



**A Guide to
Acting as a Member of a
Committee of Inspection
in Hong Kong**

Committee of Inspection

A Committee of Inspection is appointed by creditors to assist the liquidator performing his duties.

This guide aims to provide a brief introduction to the role of the Committee of Inspection (“CoI”) in voluntary and compulsory liquidations in Hong Kong. It should be useful to any creditor who is considering acting as a member of a CoI.

The aim of the guide is to explain in layman’s terms, the role of the CoI and the responsibilities of the committee members. It is not meant to be a substitute for specific legal advice on the role of the committee and the responsibilities of its members.

In Voluntary and Compulsory Liquidations

What is a Committee of Inspection?

A CoI is made up of creditors, and sometimes shareholders, who are appointed at a meeting of creditors. Its role is to provide assistance and guidance to the liquidator in the performance of his duties, to approve the exercise of certain powers by the liquidator in accordance with the terms of the Companies Ordinance and to approve the liquidator's remuneration.

In a creditors' voluntary liquidation, the CoI can comprise not more than five creditors. In a Court supervised liquidation, there is no limit but the Court will be reluctant to allow more than five or six members to be appointed to a CoI.

A person cannot be a member of a CoI unless they are a creditor of the company or a shareholder.

Why have a Committee of Inspection?

In most liquidations, the creditors know more about the affairs of the company than the liquidator. With that in mind, they are often able to provide valuable assistance to the liquidator in undertaking his duties. This assistance can take the form of information regarding the whereabouts of assets and details of information regarding claims against the company. This can be particularly useful when it comes to the liquidator admitting claims for dividend purposes when a distribution is being made.

The liquidator also looks to the CoI for guidance on major issues in relation to the liquidation. For example, before the liquidator takes steps to commence legal proceedings, he will invariably seek the advice of and the consent of the CoI. The liquidator may not always agree with the views of the CoI, but it is rare that he will act against their wishes.

However, if for example, a liquidator wishes to commence proceedings against a third party for the recovery of assets, but for non-commercial reasons the CoI do not agree, it would be necessary for the liquidator to seek the approval of the Court to instruct solicitors and to commence proceedings. The CoI members would have the right of attendance at the hearing to put forward their views.

There are certain powers which the liquidator can only exercise with the approval of the CoI. In a compulsory liquidation a CoI must approve the following actions by the liquidator as set out in s199 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance.

- 1) to bring or defend any action or other legal proceedings in the name and on behalf of the company;
- 2) to carry on the business of the company so far as may be necessary for the beneficial winding up thereof;
- 3) to appoint a solicitor to assist him in the performance of his duties;
- 4) to pay any class of creditors in full;
- 5) to make any compromise or arrangement with creditors; and
- 6) to compromise calls or other claims relating to creditors or contributories of the company.

In a creditors' voluntary liquidation, a liquidator only requires the CoI approval to exercise powers 4, 5 and 6, above.

Supervising the liquidation

The liquidator should report to the members of the CoI on a regular basis.

It may be that in the earlier stages of a liquidation the liquidator reports once a month to the CoI, whereas in the later stages, it is likely that he will report less frequently.

These reports can be by way of correspondence or by an actual physical meeting of the members of the CoI. This is for the members and the liquidators to decide between them, but most liquidators will be happy to convene a physical meeting if requested to do so by a CoI member.

Liquidator's Remuneration

One of the roles of the CoI in both voluntary and compulsory liquidations is to review and approve the remuneration of the liquidator before it is paid. In the event that the CoI are not prepared to agree the liquidator's remuneration, the liquidator will need to apply to Court for his remuneration to be determined.

The CoI will base their decision on whether or not to agree to the liquidator's remuneration on the basis of his performance and the information provided by him in his regular report to the CoI.

Membership of a Committee

Members of a Committee have a duty to act in the best interest of all creditors. They are not on the Committee to represent themselves, or even a particular class of creditors. Their role is to represent the general body of creditors.

In general, the contents of reports provided to a CoI should remain confidential. The possibility exists that if that information contained in the report is put into the public domain, it could have an adverse effect on the work of liquidator, particularly when it comes to realising assets of the company.

CoI members do not get paid for acting in that capacity. They are however entitled to have their expenses reimbursed. Moreover, they are not allowed to purchase assets of the company or provide services to the liquidator unless prior sanction of the Court is obtained.

There will be occasions where a member of the CoI is presented with a conflict of interest. The most common situation which arises is where a creditor is a member of CoI and the liquidator believes that the company has a right of action against that creditor. In those circumstances, it may be that it would be better for the CoI member to resign. Alternatively, it may be that he is asked to absent himself from that part of the meeting where these particular issues are discussed.

It is not compulsory to attend CoI meetings, but if a member fails to attend five consecutive meetings, and the remaining members do not agree to his absence that member is automatically removed.

A member may resign from the CoI by writing to the liquidator to that effect.

Summary

The role of a CoI member is not onerous, but in certain situations a CoI can be extremely useful for enabling the liquidator to maximise recoveries for the benefit of creditors generally. The CoI is an important part of the liquidation process and we invite creditors to consider carefully whether or not they wish to be involved as a member of a CoI in a liquidation.

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