

## **Summary of Rules incorporated by reference into the CVA Proposal**

### **Rules 4.73 to 4.94**

#### **4.73. Meaning of “prove”**

1. Where a company is being wound up by the court, a person claiming to be a creditor of the company and wishing to recover his debt in whole or in part must (subject to any order of the court under Rule 4.67(2)) submit his claim in writing to the liquidator. (NO CVL APPLICATION)
2. (CVL) In a voluntary winding up (whether members' or creditors') the liquidator may require a person claiming to be a creditor of the company and wishing to recover his debt in whole or in part, to submit the claim in writing to him.
3. A creditor who claims (whether or not in writing) is referred to as “proving” for his debt; and a document by which he seeks to establish his claim is his “proof”.
4. Subject to the next paragraph, a proof must be in the form known as “proof of debt” (whether the form prescribed by the Rules, or a substantially similar form), which shall be made out by or under the directions of the creditor, and authenticated by him or a person authorised in that behalf. (NO CVL APPLICATION)
5. Where a debt is due to a Minister of the Crown or a Government Department, the proof need not be in that form, provided that there are shown all such particulars of the debt as are required in the form used by other creditors, and as are relevant in the circumstances. (NO CVL APPLICATION)
6. The creditor's proof may be in any form.
7. *[Rule repealed]*
8. Where a winding up is immediately preceded by an administration, a creditor proving in the administration shall be deemed to have proved in the winding up.

#### **4.74. Supply of Forms**

A form of proof shall be sent to any creditor of the company by the liquidator where the creditor so requests

#### **4.75. Contents of proof**

1. Subject to Rule 4.73(5), the following matters shall be stated in a creditor's proof of debt:
  - a) the creditor's name and address, and, if a company, its company registration number;
  - b) the total amount of his claim (including any Value Added Tax) as at the date on which the company went into liquidation (or, if the liquidation was immediately preceded by an administration, the date on which the company entered administration), less any payments made after that date in respect of the claim and any deduction under Rule 4.89;
  - c) whether or not that amount includes outstanding uncapitalised interest;
  - d) particulars of how and when the debt was incurred by the company;

- e) particulars of any security held, the date when it was given and the value which the creditor puts upon it;
  - f) details of any reservation of title in respect of goods to which the debt refers; and
  - g) the name, and address and authority of the person authenticating the proof (if other than the creditor himself).
2. There shall be specified in the proof any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such documents be attached to the proof or submitted with it.
  3. The liquidator, or the chairman or convener of any meeting, may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

#### **4.76. Particulars of a creditor's claim (CVL)**

The liquidator, or the convener or chairman of any meeting, may, if he thinks it necessary for the purpose of clarifying or substantiating the whole or any part of a creditor's claim made in his proof, call for details of any matter specified in paragraphs (a) to (h) of Rule 4.75(1), or for the production to him of such documentary or other evidence as he may require.

#### **4.77**

*[Rule repealed]*

#### **4.78 Cost of proving**

1. Subject as follows, every creditor bears the cost of proving his own debt, including such as may be incurred in providing documents or evidence under Rule 4.75(3) or 4.76-CVL.
2. Costs incurred by the liquidator in estimating the quantum of a debt under Rule 4.86 (debts not bearing a certain value) are payable as an expense of the liquidation.
3. Paragraphs (1) and (2) apply unless the court otherwise orders.

#### **4.79. Liquidator to allow inspection of proofs**

The liquidator shall, so long as proofs lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons:

- a) any creditor who has submitted his proof of debt (unless his proof has been wholly rejected for purposes of dividend or otherwise);
- b) any contributory of the company;
- c) any person acting on behalf of either of the above.

#### **4.80. Transmission of proofs to liquidator**

(No CVL Application)

1. Where a liquidator is appointed, the official receiver shall as soon as reasonably practicable transmit to him all the proofs which he has so far received, together with an itemised list of them.
2. The liquidator shall authenticate the list by way of receipt for the proofs, and return it to the official receiver.
3. From then on, all proofs of debt shall be sent to the liquidator, and retained by him.

#### **4.81. New liquidator appointed**

1. If a new liquidator is appointed in place of another, the former liquidator must as soon as reasonably practicable transmit to him all proofs which he has received, together with an itemized list of them.
2. The new liquidator shall authenticate the list by way of receipt for the proofs, and return it to his predecessor.
3. From then on, all proofs of debt must be sent to and retained by the new liquidator.

