

Statement of Insolvency Practice (SIP) 15 (E & W)

Annex B

Guidance for members of creditors' committees in administrative receiverships

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1. General

- s.49
- r.3.18
- s.49
- 1.1** Administrative receivership is a remedy available to a creditor holding security created before 15 September 2003, which includes a floating charge, over all (or substantially all) the assets of a company as a means of enforcing security. An administrative receiver is appointed by the holder of the security but normally acts as agent of the company over whose assets he is appointed. The primary duty of an administrative receiver is to his appointor. Whilst he also owes certain duties to the company and is required to provide information to the unsecured creditors, neither the creditors nor any committee appointed by them have any authority to sanction any of his actions.
- 1.2** The administrative receiver must (unless the court directs otherwise) convene a meeting of the unsecured creditors within three months of his appointment and lay before it a report on matters relating to the receivership. The meeting convened to receive the report may also establish a creditors' committee. The function of the committee is to assist the administrative receiver in discharging his functions, and act in relation to him in such manner as may be agreed from time to time. The committee may also require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.
- 1.3** The margin references are to the Insolvency Act 1986, the Insolvency Rules 1986 (as amended) and the Insolvency Practitioners Regulations 2005.

2. Membership

- r.3.16
- 2.1 General**
- 2.1.1** The committee must consist of at least three, and not more than five, creditors. Any creditor of the company is eligible to be a member of the committee, so long as his claim has not been rejected for the purpose of his entitlement to vote.
- 2.1.2** It is the creditors themselves who are the members of the committee, not the individuals who represent them. Thus a company which is a creditor may be a member of the committee but can only act through a representative appointed in accordance with paragraphs 2.2.1 to 2.2.3 below.

2.2 Representatives

- r.3.21 2.2.1 A member of the committee may be represented by another person duly authorised by him. Such representative must hold a letter of authority entitling him so to act (either generally or specially) signed by or on behalf of the committee member, and for this purpose any proxy or any authorisation under section 375 of the Companies Act 1985 in relation to any meeting of creditors of the company shall, unless it contains a statement to the contrary, be treated as a letter of authority to act generally signed by or on behalf of the committee member. The chairman at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.
- 2.2.2 No member may be represented by –
- a body corporate,
 - an undischarged bankrupt,
 - a person who is subject to a bankruptcy restrictions order or undertaking, or
 - a disqualified director.
- 2.2.3 No person may act as representative of more than one committee member, or as both a member and a representative of another member, on the same committee.
- 2.2.4 Where the representative of a committee member signs any document on the member's behalf, the fact that he so signs must be stated below his signature.

2.3 Resignation and termination of membership

- r.3.22 2.3.1 A member of the creditors' committee may resign by notice in writing delivered to the administrative receiver. A
r.3.23 person's membership of the committee is automatically terminated if –
- (a) he becomes bankrupt, or
 - (b) at three consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this rule is not to be applied in his case), or
 - (c) he ceases to be, or is found never to have been, a creditor.
- 2.3.2 However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.

r.3.24 2.3.3 A member of the committee may be removed by resolution at a meeting of creditors, provided at least 14 days' notice has been given of the intention to move that resolution.

2.4 Vacancies

r.3.25 If there is a vacancy in the membership of the committee it need not be filled if the administrative receiver and a majority of the remaining committee members so agree, provided the number of members does not fall below three. The administrative receiver may appoint any creditor qualified to be a member of the committee to fill the vacancy, provided a majority of the other members of the committee agree and the creditor consents to act.

3. Establishment of committee

3.1 Formalities of establishment

r.3.17 3.1.1 The committee does not come into being, and accordingly cannot act, until the administrative receiver has issued a certificate of its due constitution.

3.1.2 The administrative receiver will not issue the certificate until at least three of the persons who are to be members of the committee have agreed to act. Such agreement may be given by the creditor's proxy-holder or representative under section 375 of the Companies Act 1985 present at the meeting establishing the committee, unless the proxy or authorisation specifically precludes such agreement being given.

3.2 Formal defects

r.3.30A The acts of the committee are valid notwithstanding any defect in the appointment, election or qualifications of any committee member or the representative of any committee member, or in the formalities of its establishment.

4. Proceedings

4.1 Chairman

r.3.19 Subject to paragraph 4.5.3 below, the chairman at any meeting of the committee will be the administrative receiver, or a person nominated by him in writing to act. A person so nominated must be either –

(a) one who is qualified to act as an insolvency practitioner in

- relation to the company, or
(b) an employee of the administrative receiver or his firm who is experienced in insolvency matters.

4.2 Quorum

r.3.20 A meeting of the committee is duly constituted if due notice of it has been given to all members and at least two members are present or represented.

4.3 Meetings

4.3.1 General

r.3.18 The committee will meet where and when determined by the administrative receiver, subject as follows:

4.3.2 First meeting

r.3.18 The administrative receiver must call the first meeting of the committee not later than three months after its establishment.

4.3.3 Subsequent meetings

r.3.18 Subsequent meetings of the committee must be called by the the administrative receiver –

- (a) if so requested by a member of the committee or his representative – the meeting must then be held within 21 days of the request being received by the administrative receiver - and
- (b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

4.4 Notice of venue

r.3.18 The administrative receiver must give 7 days' notice in writing of the venue of any meeting to every member of the committee (or his representative designated for that purpose), unless this requirement has been waived by or on behalf of any member. Such waiver may be signified either at or before the meeting.

4.5 Information from administrative receiver

r.3.28
s.49 4.5.1 Where the committee resolves to require the attendance of the administrative receiver under section 49(2) of the Insolvency Act 1986, he must be given at least 7 days' notice. The notice to him must be in writing, signed by a majority of the current members of

the committee. A member's representative may sign for him.

