors object the procedure stops and the proposal fails. The convener of the process (e.g. the official receiver (but see later) must then decide whether to use a qualifying decision procedure instead.

When seeking the appointment of an insolvency practitioner to replace the official receiver as liquidator or trustee, the official receiver can, at any time, ask the Secretary of State to make the appointment (see chapter 45). Consequently It is not anticipated that the official receiver will use the deemed consent provisions.

1. Section 246ZF or Section 379ZB

44.5 Criteria for starting a decision procedure

Where the official receiver considers the case requires the skills of an insolvency practitioner, in the first instance, or where the appointment is urgent, the official receiver should consider whether the appointment might be achieved by application to the Secretary of State (see chapter 45).

If there is the possibility of contention, dispute or conflict, a decision procedure should be commenced. This allows the creditors (and contributories) an opportunity to express their views. The outcome of the decision procedure may be appealed to the court¹.

In any case where a decision procedure is correctly requisitioned by creditors it must be started.

1. Rule 15.35

44.6 Companies – active decision whether to be replaced

The official receiver is required within 12 weeks of the date of the winding-up order to decide whether or not to seek nominations to be replaced in office as liquidator of the company¹. The official receiver must give notice of that decision to creditors and contributories². These provisions also apply where the official receiver is the responsible insolvency practitioner (liquidator) of a partnership and any insolvent member (liquidator or trustee) where the petitions were presented concurrently under article 8 of the Insolvent Partnerships Order 1994.

If, for any reason, the statutory time limit cannot be adhered to application must be made to the court for an extension of time³.

1. Section 136(4) and ISCIS form ORCREDFN

2. Section 136(5)

3. Section 376

44.7 Bankruptcy – no decision whether to be replaced

There are no provisions in the legislation which compel the official receiver to decide in every case whether or not to be replaced in office as trustee of the bankruptcy estate or to notify the creditors of that decision. The official receiver can begin a decision procedure for the purpose of being removed and replaced in office¹. These provisions also apply where the official receiver is the trustee of a partnership and insolvent members where the petition was presented under article 11 of the Insolvent Partnerships Order 1994 or where the official receiver is acting under the Administration of the Insolvent Estates of Deceased Persons Order 1986.

1. Section 298(4)

44.8 Notices to creditors (and contributories)

Where creditors (or contributories) have given actual or deemed consent, notices from the official receiver can be delivered to them electronically (e.g. by email)¹.

Official receivers should, as far as possible, seek to use email in the decision process.

A creditor, or contributory, is deemed to have consented to electronic delivery if they usually communicated with the company, partnership or bankrupt electronically prior to the date of the insolvency order².

1. Rule 1.45

2. Rule 1.45(4)

Requisitioned decision procedures

44.9 Creditors right to requisition a decision to replace the official receiver

The official receiver has no discretion over starting a decision procedure where at least 25% of the creditors in value require the official receiver to seek nominations for the purpose of choosing a person to be liquidator in place of the official receiver¹ or seek a decision on the removal of the official receiver as trustee².

The provisions setting out the 25% threshold, refer to 25% of all creditors (including secured creditors). The official receivers will, as a matter of operational policy, regard the threshold as having being reached provided the requisition is supported by 25% in value of the unsecured creditors³.

In bankruptcy, where the official receiver is trustee as a result of a vacancy⁴ the creditors may requisition a decision to appoint a trustee with the support of only 10% of creditors in value⁵. The same operational policy considerations as above will apply to the calculation of this threshold.

1. Section 136(5)

2. Section 298(4)

3. Dear IP issue 77, June 2017

4. Section 300(2)

5. Section 300(3)

44.10 Requisition in partnership cases

In partnership cases where there is a winding-up order¹ the requisition can be made by 25% in value of either the partnership's creditors, or the creditors of any insolvent

member against whom an insolvency order has been made ². The same operational policy considerations set out in paragraph 44.9 will apply to the calculation of this threshold.

Where the partnership is only subject to a bankruptcy order against all of the members of a partnership, with authority to wind-up the partnership, made on the joint petition of all the members³, the requisition can be made by 25% in value of the combined body of creditors ⁴.

1. Insolvent Partnerships Order 1994, article 8

2. Insolvent Partnerships Order schedule 4 part 2 paragraph 12 as it amends the Insolvency Act 1986 section 136]

3. Insolvent Partnerships Order 1994, article 11

4. Insolvent Partnerships Order schedule 7 paragraph 15 as it amends the Insolvency Act 1986 section 298

44.11 Contributories rights to requisition

There is no provision enabling contributories to requisition a decision procedure for the purpose of replacing the official receiver as liquidator. Where the official receiver seeks nominations for the purpose of choosing a person to be liquidator of the company in place of the official receiver, including a case where the official receiver has been requisitioned to do so, nominations are sought from the contributories¹. The contributories will only be invited to participate in a decision procedure on any nomination made by the contributories².

1. Section 136(4)

2. Rule 7.52(6)

44.12 General provisions do not apply

The general provisions of the Act under which creditors can require a liquidator or trustee to seek a decision¹ do not apply where the decision requested is the removal / replacement of the official receiver as liquidator or trustee. The Act has separate provision for these decisions² and the required majority to requisition these decisions is set out above (see also paragraph 44.9).

1. Section 168(2) or section 314(7)

2. Section 136(4) and section 172, or section 298(4)

44.13 Form of requisition

The request for a requisitioned decision must include a statement of the purpose of the proposed decision. The request must also include a statement that either

confirms the requisitioning creditor's debt alone is sufficient or a list of the creditors concurring with the request, details of their claim(s) and written confirmation of concurrence from those creditors ¹. A template form of requisition is available on www.gov.uk.

1. Rule 15.18(3)

44.14 Withdrawal of any notice that the official receiver has decided not to seek nominations (companies only)

If the official receiver has issued notice of a decision not to seek nominations¹ and subsequently receives a valid requisition², the official receiver must withdraw those notices and proceed as if the official receiver had decided to seek nominations³.

