

THE LAWS OF
THE VIRGIN ISLANDS
STATUTORY INSTRUMENT No. 45 of 2005
INSOLVENCY RULES, 2005

Based on the Insolvency Rules, 2005 (Statutory Instrument No. 45 of 2005) and amendments made by the Insurance Act, 2008 (No. 1 of 2008) (“1/2008”).

Important

This is an unofficial version of the Insolvency Rules as amended. Whilst every effort has been made to ensure correctness, no responsibility is assumed for any errors which may appear.

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VIRGIN ISLANDS
INSOLVENCY RULES, 2005
ARRANGEMENT OF RULES

Rule

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¹ The word “to” should be inserted between the words “Court” and “expunge”.

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² The word “to” should be inserted between the words “Court” and “expunge”.

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 2005 NO. 45

**INSOLVENCY ACT, 2003
(No. 5 of 2003)**

Insolvency Rules, 2005

[Gazetted 30th June, 2005]

The Executive Council, in exercise of the powers conferred by section **498** of the Insolvency Act, 2003 (No. 5 of 2003), makes the following Rules:

1/2008.

PART I

PRELIMINARY PROVISIONS

Short title and commencement.

- 1.** (1) These Rules may be cited as the Insolvency Rules, 2005.
- (2) The Rules come into operation on the dates specified below:
 - (a) Rules **3** and **324** are deemed to have come into operation on the 16th day of August, 2004;
 - (b) Part V (Administration) shall come into operation on such date as may be appointed by the Executive Council by Notice published in the Gazette and any reference to “administration”, “administration order” or “administrator” in any other Part of the Rules shall be construed accordingly; and
 - (c) all other provisions of the Rules come into operation on the date of publication of these Rules in the Gazette.

Interpretation.
No. 5 of 2003

- 2.** (1) In these Rules,
 - “Act” means the Insolvency Act, 2003;
 - “contact details”, in respect of a person, means
 - (a) a telephone number;

- (b) a fax number;
- (c) an e-mail address; or
- (d) another method of communication, not being a physical address;

“CPR” means the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 and “CPR” followed by a Part or Rule by number means the Part or Rule with that number in those Rules;

“insolvency proceeding” means any proceeding under the Act or the Rules, including a creditors’ arrangement;

“practice direction” means a direction as to practice and procedure issued by the Court under Rule 8;

“Regulations” means the Regulations made under section 486;

“Rules” means these Rules;³

“section” means a section of the Act;

(2) For the purposes of section 2(1) [definition of “preferential claims”], the claims set out in Schedule 2 are preferential claims.

(3) Unless otherwise provided, the words and expressions defined in the Act have the same meaning in the Rules.

Prescribed
financial services
licence.

3. For the purposes of section 2(1) (definition of “regulated person”), a prescribed financial services licence is a licence, authorisation, permission or recognition issued under one of the following Acts:

- No. 9 of 1990 (a) Banks and Trust Companies Act, 1990;
- 1/2008.
No. 1 of 2008 (b) Insurance Act, 2008;
- No. 8 of 1990 (c) Company Management Act, 1990;⁴
- No. 6 of 1990 (d) Mutual Funds Act, 1996.

³ The word “and” should follow the word “Rules;”.

⁴ The word “and” should follow the word “1990;”.

PART II

COURT PROCEDURE AND PRACTICE

Division 1 – General

Application of
CPR.

4. (1) Subject to paragraph (2), except so far as inconsistent with the Act or the Rules or a practice direction issued under Rule 8, the CPR, practice directions issued under CPR Part 4 and practice guidance issued under CPR 4.6 apply to insolvency proceedings, with any necessary modifications.

(2) The provisions of the CPR specified in Schedule 1 do not apply in insolvency proceedings.

Exercise of
Court's powers.

5. Subject to any provision in the Act or the Rules to the contrary or to any practice direction, the functions of the Court under the Act or the Rules may be exercised by a master.

Filing of
documents with
the Court.

6. Every document filed with the Court shall have endorsed upon it the date and time at which it was filed and, if the Rules so provide, shall be sealed.

Filing of
documents with
the Registrar.

7. (1) Where a document is required or permitted under the Act or the Rules to be filed with the Registrar, the document is filed by delivering or posting it to the Registrar.

(2) A document is filed with the Registrar on the day when it is received at the Companies Registry or, where it is received at a time when the Companies Registry is closed, on the next day on which the Companies Registry is open.

Division 2 – Practice Directions and Guides

Issue of practice
directions.

8. (1) The Chief Justice may issue a practice direction where required or permitted by the Act or the Rules.

(2) Where there is no express provision in the Act or the Rules for such a direction, the Chief Justice may issue directions as to the practice and procedure to be followed with regard to insolvency proceedings before the Court.

(3) In the case of any inconsistency between a practice direction issued under this Rule and the CPR, or a practice direction or practice guide issued under the CPR, the practice direction issued under this Rule prevails.

Practice directions to be published in Gazette.

9. (1) A practice direction issued under Rule 8 shall be published in the Gazette.

(2) A practice direction issued under Rule 8 comes into effect on its publication in the Gazette or on such later date as may be specified in the direction.

Compliance with practice directions.

10. (1) In this Rule, “relevant practice direction” means a practice direction made

(a) under Rule 8; or

(b) under CPR Part 4.

(2) Unless there are good reasons for not doing so, a party shall comply with any relevant practice directions.

(3) The Court may make an order under CPR Part 26 (Powers of Court) or CPR Part 64 (Costs – General) against a party who fails to comply with a relevant practice direction.

Practice guides.

11. (1) In this Rule, “relevant practice guide” means a practice guide made

(a) under this Rule; or

(b) under CPR 4.6.

(2) The Court may issue practice guides to assist parties concerned with insolvency proceedings before the Court.

(3) Parties shall have regard to any relevant practice guide.

(4) The Court may take account of any failure of a party to comply with any relevant practice guide when deciding whether or not to make an order under CPR Part 26 (Powers of the Court) or CPR Part 64 (Costs – General).

Division 3 – Applications

Scope of Rules.

12. (1) Except as otherwise provided in the Act or the Rules, this Division applies to every application made to the Court under the Act or the Rules.

(2) Notwithstanding this Division, an application for an administration order, for the appointment of a liquidator and for a bankruptcy order shall also comply with the relevant provisions of the Act and the Rules.

Types of application.

13. (1) An application to the Court which is not an application made in insolvency proceedings already before the Court shall be made as an “originating application”.

(2) An application to the Court made in insolvency proceedings already before the Court shall be made by way of an “ordinary application”.

(3) For the purposes of applying the CPR, an application made in insolvency proceedings, whether originating or ordinary, shall be regarded as a fixed date claim.

Form and content of application.

14. (1) An application, whether originating or ordinary, shall be in writing and in the prescribed form, with such modifications as are appropriate.

(2) In particular, an application shall state

- (a) the name of the applicant and the names of any respondents;
- (b) the nature of the relief or the order applied for or the directions sought from the Court;
- (c) the names and addresses of the persons, if any, on whom it is intended to serve the application or that no person is intended to be served;
- (d) where the Act or the Rules require that notice of the application is to be given to specified persons, the names and addresses of those persons so far as known to the applicant;
- (e) the applicant’s name and his address for service within the Virgin Islands; and
- (f) the applicant’s contact details.