#### **4.82. Admission and rejection of proofs for dividend**

1. A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount.
2. If the liquidator rejects a proof in whole or in part, he shall prepare a written statement of his reasons for doing so, and send it as soon as reasonably practicable to the creditor.

#### **4.83. Appeal against decision on proof**

1. If a creditor is dissatisfied with the liquidator's decision with respect to his proof (including any decision on the question of preference), he may apply to the court for the decision to be reversed or varied.

The application must be made within 21 days of his receiving the statement sent under Rule 4.82(2).

2. A contributory or any other creditor may, if dissatisfied with the liquidator's decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the liquidator's decision.
3. Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to the creditor who lodged the proof in question (if it is not himself) and to the liquidator.
4. The liquidator shall, on receipt of the notice, file in court the relevant proof, together (if appropriate) with a copy of the statement sent under Rule 4.82(2).

- 4A. Where the application is made by a contributory, the court must not disallow the proof (in whole or in part) unless the contributory shows that there is (or would be but for the amount claimed in the proof), or that it is likely that there will be (or would be but for the amount claimed in the proof), a surplus of assets to which the company would be entitled.
5. After the application has been heard and determined, the proof shall, unless it has been wholly disallowed, be returned by the court to the liquidator.
6. The official receiver is not personally liable for costs incurred by any person in respect of an application under this Rule; and the liquidator (if other than the official receiver) is not so liable unless the court makes an order to that effect.

#### **4.84. Withdrawal or variation of proof**

A creditor's proof may at any time, by agreement between himself and the liquidator, be withdrawn or varied as to the amount claimed.

#### **4.85. Expunging of proof by the court**

1. The court may expunge a proof or reduce the amount claimed:
  - a) on the liquidator's application, where he thinks that the proof has been improperly admitted, or ought to be reduced; or
  - b) on the application of a creditor, if the liquidator declines to interfere in the matter.
2. Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant:
  - a) in the case of an application by the liquidator, to the creditor who made the proof; and
  - b) in the case of an application by a creditor, to the liquidator and to the creditor who made the proof (if not himself).

#### **4.86. Estimate of quantum**

1. The liquidator shall estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value; and he may revise any estimate previously made, if he thinks fit by reference to any change of circumstances or to information becoming available to him.

He shall inform the creditor as to his estimate and any revision of it.

2. Where the value of a debt is estimated under this Rule, or by the court under section 168(3) or (5), the amount provable in the winding up in the case of that debt is that of the estimate for the time being.

#### **4.87. Negotiable instruments, etc.**

Unless the liquidator allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or his authorized representative to be a true copy.

#### **4.88. Secured creditors**

1. If a secured creditor realises his security, he may prove for the balance of his debt, after deducting the amount realised.
2. If a secured creditor voluntarily surrenders his security for the general benefit of creditors, he may prove for his whole debt, as if it were unsecured.

#### **4.89. Discounts**

There shall in every case be deducted from the claim all trade and other discounts which would have been available to the company but for its liquidation, except any discount for immediate, early or cash settlement.

#### **4.90. Mutual credits and set-off**

1. This Rule applies where, before the company goes into liquidation there have been mutual credits, mutual debts or other mutual dealings between the company and any creditor of the company proving or claiming to prove for a debt in the liquidation.
2. The reference in paragraph (1) to mutual credits, mutual debts or other mutual dealings does not include:
  - a) any debt arising out of an obligation incurred at a time when the creditor had notice that:
    - i. a meeting of creditors had been summoned under section 98; or
    - ii. a petition for the winding up of the company was pending;
  - b) any debt arising out of an obligation where:
    - i. the liquidation was immediately preceded by an administration; and
    - ii. at the time the obligation was incurred the creditor had notice that an application for an administration order was pending or a person had given notice of intention to appoint an administrator;
  - c) any debt arising out of an obligation incurred during an administration which immediately preceded the liquidation; or
  - d) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into:

