



**A Procedural Guide to
Members' Voluntary Liquidation
in Hong Kong**

Members' Voluntary Liquidation

A Members' Voluntary Liquidation is for a solvent company which can pay all its debts in full.

The following is a short guide to the Members' Voluntary Liquidation procedure ("MVL") in Hong Kong. The aim of this guide is to provide professional advisors or their clients with a summary of the MVL procedure and address certain of the most frequently asked questions in relation to the process.

MVL Procedure in Hong Kong

Why an MVL?

The purpose behind an MVL is to bring the life of a company to an end. This may be for a number of reasons but frequently takes place in the context of a group restructuring or where a major company is reviewing its operations and finds that it has certain corporate entities which it no longer needs.

How does the process start?

If a company has sufficient assets to pay its liabilities in full, the shareholders can decide to place the company into Members' Voluntary Liquidation ("MVL"). This process is controlled by the shareholders of the company.

Directors' Meeting

The winding-up process commences with a meeting of the board of directors convened to consider the proposed MVL of the company. At this meeting, the directors will vote in favour of the winding-up and resolve that a majority of the existing directors should issue a Certificate of Solvency ("Certificate") pursuant to Section 233 (1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance. The directors will also resolve to convene a General Meeting ("GM") of the company to consider the winding-up resolution.

In the Certificate, the directors must state, that having made full enquiry into the affairs of the company, they are of the opinion that the company will be able to pay its debts in full within twelve months of the start of the winding up (i.e. it is solvent). The Statement of Assets and Liabilities contained in the Certificate must be based on the most recent available financial statements of the company. The Certificate must be delivered to the Hong Kong Registrar of Companies (Registrar).

Shareholders' Meeting

A GM of the company's shareholders must be held within 5 weeks of the date of the Certificate.

As special resolutions are to be considered at this meeting of shareholders, at least 21 days' notice must be given to members pursuant to Section 571 of the Companies Ordinance. To overcome this restriction, a "Consent to Short Notice" can be executed by at least 95% of the shareholders.

At the GM, a special resolution is passed to place the company into MVL and to appoint liquidators. Other resolutions are also passed to assist in the smooth administration of the winding-up. The winding-up will commence once the special resolution is passed. The powers of the directors will cease at this time and the liquidators will assume control of the company and its assets.

Within 15 days of the passing of the winding-up resolution, a copy of the resolution must be filed with the Registrar and a notice of the winding-up resolution advertised in the Hong Kong Government Gazette (“the Gazette”). Further, under Section 253 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the liquidators are required to publish in the Gazette and also deliver to the Registrar a notice of their appointment within 21 days of their appointment.

How long does it take to conclude an MVL?

There is no definitive time scale for bringing an MVL to a conclusion. The principle issue to be addressed before closing the liquidation is for all the creditors of the company to be paid in full. In many MVLs, there are no creditors and so this is not an issue.

However, there are some MVLs which are more complex and where there are creditors who need to be paid. The essence of an MVL is that the company is solvent and that all creditors will be paid in full. In these situations, the liquidator must satisfy himself that all the creditors have been paid in full before proceeding to close the administration.

Tax Clearance

However, before the liquidator can take steps to convene the final meetings of shareholders and creditors, he must satisfy himself that there is nothing outstanding to the Inland Revenue Department (“IRD”). He will do this by writing to the IRD requesting “tax clearance.” This is confirmation from the IRD that it has no claim against the company.

In most MVLs, this is the factor which causes the longest delay in concluding the affairs of the company. If a company has a long history and its tax affairs are complicated, it may take much longer to obtain tax clearance than if a company has traded for only a short time and has not made profits. Each case must be treated on its merits.

Briscoe Wong Advisory’s role in the process

Two directors of Briscoe Wong Advisory will act as liquidators of the company. We will prepare all the forms necessary to start the liquidation, including the preparation and filing of the Certificate and placing the statutory advertisements required by the Companies (Winding Up and Miscellaneous Provisions) Ordinance.

We will also liaise with the company’s tax agents to ensure that there is no outstanding tax liability and to obtain tax clearance. We will then prepare all the necessary forms to bring the liquidation to a close and make such distributions to the shareholders as are appropriate depending upon the assets available.

Summary

We trust that this summary of the MVL procedure will be of assistance to you and your clients in understanding the process and addressing the most frequently asked questions.

For more information visit our website at www.briscoewong.com or contact us at our offices:

Briscoe Wong Advisory is an independent specialist provider of assistance to distressed companies in Hong Kong, PRC and throughout Asia. The firm's success is the result of delivering many years of excellent business-focused advice efficiently and independently to distressed companies, their management and professional advisors.

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