(3) Where an application is made on behalf of an applicant by a legal practitioner appointed by the applicant to act for him, the application shall state the full address of the legal practitioner, contact

details for the legal practitioner and the name or reference of the individual dealing with the matter.

(4) An originating application shall set out the grounds on which the applicant claims to be entitled to the relief or order sought.

(5) The application shall be signed by the applicant if he is acting in person or, otherwise, by or on behalf of his legal practitioner.

(6) An application may, and where the Rules so provide shall, be supported by an affidavit.

(7) Where the address for service of an applicant changes, he shall immediately notify the Court and all other parties and any document sent to the original address before notice of the change is given is regarded as validly served.

Application for appointment of insolvency practitioner.

15. Any application that seeks the appointment of one or more insolvency practitioners in an insolvency proceeding shall have attached to it, a written statement signed by each of the proposed insolvency practitioners

- (a) stating that the insolvency practitioner consents to accept the appointment;
- (b) setting out details of any prior professional relationship that he has had with the company or individual concerned; and
- (c) stating that he is eligible to act as insolvency practitioner in respect of the company or individual concerned.

Filing of applications.

16. (1) An application, with any supporting documents, shall be filed with the Court together with one copy for exhibiting to the affidavit of service, if required, and sufficient additional copies for service.

(2) Unless the Rules otherwise provide, or the Court otherwise orders, the Court shall

- (a) fix a venue for the first hearing of the application;
- (b) seal each application and each copy of the application filed;

- (c) endorse on the application, and on each copy of the application filed, the date and time of filing and details of the venue fixed; and
- (d) return the copies of the application to the applicant.

Service of applications.

17. (1) A copy of the application, endorsed in accordance with Rule 16(2), shall be served on

- (a) the respondent or respondents named in the application; and
- (b) any other person that the Court may direct.

(2) Subject to paragraph (3), notice of the application shall be given to any person specified in the Rules and to any other person that the Court may direct.

(3) Unless the Act or the Rules provide otherwise, the Court may, by order, give any of the following directions

- (a) that the giving of notice of an application to any person be dispensed with; and
- (b) that notice be given in some way other than that specified in the Act or the Rules.

(4) Unless the Act or the Rules provide otherwise, an application shall be served at least 14 days before the date fixed for the hearing.

Persons entitled to copy of certain applications.

18. (1) Each of the following persons may request the applicant to provide him with a copy of an application for an administration order or an application for the appointment of a liquidator:

- (a) a director of the company against which the application is made;
- (b) a member of the company; and
- (c) a creditor of the company.

(2) On receipt of a request made under paragraph (1), the applicant, or where the applicant is represented by a legal practitioner, his legal practitioner shall provide the person making the request with a copy of the application.

Affidavit of service.

19. (1) Where required by the Act or the Rules, service of an application or other document shall be verified by an affidavit of service in the prescribed form sworn by the person who effected service specifying the date on which, and the manner in which, service was effected.

(2) A sealed copy of the application or other document served, together with any supporting documents served, shall be exhibited to the affidavit of service.

(3) The affidavit verifying service shall be filed in Court as soon as reasonably practicable after service but, in any event, not less than two days prior to the date fixed for the hearing of the application.

Hearing of applications.

20. (1) Unless otherwise provided by the Act or the Rules

(a) an application before the master shall be heard in chambers; and

(b) an application before the judge may be held in chambers or in Court.

(2) An ordinary application shall be made to the master unless

(a) the Act, the Rules or a practice direction issued under Rule 8 provide otherwise; or

(b) the master does not have power to make the order sought.

(3) The master may refer to the judge any matter that he considers should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the master with such directions as he considers appropriate.

(4) The following originating application shall be made and heard by the judge:

(a) an application for an administration order;

(b) an application to appoint a liquidator of a company or a foreign company; and

(c) an application for a bankruptcy order.

(5) Nothing in this Rule precludes an application being made directly to the judge in a proper case.

(6) Unless the Act or the Rules provide otherwise, any person served with or given notice of an application is entitled to appear or be represented at the hearing of the application.

Ex parte
hearings.

21. (1) Where the Act or the Rules do not require service of an application on, or notice of it to be given to, any person, the Court may hear the application ex parte.

(2) Where the application is made ex parte in the circumstances specified in paragraph (1), the Court may

(a) hear it forthwith, without fixing a venue as required by Rule **16(2)**; or

(b) fix a venue for the application to be heard, in which case Rule **16(2)** applies.

Affidavits.

22. (1) Except as provided otherwise by the Act or the Rules, or as the Court otherwise orders, an affidavit in an insolvency proceeding may contain statements of information and belief.

(2) The deponent of an affidavit in an insolvency proceeding,

(a) shall state which of the statements in it are made from the deponent's own knowledge and which are matters of information and belief;

(b) shall specify the means of his knowledge or belief as to the matters sworn to; and

(c) if he is not an applicant, shall state the capacity in which and the authority by which he makes the affidavit.

(3) Subject to paragraphs (1) and (2) and except as provided otherwise by the Act or the Rules or as the Court otherwise orders, CPR Part 30 applies to an affidavit sworn under the Act or the Rules with such modifications as the circumstances require.

Division 4 – Service

Scope of Rules
concerning
service.

23. (1) This Division applies where in an insolvency proceeding

- (a) a document is required or permitted to be served, sent or delivered to any person; or
- (b) notice of any matter is required or permitted to be given to any person.

(2) In this Division, “registered office” has the meaning set out in the International Business Companies Act, the Companies Act or the BVI Business Companies Act, as the case may be.

Application of
CPR.

- 24.** (1) Except as otherwise provided in the Act or the Rules
- (a) CR Parts 5 and 7 apply to the service of a document of a type specified in paragraph (2), as if the document was a claim form; and
 - (b) CPR Parts 6 and 7 apply to the service of an ordinary application, a judgment or order and any other document required or permitted to be served, sent or delivered in an insolvency proceeding before the Court;

in each case with such modifications as are necessary.

(2) Paragraph (1)(a) applies to the documents of the following types

- (a) an application for an administration order;
- (b) an application for the appointment of a liquidator;
- (c) an application for a bankruptcy order;
- (d) an originating application;
- (e) a statutory demand; and
- (f) an order for the examination of a person under section 284.

(3) A document referred to in paragraph (2) shall be served in accordance with paragraph (1)(a) on every person whom the Act or the Rules require to be served with the document.

Responsibility for service.

25. (1) Unless the Act or the Rules provide otherwise, the service of documents in insolvency proceedings is the responsibility of the parties and will not be undertaken by the Court.

(2) Paragraph (1) applies notwithstanding that a Rule in the CPR applicable in insolvency proceedings may state otherwise.

(3) As soon as reasonably practicable after making an order in an insolvency proceeding, the Court shall provide the applicant with, or send to the applicant, sealed copies of the order for service.

Service on company.

26. (1) Subject to paragraphs (2) and (3), service on a company may be effected by one of the methods of service specified in CPR 5.7 (Service on limited company).

