Information Sheet: Committees of Inspection

You have been elected to be, or are considering standing for the role of, a member of a Committee of Inspection (COI) in either a bankruptcy or personal insolvency agreement (collectively referred to as a regulated debtor's estate).

This information sheet is to assist you with understanding your rights and responsibilities as a member of a COI.

What is a COI?

A COI is a small group of creditors elected to represent the interests of creditors in the regulated debtor's estate. The COI advises and assists the trustee and also has the power to approve and request certain things – this is discussed in more detail below.

Membership of the COI is a voluntary, unpaid position.

Who can be elected to a COI?

To be eligible to be appointed as a member of a COI, a person must be:

- A creditor
- The attorney of a creditor
- A person authorised in writing by a creditor; or
- A representative of the Commonwealth where an advance has, or is likely to be made, to meet employee entitlements.

If a member of the COI is a company, it can be represented by an individual authorised in writing to act on that creditor's behalf. It also allows the creditor to maintain its representation if a change in the individual is required

A COI usually has between 5 and 7 members, though it can have more or less depending on the size of the regulated debtor's estate.

A member of a COI can be appointed by:

- resolution at a meeting of creditors
- an employee or a group of employees owed at least 50% of the entitlements owed to employees of the bankrupt or debtor (collectively referred to as the regulated debtor); and
- a large creditor or group of creditors that are owed at least 10% of the value of the creditors' claims,

If an employee or group of employees, or a large creditor or group of creditors, appoints a member to the COI, they cannot vote on the general resolution of creditors to appoint a member to the COI. Each of these groups also have the power to remove their appointed member of the COI and appoint someone else.

If you are absent from 5 consecutive meetings of the COI without leave of the COI or you become an insolvent under administration, you are removed from the COI.

What are the roles and powers of a COI?

A COI has the following roles:

- to advise and assist the trustee
- to give directions to the trustee
- to monitor the conduct of the regulated debtor's estate.

In respect of directions, the trustee is only required to have regard to those directions. If there is a conflict between the directions of the COI and the creditors, the directions of the creditors prevail. If the trustee chooses to not comply with the directions of the COI, the trustee must document why.

A COI also has the power to:

- approve remuneration of the trustee after the trustee has provided the COI with a Remuneration Approval Report (a detailed report setting out the remuneration for undertaking the regulated debtor's estate)
- require the trustee to convene a meeting of the regulated debtor's creditors
- request information from the trustee
- approve the return of books and records of the regulated debtor to the regulated debtor at the end of the administration
- with the approval of the trustee, obtain specialist advice or assistance in relation to the conduct of the regulated debtor's estate
- authorise the payment to a third party for services ordinarily provided by the trustee
- apply to the Court for the Court to enquire into the regulated debtor's estate.

A trustee is not required to convene a meeting of creditors if the request by the COI is unreasonable, or provide requested information if the request is unreasonable, not relevant to the administration or would cause the trustee to breach their duties.

A request to convene a meeting of creditors is unreasonable if:

- it would substantially prejudice the interests of a creditor or third party
- there are insufficient funds in the regulated debtor's estate to cover the cost of the request
- a meeting of creditors dealing with the same matters has already been held or will be held within 15 business days, or
- the request is vexatious.

If a request for a meeting is reasonable, the trustee must hold a meeting of creditors as soon as reasonably practicable.

A request for information is unreasonable if:

- it would substantially prejudice the interests of a creditor or third party
- the information would be subject to legal professional privilege
- disclosure of the information would be a breach of confidence
- there are insufficient funds in the regulated debtor's estate to cover the cost of the request
- the information has already been provided or is required to be provided within 20 business days, or
- the request is vexatious.

If the request for information is not unreasonable, the trustee must provide the requested information within 5 business days, but the law provides for further time in certain circumstances.

A trustee must inform the COI if their meeting or information request is not reasonable and the reason why.

How does the COI exercise its powers?

A COI exercises its powers by passing resolutions at meetings of the COI. To pass a resolution, a meeting must be convened and a majority of the members of the COI must be in attendance.

A meeting is convened by the trustee by giving notice of the meeting to the members of the COI. Meetings of the COI can be convened at short notice. The trustee must keep minutes of the meeting. The Inspector-General in Bankruptcy is entitled to attend any meeting of a COI.

What restrictions are there on COI members?

A member of a COI must not directly or indirectly derive any profit or advantage from the regulated debtor's estate. This includes by purchasing assets from the estate or by entering into a transaction with the estate. This prohibition extends to related entities of the member of the COI and a large creditor(s) that appoints a member to the COI.

Creditors, by resolution at a meeting of creditors, can resolve to allow the transaction. The member of the COI or the large creditor(s) that appoints a member to the COI is not allowed to vote on the resolution.

Where can you get more information?

Specific queries about the regulated debtor's estate should be directed to the trustee's office.

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding regulated debtor estates and insolvency.

This information is available from ARITA's website at artia.com.au/creditors.

AFSA provides information on a range of personal insolvency topics. This information can be accessed on AFSA's website at www.afsa.gov.au.