
CAYMAN ISLANDS GUIDE FOR LIQUIDATION COMMITTEE MEMBERS

1. INTRODUCTION

- 1.1 This guidance note to liquidation committee members (“**LC Guide**”) has been issued by RISA Cayman with a view to assisting current and prospective members of a liquidation committee on the role and responsibilities involved in being a member of a liquidation committee. It will provide prospective or incumbent liquidation committee members with a guide to assist in performing their important role as member of liquidation committees. The LC Guide is also intended to assist creditors and / or contributories¹ in making informed decisions to either seek to form a liquidation committee or to nominate themselves to serve on a liquidation committee.
- 1.2 This guide only provides an overview. Detailed provisions regarding membership, formation, functions and procedural operations of a liquidation committee are set out in legislation. Accordingly, the LC Guide note should be read in conjunction with the wider fundamental principles embodied in the Companies Winding Up Rules (2023 Consolidation) (as amended) (**CWR**), in particular Order 9, and the Insolvency Practitioners' Regulations (2023 Consolidation) (as amended) (**IPR**) and should be applied in accordance with both the CWR and IPR, and with other relevant law. A literal interpretation of this LC Guide may not be appropriate where it would be contrary to the CWR and IPR.
- 1.3 The LC Guide applies to the Cayman Islands only. References to the Act are to the Companies Act (2023 Revision) (as amended).

2. PRINCIPLES

- 2.1 A liquidation committee is a small group of representative creditors and / or contributories that act as a sounding board to insolvency practitioners. In addition, Liquidation Committees are responsible for consideration of the insolvency practitioner’s remuneration (fees).
- 2.2 In practice insolvency practitioners will commonly seek the views of a liquidation committee in respect of certain workstreams in advance of seeking sanction by a supervising judge. Such matters commonly include sanction to sell assets; sanction to commence litigation; or sanction to approve the insolvency practitioner’s remuneration. The insolvency practitioner should take into account the views of the Committee but is not obliged to follow their wishes. The Committee cannot direct an office holder in relation to the conduct of the insolvency proceeding.

3. FORMATION OF LIQUIDATION COMMITTEES

- 3.1 Prospective liquidation committee members are nominated at the first meeting of creditors or contributories. Should more than 5 members seek nomination, a vote is held which is managed by the insolvency practitioner at the meeting.

4. COMPOSITION OF LIQUIDATION COMMITTEES

- 4.1 Only creditors and / or contributories may seek an appointment to a liquidation committee. The composition of a liquidation committee between members who are creditors and members who

¹ Under section 89 of the Act a “*Contributory*” includes every holder of fully paid-up shares. For example a shareholder, participating shareholder or an investor.

are contributories is determined by the solvency position of the company.

- 4.2 Liquidation committee members need not have any special qualifications or previous experience as a liquidation committee member. However, it is most helpful to the insolvency practitioner and efficient management of the liquidation that members be familiar with the circumstances of the liquidation and the general affairs of the company prior to the commencement of the liquidation.

Solvent or Insolvent Liquidations

- 4.3 In a liquidation which is solvent or insolvent, the liquidation committee shall comprise not less than three nor more than five members. Depending on the solvency status of the company the composition of the liquidation committee differs. For example:
- In a liquidation which is **solvent**, the members of the liquidation committee must comprise solely of members who are contributories.
 - In a liquidation which is **insolvent**, the members of the liquidation committee must comprise solely of members who are creditors.

Of Doubtful Solvency Liquidations

- 4.4 In a liquidation which is of **doubtful solvency**, the members of the liquidation committee must comprise not less than three, but not more than six members of whom a majority must be creditors and at least one of whom must be a contributory.

Solvency Determination

- 4.5 The determination as to whether a company is solvent, insolvent or of doubtful solvency is made by the insolvency practitioner within 28 days of the date on which the winding up order is made.
- 4.6 However, an insolvency practitioner's certification as to the solvency status of a company can be changed at the discretion of the insolvency practitioner taking into account the current financial position of the company. For example, if assets are uncovered or unforeseen liabilities surface an insolvency practitioner may deem it appropriate to change the solvency determination.