(2) Service of a document of a type specified in Rule **24**(2)(a), (b), (d) and (e) shall be served on a company

(a) at its registered office

(i) by serving the application personally on a director, officer or employee of the company,

(ii) by serving the application personally on a person who acknowledges himself to be authorised to accept service of documents on behalf of the company, or

(iii) if service under sub-paragraphs (i) or (ii) is not possible, by leaving the application at the registered office in such a way that it is likely to come to the attention of a person coming to the office; or

(b) if, for any reason, service of a document at the registered office of a company under sub-paragraph (a) is not practicable, or the company has no registered office, the document may be served

(i) by leaving it at the company's last known principal place of business in the Virgin Islands in such a way that it is likely to come to the attention of a person coming to the office, or

(ii) by serving the document personally on any director, officer or manager of the company.

(3) CPR 5.13 and 5.16 do not apply to the service on a company of a statutory demand or an application for an administration order or for the appointment of a liquidator.

(4) Where the Act or the Rules require service of a document on the board of a company, service may be effected by service of a single copy of the document on the company at its registered office.

Service on a partnership.

27. Service on a partnership may be effected by one of the methods of service specified in CPR 5.8 (Service on firm or partnership).

Service on foreign company.

28. (1) Service on a foreign company may be effected

(a) by one of the methods of service specified in CPR 5.9 (Service on body corporate); or

(b) by serving the claim form, in the Virgin Islands, personally on any person who acknowledges himself to be authorised to accept service of documents on behalf of the foreign company.

(2) If, for any reason, service of a document in a manner specified in paragraph (1) is not practicable, service may be effected by leaving the document at, or sending it by post to, any place of business established by the foreign company in the Virgin Islands.

Service on any other person.

29. (1) Service on any other person may be effected by one of the methods specified in the relevant Part of the CPR or by delivering the document to be served to his proper address.

(2) For the purposes of paragraph (1), a person's proper address is any address which he has previously notified as his address for service or, if he has not notified any such address, service may be effected by delivery of the document to his usual or last known address.

(3) Delivery of documents to any place or address may be made by leaving them there or by sending them by post.

Sending or delivering other documents.

30. (1) Paragraph (2) applies where, under the Act or the Rules

(a) a document, other than an application, is required or permitted to be sent or delivered to any person; or

(b) written notice of a meeting or any matter is required or permitted to be given to any person.

(2) A document may be sent or delivered and written notice may be given

- (a) by any means of service specified in CPR Part 6; or
- (b) by any other means, including a means of electronic communication, that may be agreed between the person sending the document or notice and the person receiving it.

Division 5 – General

Advertisements.

31. (1) Without limiting any specific requirement to advertise contained in the Act or the Rules, where a person is required by the Act or the Rules to advertise any application, order, notice or other document or matter, he shall, within the time specified in the Act or the Rules

- (a) ensure that a copy of the application, order, notice or other document or matter concerned is delivered to the Gazette Office for advertisement; and
- (b) advertise the application, order, notice or other document or matter concerned in such newspaper or newspapers that the person considers most appropriate for ensuring that the application, order, notice or other document or matter comes to the attention of the creditors of the company or individual who is subject to the insolvency proceeding concerned.

(2) The first meeting of creditors in an administration or a liquidation and the notice specified in section 147(3) shall be advertised in the same newspaper as that in which, as the case may be, the notice of the administration order, the appointment of the liquidator or the appointment of the administrative receiver was advertised.

(3) Where paragraph (2) applies, the administrator, liquidator or administrative receiver may also advertise in such other newspaper as he thinks appropriate for ensuring that the notice comes to the attention of the creditors of the company.

Advertisement of liquidator's appointment.

32. (1) This Rule applies to the advertisement by a liquidator of his appointment as required by section 178(1).

- (2) A liquidator shall advertise his appointment

- (a) as specified in Rule **31**(1)(a);
- (b) in a newspaper published and circulating in the Virgin Islands; and
- (c) in such other newspaper or newspapers, if any, that he considers most appropriate for ensuring that the application, order, notice or other document or matter comes to the attention of the creditors of the company.

Advertisement of
bankruptcy
trustee's
appointment.

33. (1) This Rule applies to the advertisement by a bankruptcy trustee of his appointment as required by section 326(1).

(2) A bankruptcy trustee shall advertise his appointment

- (a) as specified in Rule **31**(1)(a); and
- (b) in a newspaper published and circulating in the Virgin Islands.

Division 6 – Minors and Patients

Interpretation.

34. (1) In this Division

“minor” means a person who has not attained the age of eighteen years; and

“patient” means a person who is incapable of managing his assets and affairs

(a) by reason of his mental disorder as defined in section 2 of the Mental Health Ordinance; or

(b) due to physical affliction or disability.

(2) A person is eligible to be appointed as the next friend of a patient or a minor under Rule **35** if

(a) he can fairly and competently appear for, represent or act for that patient or minor; and

(b) he has no interest adverse to that of the patient or minor.

Cap. 191

Appointment of
next friend.

35. (1) The Court may appoint an eligible person as the next friend to appear for, represent or act for a patient or a minor.

(2) The appointment of a next friend may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the patient or minor is entitled to exercise.

(3) The Court may make the appointment of a next friend either of its own motion or on application by

- (a) a person who has been appointed by a court in a jurisdiction outside the Virgin Islands to manage the affairs of, or to represent, the patient or minor;
- (b) a relative or friend of the patient or minor who appears to the Court to be a proper person to make the application;
- (c) the Official Receiver;
- (d) the person who, in relation to the proceedings, is the responsible insolvency practitioner; or
- (e) in the case of a minor, the minor himself.

(4) Subject to paragraph (5), an application under paragraph (3) may be made ex parte.

(5) The Court may require such notice of the application as it considers appropriate to be given to the patient or minor, or to any other person that it considers appropriate, and may adjourn the hearing of the application to enable notice to be given.

(6) The Court may make an order appointing a next friend subject to such terms and conditions as it considers just, including a requirement that the next friend take legal or other professional advice or that he act by a legal practitioner, and may limit the next friend's authority to appear for, represent or act for the patient or minor.

Affidavit in
support of
application.

36. (1) An application under Rule 35(3) made in respect of a patient by a person other than the Official Receiver, shall be supported by an affidavit of a registered medical practitioner as to the mental or physical condition of the patient.

(2) An application under Rule 35(3) made in respect of a patient by the Official Receiver shall be supported by a report made by the Official Receiver.

Service of documents and giving of notice.

37. Any document or notice served on, or sent to, a person appointed as next friend under Rule 35 has the same effect as if it had been served on, or given to, the patient or minor.

Termination of appointment of next friend and variation of conditions.

38. (1) The Court may on its own motion, or on the application of the person appointed as the next friend of a minor or patient or of a person specified in Rule 35(3)

- (a) terminate the appointment of a person as next friend of the patient or minor;
- (b) limit the next friend's authority to appear for, represent or act for the patient or minor;
- (c) amend the terms and conditions upon which the person is appointed next friend; or
- (d) appoint an eligible person as next friend of the patient or minor in substitution for an existing next friend.

(2) If an application under paragraph (1) is made by a person other than the next friend of the patient or minor, notice of the application shall be given to the person appointed as best friend.