- i. after the company went into liquidation;
  - ii. at a time when the creditor had notice that a meeting of creditors had been summoned under section 98;
  - iii. at a time when the creditor had notice that a winding up petition was pending;
  - iv. where the liquidation was immediately preceded by an administration, at a time when the creditor had notice that an application for an administration order was pending or a person had given notice of intention to appoint an administrator;  
or
  - v. during an administration which immediately preceded the liquidation.
3. An account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sums due from one party shall be set off against the sums due from the other.
4. A sum shall be regarded as being due to or from the company for the purposes of paragraph (3) whether:
  - a) it is payable at present or in the future;
  - b) the obligation by virtue of which it is payable is certain or contingent; or
  - c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.
5. Rule 4.86 shall also apply for the purposes of this Rule to any obligation to or from the company which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.
6. Rules 4.91 to 4.93 shall apply for the purposes of this Rule in relation to any sums due to the company which:
  - a) are payable in a currency other than sterling;
  - b) are of a periodical nature; or
  - c) bear interest.
7. Rule 11.13 shall apply for the purposes of this Rule to any sum due to or from the company which is payable in the future.
8. Only the balance (if any) of the account owed to the creditor is provable in the liquidation. Alternatively the balance (if any) owed to the company shall be paid to the liquidator as part of the assets except where all or part of the balance results from a

contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) shall be paid if and when that debt becomes due and payable.

9. In this Rule “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

#### **4.91. Debts in foreign currency**

1. For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at the official exchange rate prevailing on the date when the company went into liquidation or, if the liquidation was immediately preceded by an administration, on the date that the company entered administration.
2. “The official exchange rate” is the middle exchange rate on the London Foreign Exchange Market at the close of business, as published for the date in question. In the absence of any such published rate, it is such rate as the court determines.

#### **4.92. Payments of a periodical nature**

1. In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date when the company went into liquidation or, if the liquidation was immediately preceded by an administration, up to the date that the company entered administration.
2. Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day.

#### **4.93. Interest**

- A1. In this Rule, “the relevant date” means the date on which the company went into liquidation or, if the liquidation was immediately preceded by an administration, the date on which the company entered administration.
1. Where a debt proved in the liquidation bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the relevant date.
2. In the following circumstances the creditor's claim may include interest on the debt for periods before the relevant date, although not previously reserved or agreed.
3. If the debt is due by virtue of a written instrument, and payable at a certain time, interest may be claimed for the period from that time to the relevant date.
4. If the debt is due otherwise, interest may only be claimed if, before the relevant date, a demand for payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment.
5. Interest under paragraph (4) may only be claimed for the period from the date of the demand to the relevant date and for all the purposes of the Act and the Rules shall be chargeable at a rate not exceeding that mentioned in paragraph (6).

6. The rate of interest to be claimed under paragraphs (3) and (4) is the rate specified in section 17 of the Judgments Act 1838 on the relevant date.

#### **4.94. Debt payable at future time**

A creditor may prove for a debt of which payment was not yet due on the date when the company went into liquidation, or, if the liquidation was immediately preceded by an administration, on the date that the company entered administration but subject to Rule 11.13 in Part 11 of the Rules (adjustment of dividend where payment made before time).



## **Summary of Rules incorporated by reference into the CVA Proposal**

### **Rules 11.1 to 11.13**

#### **11.1. Preliminary**

- (1) The Rules in this Part relate to the declaration and payment of dividends in companies winding up and in bankruptcy.
- (2) The following definitions apply—
  - (a) “the insolvent” means the company in liquidation or, as the case may be, the bankrupt; and
  - (b) “creditors” means those creditors of the insolvent of whom the office-holder is aware.
- (3) For the purposes of this Part, a member State liquidator appointed in relation to an insolvent is deemed to be a creditor.

#### **11.2. Notice of intended dividend**

- (1) Before declaring a dividend, the office-holder shall give notice of his intention to do so—
  - (a) to all creditors whose addresses are known to him and who have not proved their debts, and
  - (b) where a member State liquidator has been appointed in relation to the insolvent, to that person.

***[Rules 11.2(1A), (1B) and (1C) not incorporated by reference into the CVA Proposal]***

- (2) Any notice under paragraph (1) and any notice of a first dividend under paragraph (1A) shall specify a date (“the last date for proving”) up to which proofs may be lodged. The date shall be the same for all creditors, and not less than 21 days from that of the notice.
- (3) The office-holder shall in the notice state his intention to declare a dividend (specified as interim or final, as the case may be) within the period of 2 months from the last date for proving.

