Association of Business Recovery Professionals
R3
Rescue Recovery Renewal

Liquidation/Creditors' Committees and Commissioners

A Guide for Creditors

The Guide is intended to provide you with:

> an understanding of the role of the Committee in insolvency proceedings;

> information on how Committees are formed; and

> guidance on what might be expected of you should you choose to serve as a member of a Committee

to enable you to make an informed decision as to whether you wish to either seek to form a Committee or to nominate yourself to serve on a Committee.

The Guide provides only an overview. Detailed provisions regarding the membership, formation, functions and procedural operation of a Committee are set out in legislation.

Introduction

Most of us will be familiar with the term "committee" which is used to define a group of people appointed for a specific function by a larger group and typically consisting of members of that group.

In the context of an insolvency procedure, the office holder may invite creditors to form a committee either to assist generally in discharging his or her functions as an office holder or, more commonly, for a specific purpose, such as where litigation or investigation is anticipated. Such committees may be called "liquidation committee" or "creditors' committee", depending on the type of insolvency process, or, in sequestration in Scotland, "Commissioners". For purposes of this guidance note we will use the term "Committee".

Role of the Committee in Insolvency Proceedings

The primary purpose of a Committee is to assist the office holder in fulfilling his or her duties. This could involve helping them to make key decisions, for example to take legal action to recover assets, to represent the interests of the main body of unsecured creditors, or to provide the office holder with the benefit of specialist knowledge either about the company or the industry in which the company operates. The office holder should always take into account the views of the Committee but is not obliged to follow their wishes. The Committee cannot direct an office holder in relation to the conduct of the insolvency proceeding.

In any insolvency process there are a number of decisions that creditors may be asked to make, including how the office holder is to be paid out of the assets of the insolvent estate. Where there are large numbers of creditors or creditors are geographically remote, having a Committee would enable the office holder to seek approval from the Committee which is often a quicker and cheaper process than seeking a decision from the entire body of creditors.

How are Committees formed?

For a Committee to come into being, generally, there must be a minimum of three unsecured creditors who are willing to act. The maximum number of creditors who may sit on the Committee at any one time is five, so if more than five unsecured creditors express an interest in being on the Committee there must be a vote. This vote will be managed by the office holder, and other unsecured creditors will be given the opportunity of deciding which of the interested creditors get to form the Committee. You have to agree in writing to sit on the Committee so you will never be voted onto a Committee without your knowledge or agreement.

For sequestrations in Scotland, only a single unsecured creditor willing to act is required.

Who can sit on the Committee?

Any creditor of the insolvent company/individual with a debt at least part of which is unsecured may be put forward to sit on the Committee. If they cease to be an unsecured creditor for any reason they will automatically cease to be a member of the Committee.

You do not need to have any special qualifications or previous experience as a Committee member.

Where the creditor is a company, i.e. not a real person, it must be represented by an individual who will be given a letter of authority, by the company, enabling them to act on the company's behalf.

A member of the Committee may be represented by another person if they hold a letter of authority to act.

Exceptions

You cannot be on the Committee as a creditor in your own right and act for another creditor at the same time.

You cannot be represented by a body corporate, an undischarged bankrupt, a person whose estate has been sequestrated and who has not been discharged, a person to whom a moratorium period under a debt relief order applies, a disqualified director, a person subject to a bankruptcy restriction order or undertaking or a debt relief restrictions order or undertaking.

What will I have to do as a Committee member?

Business of the Committee is conducted through meetings (physical or by way of conference call or other remote attendance). Decisions may also be made by written correspondence and resolutions. For the purposes of this Guide, reference to meetings include all such forms.

The frequency of meetings and reporting by the office holder to the Committee will generally be agreed between the office holder and members at the first meeting of the Committee. The first meeting of the Committee must be held within six weeks of its formation – as indicated it is not uncommon for meetings to be held by conference call.

At the meetings the office holder will update the Committee on relevant matters and may seek guidance or formal approval for specific courses of action. In particular you will be asked to approve the basis of calculation of the remuneration of the office holder.

As a Committee member you would also be able to request additional information from the office holder, who will be required to provide the information unless the request is deemed to be unreasonable, frivolous or excessively costly to provide.

You should try and attend all meetings as if you fail to attend three consecutive meetings you will automatically cease to be a member (though the remaining members can decide to allow you to remain as a member). An office holder will only call a meeting when they think there is something important which requires the Committee's input. If you are unable to attend a meeting you could appoint someone to attend on your behalf.

A Committee may also be required to consider other matters appropriate to the insolvency proceeding. This may include matters in connection with the resignation of the office holder and any vacancy in office, or consideration of whether legal costs should be assessed by the court.

Can I cease to be a member of the Committee?

You can resign as a member at any time by giving the office holder written notice.

Will I get paid?

Committee members are not paid for their time acting on the Committee, this is a voluntary role. You will however be entitled to reclaim reasonable travelling expenses incurred in attending Committee meetings.

Why should I agree to be on a Committee?

As a Committee member you will be in a privileged position, assisting the office holder in his duties and being involved at each stage in the insolvency process. Serving on a Committee will give you the opportunity to have a positive impact on the insolvency process, assisting the office holder to maximise returns to creditors, providing essential information and knowledge which could assist in tracing company assets which have been misappropriated or identify conduct by the directors that could ultimately lead to their disqualification by the Insolvency Service.

It is important to consider that acting on the Committee is a responsible role and you would be required to act ethically and in good faith in all of your Committee dealings. You would be expected to avoid any situations where a conflict of interest might arise. You would also be unable to obtain any of the company or individual's assets without the prior agreement of the Committee.

Does a Committee always have to be appointed?

There is no requirement for there to be a Committee in every insolvency process. There may be insufficient creditors willing to form a Committee or in a straightforward insolvency process there may be no need for a Committee.

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This booklet has been produced by R3, the Association of Business Recovery Professionals, in conjunction with the Recognised Professional Bodies ("RPBs"). R3 is the leading professional association representing insolvency practitioners and professionals within the insolvency, restructuring and turnaround profession in the UK.

If you would like to find out more about the work of R3 or its members, please visit the R3 website at **www.r3.org.uk**.

The Insolvency Service also produces a number of useful guides about personal and corporate insolvency procedures and directors' duties which can be accessed at **www.gov.uk/government/collections/insolvency-service-guidance-publications**.

This leaflet is not intended to be a statement of law or a substitute for specific professional or legal advice. We have made every effort to ensure that the guide is accurate but R3 cannot accept any responsibility for the consequences of any action taken in reliance of its contents.

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