

**PLANNING AND ADMINISTRATION
OF CREDITORS' MEETINGS**

Contents

	<i>Paragraphs</i>
Introduction	1 – 4
Instructions to Convene Meeting	5 – 9
Appointment of Liquidator	10 – 12
Venue and Time of Meeting	13 – 16
Notice of Meeting	17 – 22
Proxies	23 – 28
Proof of Debt	29 – 31
Availability of Proxies and Proof of Inspection	32
Attendance at the Creditors' Meeting	33 – 36
Information to be provided at the Meeting	37 – 39
Conduct at the Meeting	40 – 56
Effective Date	57

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S_{8B}

Planning and administration of creditors' meetings

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INTRODUCTION

1. This Statement of Insolvency Practice is one of a series issued by the Institute of Chartered Accountants in Ireland to insolvency practitioners with a view to maintaining standards by setting out required practice and harmonising members' approach to particular aspects of insolvency practice.
2. The purpose of Statements of Insolvency Practice is to set out basic principles and essential procedures with which insolvency practitioners are required to comply. Departure from the standards set out in the Statements of Insolvency Practice is a matter that may be considered by the Institute for the purposes of possible disciplinary or regulatory action.
3. This Statement concentrates on creditors' meetings held under Section 266, Companies Act, 1963, and does not purport to cover the practice to be adopted in respect of all creditors' meetings. Throughout this Statement the member who has received instructions from the company's directors to advise in relation to the convening of the creditors' meeting will be referred to as the "advising member". An advising member, in situations where he or she so becomes aware, should advise the directors to add creditors omitted from the listing used to draw up the Statement of Affairs. An advising member is reminded that he or she must have regard to the relevant primary and secondary legislation.
4. Fees and out of pocket expenses incurred by the member advising the company on the appropriate procedures to be followed and administrative matters to be dealt with in relation to creditors' meetings can be paid by the company's directors in their personal capacity. Otherwise, it will be necessary for the liquidator on appointment to apply to the Court, the Committee of Inspection, or the meeting of creditors, as appropriate, seeking approval for payment of such fees and expenses as costs properly incurred by the liquidator.

INSTRUCTIONS TO CONVENE MEETING

5. It is the responsibility of the company's directors to convene the creditors' meeting and to ensure that arrangements are made for the meeting to be held in accordance with current legislation. The advising member must therefore be satisfied that the directors are aware of their responsibilities. He or she should obtain written instructions from the board of directors which clearly define the matters on which advice is sought.

Planning and administration of creditors' meetings

6. If the advising member receives instructions which would require him or her to act in a manner materially contrary to the Statements of Insolvency Practice, those instructions should only be accepted in exceptional circumstances, having obtained appropriate independent advice and after careful consideration of the implications of acceptance in that particular case. Where the directors act contrary to the guidance contained in this Statement, the advising member may be called upon to show that the directors' actions were undertaken either without the knowledge or against the advice of that member.
7. A member who is unable to accept an appointment as liquidator of a company because the member, or the member's firm, has had a material professional relationship with the company – for example, acting as the company's auditor during the preceding twelve months – may act as an advising member. However, the member should only do so after careful consideration of the implications of so acting in the light of the Institute's most recent guide to professional ethics.
8. A member who is asked to act as advising member in relation to any company should not agree to act unless satisfied that he or she is competent to provide the level of advice needed by the company in question.
9. Where any person is entitled to appoint a receiver for the company the advising member should normally advise the company to inform the debenture holder prior to the notices being despatched.

APPOINTMENT OF LIQUIDATOR

10. It is most undesirable that shareholders should pass a resolution for the winding-up of a company unless a liquidator is also appointed. Accordingly, no member should accept instructions to act as advising member unless he or she had good grounds for believing that such appointment will be made. If, having accepted instructions, the advising member concludes that, although a winding-up is desirable, a members' voluntary winding-up is inappropriate, he or she should advise the directors and shareholders that steps leading to a creditors' voluntary winding-up or winding-up by the Court, as appropriate, should be taken. Such a situation could arise where a liquidator is unlikely to be appointed under the voluntary winding-up, or where there is a strong case in favour of the liquidation commencing before a meeting of shareholders can be held.
11. Having previously acted as the advising member does not, of itself, prohibit a person from being nominated as liquidator to that company.
12. Members are reminded of the provisions of Section 301, Companies Act, 1963, Section 147, Companies Act, 1990, and of the Institute's most recent guide to professional ethics.