(3) Subject to paragraph (2), Rule 35 applies to an application made under paragraph (1) as if it was an application for the appointment of a best friend.

Termination of appointment of next friend of minor on majority.

39. (1) The appointment of the next friend of a minor, who is not also a patient, terminates when the minor reaches the age of majority.

(2) Where the appointment of the next friend of a minor terminates under paragraph (1), the person whose appointment as best friend has been terminated, shall apply to the Court for directions.

(3) On an application under paragraph (2), the Court may make such directions, if any, as it considers necessary or just.

Directions.

40. A person appointed as the next friend of a patient or minor may at any time apply to the Court for directions concerning his appointment

and upon such application the Court make⁵ give such directions as it considers appropriate.

⁵ The word “make” should be replaced with the word “may”.

PART III

GENERAL PROVISIONS

Division 1 – Creditors’ and Members’ Meetings

Interpretation.

41. In this Division

“convener” means the person calling a creditors’ or members’ meeting;

“creditors’ meeting” means a meeting of creditors required or permitted to be called under the Act or the Rules;

“members’ meeting” means a meeting of members required or permitted to be called under the Act or the Rules;

“notice” means a notice calling a creditors’ or members’ meeting;

“office holder” means

- (a) in the case of a company, a supervisor, interim supervisor, administrator, administrative receiver or liquidator; and
- (b) in the case of an individual, a supervisor, interim supervisor or his bankruptcy trustee;

“relevant date” means

- (a) in the case of a company creditors’ arrangement, the date of the creditors’ meeting or, if the company is in administration or in liquidation, the date that the administration or liquidation commenced;
- (b) in the case of an individual creditors’ arrangement, the date of the creditors’ meeting;
- (c) in the case of an administrative receivership, the date of his appointment; and
- (d) in the case of administration, liquidation or bankruptcy proceedings, the date that the

administration, liquidation or bankruptcy commenced.

Scope of this Division.

- 42.** Except to the extent that the Act or the Rules otherwise provide,
- (a) Rules **43** to **60** apply to all creditors' meetings; and
 - (b) Rule **61** applies to all members' meetings.

Calling of Creditors' Meetings

Calling of creditors' meetings.

43. (1) A creditors' meeting is called by the convener sending, or causing to be sent, to every creditor entitled to attend the meeting a notice complying with the Act and the Rules.

(2) Subject to any requirement of the Act or the Rules, or any direction of the Court, concerning the date or last date for which a creditors' meeting may be called, the venue of a creditors' meeting shall be fixed by the convener and stated in the notice.

(3) In fixing the venue of a creditors' meeting, the convener shall have regard primarily to the convenience of the creditors entitled to attend the meeting and creditors' meetings may be held in or outside the Virgin Islands.

(4) A notice sent to a creditor under paragraph (1) shall be sent in sufficient time for it to be received, or deemed to be received, by him at least 14 days before the date of the meeting.

(5) Unless exceptional circumstances justify otherwise, creditors' meetings shall be called for commencement between 10.00 and 16.00 on a business day.

Form of notice calling creditors' meeting and accompanying documents.

44. (1) In addition to any other requirements of the Act or the Rules, a notice shall contain

- (a) a statement as to the primary purpose of, or the main business to be conducted at, the meeting; and
- (b) an explanation as to
 - (i) the majority required to pass a resolution at the meeting, and
 - (ii) the basis on which a person will be admitted to vote at the meeting.

(2) The convener shall send, or cause to be sent, together with every notice

- (a) a proxy form; and
- (b) any document required by the Act or the Rules to be sent with the notice.

(3) Where a copy of the notice, together with any other documentation, is required by the Act or the Rules to be sent to any person not entitled to vote at the meeting, the convener shall send, or cause to be sent, a copy of the notice together with any accompanying documentation in sufficient time for it to be received, or deemed to be received, by that person at least 14 days before the date of the meeting.

(4) Neither the proceedings at, nor the resolutions passed by, a creditors' meeting are invalid by reason only that one or more creditors have not received notice of the meeting.

Notice to be given to creditors.

45. (1) The convener of a creditors' meeting shall send a notice to every creditor

- (a) specified in the statement of affairs or statement of assets and liabilities, if any; and
- (b) of whom the convener is otherwise aware.

(2) The convener of a creditors' meeting is not in breach of any requirement of the Act or the Rules to give notice of the meeting to the creditors of a company by reason only of failing to send a notice to a person who was not known by the convener to be a creditor of the company.

Notice of meetings by advertisement.

46. (1) The Court may direct that notice of a creditors' meeting be given by public advertisement, and not, or not only, by individual notice to the persons concerned.

(2) In considering whether to make a direction under this Rule, the Court shall have regard to

- (a) the cost of public advertisement;
- (b) the assets available in the insolvency proceedings concerned; and

- (c) the extent of the interest of creditors or any particular class of either.

Notice to
Registrar,
Commission and
Official Receiver.

47. Where a convener is required by the Act to file a notice of a creditors' meeting with the Registrar, the Commission or the Official Receiver, he shall file the notice, together with any accompanying documentation, at least 14 days before the date set for the meeting.

Meetings
requisitioned by
creditors.

48. (1) This Rule applies where creditors are permitted by the Act to requisition a meeting.

(2) A notice requisitioning a creditors' meeting shall be sent to the office holder concerned by a creditor accompanied by

- (a) a list of creditors supporting the requisition, showing the amounts of their respective claims;
- (b) the written confirmation of each creditor on the list that he supports the requisition; and
- (c) a statement
 - (i) specifying the section of the Act under which the meeting is requisitioned,
 - (ii) that the creditors on the list comprise at least the minimum number of creditors specified by the relevant section, and
 - (iii) of the purpose of the meeting.

(3) Subject to paragraph (7), the costs of calling and holding a requisitioned creditors' meeting shall be paid by the creditor who sent the notice to the office holder in accordance with paragraph (2).

(4) If the office holder is satisfied that a requisition complies with the Act and the Rules, he shall, within five business days of receiving the notice under paragraph (2), provide the creditor who sent the notice with an estimate of the costs of calling and holding the meeting together with a request that the creditor deposit with the office holder sufficient security to cover those costs.

(5) If the office holder is not satisfied that a requisition complies with the Act and the Rules, he shall notify the creditor in writing stating the reasons for his conclusion.

(6) Upon receipt of the deposit referred to in paragraph (4), the office holder shall fix a venue for the meeting not more than 35 days from his receipt of the deposit and shall give not less than 21 days notice of the meeting to creditors.

(7) A meeting held under this Rule may resolve that the expenses of calling and holding it are to be payable out of the assets of the company concerned.

(8) To the extent that any deposit paid to the office holder under this Rule is not required for the payment of the expenses of calling and holding the meeting, it shall be repaid to the person who paid the deposit.

Conduct of Creditors' Meetings

Chairman. **49.** (1) Subject to paragraphs (2) and (3), every creditors' meeting shall be chaired by the convener.

(2) Where the convener is an insolvency practitioner or the Official Receiver and he is unable to attend the meeting, he may, in writing, nominate as chairman

(a) in the case of an insolvency practitioner,

(i) another eligible insolvency practitioner, or

(ii) an employee of the insolvency practitioner, or of his firm, who is experienced in insolvency matters; or

(b) in the case of the Official Receiver, the Deputy Official Receiver or a member of his staff.