1. Section 136(5)(b)

2. Section 136(5)(c)

3. Rule 15.18(6)

44.15 Expenses of requisitioned decision

There is provision for the expenses of a requisitioned decision to be met by the requisitioning creditor¹. The official receiver's administration fee² is expected to cover the time and postal costs involved in dealing with the requisitioned decision.

Therefore no deposit will be required by the official receiver from the requisitioning creditor. There is no provision to require a deposit where a creditor asks for a decision to be made by physical meeting after the decision notice has been issued.

Where the request for the decision to be made by physical meeting is made concurrently with a requisition of the decision procedure the official receiver may ask for a deposit where additional costs will be incurred. Those costs may include the hire of a venue and the cost of the Gazette notices, for example. The official receiver does not have to begin the decision procedure until any deposit requested is received³.

1. Rule 15.19

2. Insolvency Proceedings (Fees) Order 2016

3. Rule 15.19(2)

Starting a decision procedure – companies and partnerships subject to a winding-up order

Note: Amendments have not been made to the Limited Liability Partnership Regulations 2001, therefore decisions in those cases might only be made through a meeting of creditors convened in accordance with the unamended provisions of the Insolvency Act 1986.

44.16 Seeking nominations

If the official receiver decides to seek nominations, or is requisitioned to do so by the creditors, the official receiver must deliver to the creditors and contributories a notice inviting proposals for a liquidator¹. Where the official receiver decides to seek nominations the notice inviting nominations will be issued with the first notice to creditors². The first notice to creditors will always state whether or not the official receiver has decided to seek nominations.

1. Rule 7.52(2), ORNOMLQD

2. ORCREFN

44.17 Nominations

Any nominations (proposals) from creditors or contributories must be received by the official receiver within 5 business days of the date of the notice inviting nominations. The proposal submitted should include a statement that the proposed liquidator is a qualified insolvency practitioner and has consented to act¹.

Where a creditor has requisitioned nominations be sought, they are not obliged to, but are likely at the same time to, have nominated an insolvency practitioner to be liquidator (the template to requisition a decision available on www.gov.uk provides for this). The official receiver should regard any nomination delivered with the requisition as valid provided it includes confirmation that the insolvency practitioner has consented to act. The requisitioning creditor is not required to re-submit their nomination during the five days available to respond to the invitation for nominations.

The official receiver cannot be a nominee² and any nominations for the official receiver to continue in office should be ignored. This does not prevent creditors later voting against a resolution to replace the official receiver in office.

1. Rule 7.52(4) and (5)

2. Rule 13.5

44.18 No nominations received

Only if any nominations are received by the end of the 5 day period can the official receiver begin a decision procedure. If no nominations are received the process stops¹. The official receiver should then consider an application to the Secretary of State if the official receiver considers the case requires the skills of an insolvency practitioner² (see also chapter 45).

1. Rule 7.52(12)

2. Section 137(2)

44.19 Nominations received, application to the Secretary of State

If the nominations received indicate that an insolvency practitioner (or joint nominees) has the support of more than 50% in value of the creditors, the official receiver can apply to the Secretary of State for the appointment¹ (see also chapter 45). A successful application to the Secretary of State would end the process; there would be no decision procedure.

1. Rule 7.52(13)

44.20 Seeking a decision on nominations

If any nominations are received, and there is no majority support enabling the official receiver to seek a Secretary of State appointment, the official receiver must decide on the qualifying decision procedure to use and set a decision date. Unless the official receiver holds a valid request that the decision be made by a physical meeting of creditors (see paragraph 44.29) the official receiver should default to a decision by correspondence.

If any nominations are received from creditors, the creditors are asked to vote on those creditor nominations. If any nominations are received from contributories, the contributories are separately asked to vote on those contributory nominations. If nominations are received from creditors but no nominations from contributories then only a decision procedure for creditors is undertaken, and vice versa. For example the contributories are not asked to vote on the nominations of the creditors.

Where the creditors and contributories resolve to appoint different insolvency practitioners to be liquidator, see paragraph 45.39.

44.21 The decision date

The decision date must be no later than 21 calendar days after the date for receiving nominations has passed. The creditors, or contributories, must be given at least 14 days notice of the decision date.

A [decision procedure calculator](#) is available to assist calculate the timeline in an individual case.

Once the decision date is chosen the official receiver should issue notice of the decision to be made and the decision date (ORNDEC) together with forms to vote (ORCREDVOTE).

Starting a decision procedure – bankruptcies, partnerships with authority to wind-up and deceased insolvents

44.22 Replacing the official receiver as trustee.

The official receiver can decide at any time, or be requisitioned to do so by the creditors, to instigate a decision procedure the purpose of which is to remove the official receiver from office as trustee¹.

1. Section 298(4)

44.23 The decision date

The creditors must be given at least 14 calendar days notice of the decision date. Where the creditors have requisitioned the decision the decision date must be no later than 42 days after the requisition.

Even if the creditors vote to remove the official receiver as trustee, the resolution cannot take effect until the official receiver is replaced in office as trustee¹. Subject to the official receiver holding a valid request that the decision be made by a physical meeting of creditors (see paragraph 44.29) the official receivers will combine the decision on removing the official receiver and voting on nominations for a replacement. This affects the time periods involved in calculating the decision date (see paragraph 44.24)

1. Section 298(4B)

44.24 The combined decision date and seeking nominations

A [decision procedure calculator](#) is available to assist calculate the timeline in an individual case.

Before issuing any notices the calculator should be used to calculate the range of dates from which a combined decision date can be chosen.

Once the decision date is chosen the official receiver should issue notice of the decision required on removal of the official receiver as trustee. This notice is combined with the invitation to nominate an insolvency practitioner to replace the official receiver in office if a decision is made to remove the official receiver (ORNOMTRUSTEE).

44.25 Nominations

Any nominations (proposals) from creditors must be received by the official receiver within 5 business days of the date of the notice inviting nominations. The proposal submitted should include a statement that the proposed trustee is a qualified insolvency practitioner and has consented to act¹.

