

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

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About this guide

We have produced this quick guide to explain the duties and powers of creditors under the Companies Act.

What is a creditor?

A creditor is a person or a 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 creditor – this type of creditor has a claim over the company's assets, such as property. For example, if a company borrows money from a bank to buy a building, the bank will ask for the title deeds to the building as security in case the company cannot repay the loan.

Unsecured creditor – this is a creditor who is owed money by a company but does not have any claim over the company's assets. For example, if a company cannot pay all of its debts, unsecured creditors will only be paid if there is money remaining after the secured creditors have been paid.

What duties do creditors have?

The most important duty of creditors is to protect their own interests. At least once a year, creditors should check that companies are able to pay for the goods and services they receive.

One way to do this is to view the annual return that a company must file with the Companies Registration Office (www.cro.ie). Creditors can then 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 take legal action to protect their interests.

What powers do creditors have?

Creditors have several powers under the Companies Act.

Power to appoint a liquidator

The most important power that a creditor has is to have a company liquidated (legally shut down). A liquidator is someone who is appointed to wind up a company.

- A creditor can ask a court to appoint a liquidator if the company is unable to pay its debts. A company is considered to be unable to pay its debts if it is unable to pay a debt of €10,000 or more within three weeks of a written request for payment.
- If the members of a company decide to voluntarily wind up a company because it is unable to pay its debts, the creditors can appoint a liquidator to wind up the company.

Power to appoint a receiver

A receiver sells 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 the debt. They can also ask the court to appoint a receiver.

Power to appoint an examiner

An examiner is someone appointed by a court to see if a company is able to stay in business. If there is a reasonable chance that a company in financial difficulty can be saved, the creditors can ask the court to appoint an examiner. Creditors cannot get the money owing to them while the examiner prepares rescue proposals.

Power to seek civil remedies

Creditors can ask the court to make the directors personally responsible (liable) for all or part of the company's debts.

Power to seek a court judgment

When a company does not pay a debt, a creditor can look for a court judgment (decision) against the company. If it gets the judgment, the creditor can employ a public official (known as a sheriff) to try to recover the debt.

The creditor can also ask the court to register the judgment. This means that the debtor's name will be published and this may affect their credit rating. The poor publicity associated with a registration can make it difficult for the company to get credit from banks or other businesses while the debt remains unpaid.

Other powers regarding insolvent companies

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

- order a related company (such as a parent or subsidiary company) to contribute to the assets of the insolvent company;

- order that assets which were wrongly taken from the company be returned to it;
- make directors personally responsible for the company's debt if they are guilty of fraud or reckless trading;
- make directors personally responsible for the company's debt if the company has not kept adequate accounting records;
- assess what damages directors should pay if they have done wrong;
- question the directors or company secretary under oath about the company's business;
- inspect the company's accounts; or
- have a director or company secretary arrested and their records and personal property seized.

Power to restore a company to the Register

When a company is 'struck off' the Register of Companies, it ceases to legally exist. Creditors who want to take legal action against the former company must first get it restored to the Register. They can ask the court to direct that this be done.

Power to seek an investigation

Creditors can ask the court to appoint one or more inspectors to investigate and report on the company's affairs.

Power if a company flouts the Companies Act

If a company or any of its directors does not comply with the requirements of the Companies Act, a creditor can demand that they do so within 14 days. If this does not happen, the creditor can ask the court to order the company to correct the situation.

Where can I get more information?

You can find more detailed information on creditors on our website, www.odce.ie.

If you are unsure about creditors and what they need to do under the law, you should get independent professional advice.

Disclaimer

This Quick Guide sets out some of the basic legal duties and powers of creditors. It is not a legal interpretation of any part of the Companies Act. The Director of Corporate Enforcement accepts no responsibility or liability for any errors, inaccuracies or omissions in this guide.



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*Tá leagan Gaeilge den leabhrán seo ar fáil
An Irish version of this booklet is available*