5. LEGAL COUNSEL

- 5.1 The liquidation committee can appoint an attorney to provide legal advice to the liquidation committee. The fees and expenses of the liquidation committee's counsel are payable out of the assets of the company (if and to the extent that assets are available. Please refer to 6.1).
- 5.2 A liquidation committee may for example, appoint legal counsel in liquidations which involve complex legal disputes. However, there is no requirement for a liquidation committee to retain counsel and it is a matter for the liquidation committee to determine.

6. PRACTICAL CONSIDERATIONS

Expenses and Remuneration

- 6.1 Liquidation committee members can charge expenses such as travel and telephone expenses reasonably and properly incurred in attending meetings and shall be reimbursed out of the assets of the company (if and to the extent that assets are available). Order of payment of expenses out of the assets is detailed in the CWR at Order 20. Liquidation Committee Members are encouraged to communicate with the Insolvency Practitioner if uncertain about the

availability of assets for payment of expenses). Liquidation committee members are not allowed to be paid remuneration in fulfilling their role.

Corporate and Individual Members

- 6.2 Liquidation committee members who are corporate bodies will complete a proxy or provide a written letter to appoint an authorised individual to vote and attend liquidation committee meetings on their behalf. A corporate liquidation committee member can change its nominated representative by written notice to the Insolvency Practitioner. Liquidation committee members who are individuals will be appointed member in their personal capacity.

Non-Disclosure Agreements

- 6.3 It is common for insolvency practitioners to require that prospective liquidation committee members enter into non-disclosure agreements. This is to enable liquidators to provide information, which may be sensitive commercial and legal information that would not ordinarily be shared with the body of creditors or contributories as a whole.

Conflicts of Interest

- 6.4 To the extent a conflict of interest arises with a liquidation committee member such member will be expected to exclude themselves from participating in liquidation committee meetings or from receiving related reports. Such conflicts of interest may occur, for example, when liquidation committee members are associated with, or are connected to, litigation taken by the insolvency practitioner. It may in certain circumstances, depending on the nature of the conflict or the matter, be appropriate for the Liquidation Committee member to resign from the Liquidation Committee.

Resignation

- 6.4.1 A Liquidation Committee member may resign at any time by giving written notice to the Insolvency Practitioner.

7. INSOLVENCY PRACTITIONERS' REMUNERATION

- 7.1 It is the responsibility of the liquidation committee and the insolvency practitioner to consider and agree the basis upon which the insolvency practitioner will be remunerated by way of a remuneration agreement in accordance with Part IV of the IPR. The liquidation committee will also be asked to approve the quantum of remuneration which an insolvency practitioner is intending to seek the Court's approval of.
- 7.2 In considering the approval of the insolvency practitioner's remuneration, the insolvency practitioner will provide the liquidation committee with a report and accounts containing all the information reasonably required to enable a creditor or contributory to make an informed decision about the reasonableness of the proposed basis of the insolvency practitioner's remuneration.

8. MEETINGS OF THE LIQUIDATION COMMITTEE

- 8.1 The insolvency practitioner will convene the first meeting of the liquidation committee within the first 3 months of its establishment and thereafter at least every 6 months. Any two liquidation committee members can convene a liquidation committee meeting in writing. Following meetings of the liquidation committee, the insolvency practitioner will circulate the minutes of meeting within 14 days. The insolvency practitioner may also propose a resolution be signed by liquidation committee members where it is more efficient and cost effective to proceed without a meeting being held.

- 8.2 Depending on the complexity of the liquidation and number of issues to be discussed with the liquidation committee, meetings may be convened on a more regular basis.
- 8.2.1 Meetings can be held in person or virtually (for example, by videoconference). The latter is normal for most meetings depending on the locations of the members. A Liquidation Committee member should try to attend all meetings as failure to attend three consecutive meetings will automatically terminate a person's membership of the Liquidation Committee.
- 8.3 The insolvency practitioner shall attend every meeting of the liquidation committee either in person or by a duly authorised person.
- 8.4 The liquidation committee are free to hold their own informal meetings without the insolvency practitioner in attendance and this is encouraged so as to contribute to a more informed and effective liquidation committee.

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This LC Guide is not intended to be a statement of law or a substitute for specific professional or legal advice. RISA has made every effort to ensure that the guide is accurate but RISA cannot accept any responsibility for the consequences of any action taken in reliance of its contents.

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