

SMALLER PRACTICE FEATURE

Insolvency – Creditors' Rights Worldwide



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How is a claim filed in an insolvency procedure in Russia? Does an insolvency court in New Zealand take into consideration a creditor's proposal related to the appointment of a Liquidator? How may a liquidator be replaced in a compulsory insolvency proceeding in Hong Kong? – These and many other questions frequently posed by creditors around the world will be answered in the INSOL publication "Creditor's Rights in Insolvency Proceedings- A Practical Guide" that will be published in May this year.

This publication comes from the "Smaller Practice Issues Committee". Therefore, it focuses particularly on the needs of smaller practices and firms. Some of the authors are actually members of the Committee.

The authors come from about 20 different Countries, selected on the basis of their economic importance or legal significance: the USA, Canada, Mexico, Brazil, the British Virgin Islands, the UK, Germany, Poland, Russia, France, Spain, Italy, South Africa, UAE, Ghana, India, China, Hong Kong, Japan, Indonesia, Australia and New Zealand. By using a common template for each country, the publication allows easy comparisons between the current legal systems in the different countries.


The publication has been designed to give readers prompt and basic information about the position of secured and unsecured creditors in insolvency proceedings worldwide, how they can actively participate in such proceedings and what they have to do in order to make the most of their claims against the debtor.

It is not limited to a mere description of the legal framework: a lot of practical advice is also included, covering creditors' rights and all the different steps and phases of insolvency proceedings, especially those of companies, smaller businesses and of consumers.

A few examples from the draft phase of the publication illustrate the variety of issues that can face creditors from country to country.

Creditors' rights before an insolvency proceeding is opened

In some countries (especially those based on common-law jurisdictions), creditors have considerable power to influence the progress of the insolvency proceeding right from the start; for example, in the preliminary phase, they may be able to nominate a trustee or a liquidator, who afterwards only needs to be formally empowered by the Court. In such cases it's quite appropriate to refer to these as "creditor-conducted proceedings". But in most of the other countries creditors do not hold such a strong position.

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In other jurisdictions a single creditor is not even able to file a petition for insolvency against his debtor; sometimes a joint action of two or even more coordinated creditors is required for an insolvency proceeding to be opened. In yet other countries only debts over certain amounts may be taken into consideration when bankruptcy is filed for.

Creditors' rights in monitoring the insolvency proceeding

Creditors' powers to control the course of proceedings vary as much as their power to influence the preliminary phases. It's quite interesting, for example, that in certain jurisdictions things like a "creditors' committee" or similar internal organizations are completely unknown, whilst in others only the creditors have the power to give essential inputs to the execution of the proceeding.

Even where creditors' committees are allowed, they don't all get paid. In some countries, members of the committees are entitled to reimbursement for their expenses as well as a remuneration for their performed activity; in others, on the contrary, they are deemed to be "volunteers" and don't even get paid for their costs, let alone receive remuneration.

Information rights granted to creditors

The greatest differences emerge in relation to the range of information rights creditors may or may not have in the course of a procedure.

There is a full spectrum of information rights, ranging from the use of "open files" to "no information at all". This issue is obviously strictly linked with the technical possibilities and facilities actually available within the different countries. In some, for example, creditors can even obtain direct access to the insolvency proceeding files via the Internet.

Practice standards are a relevant issue here, as is the discretion of individual insolvency practitioners. Even if not legally required, a practitioner may provide answers to creditors' queries of creditors, as a matter of 'best practice'.

Creditors' obligations

Another issue which varies between jurisdictions is creditors' obligations arising out of insolvency proceedings. Apart from the risk of bearing the costs of an unsuccessful petition for the insolvency of a debtor, creditors in certain circumstances may also be required to bear the expenses and the remuneration of the appointed liquidator.

Cross-Border Issues

Last (but not least) each country-chapter gives general guidance in relation to cross-border situations (e.g. whether foreign creditors need a domicile in the country of the proceeding in order to file a claim or whether foreign creditors face restrictions arising from the fact that they are not located in the country of the proceeding).

All in all, the forthcoming INSOL publication "*Creditors' Rights in Insolvency Proceedings – A Practical Guide*" will provide a very helpful overview to all those who are involved in assisting creditors in foreign insolvency proceedings, especially with regard to the practice of smaller practitioners.

The publication is due to be launched in May 2011 and it will be distributed to all INSOL Members as part of their membership benefits. ▲

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