#### **11.3. Final admission/rejection of proofs**

- (1) The office-holder shall, within 5 business days from the last date for proving, deal with every creditor's proof (in so far as not already dealt with) by admitting or rejecting it in whole or in part, or by making such provision as he thinks fit in respect of it.
- (2) The office-holder is not obliged to deal with proofs lodged after the last date for proving; but he may do so, if he thinks fit.
- (3) In the declaration of a dividend no payment shall be made more than once by virtue of the same debt.
- (4) Subject to Rule 11.11, where—
  - (a) a creditor has proved, and

- (b) a member State liquidator has proved in relation to the same debt,  
payment shall only be made to the creditor.

#### **11.4. Postponement or cancellation of dividend**

If in the period of 2 months referred to in Rule 11.2(3)—

- (a) the office-holder has rejected a proof in whole or in part and application is made to the court for his decision to be reversed or varied, or
- (b) application is made to the court for the office-holder's decision on a proof to be reversed or varied, or for a proof to be expunged, or for a reduction of the amount claimed,

the office-holder may postpone or cancel the dividend.

#### **11.5. Decision to declare dividend**

- (1) If the office-holder has not, in the 2-month period referred to in Rule 11.2(3), had cause to postpone or cancel the dividend, he shall within that period proceed to declare the dividend of which he gave notice under that Rule.
- (2) Except with the permission of the court, the office-holder shall not declare the dividend so long as there is pending any application to the court to reverse or vary a decision of his on a proof, or to expunge a proof or to reduce the amount claimed.

If the court gives permission under this paragraph, the office-holder shall make such provision in respect of the proof in question as the court directs.

#### **11.6. Notice of declaration**

- (1) The office-holder shall give notice of the dividend to
  - (a) all creditors who have proved their debts, and
  - (b) where a member State liquidator has been appointed in relation to the insolvent, to that person.
- (2) The notice shall include the following particulars relating to the insolvency and the administration of the insolvent estate—
  - (a) amounts realised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;
  - (b) payments made by the office-holder in the administration of the insolvent estate;
  - (c) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;
  - (d) the total amount to be distributed, and the rate of dividend;
  - (e) whether, and if so when, any further dividend is expected to be declared.

- (2A) Where, in a winding up other than a members' voluntary winding up, the liquidator proposes to declare a dividend to unsecured creditors, the notice must also state the value of the prescribed part, except where the court has made an order under section 176A(5).
- (3) The dividend may be distributed simultaneously with the notice declaring it.
- (4) Payment of dividend may be made by post, or arrangements may be made with any creditor for it to be paid to him in another way, or held for his collection.
- (5) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend shall be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.

#### **11.7. Notice of no, or no further, dividend**

If the office-holder gives notice to creditors that he is unable to declare any dividend or (as the case may be) any further dividend, the notice shall contain a statement to the effect either—

- (a) that no funds have been realised, or
- (b) that the funds realised have already been distributed or used or allocated for defraying the expenses of administration.

#### **11.8. Proof altered after payment of dividend**

- (1) If after payment of dividend the amount claimed by a creditor in his proof is increased, the creditor is not entitled to disturb the distribution of the dividend; but he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive.
- (2) Any dividend or dividends payable under paragraph (1) shall be paid before the money there referred to is applied to the payment of any such further dividend.
- (3) If, after a creditor's proof has been admitted, the proof is withdrawn or expunged, or the amount of it is reduced, the creditor is liable to repay to the office-holder, for the credit of the insolvent estate, any amount over paid by way of dividend.

#### **11.9. Secured creditors**

- (1) The following applies where a creditor re-values his security at a time when a dividend has been declared.
- (2) If the revaluation results in a reduction of his unsecured claim ranking for dividend, the creditor shall as soon as reasonably practicable repay to the office-holder, for the credit of the insolvent estate, any amount received by him as dividend in excess of that to which he would be entitled having regard to the revaluation of the security.
- (3) If the revaluation results in an increase of his unsecured claim, the creditor is entitled to receive from the office-holder, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which he has failed to receive, having regard to the revaluation of the security.

However, the creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the revaluation.

#### **11.10. Disqualification from dividend**

If a creditor contravenes any provision of the Act or the Rules relating to the valuation of securities, the court may, on the application of the office-holder, order that the creditor be wholly or partly disqualified from participation in any dividend.