Where a creditor has requisitioned the decision procedure they are not obliged to, but are likely to, have nominated an insolvency practitioner to be trustee (the template available on [GOV.UK](#) provides for this). The official receiver should regard any nomination delivered with the requisition as valid provided it includes the insolvency practitioner's consent to act. The requisitioning creditor is not required to re-submit that nomination during the five days available to respond to the invitation for nominations.

1. Rule 10.67(5) and (6)

44.26 No nominations received

Even if no nominations are received the official receiver will need to proceed with the decision procedure seeking a decision on whether or not the official receiver should be removed as trustee. Where the resolution is to remove the official receiver but no insolvency practitioner has been nominated as trustee the official receiver remains in office. The official receiver should consider whether to seek the appointment of the next insolvency practitioner on the rota but can elect to stay in office if the creditors make no nominations.

44.27 Nominations received, application to the Secretary of State

If the nominations received indicate that an insolvency practitioner (or joint nominees) has the support of more than 50% in value of the creditors, the official receiver can apply to the Secretary of State for the appointment¹ (see also chapter 45). A successful application to the Secretary of State would end the process. There would be no decision procedure. In these circumstances the official receiver will need to notify the creditors that the decision procedure has been discontinued and give details of the insolvency practitioner appointed by the Secretary of State with the support of the majority of creditors.

1. Rule 10.67(13)

44.28 Seeking a decision on nominations

Where nominations are received and there is no majority support to seek a Secretary of State appointment (unless the official receiver holds a valid request that the decision be made by a physical meeting of creditors (see paragraph 44.29), the official receiver must issue a further notice which reconfirms the decision date (see paragraph 44.23)(ORNDEC). This notice is issued together with the forms to vote (ORCREDVOTE).

Request for a physical meeting of creditors

44.29 Restriction on calling a physical meeting

Where the official receiver seeks a decision about any matter from the creditors, or contributories, the decision may be made by any qualifying decision procedure the official receiver thinks fit, except a physical meeting of creditors, or contributories¹. Only if at least the minimum number of creditors, or contributories, request in writing that the decision be made by a creditors', or contributories', meeting can a physical meeting be held².

1. Section 246ZE or section 379ZA

2. Section 246ZE(3) or section 379ZA(3)

44.30 The minimum number

The minimum number of creditors or contributories is any of: 10% in value; 10% in number or 10 creditors¹. In partnership cases the minimum number of creditors is calculated on the value of the combined body of creditors². The threshold for the 10% in value is based upon the creditors and contributories voting rights³. Therefore 10% in value of creditors is 10% in value of the unsecured creditors, whether or not they have lodged a proof of debt.

1. Section 246ZE(7) or section 379ZA(7)

2. Insolvent Partnerships Order schedule 7A as it amends the Insolvency Act 1986 sections 246ZE or 379ZA

3. Rules 15.6(8) and 15.39

44.31 Time limit on making request for a physical meeting

A written request for a decision to be made by a physical meeting can be made at any time before or after the official receiver has issued notice of the decision procedure (ORCREDDEC). Once notice of the decision procedure has been issued, the request must be made within five business days after the notice was delivered, therefore the deemed delivery time must be taken into account¹. The [decision procedure calculator](#) can assist as it will calculate the last date for receiving a request for a physical meeting based upon the notice of the decision procedure being sent by first class post. Where there is a mix of methods in delivery of the notice, the last date for all creditors to lodge a request for a physical meeting will be based upon the slowest used method (first class post).

It is the responsibility of the convenor of the decision procedure, the official receiver, to check whether a valid request for a physical meeting has been submitted before the deadline².

1. Rules 1.42 – 1.45

2. Rule 15.6(2)

44.32 Issuing notice of a physical meeting

Once a valid request for a physical meeting has been received the official receiver must send notice of the meeting within three business days¹.

Where the request for a physical meeting is received before the official receiver has issued notice of, or started, an alternative decision procedure the official receiver should simply give notice of the meeting of creditors.

If notice of an alternative decision procedure has been issued the notice of the meeting must state that the original decision procedure is suspended².

1. Rule 15.6(5)

2. Rule 15.6(4)

44.33 Notice to company officers, bankrupts, etc.

Notice to participate in a creditors' meeting must be delivered to every present or former officer of the company whose presence the official receiver thinks is required at the meeting¹.

Notice of the meeting must be sent to the bankrupt. The notice must state whether or not the bankrupt is required to attend the meeting. If the bankrupt is not required to attend the notice must inform the bankrupt that if they wish to attend they should inform the official receiver as soon as practicable. Attendance at the meeting is at the discretion of the chair (see paragraph 44.42)².

1. Rule 15.14(1)

2. Rule 15.14(2)(3)

44.34 Remote attendance

Creditors, or contributories, may be permitted to attend a physical meeting of creditors remotely. "Remote" simply means they would not be a physical presence at the meeting but would participate via a video or telephone link. Remote attendance is at the discretion of the convenor of the meeting. This is different from attending the meeting by proxy.

The decision date – conduct of decision procedure

44.35 Participation in the decision

Where the decision is to be made by correspondence, or by any process other than a meeting, the decision is to be treated as if it was made at 23:59 on the decision date¹.

To participate in a decision procedure, other than a meeting, a creditor's vote must have been received by the official receiver on or before the decision date. Any vote must be accompanied by a proof of debt, unless a proof of debt has already been provided to the official receiver². Any vote must be discounted if a proof of debt has not been received on the decision date.

1. Rule 15.2

2. Rule 15.9(1)

44.36 Making the decision

For a decision to be made the official receiver must receive at least one valid vote on or before the decision date¹.

Votes are calculated in accordance with creditor's claim admitted for voting purposes. An appointment is made on a simple majority of creditors by value (or contributories) voting for the appointment.

1. Rule 15.9(1)

44.37 Bankruptcy cases – decision to remove the OR

In bankruptcy the creditors are first asked to vote on the resolution to remove the official receiver from office as trustee. Only if a simple majority of creditors by value participating in the vote passes the resolution to remove the official receiver would the votes then be considered on the decision of the insolvency practitioner who is to replace the official receiver in office.