(3) Where a creditors' meeting convened by an insolvency practitioner or the Official Receiver is to be held outside the Virgin Islands and he will not be attending the meeting, he may nominate a suitably qualified and experienced individual to act as chairman.

Suspension. **50.** Once only in the course of any meeting, the chairman may, in his discretion and without an adjournment, declare that the meeting is suspended for a period of no more than one hour.

Adjournment of meetings. **51.** (1) If within 30 minutes of the time fixed for the commencement of a creditors' meeting there is no person present to act as chairman of the meeting, the meeting is adjourned to the same time

and place in the following week or, if that is not a business day, to the same time on the next following business day.

(2) Subject to paragraph (3), unless those persons present, in person or by proxy, pass a resolution to the contrary, the chairman may adjourn a creditors' meeting.

(3) The chairman of a creditors' meeting may not adjourn or further adjourn a meeting under paragraph (2) to a date more than 14 days after the date fixed for the original meeting.

Chairman as proxy holder.

52. (1) The chairman shall not by virtue of any proxy he holds, vote on a resolution concerning the remuneration or expenses of the office holder unless the proxy specifically directs him to vote in that way.

(2) If the chairman uses a proxy contrary to paragraph (1), his vote with that proxy does not count towards any majority under this Rule.

(3) Where the chairman holds a proxy which requires him to vote for a particular resolution, and no other person proposes that resolution,

(a) he shall propose it himself, unless he considers that there is good reason for not doing so; and

(b) if he does not propose it, he shall forthwith after the meeting notify his principal of the reason why he did not propose it.

Quorum.

53. (1) The quorum for a meeting of creditors is at least one creditor entitled to vote.

(2) A creditor shall be counted towards the quorum for the purposes of paragraph (1) if he is present or represented by proxy by any person, including the chairman.

(3) Where at any meeting of creditors

(a) a quorum is present by the attendance of the chairman alone or by the chairman together with one additional creditor; and

- (b) the chairman is aware, by virtue of claims and proxies received or otherwise, that one or more other persons would, if attending, be entitled to vote

the meeting shall not commence until at least 15 minutes after the time set for its commencement.

Voting Rights and Majorities

Resolutions.

54. (1) Unless the Act or the Rules provide otherwise, the majority required for the passing of a resolution at a creditors' meeting is in excess of 50 per cent in value of the creditors present in person or by proxy who vote on the resolution.

(2) A resolution passed at an adjourned creditors' meeting is treated for all purposes as having been passed on the date of the resolution and not as having been passed on an earlier date.

(3) Where a resolution is proposed which affects a person in respect of his remuneration or conduct as an office holder, or as a proposed or former office holder, the vote of that person and of any partner or employee of his, shall not be counted in the majority required for passing the resolution.

(4) Paragraph (3) applies with respect to a vote given by a person whether personally, on his behalf by a proxy-holder or as a proxy holder for a creditor.

Creditors' entitlement to vote.

55. (1) A creditor is entitled to vote at a creditors' meeting only if, no later than 12.00 noon on the business day before the day fixed for the meeting,

- (a) he has given written notice of his claim to the office holder and the claim is admitted in accordance with Rule 58; and
- (b) any proxy that he intends to be used on his behalf has been lodged with the office holder.

(2) The office holder may accept a proxy that has been sent to him by facsimile transmission as lodged for the purposes of paragraph (1)(b).

(3) The chairman of a creditors' meeting may allow a creditor to vote, notwithstanding that he has failed to comply with paragraph

(1)(a), if he is satisfied that the failure was due to circumstances beyond the creditors' control.

(4) The votes of a creditor are calculated

- (a) where the creditors' meeting is in respect of a company that is in liquidation, on the value of the creditor's claim made in accordance with the provisions of the Act and the Rules that relate to a claim in a liquidation;
- (b) where the creditors' meeting is in respect of a bankruptcy, on the value of the creditor's claim made in accordance with the provisions of the Act and the Rules that relate to a claim in a bankruptcy;⁶
- (c) in any other case, according to the amount of the creditor's debt as at the relevant date, deducting any amounts paid in respect of the debt after that date.

(4) A creditor may not vote in respect of a claim for an unliquidated amount, or on any claim the value of which is not ascertained, except where the chairman agrees to put an estimated minimum value on the claim for the purpose of entitlement to vote and admits the claim for that purpose.

Secured creditors
and holders of
negotiable
instruments.

56. (1) At a creditors' meeting, a secured creditor is entitled to vote only in respect of the balance, if any, of his debt after deducting the value of his security interest as estimated by him.

(2) A creditor may not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing

- (a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the debtor, and against whom a bankruptcy order has been made, or in the case of a company, which has not gone into liquidation, as a security in his hands;⁷
- (b) to estimate the value of the security interest and, for the purposes of entitlement to vote only, to deduct it from his claim;

⁶ The word "and" should follow the word "bankruptcy;".

⁷ The word "and" should follow the word "hands;".

and the chairman decides to admit the reduced claim for voting purposes.

Hire purchase,
conditional sale
and chattel
leasing
agreements.

57. (1) This Rule does not apply to a creditors' meeting held in respect of a company that is in liquidation or in respect of a bankruptcy.

(2) Subject to paragraph 3, an owner of goods under a hire purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt owned by the debtor to him on the relevant date.

(3) In calculating the amount of a debt for the purposes of paragraph 1, no account is taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the relevant insolvency proceeding or any order made in, or matter arising in consequence of, the proceeding.

Admission and
rejection of
claims.

58. (1) Subject to paragraph (5), the chairman of a creditors' meeting shall determine the entitlement of persons wishing to vote and shall admit or reject their claims for voting purposes accordingly.

(2) The chairman may admit or reject a claim in whole or in part.

(3) The chairman of a creditors' meeting may require a creditor to produce any document or other evidence where he considers it necessary for the purpose of substantiating the whole or part of the creditor's claim.

(4) If the chairman of a creditors' meeting is in doubt as to whether a claim should be admitted or rejected, he shall mark the claim as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained.

(5) Where a creditor's claim in a liquidation or bankruptcy has been admitted by the liquidator or trustee, under section 209 or section 336, as the case may be, the chairman shall admit the claim in the same amount for the purposes of voting.

Appeal.

59. (1) A creditor may appeal to the Court against any decision of an office holder, or the chairman of a creditors' meeting, under Rules⁸ **55** or **58**.

⁸

The word "Rules" should read "Rule".

(2) If on an appeal the Court reverses or varies the chairman's decision, or the vote of a creditor is declared invalid, the Court may make such order as it considers just including, if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity, an order that another meeting be summoned.

(3) An appeal under this Rule shall be made within a period of 28 days from the date of the decision in respect of which the appeal is made.

(4) Neither an office holder, nor any person nominated to chair a creditors' meeting on his behalf in accordance with Rule 49(2) is personally liable for the costs incurred by any person in respect of an appeal to the Court under this Rule, unless the Court makes an order to that effect.

Minutes. **60.** (1) The chairman of a creditors' meeting shall ensure that minutes of its proceedings are kept and that he signs the minutes.

