

A nighttime photograph of a cityscape, likely Hong Kong, featuring a prominent skyscraper with a grid-like facade and many lit windows. The building is illuminated with warm yellow lights. In the foreground, there are blurred light trails from moving vehicles on a road, and a curved walkway or bridge structure with blue lighting. The overall scene is vibrant and modern.

A Creditor's Guide to Compulsory Liquidation in Hong Kong

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The purpose of this publication is to provide a brief, plain English guide to the creditor's role in a compulsory liquidation in Hong Kong. It is not exhaustive and is not meant to be an alternative to legal or professional advice on specific issues. If however you are in doubt regarding any of the matters dealt with in the guide, please do not hesitate to contact us.

What is a Compulsory Liquidation?

A compulsory liquidation occurs when a company is wound up by an order of the court. The purpose of the winding-up order 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. The most common circumstances when a company finds itself in compulsory liquidation are when a petition is presented to the court on the grounds that the company is unable to pay its debts, or it is proved to the court that the company's liabilities are greater than its assets.

Who can present a petition to wind up the company?

Amongst others, a creditor or the company itself, can present a petition to the court to wind up the company. Should a petitioning creditor feel that the company's assets might be in jeopardy in the period after presentation of the petition he may apply to the court for an order to appoint a provisional liquidator whose main function is to ensure the security of the company's assets between the petition date and the hearing.

Who deals with the company's affairs?

Upon a winding-up order being made, the Official Receiver becomes the provisional liquidator. The Official Receiver is a civil servant and an officer of the court. The Official Receiver must decide within 12 weeks of the winding up order whether to call a meeting of creditors to appoint a private sector insolvency practitioner to act as liquidator. This guide assumes that an insolvency practitioner has been appointed liquidator.

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.

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

Secured and preferential creditors are paid in priority to unsecured creditors. Secured creditors are those that have some form of security over a company's assets (for example a bank with a fixed and floating charge). Secured creditors are entitled to be repaid their debt out of the proceeds of sale of the secured assets in priority to other creditors. Preferential creditors are a special category of creditor. They include certain debts due to employees, the Inland Revenue Department or other government departments and are paid in priority to unsecured creditors.

The liquidator will pay a dividend to unsecured creditors if sufficient funds have been realised from the company's assets after paying preferential creditors and the costs associated with the liquidation. When all 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 a proof of debt form. You should complete this form and return it to the liquidator within the specified time limit. You should also send enough 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. You must use the form sent by the liquidator to make your claim. The liquidator will not necessarily acknowledge receipt of your claim, but will advise you when he has adjudicated your claim. Any costs incurred in submitting your claim will not be reimbursed.

How will the liquidator adjudicate my claim?

The liquidator will consider your proof of debt form and any supporting information. He will compare your claim to the company's records and any other available information and 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.

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 is 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 of the company rank as an expense of the liquidation.

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

The Official Receiver will have sent a report to creditors. If you would like information on progress at any time, you should contact the liquidator. Meetings of creditors are normally convened only at the beginning and the end of the liquidation. Creditors may demand a meeting of creditors if they constitute 10 percent in value of the creditors as a whole.

How can I help the liquidator to achieve the best possible outcome for creditors?

The unsecured creditors can form a Committee of Inspection to help the liquidator in carrying out his duties. You should also tell the liquidator if you believe that the company has assets, income or business interests that the directors have not disclosed, or if you think you may have any information that might be useful to the liquidator.

The Committee of Inspection receives reports from the liquidator and may meet periodically. It assists the liquidator, approves his remuneration and sanctions the exercise of some of his powers. Committee members are not paid, but may receive their reasonable travelling expenses as a cost of the liquidation.

How are the liquidator's fees 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 expenses of the liquidation have been distributed to the creditors.

The liquidator will send you a copy of his final receipts and payments account, together with a report showing how the liquidation has been conducted and advise you that he is applying to the Court for his release.

Briscoe Wong Advisory is 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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