Creditors Meetings for Creditors

by Tom Murray

There has been a significant increase in the number of companies entering creditors voluntary liquidation in the first 4 months of 2024 when comparing with the same period in recent years. As such, it is more likely that a business may be faced with the possibility that a customer may cease trading and will be given notice of an upcoming creditors meeting.

Often the receipt of such a notice is the first sign or indication that a creditor or supplier gets that a customer is in financial difficulty. For many businesses there is a lack of understanding as to what the function and format of a creditors' meeting is and as to what the benefit, if any, there may be in attending.

Notice

The first thing to note is that creditors meetings need to be convened in line with provisions outlined in the Companies Acts 2014.

In this regard, notice must be sent to all creditors at least 10 clear days in advance of the meeting.

The notice sent to creditors should be accompanied by a general proxy and a special proxy in the prescribed format, together with details of the proposed liquidator and a list of names of the creditors. If a list is not provided with the notice, the notice itself should inform the creditor of their right to request this list to be provided where 24 hours' notice is given in writing or the right to go to the registered office during business hours to inspect this list.

The Companies Act 2014 also provides that the meeting must be advertised at least ten days before the meeting in at least two daily newspapers "circulating in the district where the registered office or principal place of business of the Company is situate".

Post the Covid pandemic, creditors meetings can be held virtually. The Companies (Miscellaneous Provisions) (Covid-19) Act 2020 related to the holding of virtual

meetings, including Annual General Meetings (AGMs), will now continue until the 31st of December 2024.

If creditors meetings are being held virtually, the notices will include notice of how to get access to the meeting details (generally by returning a proxy for a company)

The importance of Proxies

Generally speaking, if a creditor wishes to ensure that its choice of liquidator is appointed, then they need to seek the support of as many creditors as possible and encourage them to return proxies that are validly completed and are in favour of the creditor's representative who is attending the meeting.

The creditors of the company will either be limited companies or creditors who are owed monies personally. The rules governing the conduct of creditors meetings state that a proxy representing a limited company must be appointed:

- under the common seal of the company, or under the hand of some officer duly authorised who must state that fact on the proxy form.
- In practice, to avoid any dispute over the admissibility of a proxy submitted by a limited company, it is advisable that the person duly authorised who signs the proxy on behalf of the creditor writes in beneath his name the following:

"Duly authorised officer of the company".

The proper completion of a proxy (and consequently the validity of same) is something that many creditors fail to understand and do properly.

Format of a Creditors Meeting

A typical creditors meeting has three main items of business.

1. To present a Statement of Affairs to the creditors.
2. To give the creditors an opportunity to appoint their choice of liquidator.
3. To give creditors the opportunity to appoint a Committee of Inspection.

The meeting is chaired by a director and may be conducted by a professional advisor (e.g. a solicitor) who advises the Chair of the meeting.

