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Creditors Meetings -The Final Nail in the Coffin?



For many businesses, the final confirmation of a bad debt arrives in the form of the statutory notice convening a meeting of creditors under Section 266 of the Companies Act 1963. In 2008 over 570 such meetings took place and early indicators for 2009 suggest that this figure will be surpassed.

So what can companies do when faced with the dreaded Section 266 notice? Is there any benefit in attending such meetings? What influence have creditors in relation to the appointment of the Liquidator?

Brendan O Donoghue, Director of Corporate Recovery with Russell Brennan Keane Corporate Services points out that creditors of insolvent companies have various powers and / entitlements which they can exercise and should consider attending such meetings particularly where they are owed a significant debt. In certain instances, it may be appropriate to attend the meeting accompanied by an insolvency professional conversant in the conduct of creditors meetings. The purpose of a creditors meeting is threefold, it is to present before the meeting a Statement of Assets and Liabilities of the Company, to sanction the appointment of a Liquidator and to appoint a Committee of Inspection.

Creditors meetings which can on occasion be heated affairs provide an opportunity for creditors to question insolvent company directors regarding their stewardship of the company says Brendan. Creditors are entitled to raise queries with the directors on matters pertaining to the company such as the valuation and ownership of assets appearing on the Statement of Assets and Liabilities as compared with the most recent set of filed accounts, request details of any recent payments to creditors and enquire regarding details of company borrowings personally guaranteed by the directors. The explanations provided by the directors at the meeting together with the Statement of Assets & Liabilities will provide a good indication as to the prospects of receiving a dividend.

One of the main rights afforded to creditors at the meeting of creditors is the opportunity to put forward an alternative liquidator to the company nominee. For the creditors' nominee to overturn the company appointed Liquidator he or she must have a majority of creditors validly voting either in person or by proxy at the meeting of creditors.

In order to attend and vote at a meeting of creditors, a limited company must complete a proxy nominating a person or persons to attend and vote on its behalf. This proxy must be signed and sealed by an authorised officer of the company and the fact that he/she is authorised should be stated in writing. The completed proxy should be sent to the registered office of the insolvent company no later than the time/date specified on the notice convening the meeting.

There is no requirement for personal creditors to submit a proxy form if they are attending in person, however if they wish to nominate a representative to attend on their behalf a completed proxy is required.

The meeting of creditors can also decide to appoint a committee of Inspection to assist the liquidator in the conduct of his duties. The committee can also approve the fees and costs of the Liquidator. A minimum of two and a maximum of members can be appointed.

If you would like to discuss your companies individual circumstances with Brendan O'Donoghue, he can be contacted confidentially at Tel (01) 6440100 or email bodonoghue@rbk.ie

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About RBK

Russell Brennan Keane is one of Irelands leading business advisory and accountancy firms. With 50 years experience providing professional advisory services to a range of clients in the mid to large corporate market in Ireland, from offices in Dublin, Athlone and Roscommon.

Press Contact:

Gillian Mullan
Tel: + 353 (0)90 6480667 / 0860585245
Email: gmullan@rbk.ie
