

Best Practices - Meetings of Committee of Creditors Under CIRP and Stakeholder's Consultation Committee Under Liquidation Process

(.....Continue from the previous edition)

7.3 Voting through electronic means

- a) The resolution professional shall provide each member of the committee with the means to exercise its vote by either electronic means or through electronic voting system in accordance with the relevant provisions of CIRP Regulations.
- b) The expressions “voting by electronic means” or “electronic voting system” means a “secured system” based process of display of electronic ballots, recording of votes of the members of the committee and the number of votes polled in favour or against, such that the voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security.

Note: The IRP/RP shall not seek voting through emails.

- c) The expression “secured system” means computer hardware, software, and procedure that –:
 - are reasonably secure from unauthorized access and misuse;
 - provide a reasonable level of reliability and correct operation;
 - are reasonably suited to perform the intended functions; and
 - adhere to generally accepted security procedures.
- d) The authorised representative shall exercise the votes either by electronic means or through electronic voting system as per the voting instructions received by him from the creditors in the class pursuant to sub-regulation (6) of regulation 25 of CIRP Regulations.
- e) At the end of the voting period, the voting portal shall forthwith be blocked.
- f) At the conclusion of a vote held under this Regulation, the resolution professional shall announce and make a written record of the summary of the decision taken on a relevant agenda item along with the names of the members of the committee who voted for or against the decision or abstained from voting.

- g) The Resolution Professional shall circulate a copy of the written record made under clause above to all participants by electronic means within twenty-four hours of the conclusion of the voting.

8. Minutes of the meeting

- a) “Minutes” are an official written record of a meeting’s proceedings that can be found in hard copy or electronic format. Their main function is to document the decisions and conversations that took place during the meeting.
- b) The Interim Resolution Professional/Resolution Professional shall keep and preserve minutes of all meetings of COC as per the record retention schedule advised by IBBI from time to time.
- c) Minutes shall be written in clear and simple language. Minutes shall ideally be drafted in third person and past tense. Resolutions shall however be placed in the present tense.

Illustrations:

Example 1: Drafting in Third Person and Past Tense (General Minutes)

Meeting Discussion:

- The Committee discussed the proposed budget for the upcoming fiscal year.
- Mr. X presented the financial report for the previous quarter.
- The members agreed to review the budget proposal in the next meeting.

Minutes:

- The Committee discussed the proposed budget for the upcoming fiscal year.
- Mr. X presented the financial report for the previous quarter.
- It was agreed that the budget proposal would be reviewed in the next meeting.

Example 2: Drafting Resolutions in Present Tense

Resolution Passed:

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- Resolved that the budget for the fiscal year 2024-2025 is approved.

Minutes:

- The Committee resolved that the budget for the fiscal year 2024-2025 is approved.

Example 3: Combination of Both

Meeting Discussion:

- The Chairperson welcomed all the members and called the meeting to order.
- The previous meeting's minutes were reviewed and approved by the Committee.
- A resolution was proposed to increase the marketing budget by 15%.

Minutes:

- The Chairperson welcomed all the members and called the meeting to order.
- The Committee reviewed and approved the minutes of the previous meeting.
- Resolved that the marketing budget is increased by 15%.

These examples align with the requirement to use clear and simple language, draft minutes in the third person and past tense, and phrase resolutions in the present tense.

- d) Each of the items in the Minutes shall ideally be specifically identified with Agenda item and paragraph number. The paragraph can be numbered in a manner such that it contains the Meeting Number followed by Agenda Item Number.
- e) The Resolution Professional has to circulate the minutes of the meeting to all participants by electronic means within forty eight hours of the meeting.
- f) IRP/RP shall keep Minutes of all the meeting of Committee of Creditors and such Minutes may also be maintained in electronic form with Timestamp.
- g) If the Minutes are maintained in electronic form, the Chairman shall sign the minutes digitally.
- h) The Interim Resolution Professional/Resolution Professional will however follow a uniform and consistent form of maintaining the minutes.
- i) The minutes of all meetings of a particular CIRP will be bound together at the end of the period of CIRP, for safekeeping by the Resolution Professional.