44.38 No clear majority

If there are three or more nominees and none has a clear majority over the combined others, further rounds of voting must occur. This is easily achieved in a meeting where the nominee with the least votes drops out and the creditors are asked to vote again on the remaining nominees (see paragraph 44.50).

When using another decision procedure this is not easily achieved. The voting form to be used by official receivers (ORCREDVOTE) in a decision by correspondence asks the creditors to rank the nominees in order of preference. In a round of voting the nominee with the least support would drop out. The votes would then be recounted with the removed nominees' votes being passed to the creditor's second preference on the voting paper, and so on.

If a creditor has not expressed a second choice and their nominee is eliminated the creditor is removed from participating in further rounds of voting. The creditor is deemed to have abstained and the value of the claim need not be included for the purposes of the next round of voting¹.

1. Rule 15.34(1)

44.39 Effective date of appointment

The effective date of appointment of the insolvency practitioner as liquidator or trustee is the date the convener (the official receiver) certifies the appointment, i.e. the date is entered on the certificate of appointment (IPCAM)¹. This will normally be the first working day after the decision date provided the insolvency practitioner has supplied their consent to act.

1. Rule 10.68(3)

44.40 Record of decision

The convener must make a record of the decision procedure. This must include a list of the creditors who participated and their claims (or a list of contributories who participated if it is a decision of contributories) together with a record of the decisions made and how the creditors voted¹.

1. Rule 15.40

Conduct of meetings - virtual and physical

44.41 Chair at meetings

The chair of a meeting must either be the convener (the official receiver) or a person appointed by the official receiver¹. The chair has various responsibilities associated with the conduct of meetings, including decisions as to who will be in attendance at the meeting; which proofs of debt will be admitted for voting purposes; which proxies are valid; which resolutions will be put to the meeting and which questions, if any, may be asked of the company personnel or the bankrupt².

If no one attends to act as chair within 30 minutes of the time fixed for the meeting to start, the meeting is automatically adjourned to the same time and place in the following week, or if that is not a business day, to the business day immediately

following. If no one attends to act as chair within 30 minutes of the time fixed for the adjourned meeting to start the meeting ends³.

1. Rule 15.21; MAC

2. Rule 15.22

3. Rule 15.25

44.42 Attendance

The chair may allow any person who has given reasonable notice of wishing to attend to participate in a virtual or physical meeting. It is for the chair to decide what intervention, if any, the person may make if they are not a creditor or contributory or proxy-holder¹.

1. Rule 15.22

44.43 Participation in meetings

Proposing nominations for liquidator or trustee and participation in any vote may only be exercised by creditors who have lodged a proof of debt which has been admitted for voting purposes or their proxy-holders. Proofs of debt should be received not later than 4.00pm on the business day before the meeting. Proofs of debt may be accepted and admitted after that time where the chair is content to accept the proof¹.

1. Rule 15.28

44.44 Quorum at meetings

A quorum is established at a meeting of creditors where at least one creditor entitled to vote is in attendance¹.

A quorum is established at a meeting of contributories where at least two contributories entitled to vote are in attendance, or all the contributories, if their number does not exceed two¹.

Attendance includes anyone present or represented by proxy by any person, including the chair.

Where the quorum is established by the attendance of the chair alone, or the chair and one other person, the chair should consider whether there are any others not in attendance who would be entitled to vote if they did attend (i.e. creditors who have submitted a proof of debt admitted for voting purposes or their proxy-holders). If so, the chair must delay the start of the meeting by at least 15 minutes.

1. Rule 15.20

44.45 Adjournment

The chair may adjourn a meeting for any purpose and must do so if the meeting passes a resolution to adjourn. Adjournment(s) of the meeting cannot be for more than a total of 14 days after the date on which the meeting was originally held, subject to any direction of the court¹.

If the meeting is to consider a resolution to remove the official receiver as trustee the chair can only adjourn the meeting with the consent of at least 50% in value of the creditors attending and entitled to vote².

The chair should adjourn a meeting if the chair is aware a creditor whose vote could be decisive wishes to nominate a practitioner to act as liquidator or trustee, but the creditor has not complied with all of the necessary formalities³.

A proof or proxy given for a meeting may be used at any adjournment of that meeting. Any proofs and proxies to be used at the adjourned meeting must be received by 4.00pm on the business day immediately before the adjourned meeting, or later than that time where the chair is content to accept the proof⁴.

1. Rule 15.23

2. Rule 15.24

3. *Mardas v Official Receiver* (unreported) also known as *Alcom Ltd* transcript is in Westlaw

4. Rule 15.26

44.46 Notice of adjourned meeting

There is no statutory requirement to give notice of or advertise an adjourned meeting.

If it is considered that lack of notice would tend to defeat the purpose of the adjourned meeting, such as where there was no quorum at the first meeting, notice should be given when the length of the adjournment permits. Notice of the adjourned meeting should be sent to the company personnel or bankrupt, where they were not at the meeting, only if the chair sees fit.

44.47 Opening the meeting

Before opening the meeting the chair should be satisfied that the persons present at a meeting are entitled to be there, or that the chair has properly exercised discretion in allowing others to attend. It is usually desirable to start the proceedings by stating the purpose of the meeting and providing those present with a brief summary of the information in the report to creditors, if this has been issued. It is usual in company

cases for most of the information held to have been provided by the officers, who are often contributories. The chair may therefore not need to spend so much time providing information to the contributories' meeting, as they will have done at the creditors' meeting.

44.48 Allowing questions

It is not unusual for persons attending meetings to ask questions and, although the chair has a discretion as to which questions or interventions are allowed, the chair should exercise this discretion with caution.

Questions permitted should be limited so far as possible to matters material to the purposes of the meeting and the chair should make a note of the questions and answers in the minute of the meeting. Where any matter is raised which cannot be dealt with at the meeting, the chair should seek to deal with the point in correspondence or outside of the meeting.

