

Creditors meetings

What you need to know

Creditors' meetings can be a useful tool to more fully investigate a bankrupt's or a company's affairs including the causes of insolvency or may lead to the identification of previously undiscovered assets. It is a forum for matters relevant to the administration of the bankruptcy and liquidation to be raised and discussed.

Creditors' meetings do not occur often but can be held depending on the particular circumstances of the bankruptcy or liquidation and whether the meeting is likely to assist in the administration of the estate. Creditors' meetings are not an opportunity for creditors to badger the bankrupt or company director or to attempt to extract some retribution for financial losses suffered.

If a creditor would like a meeting to be held, they can make a request in writing to the Official Assignee setting out why they consider that holding a creditors' meeting would benefit the administration of the bankruptcy or liquidation. Creditors' meetings will only be held where they are likely to be of benefit to the administration.

They may also be held in particularly large bankruptcies or liquidations involving complex issues where the Official Assignee considers that it would be appropriate for creditors to assist in making decisions.

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Bankruptcy creditors meetings

In the administration of bankruptcy there is provision for a meeting of creditors to be called within 25 working days of the date of adjudication, unless there is justified delay due to special circumstances. However, the Official Assignee can (and usually does) dispense with this meeting unless particular issues have arisen during his investigations that need to be addressed with creditors.

In lieu of a meeting the Official Assignee will provide a report to all known creditors. If any of these creditors believe there is cause for a meeting to be held, that creditor may notify the Official Assignee in writing within 10 working days of the report that he or she wishes the meeting to be called.

The Official Assignee has the ability to call subsequent creditors' meetings if such a meeting would be beneficial to the administration.

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Calling of a meeting of creditors

Where the Official Assignee intends to call a meeting of creditors, he must notify the bankrupt and all of their known creditors of a time and place for the meeting. In informing creditors of the meeting, the Official Assignee must also send:

- a summary of the bankrupt's statement of assets and liabilities (where the bankrupt has provided one); and
- extracts from or a summary of the bankrupt's explanation of the causes of the bankruptcy; and
- any comments on the bankruptcy the Official Assignee chooses to make.

And, if a resolution allows it:

a voting paper for each resolution put to the meeting; and

instructions for returning the voting paper or electronic vote; and

notification of the timeframe (at least 2 working days before the meeting begins) by which voting papers must reach the Official Assignee.

Conduct of a meeting of creditors

For a valid creditors' meeting at least two people must be present, of which one must be the Official Assignee (or representative) and a person who is or represents a creditor. If there are insufficient numbers for a valid meeting, the meeting lapses and the Official Assignee may call another meeting.

The Official Assignee will usually be the chairperson of the creditors' meeting; however, it is possible for another person at the meeting to be the chairperson.

The chairperson may:

administer any oath that the Official Assignee could have administered if they had attended the meeting

adjourn the meeting from time to time and place to place

require the bankrupt to sign a statement of the bankrupt's evidence given under questioning at the meeting.

Creditors at a meeting

A creditor may be represented by a:

- lawyer; or
- accountant; or
- person who keeps the creditor's accounts; or
- person who is their authorised agent under a power of attorney; or
- person who satisfies the Official Assignee they represent the creditor; or
- in the case of a partnership, a partner; or
- in the case of the Crown, by any officer of the appropriate government department; or
- in the case of a public body, an officer of that body; or
- in the case of a company, a director, general manager or accountant or person authorised in writing by one those persons.

Resolutions

Creditors' meetings may pass ordinary and special resolutions.

Ordinary resolutions

An ordinary resolution may be passed by a majority in number and value of creditors who attend. For example, a creditors' meeting may pass an ordinary resolution appointing an expert to assist the Official Assignee in the administration of the estate and providing for that expert's remuneration from the estate.

A creditors' meeting may also pass an ordinary resolution appointing a committee of persons to assist the Official Assignee but in that case the Court must approve the remuneration of the members from the estate.

Special resolutions

A special resolution may be three-quarters in number value of creditors who attend.

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Liquidation creditors' meetings

The requirements surrounding creditors' meetings differ depending on under what authority the company was placed into liquidation. Time periods, especially for a first meeting, do vary accordingly.

The liquidator can dispense with a meeting of creditors if there is no foreseeable benefit in holding such a meeting. However, the liquidator must provide notice of this to all known creditors. Notice must be in writing and provide reason for the liquidator's decision.

Calling of a meeting of creditors

Creditors have the right to call that meeting if they provide written request to the liquidator within 10 working days of receipt of the notice. Public notices of meetings must be arranged by the liquidator.

The predominant issue at such meetings is whether creditors should pass a resolution for appointment of an alternative liquidator or application to the court for the same. A creditors' meeting is not required when a liquidator is appointed following a watershed meeting in a voluntary administration.

Why hold a creditors' meeting?

A creditor's meeting may be held for the following purposes:

- To allow creditors to decide whether a new liquidator should be appointed;
- To pass a resolution setting out the views of creditors for the purposes of Section 258;
- To allow creditors to decide whether to appoint a liquidation committee;
- To enable the Liquidator to inform creditors or shareholders of the progress in the liquidation; or
- To provide the opportunity for the Liquidator to investigate or obtain information that will materially benefit creditors or the Liquidator.

Where a meeting has been called, or the liquidator has received a notice requiring the meeting to be called, or the liquidator decides to hold a meeting, the liquidator must send notice of the meeting together with the liquidator's report to creditors and place a public notice of the meeting not less than 5 working days before the date of the meeting and the meeting must be held within 15 working days after the Liquidator receives the notice.

The meeting must then be held within 10 working days of the liquidator's appointment by special resolution or by board of the company, or within 30 working days of the appointment of a liquidator by the Court. There may be a longer period before a meeting of creditors when allowed by the Court.

Every meeting of creditors must be held in accordance with Schedule 5 of the Companies Act 1993.

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Voluntary Administration creditors' meetings

At least two creditors' meetings are required in Voluntary Administration (VA). The administrator is responsible for calling, including publicly advertising, each meeting.

The first meeting

The first of these must be within 8 working days of the administrator's appointment. The two issues which are first addressed are the appointment (or not) of a creditors' committee, and the replacement (or not) of the administrator. The administrator must disclose in writing to the creditors at this meeting whether they have any conflict of interest. The committee may consist of creditors' agents.

The second or 'watershed' meeting

The second or 'watershed' meeting is set to allow creditors to decide the future of the company. This should be convened within 25 working days of the appointment of administrator but this may be extended by the Court.

Company directors are required to be at this meeting unless they are excused by:

- the administrator;
- a creditors' resolution granting them leave; or
- the director has a valid reason for not attending.

Resolutions

At the watershed meeting creditors have the ability to pass a resolution to:

- accept a deed of company arrangement;

- end the administration; or
- appoint a liquidator.

Resolutions are adopted where a majority in number representing 75% in value of creditors vote in favour of it. Creditor meetings are generally conducted in the same manner as meetings of creditors in liquidation.