

The background of the entire page is a photograph of two koi fish swimming in dark water. The fish are illuminated from above, creating bright highlights on their scales and fins. The water is dark, and the fish's colors—white, orange, red, and black—are very prominent. The fish are positioned diagonally across the frame, with one in the upper right and the other in the lower left.

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

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ADVISORY

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

This guide aims to provide a brief introduction, in layman terms, to the role of the Committee of Inspection (CoI) and the responsibilities of the committee members, 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.

This guide is not meant to be a substitute for specific legal advice on the role of the committee and the responsibilities of its members.

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 Winding Up and Miscellaneous Provisions Ordinance, and to approve the liquidator's remuneration.

In a creditors' voluntary liquidation, the CoI can comprise not less than three and not more than seven creditors. In a Court supervised liquidation a liquidator may apply to the Court for an order to vary the minimum or maximum number of members in the CoI 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 or a shareholder of the company.

Why have a Committee of Inspection?

In most liquidations, the creditors know more about the affairs of the company than the liquidator. As such, 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 does 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 liquidator may exercise the following powers specified in Part 1 or 2 of Schedule 25 in the Companies (Winding Up and Miscellaneous Provisions) Ordinance only with the approval from a CoI.

Part 1

1. Pay a class of creditors in full.
2. Make a compromise or arrangement with creditors or persons having any claims against the company;
3. to comprise calls or other claims relating to creditors or contributories of the company;

Part 2

1. Bring or defend any action or other legal proceedings in the name and on behalf of the company;
2. Carry on the business of the company so far as may be necessary for the beneficial winding up thereof;

In a creditors' voluntary liquidation, a liquidator only requires the CoI approval to exercise powers in Part 1 of Schedule 25.

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 the 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.

Briscoe Wong Advisory one of Hong Kong's leading independent liquidation, bankruptcy and insolvency experts. We focus on providing high quality corporate and personal insolvency advisory with the aim of maximizing value to our clients.

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