



# A Creditor's Guide to Voluntary Liquidation in Hong Kong

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## What is a Creditor's Voluntary Liquidation (CVL)?

This occurs when the shareholders, usually at the directors' request, decide to put a company into liquidation because it is insolvent. Either the company cannot pay its debts as they fall due or it has more liabilities than assets.

The purpose of the liquidation is to appoint a responsible person who has a duty to collect the company's assets and distribute them to its creditors in accordance with the law. That person is the liquidator.

## When is a company placed into CVL?

The most common circumstances are where the directors recognise that the company cannot continue to trade and there is no appropriate rescue procedure available. Sometimes, a provisional liquidator is appointed. His job is to protect the assets until the meeting of creditors at which the liquidator is appointed.

## What involvement do creditors have in putting a company into CVL?

A meeting of creditors must be held within 14 days of the shareholders' meeting (it is normally held on the same day) at a venue convenient for the majority of creditors. Notice of the creditors' meeting will be sent to all known creditors at least seven days before the meeting. It must also be advertised in one English and one Chinese newspaper in Hong Kong.

One or more of the directors will prepare a Statement of Affairs (SoA) of the company, which summarises the assets and liabilities (including details of creditors' claims). Copies of a summary of the SoA will be made available to creditors at the meeting. The insolvency practitioner whom the shareholders nominated as liquidator will assist the chairman of the meeting, who must be a director. A report of the company's history up to the date of the commencement of the liquidation will be presented to creditors present at the meeting, giving an explanation of the reasons for the insolvency, and creditors will be invited to question the directors.

The creditors then vote for the appointment of a liquidator. The vote is based on the value of creditors' claims. To be entitled to vote, creditors (unless present in a personal capacity) must have lodged a form of proxy by the time and at the place stated in the notice of the meeting. You may send your proxy by fax. Statements of claim may be lodged at any time before voting.

Should the creditors' choice of liquidator be different from that of the shareholders, the creditors' choice prevails.

## What are the powers of the liquidator?

The liquidator's powers are wide and include powers to sell the company's assets, to bring and defend legal proceedings and to pay dividends to the company's creditors. Some of the liquidator's powers can only be exercised with the agreement of the Committee of Inspection or the Court.

## Can the Creditors form a Committee of Inspection?

Yes. A committee of inspection may be appointed at a creditors' meeting and must consist of not less than three creditors but not more than seven creditors.

The committee of inspection receives reports from the liquidator and may meet periodically. It assists the liquidator, approves his fees and sanctions the exercise of some of his powers.

Committee of Inspection members are not paid but may receive their reasonable travelling expenses as a cost of the liquidation.

## Does the liquidator pay unsecured creditors the money owed to them?

Secured and preferential creditors are paid before unsecured creditors. Secured creditors are those that have some form of security over a company's property (for instance a bank with a fixed and floating charge or holding cash deposits). Secured creditors are entitled to be repaid their debt out of the proceeds of sale of the secured assets in priority to ordinary unsecured creditors.

Preferential creditors are a special category of unsecured creditor. They include certain debts due to employees, the Inland Revenue Department and other government departments and are paid in priority to all other unsecured creditors.

The liquidator will pay a dividend to unsecured creditors if enough funds have been realised from the company's assets after paying costs, secured creditors and preferential creditors.

If you believe that you own something which is in the company's possession, you should contact the liquidator as soon as possible with full proof of ownership and be prepared to identify what you are claiming. The liquidator will examine your claim carefully before deciding whether to release the goods in question, pay you for them, or otherwise.

When all the claims have been adjudicated or provided for, the liquidator will declare a dividend. The dividend will be a percentage (cents on the dollar) of each creditor's total admitted claim, based on the cash available for distribution to the creditors and the total of all creditors' claims. All unsecured creditors are treated equally.

## How do I make a claim in the liquidation?

The liquidator will write to all known creditors asking them to submit claims. You must submit your claim to the liquidator in writing, providing sufficient supporting evidence of your claim, e.g. copy statements, invoices, correspondence etc., to allow the liquidator to decide whether or not your claim is valid. Any costs incurred in submitting your claim will not be reimbursed. Your claim does not need to be on a specific form.

