



# Appointing an Insolvency Practitioner in Compulsory Liquidations and Bankruptcies

## An explanatory guide on how to use your claim to enhance your dividend prospects

One of the primary purposes of an insolvency process is to ensure a fair distribution of the insolvent's assets to their creditors. The assets are sold to get a return to creditors by way of a dividend. The assets of a person in bankruptcy are realised by a trustee, while a liquidator recovers the assets in liquidation.

### What does a trustee or liquidator do?

The primary function of a trustee or liquidator is to:

- Realise the assets of an individual in bankruptcy or a company in liquidation for the best possible price
- Distribute money to creditors in strict order of priority

A trustee may claim property obtained by a bankrupt during the bankruptcy. They can also ask the bankrupt, using the court if necessary, to pay part of their wages, salary or other income to the trustee if that income is more than they and their family need to live on.

A liquidator can bring actions against directors or former directors personally for the benefit of creditors. For example, if the liquidator can show that directors continued to trade a company when they knew the company could not pay its creditors, they may be required to personally make payments to the liquidator for the benefit of creditors.

### What is the difference between the Official Receiver and an Insolvency Practitioner?

The Official Receiver (OR) is required to undertake a number of necessary regulatory and governmental functions, which are not focused on enhancing the return to creditors. An independent trustee or liquidator is focused on recovering funds for creditors.

The OR will act as the trustee or liquidator initially unless the court has directed otherwise. The OR may seek an appointment of an insolvency practitioner (IP) as a trustee or liquidator if the OR considers it appropriate. However, creditors can also be actively involved in this process and seek their own appointment of an IP.

Given the above, creditors can often enhance their prospects of a dividend return by pursuing the appointment of an IP in place of an OR.

### Using your influence as a creditor to decide who administers an insolvent estate can enhance your prospect of recovering funds.

### What are the costs?

There are no direct costs to a creditor wishing to appoint an IP.

An IP will expect to be paid for their services once their appointment has been voted on and agreed by the creditors. However, unlike the OR who charges for their work without consulting creditors, the IP must provide an analysis of their work and obtain approval of their fees from creditors before they can be paid.

### How can the OR be replaced?

Any unsecured creditor who has submitted a claim can propose that an IP be appointed in place of the OR.

Although there are several possible ways that an IP can be appointed to replace the OR, the most frequently used is a procedure called 'the deemed consent' which has two routes:

- **When the majority of unsecured creditors in value submit to the OR to request the appointment of the same IP.** In this scenario, the OR should comply with the wishes of creditors and effect the appointment of the preferred IP. This is known as a Secretary of State appointment (SoS).

- **If at least 25% of the unsecured creditors in value submit to the OR a request for the appointment of the same IP.**

In this scenario, the OR should inform all creditors of the nomination and advise that the OR will be replaced by the IP unless there are any objections. This is known as the 'decision procedure' and requires two rounds of voting: a nomination stage and a voting stage.

With years of experience and a large network of contacts we pride ourselves on being able to provide tailored solutions. We are here to support with actionable information, so you know what to do.

### How does this work in practice?

An IP can replace the OR if they have received enough support from creditors, namely:

- More than 50% – to obtain the appointment by the Secretary of State

Or

- At least 25% – enough to start the decision procedure process

**Creditors can often enhance their prospects of a dividend return by pursuing the appointment of an IP in place of the OR.**

Creditor support is communicated to the OR by way of a nomination via email or letter.

The nomination or support must include the name of the firm of insolvency practitioners and if possible, names of the new appointment takers at the firm.

If not already submitted, the creditor must also complete a proof of debt form.

### How CreditMan can help

CreditMan has many years of experience identifying insolvency cases where the interests of creditors are best served by the appointment of an IP.

Using our link with the National Creditor Services team at Begbies Traynor we can ensure recoveries are achieved in an efficient and timely manner, meaning that the prospects of a dividend return to creditors are maximised.

The National Creditors Services team at Begbies Traynor have a proven track record of identifying and recovering assets that directors or bankrupts may have thought were placed beyond the reach of creditors.

CreditMan also works alongside a trusted network of specialist lawyers who can integrate legal proceedings against non-cooperative directors, bankrupts or third parties who may attempt to hinder the investigation and recovery process.

### Who We Are

#### Tailored solutions

With years of experience and a large network of contacts we pride ourselves on being able to provide tailored solutions. We are here to support with actionable information, so you know what to do.

#### People you can talk to

Our dedicated team are on hand to provide help and advice on all matters relating to Business Recovery and Insolvency, Finance, Credit Insurance and Debt both domestically and internationally.

#### Resource tool

We have created a 'one-stop-shop' for business credit management - a directory and resource portal for all business credit management needs.



### Further information

If you would like any further information about the services CreditMan can offer, please do not hesitate to contact us.

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