



Creditors' Committees: A Guide for Creditors

March 2023

This Guide is intended to provide you with:

- an understanding of the role of a committee comprised primarily of creditors (Committee) that may be established in the course of the insolvency proceedings;
- information on how a Committee is 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.

This Guide provides an overview only. Detailed provisions regarding the membership, formation, functions and procedural operation of a Committee are set out in legislation (Insolvency Act 1986 and Insolvency (England and Wales) Rules 2016).

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 (Insolvency), the Office-holder appointed to oversee the process (e.g. liquidator or administrator) (Office-holder) will 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 an investigation is anticipated. Such a committee is called a “liquidation committee” or “creditors’ committee”, depending on the type of insolvency process. For the purposes of this guidance note we will use the term “Committee”.

The 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 subject to the Insolvency or the industry in which it 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 proceedings.

In any Insolvency 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 certain decisions (e.g. fee approval) from the Committee which is often a quicker and cheaper process than seeking a decision from the entire body of creditors. The Office-holder cannot however bypass the creditors, and ask the Committee to make a decision, where the legislation requires the Office-holder to seek a decision from the general body of creditors.

How are Committees formed?

For a Committee to come into being, the Office-holder must first seek a decision from the creditors as to whether a Committee should be established and will invite nominations from creditors for membership of the Committee. Generally, there must be a minimum of three creditors each having a claim for an unsecured debt (Creditor) and who are willing to act as a member of the

Committee. The maximum number of creditors who may sit on the Committee at any one time is five, so if more than five Creditors express an interest in being on the Committee, there must be a vote on membership via a decision procedure. This voting process will be managed by the Office-holder, and other 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.

Who can sit on the Committee?

Any Creditor of the insolvent company/ individual with an outstanding unsecured debt may be put forward to sit on the Committee. If a person ceases to be or is found never to have been a 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 (rather than an individual person), it must be represented by an individual who holds a letter of authority signed by the company, enabling that individual to act on the company's behalf.

Any member of the Committee may be represented by another person (Person) to whom they have given a letter of authority to act, provided that Person is not another member of the Committee or is not already representing another member of the Committee.

A member of the Committee 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, or
- 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 (in person or by remote attendance). Decisions may also be made by written correspondence and resolutions.

The frequency of meetings and reporting by the Office-holder to the Committee will generally be agreed between the Office-holder and the members at the first meeting of the Committee; this must be held within six weeks of the Committee being established once the Office-holder has delivered the requisite notice in accordance with the legislation.

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, the Committee will be asked to approve the basis of calculating the Office-holder's remuneration.

As a Committee member, you may also be able to request additional information from the Office-holder. Depending on the type of Insolvency, the Office-holder 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 Committee meetings, as failure to attend three consecutive meetings means you will

automatically cease to be a member (unless the remaining members decide to allow you to remain as a member).

An Office-holder will determine when and where a Committee meeting will be held (subject to the six week requirement for the first meeting mentioned above) when they think there is something important which requires the Committee's input or when requested to do so by a member of the Committee. If you are unable to attend a meeting you should appoint someone to attend on your behalf. A member or member representative may also request a meeting from the Office-holder.

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 to that effect.

Will I get paid?

Committee members are not paid for their time acting on the Committee, this is a voluntary role. However, they may be able to recover reasonable travelling expenses incurred in attending Committee meetings.

Why should I agree to be on a Committee?

Serving on a Committee will give you the opportunity to provide your input in the

Insolvency and assist the Office-holder to fulfil their duties to try and maximise returns to creditors. Members often have access to essential information and knowledge which could assist in tracing assets which may 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 being a member of a Committee is a responsible position representing the creditors as a whole. A Committee member cannot allow a private interest to conflict with their duties or derive a profit from their position, as a Committee member (e.g. you cannot acquire an asset forming part of the insolvent estate without the requisite prior sanction or court permission).

Does a Committee always have to be appointed?

Whilst the Office-holder is required to invite creditors to form a Committee, there is no requirement for there to be one in every Insolvency; there may be insufficient Creditors willing to form a Committee or in some instances there may be no need for a Committee.

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The Institute of Chartered Accountants in England and Wales

Tel: 01908 248 250 www.icaew.com

The Insolvency Practitioners Association

Tel: 0330 122 5237 www.insolvency-practitioners.org.uk

The Institute of Chartered Accountants of Scotland

Tel: 0131 347 0100 www.icas.com

Chartered Accountants Ireland (CAI)

Tel: 00 353 1 637 7200 www.charteredaccountants.ie

Disclaimer

Information in this guide is intended to provide an overview only and relates to creditors' committees in England and Wales. It is not a replacement for seeking advice specific to your circumstances