You may claim interest on your outstanding debt up to the date of liquidation if you are contractually entitled to it, or if you had previously demanded repayment in writing with notice that you would claim interest. You will not get interest on your claim accruing after liquidation, unless all creditors are paid in full.

## **How will the liquidator adjudicate my claim?**

The liquidator will compare your claim to the company's records and any other available information, and he may discuss the claim with the directors. The liquidator may ask you for additional information or evidence if he thinks you have not sufficiently proved your claim. For example, if you have supplied goods to the company, the liquidator may ask you to provide copies of signed delivery notes.

The liquidator may agree your claim in full, or in part, or he may reject your claim if he does not think it is valid. Creditors will be notified of the liquidator's decision in writing and any rejection is accompanied by a statutory form setting out the amount rejected and the reasons for the rejection.

## **What can I do if I believe the liquidator has rejected my claim?**

It is best to contact the liquidator in the first instance to discuss any amounts under dispute. If you cannot reach agreement you can, within 21 days of rejection, appeal to Court. After 21 days, if you do not apply to Court, the adjudication is final.

## **Does the appointment of a liquidator prevent a creditor taking legal action against the company?**

No. Creditors may still pursue actions against the company, although this might lead only to more unsecured claims in the liquidation as creditors are not entitled to enforce recovery. You will not be entitled to recover any costs you incur after the start of the liquidation. The liquidator may apply to Court to stay any proceedings.

It is only in certain specific instances (for example if the company has insurance cover in place that may be used to pay your claim or you claim ownership of specific assets) that it may be appropriate to commence legal action against the company. You should always take legal advice before commencing any action against a company in liquidation.

## **Is the liquidator bound by contracts entered into by the company prior to his appointment?**

No. The liquidator may refuse to perform or formally disclaim any onerous or unprofitable contract entered into by the company prior to liquidation. The other party will then have a claim for breach of contract which will rank as an unsecured claim. However, a contracting party that has acquired a beneficial interest in property of the company will still be able to enforce it.

## **Is the liquidator liable for sums due under contracts entered into by the company subsequent to his appointment?**

The liquidator can cause the company to enter into new contracts, in which event the associated liabilities rank as an expense of the liquidation.

## **As an unsecured creditor, what information am I entitled to?**

Within three months after the end of the first year and of each succeeding year and on conclusion of the liquidation, the liquidator must summon a meeting of creditors. As well as sending a notice of the meeting to all creditors, it is usual for a liquidator to send a receipts and payments account for the period and a report setting out his conduct of the liquidation, which contains all the information that will be available at the meeting.

## **How is the liquidator's fee determined?**

The committee of inspection, (if there is one), or the creditors agree the liquidator's fee, failing which it will be determined in accordance with the scale laid down for Official Receivers or fixed by the Court. Although the fee can be fixed as a percentage of the assets realised or distributed (or both), it is normally based on the following factors:

- the time properly spent by the liquidator and his staff;
- the complexity of the case;
- any exceptional responsibility borne by the liquidator;
- the effectiveness with which the liquidator carries out his duties; and
- the value and nature of the company

## **When is the liquidation complete?**

The liquidation is complete when all the assets have been realised, all creditors' claims have been adjudicated (where there are sufficient funds) and net realisations after the costs of the liquidation have been distributed to the creditors.

To conclude the liquidation, the liquidator will call final meetings of creditors and shareholders and present his final receipts and payments account, together with a report showing how the liquidation has been conducted.

## **What should I do if I am dissatisfied with the liquidator's handling of the case?**

You should first contact the liquidator to try to resolve the problem. If you are still not satisfied you may be able to make an application to Court.

If you believe that the liquidator is guilty of professional misconduct, you should contact his recognised professional body.

The purpose of this guide is to provide a brief, plain English introduction to the creditors' voluntary liquidation procedure in Hong Kong. It is not exhaustive and is not meant to be an alternative to legal or professional advice on specific issues. However, if you are in doubt regarding any of the matters raised in this guide please do not hesitate to contact us at the contacts shown below.

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