4.5.2 The meeting at which the administrative receiver's attendance is required must be fixed by the committee for a business day, and held at such time and place as the administrative receiver determines.

4.5.3 Where the administrative receiver so attends, the members of the committee may elect any one of their number to be chairman of the meeting in place of the administrative receiver or his nominee.

4.6 Voting rights and resolutions

r.3.26 At any meeting of the committee each member (whether present himself or by his representative) has one vote, and a resolution is passed when a majority of the members present or represented have voted in favour of it.

4.7 Records of meetings

r.3.26 Every resolution passed must be recorded in writing, either separately or as part of the minutes of the meeting. The record must be signed by the chairman and kept as part of the records of the receivership.

4.8 Postal resolutions

r.3.27 4.8.1 It is possible for resolutions to be passed by post. The administrative receiver must send to every member (or his representative designated for the purpose) a copy of the proposed resolution on which a decision is sought, which must be set out in such a way that agreement with, or dissent from, each separate resolution may be indicated by the recipient on the copy so sent.

4.8.2 However, any member of the committee may, within 7 business days from the date of the administrative receiver sending out a resolution, require the administrative receiver to summon a meeting of the committee to consider the matters raised by the resolution. In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the administrative receiver is notified in writing by a majority of the members that they concur with it.

4.8.3 A copy of every resolution so passed, and a note that the concurrence of the committee was obtained, must be kept with the records of the receivership.

5. Review of administrative receiver's security

r.12.8 The administrative receiver is required to have in place security for the proper performance of his functions (see Appendix). It is the duty of the committee to review from time to time the adequacy of the administrative receiver's security.

6. Information to be provided to the committee

6.1 Administrative receiver's receipts and payments account

r.3.32 The administrative receiver must send to each member of the committee an account of his receipts and payments:

- within two months after the end of 12 months from the date of his appointment, and of every subsequent period of 12 months, and
- within two months after he ceases to act as administrative receiver.

6.2 Resignation of administrative receiver

r.3.33 If the administrative receiver intends to resign he must give the committee at least seven days' notice of his intention to do so. Notice is not necessary if the receiver resigns in consequence of the making of an administration order.

6.3 Death of administrative receiver

r.3.34 If the administrative receiver dies, the person by whom he was appointed must, as soon as he becomes aware of the death, give notice of it to the members of the committee.

6.4 Vacation of office

r.3.35 When the administrative receiver vacates office he must forthwith give notice of his doing so to the members of the committee.

7. Confidentiality of documents

r.12.13 **7.1** Where the administrative receiver considers that any document forming part of the record of the receivership –

- (a) should be treated as confidential, or
- (b) is of such a nature that its disclosure would be calculated to be injurious to the interests of the creditors,

he may decline to allow it to be inspected by a person (including a member of the committee) who would otherwise be entitled to inspect it.

- 7.2** A person refused inspection may apply to the court for the refusal to be overruled.

8. Charges for copy documents

r.12.15A Where the administrative receiver is requested by a member of the committee to supply copies of any documents, he is entitled to make a charge as follows:

15 pence per A4 or A5 page
30 pence per A3 page

9. Expenses of committee members

r.3.29 **9.1** Any reasonable travelling expenses directly incurred by committee members or their representatives either in attending meetings of the committee or otherwise on the committee's business will be paid by the administrative receiver out of the assets as an expense of the receivership.

- 9.2** However, such expenses will not be paid in respect of any meeting of the committee held within three months of a previous meeting, unless the meeting in question is summoned at the instance of the administrative receiver.

10. Committee members' dealings with the company

r.3.30 **10.1** Membership of the committee does not prevent a person from dealing with the company while the receiver is acting, provided that any transactions in the course of such dealings are in good faith and for value.

- 10.2** The court may, on the application of any interested party, set aside any transaction which appears to it to be contrary to the above requirement, and may give directions for compensating the company for any loss incurred in consequence.

- 10.3** Circumstances may occasionally arise where a legal action or dealing involving a member of the committee or a person connected with him make it inappropriate for him to attend discussions on the subject in the committee. In such circumstances the member may be asked not to attend a meeting, or part of a meeting, at which the matter is discussed.

Appendix: Administrative receiver's security

s.390(3)
reg.12 & sch.2,
IP Regs

The administrative receiver is required to have in place security for the proper performance of his functions. The IP Regs security takes the form of a bond which provides that –

- a surety undertakes to be jointly and severally liable with the administrative receiver for losses caused by the fraud or dishonesty of the administrative receiver whether acting alone or in collusion with one or more persons, or the fraud or dishonesty of any person committed with the connivance of the administrative receiver;
- the liability of the surety and the administrative receiver is to be in both a general penalty sum and a specific penalty sum in respect of the individual case;
- any claims are to be paid first out of the specific penalty sum, then, if that is insufficient, out of the general penalty sum;
- a cover schedule containing the name of the insolvent and the value of the insolvent's assets is to be submitted to the surety within a specified period.

The general penalty sum must be £250,000 and the specific penalty sum must be at least equal to the estimated value of the company's assets, but ignoring the value of any assets charged to a third party to the extent of any amount which would be payable to that party, or held on trust to the extent that any beneficial interest in those assets does not belong to the company. The minimum specific penalty sum is £5,000 and the maximum £5,000,000. If, at any time, the administrative receiver forms the opinion that the value of the assets is higher than the penalty sum under the current specific penalty he must obtain a further specific penalty to bring the penalty sum equal to that value (subject to the maximum limit of £5,000,000).