



UNIVERSITY
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MEETINGS OF CREDITORS

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GENERAL



- Meetings of creditors although **superficially judicial in appearance are essentially administrative in nature.**
- The **Ins Act** which generally also applies to the winding -up of a company **sets out in detail the formalities to be complied with** in calling a meeting of creditors.
- Creditors often **complain** - they have very little control and input in reg to the estate's administration process
 - in global terms the underlying philosophy of our insolvency law classifies SA as a "**creditor friendly**" jurisdiction.
 - One of the **decisive factors** - is the opportunity presented to creditors - to participate - and in doing so is granted the opportunity to protect their rights.
 - Main purpose of a meeting of creditors is thus to **involve the creditors** - and provide the IP with a statutory framework in which he is able to **engage with and communicate with creditors**

INFORMAL MEETINGS?



- **Mars + Smith** - fact that the act sets out the formalities in calling for a formal creditors meeting **DOES NOT PRECLUDE** an informal meeting.
- Suggests that creditors may agree to **waive strict compliance** with formalities.
- Creates opportunity for IP to call informal meeting to receive instructions on matters concerning the estate.
- There is a difference in opinion:
 - **Smith** states that such a resolution would be a valid one provided that all formalities have been waived by creditors.
 - **Mars** of opinion that the IP will only be bound by a direction given at a formal meeting. *Leyds v Simon* 1964 (1) SA 377 (T) at 382H.

AIMS OF MEETINGS



- **The aims of meetings in an insolvent estate could be summarized as –**
 - (a) to prove claims;**
 - (b) to nominate a trustee;**
 - (c) to receive the report by the trustee;**
 - (d) to give directions to the trustee;**
 - (e) to interrogate the insolvent and other persons; and**
 - (f) to consider an offer of composition by the insolvent (represents a 5th type of meeting)**

FIXING A DATE AND VENUE?



- District where M has an office = meetings are held before the M or a public servant designated by him.
- District where M does not have an office = meetings held before magistrate or a public servant designated by -mag. S 39 (2).
- S 39 (1) provides that M *must convene any meeting at such place as he considers to be most convenient for all parties concerned.*
- M usually convenes first meeting in the district where insolvent resided or had his main place of business. The IP should convene all subsequent meetings at same venue.
- Lists are available of the day of the week and the time when the Master or Magistrates hold meetings.

HOW TO CONVENE A MEETING?



- Every meeting must be convened by not less than **10 days' notice** in the GG and may be adjourned from time to time.
- The Act **is silent** as to the time for advertising any but the first meeting although it is practice to give 10 days notice.
- According to **Nedcor Bank Ltd v The Master** 2002 (1) SA 390 (SCA), the ten days is calculated according to section 4 of the Interpretation Act 33 of 1957 (exclusively of the first and inclusively of the last, unless the last is a Sunday or public holiday) and the ten days must be counted backwards from the date of the meeting.

FIRST MEETING



- **S 40 + S 364 (1)**
- **Prove claims + elect a trustee + interrogation**
- **Convened by M- receipt of the final order of sequestration.**
- **Notice in GG not less than ten days before the date scheduled for the meeting.**
- **Prior to 1936?**
- **S 18(1) clear intention** that appointment of a prov trustee = an exceptional appointment, word *may* - should be made in all cases.
- **In practice?** commerce has become more sophisticated - impractical to leave the active decision- making - after a first meeting
- **Creditors are afforded the opportunity to nominate an IP**

SECOND MEETING



- **S 40 + s 386 (1) (d)**
- **The purpose to receive report + give the trustee directions - administration of the estate.**
- **Claims + interrogations**
- **S 40(3)(a) "the Master shall appoint a second meeting" -little practical significance.**
- **Meeting convened by IP - GG and notice that is published simultaneously in an Afr and an Eng newspaper that circulate in the district in which the insolvent resides or has his principal place of business.**

S 81(1)bis OF THE INSOLVENCY ACT



- **IP must at least 14 days before the date advertised for the meeting send a copy of the following documents by registered post to each creditor whose name and address is known to the trustee-**
 - 1. his report;**
 - 2. the report and inventory submitted to him by the sheriff in terms of s 19**
 - 3. a valuation furnished by the trustee to the Master in terms of s 69**
 - 4. the resolutions and directions which in the opinion of the trustee should be passed or given at the second meeting.**

GENERAL MEETING



- S 41 + S 386 (1)(d)
- Purpose = IP **directions concerning matter relating to the administration** of the estate - notice of the meeting must state the matters to be dealt with at the meeting.
- The meeting is convened, similar to a second meeting.
- IP may **at any time** convene a general meeting and, it appears from the wording even before the 2nd meeting.
- The IP compelled = if required to do so by the M or creditors representing at least a quarter of the proved claims in value.
- The Regulations to the Ins Act prescribe a form for the notice of the meeting (and the special meeting).

GENERAL MEETING.....



- **General meetings are not convened frequently**
- **Extensive directions and powers are usually given at the second meeting.**
- **A general meeting cannot be convened for the sole purpose of holding an interrogation or proving claims.**
- **Once a general meeting has been validly convened (for instance to get directions by creditors whether an interrogation should be held), an interrogation may be held and claims proved at the meeting. *Essop v The Master* 1983 (1) SA 926 (C); *Marques v De Villiers* 1990 (4) SA 415 (W).**

SPECIAL MEETING



- **S 42 + *mutatis mutandis* -co**
- **Proof of claims + interrogations**
- **The purpose of a special meeting is usually to allow creditors who **have not yet proved their claims** to do so.**
- **A special meeting is convened by the IP by notice in the prescribed form in the GG.**
- **The trustee **must** convene a special meeting for the proof of claims if after the second meeting he is requested to do so by an interested person who tenders payment of all expenses to be incurred in connection with the meeting**

VOTING?



- Creditors' views will be expressed through a process of voting.
- The basic rules are set out in **s 52** of the Insolvency Act which in terms of **s 412(2)** of the Co Act applies mutatis mutandis to the right of a creditor to vote at a meeting of creditors in a winding-up of a company.
- Only **proved creditors** can vote and a creditor cannot vote on a claim which **was ceded** to him after the commencement of the proceedings by which the estate was sequestrated.

UNIFIED INSOLVENCY BILL ?



- **S 46 First meeting of creditors.** - (1) A liquidator of an insolvent estate appointed in terms of section 37 shall convene a first meeting of creditors to be held within 60 days of his or her appointment by notice in the **Gazette**.
- Merger of 1st and 2nd meeting.
- Also makes provision for special meeting with more or less similar purpose to present general meeting.
- **S 47(5)** A liquidator may convene any meeting to be held before himself or herself at any place within the magisterial district contemplated in subsection (2), but no questioning can take place at such a meeting...
- **S 47(8)** A meeting may after an adjournment be presided over by a different presiding officer and a meeting before the Master may be adjourned to take place before a magistrate.

CONCLUSION?



- Another important achievement of the modern law of insolvency has been to provide an alternative to the ancient practices of enslavement and corporal punishment against debtors.
- Consequently, the factors which necessitated modifications to ancient law were relevant considerations in the development of present South African law.
- How do we modernize our law?



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Thank you.

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