#### **11.11. Assignment of right to dividend**

- (1) If a person entitled to a dividend gives notice to the office-holder that he wishes the dividend to be paid to another person, or that he has assigned his entitlement to another person, the office-holder shall pay the dividend to that other accordingly.
- (2) A notice given under this Rule must specify the name and address of the person to whom payment is to be made.

#### **11.12. Preferential creditors**

- (1) Subject as follows, the Rules in this Part apply with respect to any distribution made in the insolvency to preferential creditors, with such adaptations as are appropriate considering that such creditors are of a limited class.
- (2) The notice by the office-holder under Rule 11.2, where a dividend is to be declared for preferential creditors, need only be given to those creditors in whose case he has reason to believe that their debts are preferential and notice of the intended dividend need only be gazetted if the office-holder thinks fit.

#### **11.13. Debt payable at future time**

- (1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, he is entitled to dividend equally with other creditors, but subject as follows.
- (2) For the purpose of dividend (and no other purpose) the amount of the creditor's admitted proof (or, if a distribution has previously been made to him, the amount remaining outstanding in respect of his admitted proof) shall be reduced by applying the following formula—

$$\frac{x}{1.05^n}$$

where—

- (a) “x” is the value of the admitted proof; and
  - (b) “n” is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would otherwise be due expressed in years and months in a decimalised form.
- (3) In paragraph (2) “relevant date” means—
- (a) in the case of a winding up which was not immediately preceded by an administration, the date that the company went into liquidation;
  - (b) in the case of a winding up which was immediately preceded by an administration, the date that the company entered administration; and

(c) in the case of a bankruptcy, the date of the bankruptcy order.

## **Summary of Rules incorporated by reference into the CVA Proposal**

### **Rule 1.11**

#### **1.11. Summoning of meetings under s. 3**

- (1) The responsible insolvency practitioner shall fix a venue for the creditors' meeting and the company meeting, and give at least 14 days' notice of the meetings—
  - (a) in the case of the creditors' meeting, to all the creditors specified in the company's statement of affairs, and to any other creditors of whose address the insolvency practitioner is otherwise aware; and
  - (b) in the case of the company meeting, to all persons who are, to the best of his belief, members of the company.
- (2) Each notice sent out under this Rule shall state the effect of Rule 1.19(1), (3) and (4) (requisite majorities (creditors)); and with it there shall be sent—
  - (a) a copy of the responsible insolvency practitioner's proposal, and
  - (b) a copy of the statement of affairs or, if he thinks fit, a summary of it (the summary to include a list of creditors and the amounts of their debts).

### **Rules 1.13 to 1.19**

#### **1.13. Summoning of meetings**

- (1) Subject as follows, in fixing the venue for the creditors' meeting and the company meeting, the nominee must have regard primarily to the convenience of the creditors.
- (2) Meetings shall in each case be summoned for commencement between 10.00 and 16.00 hours on a business day.
- (3) The meetings may be held on the same day or on different days. If held on the same day, the meetings shall be held in the same place, but in either case the creditors' meeting shall be fixed for a time in advance of the company meeting.
- (4) Where the meetings are not held on the same day, they shall be held within 5 business days of each other.
- (5) With every notice summoning either meeting there shall be sent out forms of proxy.

#### **1.14. The chairman at meetings**

- (1) Subject as follows, at both the creditors' meeting and the company meeting, and at any combined meeting, the nominee must be chairman.
- (2) If for any reason he is unable to attend, he may nominate another person to act as chairman in his place; but a person so nominated must be
  - (a) a person qualified to act as an insolvency practitioner in relation to the company;
  - (b) an authorised person in relation to the company; or

- (c) an employee of the nominee or his firm who is experienced in insolvency matters.

#### **1.15. The chairman as proxy-holder**

The chairman shall not by virtue of any proxy held by him vote to increase or reduce the amount of the remuneration or expenses of the nominee or the supervisor of the proposed arrangement, unless the proxy specifically directs him to vote in that way.

#### **1.16. Attendance by company officers**

- (1) At least 14 days' notice to attend the meetings shall be given by the nominee—
  - (a) to all directors of the company, and
  - (b) to any persons in whose case the nominee thinks that their presence is required as being officers of the company, or as having been directors or officers of it at any time in the 2 years immediately preceding the date of the notice.
- (2) The chairman may, if he thinks fit, exclude any present or former director or officer from attendance at a meeting, either completely or for any part of it; and this applies whether or not a notice under this Rule has been sent to the person excluded.

