
**GUIDANCE
FOR MEMBERS
OF
COMMITTEES IN
VOLUNTARY ARRANGEMENTS**

ANNEXE E

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1. LEGISLATION

- 1.1 The margin references in this guide are to the Insolvency Act 1986, the Insolvency Rules 1986 (as amended) and the Insolvency Practitioners Regulations 2005.

2. MORATORIUM COMMITTEE FOR ELIGIBLE COMPANIES

- 2.1 A company in financial difficulties may, if it meets certain eligibility criteria, obtain a moratorium on creditor action while the directors put forward a proposal for a voluntary arrangement. The person proposed as supervisor of the arrangement is called the nominee, and he has a responsibility to monitor the company's affairs during the moratorium.

Sch A1, para 35

- 2.2 Initially the maximum period for a moratorium is 28 days, during which time meetings of creditors and shareholders must be held to consider the proposal. These meetings (or the creditors' meeting if the two meetings cannot agree) may resolve to extend the moratorium for a maximum of a further two months. Where this happens the meetings may also establish a committee. Apart from the duty to review the nominee's security mentioned below, there are no statutory rules about the functions of the committee, which will depend entirely on what functions are conferred on it by the meeting at which it was set up. The committee will cease to exist when the moratorium comes to an end.

3. COMMITTEES IN APPROVED ARRANGEMENTS

- 3.1 A committee of creditors may be established under an agreed proposal for a company or individual voluntary arrangement. However, the insolvency legislation makes no provision for the establishment of such a committee, nor (save for the duty to review the supervisor's security mentioned below) for its functions. The rules pertaining to its establishment, membership, functions, powers and procedures will therefore derive wholly from the terms of the arrangement itself.

4. REVIEW OF NOMINEE'S OR SUPERVISOR'S SECURITY

- r.12.8 4.1 The one statutory obligation laid on a committee in a voluntary arrangement is the duty to review, from time to time, the adequacy of the nominee's or supervisor's security.

- s.390(3)
reg.12 & sch.2, IP Regs 4.2 The nominee or supervisor is required to have in place security for the proper performance of his functions. The security takes the form of a bond which provides that -

- a surety undertakes to be jointly and severally liable with the nominee or supervisor for losses caused by the fraud or dishonesty of the nominee or supervisor 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 nominee or supervisor;
- the liability of the surety and the nominee or supervisor 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.

4.3 The general penalty sum must be £250,000 and the specific penalty sum must be at least equal to the estimated value of the assets subject to the terms of the arrangement (whether or not they are in the supervisor's possession) including the aggregate of any payments to be made by the company or individual or any third party. The minimum specific penalty sum is £5,000 and the maximum £5,000,000. In estimating the value of the assets the nominee or supervisor must have regard to the value of the assets as disclosed in any statement of affairs, and any comments of creditors or the official receiver on that statement. If, at any time, the nominee or supervisor 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).

4.4 If the terms of the arrangement give the committee power to approve the supervisor's remuneration, reference should be made to the explanatory note, 'Voluntary Arrangements - a Creditors' Guide to Insolvency Practitioners' Fees', which is appended to Statement of Insolvency Practice 9 (Remuneration and Disbursements) and should be provided by the supervisor.