S_{8B}

Planning and administration of creditors' meetings

VENUE AND TIME OF MEETING

13. Where a company has its registered office in the County Borough of Cork or Dublin, Order 74 of the Rules of the Superior Courts requires any creditors' meeting to be held in the respective County Borough. If the company is registered elsewhere the directors should fulfil the legal requirement to choose a place which is convenient for persons who are invited to attend.
14. When choosing a venue for the meeting the directors should also ensure that the accommodation is adequate for the number of persons likely to attend. Subject thereto, there is no objection to an advising member arranging for the meeting to be held at his or her own offices. The advising member may charge the company for the use of the room if he or she wishes.
15. The date and time of the meeting should be fixed with the convenience of creditors in mind and having regard to their geographical location. As an example, notice of a meeting should not normally be despatched shortly before the commencement of a known holiday period with the meeting taking place immediately after the holiday.
16. It is for the advising member to advise the directors that the meeting of the creditors shall be on the same day or the day next following the day on which the meeting takes place at which the resolution of the winding-up is proposed.

NOTICE OF MEETING

17. The notice convening the meeting should, where possible, be sent simultaneously to all classes of known creditors (including employees). The advising member should take all reasonable steps to ensure that the list of creditors provided by the directors is complete. Thus, for example, he or she should advise the company to identify and send notices to such creditors as hire purchase companies, lessors and former lessors and public utilities.
18. Although the legal requirement is to give a minimum of ten days notice of the meeting, this is often insufficient time to enable creditors to arrange representation. For the convenience of creditors, the advising member should ensure that notices of the meeting are despatched as early as possible having regard to the circumstances of the case. This should be no later than the date when the notices are despatched to shareholders.
19. The notice of the creditors' meeting should be advertised in two daily newspapers circulating in the district where the registered office or principal place of business is situated at least ten days before the date of the meeting.
20. Where the company carries on its business by electronic means, consideration should be given to placing the notice of the creditors' meeting on the company's website.

Planning and administration of creditors' meetings

21. Copies of the notice convening the shareholders' meeting should not be circulated to creditors.
22. A copy of the notice of the shareholders' and/or creditors' meeting should be sent to the Sheriff, Sheriff's officers and the Courts known by the advising member to be interested in the company's affairs. In addition, notice of the creditors' meeting should be sent, where practical, to solicitors or debt collection agencies acting for the creditors.

PROXIES

23. The forms of general and special proxy accompanying the notice should conform to the rules and should incorporate the name of the company and the date of the meeting before despatch in order to reduce the possibility of errors by creditors in completing the forms. The proxy must not be sent out with the name or description of any other person inserted on it.
24. Proxies to be used at the meeting are valid only if properly completed, lodged by the time stated and to the place specified in the notice convening the meeting. Where proxies, which are otherwise valid, are sent by fax they should be accepted.
25. Proxies which are lodged out of time should be treated as invalid. Proxies which are incorrectly completed in a material way will be invalid.
26. There is a requirement for proxies to be signed by the principal or by a person authorised by him, in which case the nature of the authority must be stated. Proxies which are unsigned or which do not explain the authority under which they are signed will, therefore, be invalid.
27. If advising the chairman of the meeting on the validity of proxies, an advising member should bear in mind that he or she has a personal interest if he or she has been appointed at the shareholders' meeting and seeks to retain office following the creditors' meeting, or intends to seek appointment as liquidator at that meeting. Where the circumstances so demand, the advising member should suggest prior to the meeting that the chairman takes advice on the validity of proxies from an independent source, for example, the company's solicitors.
28. There is no requirement for proxies which are considered invalid to be returned to the creditors who have lodged them.

PROOF OF DEBT

29. There is not usually any proof of debt procedure at meetings of creditors in the Republic of Ireland. However, an individual creditor may bring evidence of his debt if he seeks to challenge the quantum of his claim on the statement of affairs.

S_{8B}

Planning and administration of creditors' meetings

30. Creditors may submit proof at any time before voting, even during the course of the meeting itself. The admission or rejection of proof for voting purposes is the responsibility of the chairman of the meeting. A proof should be accepted as valid for voting purposes, provided it identifies both the creditor and the amount claimed by him with sufficient clarity.
31. The amount for which the chairman admits the proof for voting purposes should normally be the lower of:
 - (a) The amount stated in the proof; and
 - (b) The amount considered by the company to be due to the creditor.

The amount for which the proof is admitted for voting purposes should be endorsed on it, and in most instances it is expected that prior to the meeting the chairman will do this.

