

APPLICATION TO APPOINT A CONTROLLER

During collective proceedings, creditors have the power to control and supervise the different operations. The creditors that are appointed are called the controllers.

Appointing controllers guarantees the transparency of the procedure, by involving non-professional actors.

The controller is a creditor, appointed by the supervisory judge (“Juge Commissaire”) to assist him/her in his/her mission of supervision of the company’s administration and to assist the creditors representative in his/her functions.

The Supervisory-Judge must appoint up to 5 controllers, chosen among applying creditors. At least one of them must be a security interest holder, and one must be a “regular” creditor, but in any case, the judge needs to make sure that the controller doesn’t act in his own interest.

The debtor can be heard but his/her opinion is not binding.

Legal references : Article L621-13, L 621-27, L623-9 of the Commercial code, Article 226-13 of the Penal code, Article 25 et 31 of decree n° 85-1388 of December 27th 1985

The controller’s missions:

The law gives the controller certain powers:

- Controllers are chosen among creditors whose debts have been declared,
- Controllers are not paid,
- Controllers assist the creditors in his/her mission, and the supervisory judge in his/her mission of supervising the administration of the company.
- The appointment as a controller gives a right of information regarding the procedure (events and documents). Other creditors do not have the same right of information. The controller can have access to all the documents that are transferred to the administrator and to the creditors’ representative.
- The controller can also seize:
 - The supervisory judge who will ask the Court to replace or add a body of procedure.
 - The court, requesting the end of business and the opening of a judicial liquidation.
 - The creditors’ representative, in order to assist him/her in the checking of liabilities.

 Carrying duties:

- Functions can be carried out personally, by a proxy or by a barrister.
The controller or his/her representative must not be a relative of the company’s manager or of any person in charge.
- The controller is bound by professional confidentiality (Article 226-13 of the Penal code applies if the controller breaches confidentiality).
- The controller is consulted, informed and summoned by the Court to be heard.
- The court can dismiss the controller.
- The controller’s liability can be involved if he/she commits a gross negligence.

Legal terms:

According to the principle of equality, no controller can be appointed before 20 days following the day of the opening judgement.

The supervisory judge decides on each creditor's application within 10 days following the day of the application.

The controller takes office on the day of his/her appointment until the definitive judgement is passed.

Application 

- The application is made at the Registry by submitting three original copies of the application, dated and signed by the applicant.
- The request is submitted to the supervisory judge in three original copies, dated and signed by the applicant.

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