44.49 Making the decision

For a decision to be made the meeting must be quorate (see paragraph 44.43).

Votes are calculated in accordance with creditor's claim admitted for voting purposes. An appointment is made on a simple majority of creditors by value (or contributories) voting for the resolution.

44.50 Bankruptcy cases – decision to remove the OR

In bankruptcy the creditors are first asked to vote on the resolution to remove the official receiver from office as trustee. Only if a simple majority by value of creditors voting pass the resolution would nominations be taken, and voted upon, for an insolvency practitioner to replace the official receiver in office.

44.51 No clear majority

In bankruptcy if the resolution is passed to remove the official receiver from office those entitled to vote are invited to support their favoured candidate, rather than voting for or against each one. In a vote in respect of a resolution to replace the official receiver as liquidator creditors can simply vote against the resolution. If the majority is in favour of replacing the official receiver then votes must be considered for support of the candidates to take the appointment. If one nominee has a clear majority in value, over both, or all of the others together, that nominee will be

appointed. If after the first round of voting, no one nominee has more support in value than all the others put together, the candidate with the least support is eliminated from the next round of voting (unless one of the other candidates withdraws, in which case the nominee with least support has another chance).

Depending on the number of original candidates, further rounds of voting on the same basis take place, with one candidate being eliminated each time, until either one nominee has more support than all the others remaining put together, or there are only two candidates left and one has more support than the other.

44.52 Effective date of appointment

The effective date of appointment of the insolvency practitioner as liquidator or trustee is the date the chair certifies the appointment. The date entered on the certificate of appointment (IPCAM)¹. This will normally be the same date as the meeting provided the insolvency practitioner has supplied their consent to act.

1. Rule 7.53(5) or rule 10.68(3)

44.53 Record of decision

The chair must make a record of the decision procedure. This must include a list of the creditors who participated and their claims (or a list of contributories who participated if it is a decision of contributories) together with a record of the decisions made and how the creditors voted¹.

1. Rule 15.40

44.54 Handover at meeting

Where the chair is aware, in advance of the meeting, of the likely outcome of the meeting, it is possible to arrange for the handover to take place on the day of the meeting. From the date of appointment, not handover, the insolvency practitioner has responsibility for the assets. There is no reason why all the papers cannot be prepared for handing over to the insolvency practitioner immediately after the conclusion of the meeting provided the insolvency practitioner has given their consent to act. (See also chapter 45).

44.55 Exclusion from meeting

If a person seeking to attend a virtual meeting or participate remotely in a physical meeting is unable to do so for the whole or part of the meeting they are an “excluded person” within the meaning of the Rules¹. A person is excluded only if they have

taken all the steps necessary to attend but have been unable to do so or have lost contact during the meeting.

Where the chair of the meeting becomes aware during the course of the meeting that there is an excluded person the chair must decide whether to continue the meeting; declare the meeting void and convene another meeting; or declare the meeting valid to the point the person was excluded and adjourn the meeting².

The chair has the discretion to suspend the meeting for any period up to an hour without a formal adjournment. A suspension may enable the excluded person to (re)join the meeting.

A meeting the chair decides to continue in the knowledge that there is an excluded person continues is valid unless a complaint is upheld and the meeting declared void³.

1. Rule 15.36(3)

2. Rule 15.36(2)

3. Rule 15.36(3)

44.56 Complaint that a person is excluded

An excluded person has until 4.00pm on the business day following the day of the meeting to request an indication of what occurred at the meeting during their absence. The request is made to the chair, if made in the course of the meeting or the convener once the meeting is concluded. The convener or chair must respond by 4.00pm in the business day following the request¹.

An excluded person may lodge a complaint if they consider they have been adversely affected by the exclusion. The person has until 4.00pm on the business day following the day of the meeting or, where they asked for an indication of what occurred at the meeting during their absence, until 4.00pm on the business day after they received the indication, to lodge the complaint².

The complaint is made to the appropriate person, i.e. chair, if made in the course of the meeting or the convener once the meeting is concluded. If the complaint is upheld the appropriate person must take action to remedy the prejudice suffered.

Where the complainant was excluded during the vote on a resolution and gives an indication of how they would have voted, the vote must be recounted to include the excluded person. The appropriate person must amend the record of the result of the resolution and give notice of the change and the reason for it to everyone entitled to attend the meeting³.

1. Rule 15.37

2. Rule 15.38

3. Rule 15.38(6)

Proofs of debt and proxies

Guidance on creditors and liabilities is found in chapter 43

44.57 Meaning of prove

A creditor who wishes to recover their debt, subject to any order of the court, or to participate in a decision making process must submit a proof of their debt to the official receiver¹.

1. Rule 14.3 and rule 15.28

44.58 Contents of proof

The requirements for a proof of debt are set out in the Rules¹. There are no statutory forms associated with the Rules but as with all prescribed content the proof must contain all the prescribed information in the same order as the Rule prescribing the content, state the nature of the document, identify the proceedings, state the Rule under which it is given². Consequently, a petition for winding-up or bankruptcy cannot be used as a proof of debt.

1. Rule 14.4

2. Rule 1.8(2)

44.59 Authentication of proofs

A proof of debt must be dated and authenticated¹. A proof of debt in hard copy is authenticated if it is signed.

A proof of debt in an electronic form is authenticated if the identity of the sender is confirmed in a way specified by the recipient. If the recipient has not specified how the sender's identity should be confirmed, the proof of debt must be accompanied by a statement of the identity of the sender and the recipient have no reason to doubt the truth of that statement².

If the proof of debt is signed on behalf of an organisation or company the position of the individual in relation to the organisation must be given on the proof of debt.

Where the proof of debt is not authenticated by the creditor, the proof of debt must state the name, postal address and authority of the person authenticating the proof³.

In practice, a scanned proof of debt containing an original signature and submitted to the official receiver by email can be accepted provided that the official receiver has no reason to doubt its authenticity. Similarly, a proof received electronically from the creditor or their intermediary, and containing an electronic signature, may be accepted if the named individual can be traced to the originating organisation and is a known party within that organisation.