(2) Minutes kept under paragraph (1) shall include a list of the creditors who attended the meeting, whether in person or by proxy, the resolutions passed at the meeting and, if a creditors' committee is established, the names and addresses of those persons elected to be members of the committee.

(3) Minutes kept in accordance with this Rule shall be retained as a record in the insolvency proceeding.

Members meetings. **61.** (1) In fixing the venue of a members' meeting, the convener shall have regard primarily to the convenience of the members and members' meetings may be held in or outside the Virgin Islands.

(2) Rules 49, 51(1), 53(2) and 53(3) apply to members' meetings with necessary modifications.

(3) The quorum for a meeting of members is

(a) where the company or foreign company only has one member or only has one member entitled to vote, that member; or

(b) where the company or foreign company has more than one member entitled to vote, at least two members of those members.

(4) Subject to this Rule, a members' meeting shall be summoned and conducted as if it were a general meeting of the company summoned under the company's articles of association, and in accordance with the applicable provisions of the Companies Act⁹, the International Business Companies Act¹⁰ or the BVI Business Companies Act.

(5) Where a company is in administration, the chairman of the meeting shall cause minutes of its proceedings to be entered in the company's minute book.

Division 2 – Proxies and Company Representation

Interpretation.

62. (1) In this Division

“meeting” means a meeting of creditors or of members required or permitted to be held under the Act or the Rules;

“principal” means the person giving a proxy; and

“proxy-holder” means the person to whom the principal gives his proxy.

(2) For the purposes of the Act and the Rules, a proxy is an authority given by a principal to a proxy-holder to attend a meeting and to speak and vote as his representative.

General provisions concerning proxies.

63. (1) Subject to paragraph (2), a person who desires to be represented at a creditors' meeting may give one proxy to an individual aged 18 or over.

(2) Notwithstanding paragraph (1)

(a) a principal may specify one or more other individuals aged 18 or over to be proxy-holder in the alternative, in the order in which they are named in the proxy; and

(b) a proxy for a particular meeting may be given to the chairman of the meeting who cannot decline to act as proxy-holder in such circumstances.

(3) A proxy requires the holder, either as directed or in accordance with the holder's discretion

⁹ Repealed 1 January 2009 by Schedule 3 of the BVI Business Companies Act.

¹⁰ Repealed 1 January 2007 by Schedule 3 of the BVI Business Companies Act.

- (a) to give the principal's vote on matters arising for determination at the meeting;
- (b) to abstain; or
- (c) to propose, in the principal's name, a resolution to be voted on by the meeting.

Issue and use of proxy forms.

64. (1) A proxy form sent with a notice of a meeting shall not have inserted in it the name or description of any person.

(2) A proxy form shall not be used at a meeting unless it is in the same, or a substantially similar, form as the proxy form sent out with the notice calling the meeting.

(3) A proxy form shall be signed by the principal, or by some person authorised by him, either generally or with reference to a particular meeting.

(4) Where a proxy form is signed by a person other than the principal, the nature of the person's authority shall be stated.

Use of proxies at meetings.

65. (1) A proxy given for a particular meeting may be used at any adjournment of that meeting.

(2) Where the Official Receiver holds proxies for use at a meeting, his deputy, or such other of his officers as he may authorise in writing, may act as proxy-holder in his place.

(3) Where an insolvency practitioner holds proxies to be used by him as chairman of a meeting, and some other person acts as chairman, the other person may use the insolvency practitioner's proxies as if he were himself the proxy-holder.

(4) Where a proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person as an officer holder, the proxy-holder may, unless the proxy states otherwise, vote for or against, as he thinks fit, any resolution for the nomination or appointment of that person jointly with another or others.

(5) A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which by virtue of the proxy he would be entitled to vote.

(6) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy-holder from voting at his discretion on resolutions put to the meeting which are not dealt with in the proxy.

Retention of proxies.

66. (1) Subject to paragraph (2), proxies used for voting at any meeting shall be retained by the chairman of the meeting.

(2) Where the chairman is not the responsible insolvency practitioner, he shall deliver the proxies, immediately after the meeting, to the responsible insolvency practitioner who shall retain them.

(3) Proxies shall be retained as records in the insolvency proceeding.

Right of inspection.

67. (1) The responsible insolvency practitioner shall allow proxies retained by him to be inspected, at all reasonable times on any business day, by

- (a) any creditor, in the case of proxies used at a meeting of creditors; and
- (b) a member, in the case of proxies used at a meeting of the company or of its members.

(2) Subject to paragraph (3), the reference in paragraph (1) to a creditor is

- (a) in the case of a liquidation or a bankruptcy, a creditor who has submitted a claim under section 209 or section 336; and
- (b) in any other case, a person who has submitted a claim, in writing, to be a creditor of the company or individual concerned.

(3) The reference in paragraph (1) to a creditor does not include a person whose claim has been wholly rejected for the purposes of voting, dividend or otherwise.

(4) The right of inspection given by this Rule is also exercisable

- (a) in the case of an insolvent company, by a director; and

(b) in the case of an insolvent individual, by him.

(5) Any person attending a meeting is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents, including claims sent or given, in accordance with directions contained in any notice convening the meeting, to the chairman of that meeting or to any other person by a creditor or member for the purpose of that meeting.

Proxy-holder
with financial
interest.

68. (1) A proxy-holder shall not vote in favour of any resolution which would directly or indirectly place him, or any associate of his, in a position to receive any remuneration out of the insolvent estate, unless the proxy specifically directs him to vote in that way.

(2) Where a proxy-holder has signed the proxy as being authorised to do so by his principal and the proxy specifically directs him to vote in the way mentioned in paragraph (1), he shall nevertheless not vote in that way unless he produces to the chairman of the meeting written authorisation from his principal sufficient to show that the proxy-holder was entitled so to sign the proxy.

(3) This Rule applies also to any person acting as chairman of a meeting and using proxies in that capacity under Rule 65 and in its application to him, the proxy-holder is deemed an associate of his.

Company
representation.
Cap. 285
Cap. 291
No. 16 of 2004

69. (1) Where a person is authorised under the Companies Act¹¹, the International Business Companies Act¹² or the BVI Business Companies Act to represent a company at a meeting of creditors or of the company or its members, he shall produce to the chairman of the meeting a copy of the resolution from which he derives his authority.

(2) The copy resolution shall be under the seal of the company, or certified by the secretary or a director of the company to be a true copy.

(3) Nothing in this Rule requires the authority of a person to sign a proxy on behalf of a principal, which is a company, to be in the form of a resolution of that company.

Division 3 – The Creditors’ Committee

Interpretation for
this Division.

70. (1) In this Division

¹¹ Repealed 1 January 2009 by Schedule 3 of the BVI Business Companies Act.

¹² Repealed 1 January 2007 by Schedule 3 of the BVI Business Companies Act.

“committee” means a creditors’ committee established under section 421 of the Act; and

“meeting” means a meeting of the committee.

(2) Where the context permits, references in the Act or the Rules to a “member” shall include a member’s representative.

Committee may establish own procedures.

71. (1) A committee may, by resolution, adopt rules governing its proceedings that are not inconsistent with the Act or this Division.