#### **1.17. Entitlement to vote (creditors)**

- (1) Subject as follows, every creditor who has notice of the creditors' meeting is entitled to vote at the meeting or any adjournment of it.
- (2) Votes are calculated according to the amount of the creditor's debt as at the date of the meeting or, where the company is being wound up or is in administration, the date of its going into liquidation or (as the case may be) when the company entered administration.
- (3) A creditor may vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained and for the purposes of voting (but not otherwise) his debt shall be valued at £1 unless the chairman agrees to put a higher value on it.

#### **1.17A. Procedure for admission of creditors' claims for voting purposes**

- (1) Subject as follows, at any creditors' meeting the chairman shall ascertain the entitlement of persons wishing to vote and shall admit or reject their claims accordingly.
- (2) The chairman may admit or reject a claim in whole or in part.
- (3) The chairman's decision on any matter under this Rule or under paragraph (3) of Rule 1.17 is subject to appeal to the court by any creditor or member of the company.
- (4) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.
- (5) If on an appeal the chairman's decision is reversed or varied, or votes are declared invalid, the court may order another meeting to be summoned, or make such order as it thinks just.

The court's power to make an order under this paragraph is exercisable only if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity.

- (6) An application to the court by way of appeal against the chairman's decision shall not be made after the end of the period of 28 days beginning with the first day on which the report required by section 4(6) has been made to the court.
- (7) The chairman is not personally liable for any costs incurred by any person in respect of an appeal under this Rule.

#### **1.18. Voting rights (members)**

- (1) Subject as follows, members of the company at their meeting vote according to the rights attaching to their shares respectively in accordance with the articles.
- (2) *[Repealed]*
- (3) References in this Rule to a person's shares include any other interest which he may have as a member of the company.

#### **1.19. Requisite majorities (creditors)**

- (1) Subject to paragraph (2), at the creditors' meeting, a resolution is passed when a majority (in value) of those present and voting in person or by proxy have voted in favour of it.
- (2) A resolution to approve the proposal or a modification is passed when a majority of three-quarters or more (in value) of those present and voting in person or by proxy have voted in favour of it.
- (3) In the following cases there is to be left out of account a creditor's vote in respect of any claim or part of a claim—
  - (a) where written notice of the claim was not given, either at the meeting or before it, to the chairman or nominee;
  - (b) where the claim or part is secured;
  - (c) where the claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing—
    - (i) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the company, and against whom a bankruptcy order has not been made (or in the case of a company, which has not gone into liquidation), as a security in his hands, and
    - (ii) to estimate the value of the security and (for the purpose of entitlement to vote, but not of any distribution under the arrangement) to deduct it from his claim.
- (4) Any resolution is invalid if those voting against it include more than half in value of the creditors, counting in these latter only those—
  - (a) to whom notice of the meeting was sent;
  - (b) whose votes are not to be left out of account under paragraph (3); and



- (c) who are not, to the best of the chairman's belief, persons connected with the company.
- (5) It is for the chairman of the meeting to decide whether under this Rule—
  - (a) a vote is to be left out of account in accordance with paragraph (3), or
  - (b) a person is a connected person for the purposes of paragraph (4)(c);and in relation to the second of these two cases the chairman is entitled to rely on the information provided by the company's statement of affairs or otherwise in accordance with this Part of the Rules.
- (6) If the chairman uses a proxy contrary to Rule 1.15, his vote with that proxy does not count towards any majority under this Rule.
- (7) The chairman's decision on any matter under this Rule is subject to appeal to the court by any creditor or member and paragraphs (5) to (7) of Rule 1.17A apply as regards such an appeal.

#### **Rules 12.A4 and 12.A5**

##### **12A.4 Non-receipt of notice of meeting**

Where in accordance with the Act or the Rules, a meeting of creditors or other persons is summoned by notice, the meeting is presumed to have been duly summoned and held, notwithstanding that not all those to whom the notice is to be given have received it.

##### **12A.5 Notice etc. to solicitors**

Where under the Act or the Rules a notice or other document is required or authorised to be given, delivered or sent to a person, it may be given, delivered or sent instead to a solicitor authorised to accept delivery on that person's behalf.