The authentication may be made by an insolvency practitioner given authority by the creditor to act for them in relation to a specific case or through a general authority to act in all insolvency cases in which the creditor has a claim. See paragraph 45.16 regarding blanket authorities.

1. Rule 14.4(1)(j)

2. Rule 1.5

3. Rule 14.4(1)(k)

44.60 Documents submitted in addition to the proof

Within the proof of debt, a creditor should specify any documents by reference to which the debt can be substantiated. It is not essential that a creditor attach such documents to the proof of debt¹.

The official receiver may call for the creditor to produce any document or other evidence deemed necessary to substantiate the whole or part of the claim made in the proof².

Any costs associated with proving a debt are the responsibility of the creditor³.

1. Rule 14.4(2)

2. Rule 14.4(3)

3. Rule 14.5

44.61 Use of proofs from administration

Where a winding-up order is immediately preceded by an administration, a creditor proving in the administration is deemed to have proved in the winding up proceedings¹.

1. Rule 14.3(2)

44.62 Checking and admitting proofs of debt

Proofs of debt received by the official receiver should be compared with the list of creditors. The amount of the debt per the list of creditors and the amount per the proof of debt should both be entered on ISCIS.

It is the role of the convener or chair to establish the creditors' entitlement to vote. The convener or chair may admit or reject a claim in whole or part¹.

Where the convener or chair is in any doubt whether to admit or reject a claim, the proof of debt should be marked as objected to but be admitted for the purpose of voting. If the objection is later upheld the vote would be declared invalid².

The convener or chair is not expected to undertake a thorough investigation into the debt claimed. If it is plain or obvious that the claim is good it should be admitted. If it is plain or obvious that it is bad it should be rejected. If there is a question, a doubt, the proof should be admitted but marked as objected to³.

A decision to accept a creditor's proof for voting purposes is not binding for other purposes, such as payment of a dividend and further evidence may subsequently be requested in this regard⁴.

1. Rule 14.7

2. Rule 15.33

3. *Re a Debtor (No 222 of 1990) ex parte the Bank of Ireland* [1992] BCLC 137

4. *Assico Engineering Ltd* [2002] BCC 481

44.63 Conflict of interest

The convener or chair has no power to exclude from the process a creditor who has lodged a valid proof of debt and whose claim has been admitted for voting purposes.

Matters of any conflict of interest are for the insolvency practitioner to consider before they provide any consent to act.

All insolvency practitioners are subject to their regulatory body's Code of Ethics and should be satisfied that they act with impartiality and balance between all parties interested in the outcome of the insolvency.

Official receivers may be directed to cases where the court has commented in the past that it is undesirable to allow the appointment of a liquidator nominated by a former director of the company, as a creditor, against whom the company has a hostile claim or whose conduct in relation to company is under investigation (e.g. a wrongful trading claim)¹. Under the Insolvency (England and Wales) Rules 2016 there is now provision in administrations, company voluntary arrangements and

individual voluntary arrangements which prevents a decision from being made where more than half of the total unconnected creditors vote against the decision². Similarly connected creditors cannot be included in any calculation of the value of creditors requisitioning a decision procedure to remove a liquidator in a voluntary liquidation³.

As Parliament has not given legislative support to the comments in case law the official receiver must allow all creditors who have submitted valid proofs of debt to participate in the decision procedure. Any objection to the appointment of a liquidator nominated by a connected person should be referred to the court⁴.

1. *Fielding v Seery* [2004] BCC 315; *Power v Petrus Estates Limited and others* [2008] EWHC 2607 (Ch)

2. Rule 15.33

3. Rule 15.18

4. Section 168

44.64 Non-provable debts

No proof should be admitted for voting purposes in relation to a non-provable debt¹.

1. Rule 14.2

44.65 Debts of uncertain value

A creditor with a claim for an unliquidated amount or whose value is not ascertained may not vote, except where the chairman agrees to put an estimated minimum value upon the debt for the purposes of entitlement to vote and admits the proof for that purpose. In any event, the liquidator or trustee must estimate or revise its value for dividend purposes^{1,2}.

A claim is not to be considered as unliquidated or unascertainable for voting purposes solely by virtue of the fact it is either disputed or subject to a counterclaim by the company or the debtor³.

The gravity of the decision made by the convener or chair will be compounded where the value put on the debt directly impacts upon the outcome of any resolution put to the meeting, although the decision should remain independent and not be swayed by this. The convener or chair should be equally wary of undervaluing or overvaluing a claim for voting purposes and should exercise care in evaluating evidence put forward by the creditor or others in support or dispute of the claim⁴.

1. Rule 14.14

2. Section 322

3. *Re a debtor* (No 222 of 1990), *ex parte Bank of Ireland* [1992] BCLC 137

44.66 Foreign debts

Any proof of debt submitted for a debt incurred, or payable, in a currency other than GBPounds must state the amount of the debt in that currency. The official receiver should convert the debt into GBPounds by reference to the exchange rates prevailing on the date of the insolvency order or where a liquidation was immediately preceded by an administration, the rate prevailing on the date that the company entered administration¹ or on the date of death where the order is made under the AIEDPO².

1. Rule 14.21

2. Administration of Insolvent Estates of Deceased Persons Order 1986 schedule 1 part II paragraph 31

44.67 Interest

Where a debt bears interest, the interest is only provable as part of the debt for any period prior to the commencement of the proceedings or if a liquidation was immediately preceded by an administration, after the date that the company entered administration¹ or on the date of death where the order is made under the AIEDPO².

1. Rule 14.23

2. Administration of Insolvent Estates of Deceased Persons Order 1986 schedule 1 part II paragraph 31

44.68 Discounts

All discounts that would have been available but for the insolvency proceedings should be deducted from a claim prior to admission for voting purposes, except where such a discount relates to immediate or early settlement¹.

1. Rule 14.20

44.69 Set off

Any set off applicable as a result of mutual debts, mutual credits or other mutual dealings should be taken into account prior to admission of a creditor's claim for voting purposes, the proof of debt being admitted for the balance due¹.