(2) Without limiting paragraph (1), the committee may agree procedures for

- (a) the participation by members in meetings by telephone or other electronic means; and
- (b) the passing of circular resolutions.

Meetings.

72. (1) Subject to paragraph (2), meetings

- (a) may be held at such venues as the committee may resolve; and
- (b) may be called by a member of the committee or by the office holder.

(2) If a meeting has not already been held, the office holder shall call a first meeting to be held not less than 28 days after the committee’s establishment.

(3) The person convening a meeting shall give seven days written notice of the venue of the meeting to each member of the committee and to the office holder.

(4) Notwithstanding paragraph (3), a member of the committee may, before or at the meeting, waive his entitlement to notice under that paragraph.

Chairman of meetings.

73. (1) Subject to paragraph (2), every meeting of the creditors’ committee shall be chaired by the relevant office holder.

(2) Where the office holder is unable to attend the meeting, he may nominate as chairman

- (a) an eligible insolvency practitioner; or

(b) an employee of the insolvency practitioner, or of his firm, who is experienced in insolvency matters.

(3) Where a meeting of the creditors' committee is to be held outside the Virgin Islands and the insolvency practitioner will not be attending the meeting, he may nominate a suitably qualified and experienced individual to act as chairman.

(4) Where a meeting of the creditors' committee is held pursuant to a notice issued by the committee under section 422(2), the members of the creditors' committee may elect one of the members of the committee to be chairman of the meeting in place of the office holder or his nominee.

Quorum and resolutions.

74. (1) A meeting is quorate if notice of the meeting has been given to all members and a majority of its members are present at the meeting.

(2) At a meeting of the committee, each member has one vote and a resolution is passed by a simple majority of those members who are present and vote.

(3) A resolution shall be recorded in writing, signed by the chairman and retained as a record in the insolvency proceeding.

Committee members' representatives.

75. (1) A member of the creditors' committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.

(2) A person acting as a committee-member's representative shall hold a letter of authority entitling him so to act (either generally or specially) and signed by or on behalf of the committee member.

(3) The chairman at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

(4) No committee member may be represented by a body corporate, a person who is an undischarged bankrupt, a person who is a disqualified person within the meaning of section 260(4) or a person who is a restricted person within the meaning of section 409.

(5) No person shall, on the same committee, act at one and the same time as representative of more than one committee member.

(6) Where a member's representative signs any document on the member's behalf, the fact that he so signs shall be stated below his signature.

Written
resolutions.

76. (1) The office holder may seek to obtain the agreement of members of the creditors' committee to a resolution by sending written notice of the resolution to each member by such method as may be agreed between the office holder and the committee member.

(2) A notice sent to a member under paragraph (1) shall be set out so as to enable the committee member to signify his dissent or agreement to each separate resolution on which the office holder seeks agreement.

(3) Any member of the committee may, within seven days of a notice being sent out under paragraph (1), require the office holder to call a meeting of the creditors' committee to consider the matters raised by the resolution.

(4) If no member requires a meeting to be called, the resolution is deemed to have been passed when the office holder is notified in writing by a majority of the committee members that they agree with it.

(5) A resolution passed under this Rule shall be treated as a resolution passed at a meeting of the creditors' committee.

(6) Without limiting paragraph (1), written notice may be given by post, fax or e-mail.

Cooperation by
office holder with
committee.

77. Without limiting section 422(2)(b), a requirement of the committee under that section to provide it with reports or information is not reasonable if the office holder considers that

- (a) the requirement is frivolous or unreasonable;
- (b) the cost of complying with the requirement would be excessive having regard to the relative importance of the report or information;¹³
- (c) the company or bankrupt does not have sufficient funds to enable him to comply with the requirement.

¹³ The word "or" should follow the word "information;"

Termination of insolvency proceeding.

78. (1) Subject to paragraph (2), the creditors' committee ceases to exist on the termination of the insolvency proceeding in which it was appointed.

(2) Where, on discharging an administration order, the Court makes an order for the appointment of a liquidator under section (111)(1)(a), unless the Court otherwise orders, any creditors' committee appointed in the administration continues as if appointed in the liquidation.

Division 4 – Written Resolutions

Written resolutions.

79. (1) The office holder may seek to obtain the passing of a resolution of creditors or members by sending a notice to every creditor or member who is entitled to be notified of a creditors' or members' meeting together with a blank statement of entitlement to vote.

(2) A notice under paragraph (1) shall specify the time and date by which votes on the resolution shall be received by him and a vote shall be counted if

- (a) the vote is received by the office holder by the time and date specified in the notice; and
- (b) the vote is accompanied by a completed statement of entitlement to vote.

(3) If any votes are received without the statement as to entitlement to vote, or the office holder decides that the creditor or member is not entitled to vote, then that creditor's or member's vote shall be disregarded.

(4) The closing date for receipt of votes shall be set at the discretion of the office holder but shall not be set less than 14 days from the date of issue of the notice under paragraph (1).

(5) Where an office holder sends out a notice under paragraph (1), a meeting to consider the resolution specified in the notice may be requisitioned in accordance with paragraph (6) by

- (a) in the case of a notice sent to creditors, by any single creditor, or a group of creditors, whose debts amount to at least 10% of the total debts of the company or debtor; or

(b) in the case of a notice sent to members of a company, by any single member, or a group of members, holding at least 25% of the voting rights in respect of the company.

(6) A meeting is requisitioned under paragraph (5) by sending a notice to the office holder within 7 days after the date that the notices under paragraph (1) are sent out.

(7) If the resolution proposed in the notice is rejected by the creditors or members, the office holder may call a meeting of creditors or members, as the case may be.

(8) A reference in the Act or the Rules to anything done, or required to be done, at, or in connection with, or in consequence of, a creditors' or members' meeting, includes a reference to anything done in the course of correspondence in accordance with this Rule.

PART IV

CREDITORS' ARRANGEMENTS

Division 1 – General

Scope of and interpretation for this Part.

80. (1) This Part applies where a debtor makes or intends to make a proposal under Part II of the Act and in respect of any arrangement that may be approved.

(2) In this Part, “creditors’ meeting” means a creditors’ meeting held under Part II of the Act.

Additional matters that may be included in an arrangement.

81. Subject to section 15(4), and without limiting section 15(1), an arrangement may

- (a) provide for circumstances in which persons who become creditors of the debtor after the approval of an arrangement are entitled to be paid under the arrangement in priority to creditors bound by the arrangement;
- (b) specify a date or a time at which liabilities of the debtor will be calculated and provide how liabilities arising after that date are to be dealt with;
- (c) be entered into a conjunction with any other arrangement, reorganisation or scheme taking effect under the law of another jurisdiction, whether subject to Court approval or otherwise; and
- (d) in the case of a company
 - (i) provide for the whole or partial cancellation of a liability of the company in return for shares of any kind or for the issue by the company, or by any other person, of a debenture or a security interest, and
 - (ii) relate to an amendment of the company’s memorandum or articles that affects the likelihood of the company being able to pay a debt or satisfy a liability.

Chairman of creditors’ meeting.

82. Subject to Rule 49(2) and (3), the interim supervisor or the supervisor shall be the chairman of every creditors’ meeting.

Voting at creditors' meeting.

