



09,10	€
78,548,25	€
3,548,871,69	€
254,558,00	€
87,589,22	€
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66,587,25	€
58,897,02	€
12,125,23	€

Creditors

Their duties and powers



A quick guide



Oifig an Stiúirthóra um
Fhorfheidhmiú Corparáideach

Office of the Director
of Corporate Enforcement



Plain English
Approved by NALA

Introduction

We have produced this information booklet to explain the duties and powers of creditors under the Companies Acts.

What is a creditor?

A creditor of a company is a person or company that is owed money (or some other kind of debt) by the company. In general, there are two types of creditor: **secured** and **unsecured**.

Secured creditors

Secured creditors are those whose debt is secured on one or more of the company's assets, such as property. If, for example, a company borrows money from a bank or other financial institution to buy a building, the lender will ask for the title deeds to the building as security in case the company cannot repay the loan on the agreed basis.

Unsecured creditors

Unsecured creditors are those whose debt is not secured on any of the company's assets. If the company cannot pay all of its debts, unsecured creditors will only receive payment if there are funds remaining after the secured creditors have been paid.

What are the duties of creditors?

An important duty of creditors is to protect their own interests. At least once a year, creditors should satisfy themselves that companies are able to pay for the goods and services being provided to them. For example, creditors can check out a company's state of affairs by viewing the

annual returns filed in the Companies Registration Office (CRO) (www.cro.ie) before they decide if they want to do business with that company. A regular credit check could prevent financial loss and avoid the need for creditors to consider taking legal action to protect their interests.

What are the powers of creditors?

Appoint a liquidator

A liquidator is a person appointed to wind up a company.

If a debt of €1,270 or more remains unpaid three weeks after payment has been requested in writing, creditors can apply to the High Court to wind up the company.

Creditors may also secure the appointment of a liquidator to a company that cannot pay its debts if the company members decide that it cannot continue in business and should be wound up voluntarily.

Creditors can take further action to recover money due to them by applying to the High Court, for example, to have the directors made personally liable for all or part of the company's debts.

Appoint a receiver

A receiver is a person who sells particular company assets on behalf of a lender.

If a company does not pay a secured creditor, the creditor can appoint a receiver under the loan agreement relating to their debt. Alternatively, they may apply to the High Court to appoint a receiver.

Appoint an examiner

An examiner is a person appointed to look at the company's viability (its ability to stay in business). If there is a reasonable chance that a company in financial difficulty can be saved, creditors can apply to the High Court to appoint an examiner. Creditors are unable to recover the money owed to them while the examiner prepares rescue proposals.

Judgments

When a company does not pay a debt, the creditor can seek a court judgment against the company. Once this judgment is secured, the creditor can engage a public official (known as a sheriff) to try to recover the debt. The creditor can also seek to register the judgment in the High Court. The poor publicity associated with such a registration can make it difficult for the company to get credit from banks or other businesses while the debt remains unpaid.

Unliquidated insolvent companies

When a company cannot pay its debts but is not in liquidation, creditors can sometimes apply to the High Court to:

- order a related company to contribute to the assets of the insolvent company;
- order that company assets that were improperly taken from the company be returned to it;
- make a director personally responsible for the company's debt if they are guilty of fraudulent or reckless trading;
- make a director personally responsible for the company's debt if the company has not kept proper books;

- assess what damages a director should pay if they have done wrong;
- question the officers of the company on oath about the company's business;
- inspect the books and papers of the company; or
- have a director, shadow director, secretary or other officer of a company arrested and have their books, papers and personal property seized.

Restoring a 'struck-off' company to the Register

After a company has been struck off the Register of Companies, it ceases to exist. Creditors wishing to take legal action against the former company must first get it restored to the Register. They can apply to the Circuit Court for an order directing that this be done.

Investigation of a company

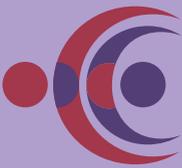
Creditors of a company can apply to the High Court for one or more inspectors to be appointed to investigate and report on its affairs.

Remedying a company law default

If a company or any of its officers fails to meet an obligation under company law, a creditor can serve a notice on them requiring the default to be remedied within 14 days. If this does not happen, a creditor can apply to the High Court for an order directing the person to correct their default.

Conclusion

A more detailed information book on creditors is available under Decision Notice D/2002/1 from www.odce.ie.



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