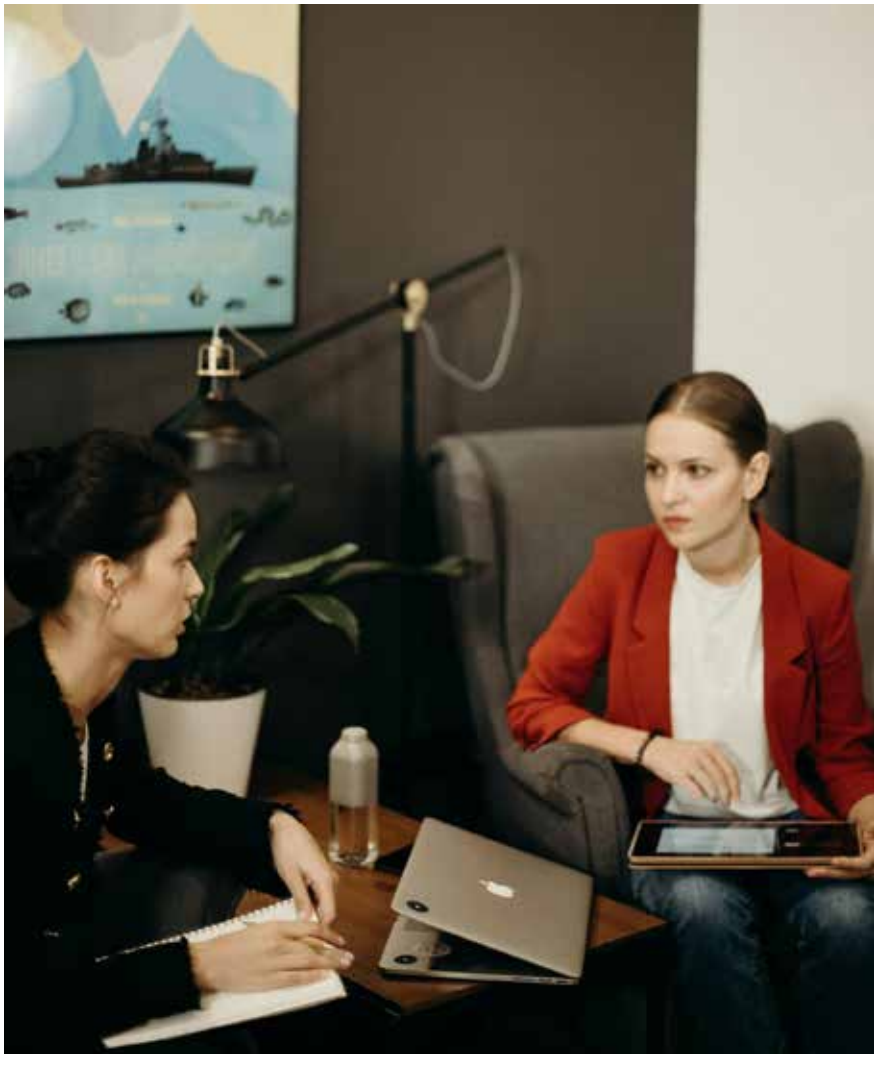
Chairmans Statement

The chairman at the outset of the meeting, will give a brief outline of the history of the company and details of the causes of failure before talking through the statement of affairs.

Statement of Affairs

The directors are obliged to present to a creditors' meeting a full statement of the position of the company's affairs, together with a list of creditors of the company and the estimated amount of their claims to the meeting of creditors.

This statement will show the book values of the company's assets with the directors estimated realisable values in a winding up. This will be sent out in advance of the creditors meeting, once prepared, to creditors who have confirmed their attendance.



Creditors Questions

Creditors will get an opportunity to ask the Chairman questions on their Statement and the Statement of Affairs. Some creditors will send along, or attend the meeting with, professional representatives who are very knowledgeable about insolvency matters. A flavour of some types of questions that may be asked are set out below:

1. When did the company cease trading?
2. When did the directors first realise the company was insolvent?
3. Provide details of all major payments made in the past three months.
4. When was the last set of audited accounts prepared?
5. Did the bank have personal guarantees as security for the company's lending?
6. Who owns the building that the company operated from?
7. Will the directors continue the business through another company?

Specific questions may also be asked on the statement of affairs presented to the meeting. In this context, some creditors attending the meeting may have copies of the last set of accounts filed at the Companies Registration Office, and they may ask questions based on these accounts and in particular any material movement between the last accounts and the statement of affairs.

This line of questions, may seem innocuous at first, however they can be used to determine whether the directors have acted honestly and responsibly and to identify:

- Any transfer of assets to related entities for less than fair value.
- The payment of certain creditors in priority to others. (e.g. guaranteed creditors)
- The continuing to trade whilst insolvent.
- Whether the directors have carried out any breaches of company law such as unfair preference, reckless

trading, or fraudulent trading or are involved in a phoenix company.

Voting on the Nomination of the Liquidator

At an earlier meeting of shareholders, a liquidator would have been appointed by the company.

However, the creditors have an opportunity after the questions and answers, to nominate an alternative liquidator. If an alternative nomination for a liquidator is proposed, a formal vote needs to be taken.

The nominated liquidator should not have previously acted for the company or its directors in a professional capacity.

If the creditors do nominate an alternative liquidator a vote of all creditors present personally or by proxy is conducted by the chairperson. The nominee liquidator with the majority vote of creditors in terms of value owed (the number of creditors voting is not a factor) is then held to have been appointed.

Committee of Inspection

Finally, the meeting will provide an opportunity to appoint a Committee of Inspection.

The creditors are entitled to nominate up to five people onto this committee, and the shareholders are entitled to appoint three people.

The purpose of the committee is to assist the liquidator in carrying out his duties. They can do this by:

a. providing the Liquidator with a background on the company and its activities.

b. aid the liquidator in his investigation of the company's affairs.

The committee can also approve the liquidator's fees, approve proposed legal actions to be taken by the liquidator and approve the payment of dividends to various classes of creditors.

Should a creditor attend a Creditors Meeting

Every creditor is entitled to attend a creditors meeting. Many creditors do not attend on the basis they believe there is nothing to be gained from attending the meeting as the matter is with the liquidator and that the prospect of a dividend is slim to none.

There are a number of reasons why a creditor may want to attend a creditors meeting:

1. In genuine collapses, the creditor may want to provide support to the director of the company that has failed. Most business failures are collapses arising for genuine reasons and the directors are facing an uncertain future.
2. If you have supplied stock to the company, you will get your first opportunity to ascertain if any of your stock remains with the company. This is critical if you have a valid retention of title clause on your goods supplied and you will be able to inform the appointed liquidator of your wishes to process your claim for retention of title asap.
3. If you have concerns regarding the directors stewardship of the company, you can:

a. Ask questions at the creditors meeting and ask that the nominated liquidator investigates your concerns and report back to the Committee of Inspection (if one is appointed) and address your concerns in the Liquidators report to the Corporate Enforcement Authority.

b. Play a role in the liquidation process by nominating yourself to be appointed to the Committee of Inspection.

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