83. (1) The majority required for the passing of a resolution at a creditors' meeting is

(a) for the approval of an arrangement or of a modification of an arrangement, 75 per cent or more in value of the creditors present in person or by proxy who vote on the resolution; and

(b) in respect of any other matter, in excess of 50 per cent in value of the creditors present in person or by proxy who vote on the resolution.

(2) A creditor is entitled to vote at a creditors' meeting if written notice of his claim is given to the interim supervisor, or supervisor, or the chairman of the meeting either at the meeting or before it.

(3) It is for the chairman to decide whether a creditor is entitled to vote in accordance with paragraph (2).

(4) At any creditor's meeting held under Part II of the Act, a creditor may vote in respect of a claim for an unliquidated amount or on any claim the value of which is not ascertained and for the purposes of voting, but not otherwise, his claim shall be valued at \$1.00 unless the chairman agrees to put a higher value on it.

(5) Rules 54 and 55 are modified to the extent provided in this Rule in respect of a creditors' meeting held under Part II of the Act.

Appointment of joint supervisors.

84. Where joint supervisors of an arrangement are appointed, they may act jointly or severally unless the arrangement provides otherwise.

Division 2 – Company Creditors' Arrangement

Scope of this Division.

85. This Division applies where, under Part II, Division 2 of the Act, a company makes or intends to make a proposal and in respect of any arrangement that may be approved.

Proposal

Form and contents of proposal.

86. (1) A proposal under section 20(1)(b)(ii) shall be in writing and shall include

(a) details of the name, registered office, registered number, date of incorporation and any trading names of the company;

- (b) a summary of the proposed arrangement with a brief explanation as to its main features and as to why the arrangement is desirable and why the board expects the creditors to agree to it;
- (c) to the best of the knowledge and belief of the board, particulars of the assets of the company specifying
 - (i) the value of each asset or class of assets,
 - (ii) the extent, if any, to which the assets are charged in favour of creditors, and
 - (iii) the extent, if any, to which particular assets are to be excluded from the arrangement;
- (d) particulars of any assets, other than those of the company, which it is proposed will be included in the arrangement, specifying
 - (i) the source of the assets, and
 - (ii) the terms upon which they are to be made available to creditors under the arrangement;
- (e) to the best of the knowledge and belief of the board, particulars of the nature and amount of the company's liabilities, including any disputed claims and any joint obligations, and the manner in which they will be met, modified or postponed or otherwise dealt with under the arrangement, specifying in particular
 - (i) how it is proposed that creditors who are or who claim to be secured creditors will be dealt with, detailing the amount of any secured liabilities,
 - (ii) how it is proposed that any creditors or joint, or joint and several, debtors who are connected with the company will be dealt with,
 - (iii) whether there are, to the knowledge of the board, any circumstances giving rise to the possibility, in the event that the company should go into liquidation, of claims for a voidable transaction under Part VIII of the Act and, if so,

whether and how it is proposed to make provision for wholly or partly indemnifying the company in respect of such claims,

- (iv) whether there are any persons with non-admissible or postponed claims against the company, and how it is proposed that they will be dealt with, if at all,¹⁴
- (v) any creditors who, for the purposes of section 15(4) of the Act, are or are expected to be or claim to be preferential, detailing the amount and nature of each such claim and how it is proposed that the claims will be dealt with;
- (f) how it is proposed that the claims of any creditor who did not participate in the approval of the arrangement, as provided by paragraph (2), will be dealt with;
- (g) particulars of any security interest, liens, rights of set-off held by creditors and as to any guarantees of the company's debts given by third parties, specifying which of the sureties, if any, are persons connected with the company;
- (h) details of the proposed duration of the arrangement;
- (i) the proposed dates of distribution of assets to creditors of the company, with estimates of their amounts;
- (j) particulars of the remuneration proposed to be paid to the interim supervisor and to the supervisor and how the remuneration and the other costs of the interim supervisor and the supervisor are to be met;
- (k) details of any benefits, including guarantees, assets and any security interests that are to be offered by any director or other third party for the purposes of the arrangement;
- (l) details of any further loans or credit facilities which it is intended to arrange for the company, specifying on what terms and how it is proposed that the additional liabilities, including interest, are to be repaid;

¹⁴ The word "and" should follow the word "all,".

- (m) details of the business that will be conducted by the company during the course of the arrangement and the manner in which funds payable to the company will be dealt with during the period before the arrangement is approved and during the course of the arrangement, if approved;
- (n) the manner in which funds or other assets held for the purpose of the arrangement are to be banked, invested or otherwise dealt with pending distribution to the creditors;
- (o) the manner in which funds or other assets held for the purpose of payment to creditors, and not so paid on the termination of the arrangement, are to be dealt with;
- (p) the functions to be undertaken by the interim supervisor and by the supervisor if the arrangement is approved; and
- (q) the name and address of the persons proposed as the supervisor and interim supervisor, who may be the same person, and confirmation that they are, or he is, eligible to act in relation to the company.

(2) For the purposes of paragraph (1)(f), a creditor does not participate in the approval of the arrangement if, for whatever reason

- (a) he was not given notice of the creditors' meeting called under section 27; and
- (b) he did not attend the meeting at which the arrangement was approved, whether in person or by proxy.

(3) Paragraphs (1) and (2) apply to a proposal prepared by the liquidator or administrator of a company under section 22 or 23, with such modifications as are appropriate.

Statement of affairs.

87. The statement of affairs provided to the nominated insolvency practitioner under section 21(1)(c) shall be verified by at least one director of the company.

Amendment or withdrawal of proposal before appointment of interim supervisor.

88. (1) The board of a company or, in the case of a company that is in administration or liquidation, its administrator or liquidator, may before the nominated insolvency practitioner has accepted appointment as interim supervisor

- (a) amend a proposal by providing a copy of the amended proposal to the nominated insolvency practitioner; or
- (b) withdraw the proposal by providing a notice of withdrawal to the nominated insolvency practitioner.

(2) In the case of a company that is not in administration or liquidation, the nominated insolvency practitioner shall also be provided with a copy of the resolution of the board approving the amendment or withdrawal.

(3) The withdrawal of a proposal under section 26(1)(a) takes effect from the time that the notice of withdrawal is received by the nominated insolvency practitioner.

(4) The nominated insolvency practitioner shall endorse the notice of withdrawal with the time and date that it was received and return a copy to the board, administrator or liquidator, as the case may be.

Amendment or withdrawal of proposal after appointment of interim supervisor.

89. (1) This Rule applies if the board of a company or, in the case of a company in administration or liquidation, its administrator or liquidator, wishes to amend or withdraw a proposal after the appointment of an interim supervisor but before a creditors' meeting is called under section 27.

- (2) A proposal is deemed to be amended under this Rule if
 - (a) the amendment is provided to the interim supervisor in writing together with, if appropriate, a copy of the board's resolution before the interim supervisor calls a creditors' meeting under section 27; and
 - (b) the interim supervisor consents to the proposal being amended in the terms of the amendment provided to him.

(3) Without limiting paragraph (2)(b), the interim supervisor may refuse to consent to the amendment if he considers that he does not have sufficient time to prepare a report on the amended proposal before giving notice of the creditors' meeting under section 27.