1. Rule 14.25

44.70 Double proofs

There cannot be two proofs in respect of the same debt, where this appears to be the case, steps should be taken to verify the true position prior to the decision procedure and the admission of the proofs for voting purposes.

44.71 Defective proofs

Any proof, which is defective, should normally be returned to the creditor for amendment. If there is insufficient time to return a proof for amendment before the decision date, consideration should be given to whether the claim will materially affect the outcome. The convener or chair may be able to rectify a formal error and admit the proof for voting purposes, marking it as objected to clearly recording the formal error noted in admitting the claim¹.

1. Rule 14.25

44.72 Amendment to proof

A proof may, with the agreement of the liquidator or trustee and the creditor, be withdrawn or varied as to the amount claimed¹. Where an agreement cannot be reached between the liquidator or trustee and the creditor, either party may apply to the court. The court may as a result of such an application expunge the proof or reduce the amount claimed².

1. Rule 14.10

2. Rule 14.11

44.73 Appeal of decision to admit or reject proofs

A decision of the convener or the chair in relation to admission or rejection of a proof of debt (either wholly or in part) may be subject to an appeal to the court by any creditor, contributory, or the bankrupt. The appeal must be made not later than 21 days after the date of the decision date. The person who made the decision is not personally liable for costs in respect of the application¹.

The court is not restricted, in considering whether the convener or chair was right to admit or reject a proof for voting purposes, by the evidence available at the time and may consider any subsequent evidence that comes to light².

Where on appeal the decision is reversed or varied, or a creditor's vote is declared invalid, the court may order that a further decision procedure is initiated, or make any such other order as it thinks just. The court may only make an order where it

considers that the circumstances which led to the appeal mean unfair prejudice has been suffered or there were material irregularities.

1. Rule 15.35

2. Re a Company No.004539 of 1993 [1995] BCC 116

44.74 Proxies generally

A proxy is an authority given by a creditor, member or contributory to individual, “the proxy-holder”, to attend a meeting of creditors (or contributories), speak and vote on their behalf. Creditors attending the meeting in person, as a company representative and HM Revenue and Customs commission holders do not require proxies in order to vote at meetings. Proxies are only required for meetings, virtual or physical, and not for any other decision procedure.

A proxy may be either specific, relating to a specific meeting, or continuing for the duration of the insolvency proceedings. A specific proxy will direct and/or authorise the proxy-holder how to act at the meeting. For example it may direct the proxy-holder to nominate and vote for a specific insolvency practitioner but in further rounds of voting where that insolvency practitioner has been eliminated to vote at their own discretion.

A proxy is treated as a specific proxy unless it states it is a continuing proxy. A continuing proxy may not give specific instruction¹.

1. Rule 16.2

44.75 Blank proxies

When issuing proxy forms to creditors for use at a meeting the office-holder must provide a form which complies with the Rules¹. The proxy must be a blank proxy the template must not be issued with the name or description of any person as proxy-holder or with any instructions or directions as to how the proxy holder is to act².

1. Rule 15.8(5)

2. Rule 16.3

44.76 Authentication of proxies

There is no requirement in the Rules that a proxy should be authenticated but unless the proxy is submitted with a proof of debt, it is preferable the proxy should be authenticated in the same manner as a proof of debt (see paragraph 44.59).

44.77 Company representation in a liquidation

A company which is a creditor, or contributory of another company, may pass a resolution authorising an individual or individuals to represent it at meetings of creditors, or contributories¹.

A copy of the resolution must be produced to the chair. The copy must be either under the seal of the company which is the creditor or contributory, or certified by the secretary or a director of that company to be a true copy².

If it is in order, the individual represents the company as if it were a creditor present in person and may vote accordingly. No proxy is required in these circumstances.

1. Section 434B; Rule 16.8

2. Rule 16.9

44.78 Receipt of proxies

A proxy for a specific meeting must be delivered to the chair before the meeting. A continuing proxy may be used at any meeting which begins after the proxy is delivered. A proxy used at an adjourned meeting may be used at the resumed meeting but if a different proxy is to be used it must be delivered to the chair before the resumed meeting¹.

1. Rule 16.4

44.79 Chair's use of proxies

The creditor may give a specific or continuing proxy to the chair, however they are described in the proxy (i.e. "the official receiver"). The chair cannot decline to be the proxy-holder and must act in accordance with the terms of the proxy¹.

Where a creditor has given the chair a proxy requiring that the chair vote for a particular resolution, the chair must propose the resolution if no-one else does, unless there is good reason for not doing so. If the chair does not propose the required resolution the chair must immediately after the meeting inform the principal of the reason why the resolution was not proposed.

If the chair may vote with their own discretion on a particular resolution, the chair may support nominations from others, or, vote for or against any resolution, when the chair believes that in so doing they are securing the best interests of the majority of the creditors. Unless specific instruction is given in the proxy, the chair should avoid nominating a liquidator or trustee, unless there is no other nomination leading to an appointment. The chair may in those circumstances use the proxy to nominate an insolvency practitioner by reference to the rota (see chapter 45)

The chair's decision to exercise discretion should be recorded in the minute of the meeting with the reasons for acting.

1. Rule 16.5

44.80 Specific proxy and further rounds of votes

If a proxy-holder is entitled by the proxy to vote for only one particular insolvency practitioner and the terms of the proxy preclude them from voting in any other way, if that insolvency practitioner is eliminated in a round of voting, the proxy-holder will not be entitled to vote in the next round. The value of the proxy-holder's principal's claim need not be counted as being entitled to vote for the purposes of the next round of voting¹.

1. Rule 15.34(1)

44.81 Multiple proxies from same creditor

A creditor can at any time withdraw or amend their proxy¹. Only one proxy should be submitted for a meeting. It is possible for more than one proxy-holder may be named on the proxy as an alternative attendee².