- j) Where any earlier Resolution (s) or decision is superseded or modified, Minutes shall contain a reference to such earlier Resolution (s) or decision with reason and rationale for the changes to be clearly recorded.
- k) In respect of a Meeting convened but adjourned for want of quorum, a statement to that effect shall be recorded by the Chairman in the Minutes. In case a Meeting is held after being adjourned, the Minutes shall be entered in respect of the original Meeting as well as the adjourned Meeting.
- l) The Chairman shall put initial on each page of the Minutes and sign the last page mentioning date and place.
- m) Minutes shall not be tampered with in any manner after being finalised post gathering comments from the members of the Committee and must always be circulated in pdf form in order to avoid any tampering.
- n) There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.
- o) Minutes shall be kept at the office of Resolution Professional, from where he conducts the CIRP.
- p) In case Authorised Representative is appointed, it shall be the duty of the authorized representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor/class of creditors he represents.

8.1. Contents of Minutes

The IRP/RP must ensure that he/she maintains written contemporaneous records for any decision taken, the reasons for taking the decision, and the information and evidence in support of such decision. This shall be maintained so as to sufficiently enable a reasonable person to take a view on the appropriateness of its decisions and actions.

A. General Contents

- i. Minutes shall state, at the beginning the serial number and type of the Meeting, name of the company, day, date, venue and time of commencement of the Meeting. Time of concluding the meeting will also be there in the minutes after vote of thanks.
- ii. In respect of a meeting adjourned for want of Quorum, a statement to that effect by the Resolution Professional shall be recorded in the Minutes.

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- iii. Minutes shall record the names of the members of COC present physically or through electronic mode, the IRP/RP, members of suspended Board of Directors, authorized representatives, other participants and invitees, if any, including invitees for specific items.
- iv. The names of the participants shall be listed in alphabetical order or in any other logical manner, but in either case starting with the name of the Resolution Professional.
- v. The capacity in which an invitee attends the meeting and where applicable, the name of such invitee and the relation, if any, of that invitee to the company shall also be recorded.
- (xi) Views of Dissenting financial creditors - The views of Dissenting financial creditors must be recorded in the minutes.
- (xii) Details of financial creditors who abstained from voting or not participated in the meeting.
- (xiii) Details of financial creditors who voted in favour of or against the Resolution.
- (xiv) Apart from the resolution or the decision, the minutes shall mention the brief background of all proposals and summaries of the deliberations thereof. In the case of major decisions, the rationale thereof shall also be mentioned.

B. Specific Contents

Minutes shall inter-alia contain the following:

- (i) Record of the Chairman of the Meeting alongwith opening remarks
- (ii) Record of the Adequate Quorum.
- (iii) Mode and Manner in which the meeting was held.
- (iv) Minutes shall specifically disclose the particulars of the participants who attended the meeting in person, through video conferencing or other audio and visual means.
- (v) In case of a member of COC participating through electronic mode, his particulars, and wherever required, the location from where he participated.
- (vi) Details of the minutes of the earlier meeting, if any sent. Confirming if any changes or clarifications are needed and then taking on record the Minutes of the earlier meeting of the Committee of Creditors.
- (vii) If any representative of the Committee of Creditors left in the middle of the meeting, then record the agenda items in which he/she did not participate.
- (viii) List of items noted /voted, and Resolutions as passed in the meeting along with names of the participants and details of voting.
- (ix) The insolvency professional shall place in each meeting of the committee, the operational status of the corporate debtor and shall seek its approval for all costs, which are part of insolvency resolution process costs.
- (x) Views of members of suspended Board of Directors of Corporate Debtor/operational creditors and other participants - The views of the members of suspended Board of Directors/operational creditors and other participants may be recorded in the minutes.
- (xv) The decisions shall be recorded in the form of Resolutions, where it is statutorily or otherwise required. In other cases, the decisions can be recorded in a narrative form.
- (xvi) IRP/RP should give his/her independent opinion on each matter voted, based on the facts of the matter voted on. This should form part of the meeting. This will ensure that justification for the decision is available at a later date, along with related records, for analysis/verification.
- (xvii) Fees to be paid to IRP/RP.
- (xviii) Regulatory fees payable to IBBI
- (xix) Actions taken, operations, cash flow , custody and control of assets.
- (xx) Status and update on Litigations by/against CD
- (xxi) Statutory compliances status and update (xxii) Additional agenda items tabled at the meeting.
- (xxii) Vote of Thanks
- Note:** When the agenda for the Resolution Plan is presented to the CoC for approval, the IRP/RP must also include the following items on the agenda as alternate of rejection. This ensures that, in the event of the Resolution Plan's rejection, the IRP/RP will not need to convene another meeting to seek approval for liquidation. The following items may be included:
- Regulation 39B. Meeting liquidation costs.
 - Regulation 39BA. Assessment of Compromise or Arrangement.
 - Regulation 39C. Assessment of sale as a going concern.
 - Regulation 39D. Fee of the liquidator.

(to be continued...)