

## Death of Creditor Meetings?

When a company enters into voluntary liquidation, there is currently a requirement under Section 98 of the Insolvency Act 1986 for a physical meeting of its creditors to be held. Under Section 99, at least one Director must attend the meeting to provide an explanation to creditors as to why the company has failed.

Many a Director has encountered a sleepless night before the day of the meeting although attendance at meetings of creditors has been declining year on year. However, such meetings did provide a useful opportunity for questions to be put to Directors about their actions and often information was obtained which enabled the Liquidator to commence proceedings which resulted in a recovery for creditors.

The lack of engagement by creditors has however resulted in a change of emphasis and on 6 April 2017, the Insolvency (England & Wales) Rules 2016 will come into force.

Section 98 is to be abolished and there will therefore be no statutory requirement to hold a physical meeting. It is to be replaced by a 'qualifying decision procedure' which will take the form of a virtual meeting which could be a telephone conference, Skype or any other web based interaction. At such a meeting, creditors will make decisions regarding the appointment of the Liquidator and any other matters pertinent to the liquidation.

However, should 10% in value of the creditors or 10% in number of the creditors or 10 creditors request a physical meeting, then such a meeting must be held and the virtual meeting will be cancelled.

To confuse matters further, the concept of 'deemed consent' has also been introduced which is an alternative to the 'qualifying decision procedure'. Effectively, creditors are advised in advance what decisions are to be made on a certain date and in the absence of the appropriate number of relevant creditors objecting, those decisions are taken as being confirmed. An example of such a decision would be the appointment of a Liquidator.

The bench mark for objections is 10% in value of the creditors and should this be reached, then the deemed consent process is immediately halted and a physical meeting has to be convened.

It remains to be seen whether or not there will be much take up by creditors of their right to request a physical meeting instead of a virtual meeting or alternatively, halt the deemed consent procedure and request a physical meeting. In certain high profile liquidations with a large number of creditors, especially the public, then it is most likely that a physical meeting will be held. However, in the vast majority of low level liquidations where creditor engagement is minimal, the likelihood is low.

From a Director's point of view, the new Rules minimise the chances of them having to face the company's creditors. From the creditors' perspective, the opportunity to engage in a virtual process without the need to travel large distances no doubt has its attractions.

An angry creditors meeting with a Director under pressure created a tension which often produced results. It is doubtful that a virtual meeting could replicate this whilst decisions being agreed by deemed consent seems to be a comfortable option for Directors.

Please note that should your clients require any confidential advice regarding any insolvency matter they are welcome to contact Ian, John or Robert. An initial consultation is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.