

Explanatory Note to Notices of Meetings of Creditors to consider proposals to vary approved Individual Voluntary Arrangements.

The Insolvency Rules 2016 rules numbered 15.28,15.31, 15.34, 15.46 and 15.35 apply to these proceedings. References to 'a proposed IVA' should be read as references to 'the proposed Variation'.

The effects of these rules so far as these proceedings are concerned are as follows:

- 1) A proxy-holder is not entitled to vote on behalf of a creditor unless the convener or chair has received the proxy intended to be used on behalf of that creditor.
- 2) The convener or chair may call for any document or other evidence to be produced if the convener or chair thinks it necessary for the purpose of substantiating the whole or any part of a claim.
- 3) In a decision relating to a proposed IVA every creditor, secured or unsecured, who has notice of the decision procedure is entitled to vote in respect of that creditor's debt.

Calculation of voting rights

- 4) Votes are calculated according to the amount of each creditor's claim in a proposed IVA
 - a) where the debtor is not an undischarged bankrupt at the date of the interim order, where there is an interim order in force,
 - b) otherwise, at the decision date,
- 5) A creditor may vote in respect of a debt of an unliquidated or unascertained amount if the convener or chair decides to put upon it an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.
- 6) In relation to a proposed IVA, a debt of an unliquidated or unascertained amount is to be valued at £1 for the purposes of voting unless the convener or chair or an appointed person decides to put a higher value on it.
- 7) Where a debt is wholly secured its value for voting purposes is nil.
- 8) Where a debt is partly secured its value for voting purposes is the value of the unsecured part.
- 9) No vote may be cast in respect of a claim more than once on any resolution put to the meeting; and for this purpose (where relevant), the claim of a creditor and of any member State liquidator in relation to the same debt are a single claim.
- 10) In a case relating to a proposed IVA a decision approving a proposal or a modification is made when three-quarters or more (in value) of those responding vote in favour of it;
- 11) a decision is not made if more than half of the total value of creditors who are not associates of the debtor vote against it.
- 12) For the purposes of paragraph 11
 - a) a creditor is not an associate of the debtor unless the convener or chair decides that the creditor is an associate of the debtor;
 - b) in deciding whether a creditor is an associate of the debtor, reliance may be placed on the information provided by the debtor's statement of affairs or otherwise in accordance with these Rules; and
 - c) the total value of the creditors who are not associates of the debtor is the total value of the creditors who are not associates of the debtor whose claims have been admitted for voting.

Complaint

- 1) A person may make a complaint who—
 - a) is, or claims to be, an excluded person; or
 - b) attends the meeting and claims to have been adversely affected by the actual, apparent or claimed exclusion of another person.
- 2) The complaint must be made to the appropriate person who is —
 - a) the chair, where the complaint is made during the course of the meeting; or
 - b) the convener, where it is made after the meeting.
- 3) The complaint must be made as soon as reasonably practicable and, in any event, no later than 4pm on the business day following—
 - a) the day on which the person was, appeared or claimed to be excluded; or
 - b) where an indication is sought under rule 15.37, the day on which the complainant received the indication.
- 4) The appropriate person must, as soon as reasonably practicable following receipt of the complaint, —
 - a) consider whether there is an excluded person;
 - b) where satisfied that there is an excluded person, consider the complaint; and
 - c) where satisfied that there has been prejudice, take such action as the appropriate person considers fit to remedy the prejudice.
- 5) (Paragraph 4 applies where the appropriate person is satisfied that the complainant is an excluded person and—
 - a) a resolution was voted on at the meeting during the period of the person's exclusion; and
 - b) the excluded person asserts how the excluded person intended to vote on the resolution.
- 6) Where the appropriate person is satisfied that if the excluded person had voted as that person intended it would have changed the result of the resolution, then the appropriate person must, as soon as reasonably practicable,—
 - a) count the intended vote as having been cast in that way;
 - b) amend the record of the result of the resolution;
 - c) where notice of the result of the resolution has been delivered to those entitled to attend the meeting, deliver notice to them of the change and the reason for it; and
 - d) where notice of the result of the resolution has yet to be delivered to those entitled to attend the meeting, the notice must include details of the change and the reason for it.
 - e) Where satisfied that more than one complainant is an excluded person, the appropriate person must have regard to the combined effect of the intended votes.
- 7) The appropriate person must deliver notice to the complainant of any decision as soon as reasonably practicable.
- 8) A complainant who is not satisfied by the action of the appropriate person may apply to the court for directions and any application must be made no more than two business days from the date of receiving the decision of the appropriate person.

Appeals against decisions

- 1) A decision of the convener or chair is subject to appeal to the court by a creditor, or by the debtor (as applicable).
- 2) If the decision is reversed or varied, or votes are declared invalid, the court may order another decision procedure to be initiated or make such order as it thinks just but the court may only make an order if it considers that the circumstances which led to the appeal give rise to unfair prejudice or material irregularity.
- 3) An appeal may not be made after the end of the period of 28 days beginning with the day—
 - a) where an interim order has not been obtained, on which the notice of the result of the consideration of the proposal required by section 259(1)(a) has been given, or
 - b) otherwise, on which the report required by section 259(1)(b)(15) is made to the court.
- 4) The person who made the decision is not personally liable for costs incurred by any person in relation to an appeal under this rule unless the court makes an order to that effect.