AVAILABILITY OF PROXIES AND PROOFS FOR INSPECTION

32. Any person entitled to attend the meeting may inspect the proxies and proofs, either immediately before or during the meeting. Notwithstanding that a form of proxy submitted is ruled by the chairman to be invalid or a proof is rejected in whole or in part, these documents should be made available for inspection.

ATTENDANCE AT THE CREDITORS' MEETING

33. A liquidator appointed by the shareholders before the creditors' meeting takes place, whose appointment has been certified by the chairman of the shareholders' meeting, is required to attend the creditors' meeting. The liquidator must report to the meeting on any exercise of powers under Sections 276 or 280 of the Companies Act, 1963, or Section 131, Companies Act, 1990. Such attendance is required even if the shareholders' appointment was made only shortly before the creditors' meeting. The liquidator must also attend any adjourned meeting. Where the shareholders have appointed joint liquidators, both are required to attend the subsequent meeting.
34. One of the directors of the company will have been nominated to act as chairman and must attend. In addition, in exceptional circumstances the advising member should consider whether any other director of the company will be able to provide specific information which is relevant to the meeting and, if so, whether the chairman has been apprised of such information.

Planning and administration of creditors' meetings

35. Creditors and their authorised representatives are entitled to attend. A person who holds himself out as representing a creditor should, in the absence of evidence to the contrary, be allowed admittance and to raise questions, but he may be unable to vote.
36. The chairman of the meeting should be advised that he or she must decide whether to allow any third parties to attend after taking into account the views of the creditors present.

INFORMATION TO BE PROVIDED TO THE MEETING

37. The advising member should ensure that a summary or a copy of the Statement of Affairs is handed to all those attending the meeting. This summary will normally be expected to include a list of the names of the major creditors and the amount owing to them. Sufficient copies of the full list of creditors should be available to facilitate its inspection by those attending the meeting.
38. The information to be given to the meeting should include:
 - (a) Details of any prior involvement with the company or its directors by the advising member or, if a different person, the proposed liquidator;
 - (b) A report on the previously held shareholders' meeting, stating the date and time that the meeting was held and if it was held at short notice, the reasons therefor and the fact that the required consents were received. The resolutions passed at the meeting should be reported. The fact that the proposed liquidator has consented to act, which consent is required by Section 276A, Companies Act, 1963, should be stated. The letter of consent should be available at the meeting for inspection.

If the shareholders' meeting was adjourned without a resolution for voluntary winding-up being passed, there should be reported:

- (i) The date and time to which the meeting had been adjourned; and
 - (ii) the fact that any resolution at the meeting of creditors will come into effect as if it had been passed immediately after the winding-up resolution.
- (c) A brief report on the company's trading history which should include:
 - (i) date of incorporation and registered number;
 - (ii) names of all persons who have acted as directors of the company and company secretary at any time during the three years preceding the meeting.

S_{8B}

Planning and administration of creditors' meetings

- (iii) names of major shareholders together with details of their shareholdings;
 - (iv) details of all classes of shares issued;
 - (v) nature of the business conducted by the company;
 - (vi) location of the business and the address of the registered office;
 - (vii) details of parent, subsidiary or associated companies;
 - (viii) the directors' reasons for the failure of the company.
- (d) If the company is in receivership, the meeting may be provided with the report on the conduct of the receivership to the date of the creditors' meeting.

This report may include a summary of the receiver's receipts and payments, together with an explanation of the circumstances surrounding the receivership. The particular circumstances may prevent some sensitive information being given at the creditors' meeting. It will be the responsibility of the chairman of the meeting to outline the report, having first discussed the situation with the receiver. The advising member should ensure that the chairman has taken whatever steps are available in order to brief himself or herself in relation to the receivership which is ongoing at the time of the creditors' meeting.

- (e) An explanation of the contents of the Statement of Affairs.
39. In assisting in the preparation of a report to be presented to the meeting, the advising member may rely on information contained in the company's accounts and records and also on information provided by directors and employees. The advising member is not expected to conduct an investigation to ensure that the information is accurate, but should provide the liquidator appointed with any material conflicting information of which he or she is aware.

CONDUCT AT THE MEETING

40. Although the chairman of the meeting must be a director of the company and his or her identity must be made clear at the outset, there is no reason why the meeting should not be conducted by the advising member or some other professional advisor. It should be explained to the meeting that, although this is done on behalf of the directors, the report is their responsibility and is based on the information supplied by them. The chairman is the arbiter on all procedural matters but may seek advice from the advising member.