The chair should not be in the position of having two proxies on behalf of the same creditor. If this occurs, the chairman will need to contact the creditor in order to establish the correct position and the circumstances surrounding the error. Where the chair has been unable to establish the correct position both proxies should be regarded as having been withdrawn.

1. Re Cardona [1997] BCC 697

2. Rule 16.2(7)

44.82 Amendment of proxies given to nominee

Caution should be applied in cases where amendments are made to proxies, which instruct an insolvency practitioner, or their representative, proxy-holder, to vote for a resolution, which would lead to the appointment of that insolvency practitioner as liquidator or trustee.

Where shortly before the meeting a letter is received from the insolvency practitioner proxy-holder stating that their clients (the principal) wish to withdraw their nomination for the associated insolvency practitioner and vote for another, this should be considered as the creditor seeking to withdraw their proxy. Where a new proxy is not

received by the meeting, set out in the same format as the original proxy, the creditor has no vote at the meeting unless they attend to vote in person.

44.83 Inspection of proofs and proxies

As long as the official receiver is in possession of the proofs of debt they must be made available for inspection at all reasonable times on any business day. The proofs of debt may only be inspected by: any creditor who has delivered a proof; any member or contributory of the company; the bankrupt; or any person acting on behalf of the aforementioned¹.

Any person attending a meeting in insolvency proceedings is entitled to inspect the proxies and associated documents (which includes proofs) either immediately before, or in the course of the meeting at which they are used².

The official receiver may decline to allow the inspection of a proof of debt if the official receiver considers the document should be treated as confidential, is of such a nature that its disclosure would be prejudicial to the conduct of the proceedings, or that the contents of the document might reasonably be expected to lead to violence against any person. Decisions of this nature made by an official receiver may be challenged upon an application to the court by the anyone wishing to inspect the proof³.

1. Rule 14.6

2. Rule 16.6

3. Rule 1.58

44.84 Proofs lodged with insolvency practitioner

When an insolvency practitioner is appointed in place of the official receiver as liquidator or trustee all proofs of debt should be handed over to the insolvency practitioner. Any further proofs received by the official receiver after appointment should also be forwarded to the insolvency practitioner¹.

The official receiver has authority to require details, or sight, of any proofs lodged directly with an insolvency practitioner acting as liquidator or trustee².

Where it is expected that the official receiver will need to act as liquidator or trustee upon vacation of office of the former trustee or liquidator, any proofs held by the insolvency practitioner should be provided to the official receiver.

1. Rule 7.60(7) and 7.73(1)(b) or rule 10.75(7) and 10.90

Liquidation or creditors' committee

44.85 Function of a liquidation or creditors' committee

A committee can be appointed to protect and promote the creditors' interests. The liquidator or trustee must report to the committee and is accountable to the committee for their costs and expenses. It is unlikely that the official receiver will become involved in any resolution to form a committee but a resolution to appoint a committee may be proposed at a meeting of creditors.

44.86 Appointment of committee where official receiver is liquidator/trustee

Where the official receiver is liquidator or trustee, a liquidation or creditors' committee is not required and is not able to act. The functions of the committee are vested in the Secretary of State¹. When no committee has been formed and the liquidator/trustee is an insolvency practitioner, the functions of a committee vest in the Secretary of State². Where the Secretary of State is required to carry out any of the functions of a liquidation or creditors' committee, authority is delegated to the Senior Official Receiver's team for official receivers and Estate Accounts and Scanning for insolvency practitioners.

1. Section 141(4) or section 302(1)

2. Section 141(5) or section 302(2)

44.87 Appointment of committee at meeting of creditors

When a resolution has been passed for the appointment of an insolvency practitioner as liquidator or trustee, the appointment of a committee may also be considered. The chair of a meeting therefore needs to be aware that they may need to deal with such a resolution.

In practice where the decision is made other than by meeting the official receiver is unlikely to ask the creditors to make a decision on whether to form a committee, leaving that to the insolvency practitioner appointed.

If a meeting is constituted only by the chair holding proxies, a resolution appointing a committee should only be passed on the basis of instructions in the proxies.

The chair of the meeting may properly use any proxies, which are held to vote for or against the persons nominated for membership of the committee, although the chair should only intervene in this way in exceptional circumstances (e.g. a committee consisting substantially of creditors who are associates of the bankrupt or directors).

44.88 Membership of the committee

A liquidation or creditors' committee must be formed of between three and five members¹. It is better to elect either three or five, rather than four, so as to avoid the risk of deadlocks in voting by the committee.

A creditor who has proved their debt and that proof of debt has been admitted for voting or dividend may be elected as a member of the committee².

A person elected to act as a member of the committee must consent to act³.

A company may be a member of a committee, but cannot act as such, other than via a representative⁴. Any member of the committee may be represented by another person holding a letter of authority. The representative may not be another member of the committee or a person who at the same time is representing another committee member; an undischarged bankrupt or person subject to a bankruptcy restriction.

A creditor does not need to be present or represented at a meeting to be nominated as a member of a committee.

1. Rule 17.3

2. Rule 17.4

3. Rule 17.5(2)

4. Rule 17.4(4)

44.89 Suitability of nominees

The chairman may suggest to the meeting that of the persons eligible to serve on the committee, those who possess the largest claims may be the most appropriate to be elected. There are exceptions to this general rule, it is for instance, usually undesirable that family creditors or directors, should serve on the committee. Similar objections may apply to creditors who are in partnership with the liquidator or trustee,

(or employed by them) in addition to those who have interests adverse to those of the general body of creditors, or whose proofs, or claims, are likely to be subjected to further investigation. It is important that the position of the members of the committee should be such as to enable them to exercise an independent and impartial view of matters arising in the administration on which their views may be sought.

44.90 Notification to insolvency practitioner

The establishment of the committee and the formalities associated with it are matters entirely for the liquidator or trustee. The committee is not established, and cannot act, until the liquidator / trustee has delivered notice of the membership. The notice is issued as soon as reasonably practical after the minimum number of members have consented to act¹. The official receiver should provide the liquidator/trustee on the conclusion of the meeting with details of the nominations for the committee.

1. Rule 17.5