Creditor Rights in a Regulated Debtor Estate

As a creditor, you have rights in a regulated debtor estate, including bankrupt estates, to request meetings and information or take certain actions:



Right to request a meeting

Meetings of creditors are not automatically held. Creditors with claims of a certain dollar value have a right to make a written request for the trustee to hold a meeting of creditors.

Meetings can be requested at any time by:

- > 10% but < 25% of the known value of creditors. Those creditors must provide security for the cost of holding the meeting
- ≥ 25% of the known value of creditors
- creditors by resolution, or
- a Committee of Inspection (this is a smaller group of creditors elected by, and to represent, all the creditors).

If a request for a meeting meets these requirements and is 'reasonable', the trustee must hold a meeting of creditors as soon as reasonably practicable.

Right to request information

Trustees will communicate important information with creditors as required in a regulated debtor estate. In addition to the initial notice, you should receive, at a minimum, a report within the first three months on the likelihood of a dividend being paid.

Additionally, creditors have the right to request information at any time. A trustee must provide a creditor with the requested information if their request is 'reasonable', the information is relevant to the administration of the estate, and the provision of the information would not cause the trustee to breach their duties.

A trustee must provide this information to a creditor within 5 business days of receiving the request, unless a longer period is agreed. If, due to the nature of the information requested, the trustee requires more time to comply with the request, they can extend the period by notifying the creditor in writing.

Requests must be reasonable.

They are not reasonable if:

Both meetings and information:

(a) complying with the request would prejudice the interests of one or more creditors or a third party
(b) there is not sufficient available property to comply with the request
(c) the request is vexatious

Meeting requests only:

(d) a meeting of creditors dealing with the same matters was held, or will be held within 15 business days of the request

Information requests only:

(e) the information requested would be privileged from production in legal proceedings
(f) disclosure would found an action for breach of confidence
(g) the information has already been provided
(h) the information is required to be provided under law within 20 business days of the request

If a request is not reasonable due to (b), (d), (g) or (h) above, the trustee may still comply if the creditor meets the cost of complying with the request.

Otherwise, a trustee must inform a creditor if their meeting or information request is not reasonable and the reason why.

Specific queries about the bankruptcy should be directed to the trustee's office.

Right to give directions to trustee

Creditors, by resolution, may give a trustee directions in relation to the administration of an estate. A trustee must have regard to these directions, but they are not required to comply with the directions.

If a trustee chooses not to comply with a direction given by a resolution of the creditors, they must document their reasons for not complying.

An individual creditor cannot provide a direction to a trustee.

Right to apply to Inspector-General for a review of remuneration

Creditors may apply to the Inspector-General to conduct a review of a trustee's remuneration. The Inspector-General may refuse to conduct a review on various grounds.

Right to replace trustee

Creditors, by resolution, have the right to remove a trustee and appoint another registered trustee.

For this to happen, there are certain requirements that must be complied with:

Meeting request	Notice and consent	Resolution at meeting
A meeting must be reasonably requested by the required number of creditors. Creditors must inform the existing trustee of the purpose for the meeting.	A creditor must obtain a consent to act from an alternative registered trustee and a Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) prior to the meeting. Consent can be obtained by different creditors from different registered trustees. The Official Trustee (the Government trustee) can also act as trustee. The existing trustee will send a notice of the meeting to all creditors with this information.	If creditors pass a resolution to remove a trustee, they will cease to be trustee. If creditors vote to appoint another registered trustee, that person will become trustee of the estate. If creditors do not appoint another trustee, the Official Trustee will become the trustee of the estate.

For more information, go to www.arita.com.au/creditors
Specific queries about the bankruptcy should be directed to the trustee's office.