Planning and administration of creditors' meetings

41. Creditors and their representatives attending the meeting are required to sign an attendance list. This list should be made available for inspection to anyone attending the meeting. Any creditor or creditor's representative wishing to speak, ask questions or make a nomination, should be asked to identify himself and the creditor he represents.
42. Creditors and their representatives should be given the opportunity to ask questions. Whilst every effort should be made to give a reasonable answer to such questions within the context of the meeting, the chairman may be advised to refuse a question to be put if, for example:
 - The questioner refuses to give the name of the creditor he represents and his own name or that of his firm;
 - The questioner does not claim to be or to represent a creditor,or may decline to answer it if, for example:
 - The answer could prejudice the successful outcome of the liquidation or creditors' interests;
 - The answer could be construed as slanderous if subsequently proved incorrect.The chairman should be advised to state the grounds on which he or she refuses to allow a question.
43. Creditors are entitled to information on the causes of the company's failure, but it is not appropriate for a detailed investigation of the company's affairs to be undertaken at a meeting of creditors.
44. Nominations for the appointment of a liquidator should be requested before any vote is taken. The appointment of a liquidator is of no effect unless the person nominated has, prior to appointment, signified his or her written consent to the appointment. The holder of a proxy requiring him to vote for the appointment of a particular liquidator is required to nominate that person, and it is therefore possible that the chairman, or any other holder of such proxies, may need to make more than one nomination.
45. The chairman must accept all nominations and put them to the meeting, unless he or she has good grounds for supposing that the person nominated is not qualified to act.
46. The procedure to be followed when voting for the appointment of a liquidator should be explained to the meeting. It is acceptable in the first instance for a vote to be taken on an informal show of hands and, if the result is accepted by all interested parties, the chairman of the meeting may conclude that a resolution has been passed.

S8B

Planning and administration of creditors' meetings

47. If a formal vote becomes necessary it should be conducted by stating the names of all those nominated and by the issue of voting papers on which those wishing to vote will be required to show their name, the name of the creditor they are representing, the amount of the creditor's claim and the name of the nominated person for whom they wish to vote. It is the advising member's responsibility to ensure that the voting papers are available.
48. If more than one person is nominated for appointment as liquidator, the nominees for liquidator are each voted on separately, in order of nomination, with the individual first achieving a majority in value being appointed. If no person nominated receives the requisite majority the person nominated by the shareholders remains in office.
49. When all votes have been counted, the chairman should announce the result to the meeting, giving details of the total value of votes in favour of each nomination. The chairman should also give details of votes which have been rejected, either in whole or in part, and should also state which nomination those creditors supported and the reasons for the rejection.
50. The meeting should always be invited to establish a Committee of Inspection. If it wishes to do so, the meeting should be advised of any shareholders' nominations (maximum three persons) to the committee and of the voting procedure which will be followed. It is accepted that, when the constitution of the committee is not contentious, a resolution may be passed on a show of hands and may also appoint a committee en bloc. If there are more than five creditors nominations for appointment to the Committee of Inspection, it is recommended that each creditor should be issued with a voting paper (the provision of which is the responsibility of the advising member) on which he should enter his own name, the name of the creditor he represents and the amount of his claim.
51. Each creditor should be allowed to vote for up to five members of the committee and, in doing so, a creditor may vote for his or her own appointment. The number of members appointed to the committee should not at any time exceed eight.
52. When declaring the result the chairman should follow the same procedures as those outlined in paragraph 49 above.
53. Voting papers should be made available for inspection by any creditor or creditor's representative whose claim has been admitted for voting purposes at any time during the meeting or during normal business hours on the business day following the meeting.
54. Once the meeting has been closed, minutes should be prepared setting out the details of the decisions reached and the Chairman should be asked to sign them. The minutes should be kept with the liquidation papers and given to the person appointed as liquidator. Copies of these minutes are to be annexed to the "Section 56 report" prepared by the liquidator.

Planning and administration of creditors' meetings

55. In instances where the advising member has not been appointed to be the liquidator of the company, he or she must provide reasonable assistance to the liquidator. This will include handing over any of the company's books and papers held by the advising member, together with documents he or she has received in relation to the meeting of creditors (e.g. proofs, proxies, statement of affairs, shareholders' resolutions, attendance lists and minutes of the creditors' meeting). It is expected that this information will be handed over as quickly as possible and, in any event, within seven days of the conclusion of the creditors' meeting.
56. Likewise, all sums received by the advising member from the company or on its behalf, less any proper disbursements which he or she has made, duly vouched, should be handed over.

EFFECTIVE DATE

57. This Statement is effective from 1st May 2005.

