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GUIDE FOR MEMBERS OF LIQUIDATION COMMITTEES OF COMPANIES IN THE CAYMAN ISLANDS

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1. INTRODUCTION

1.1 General

1.1.1 This guide has been produced to assist members of liquidation committees to be aware of:

- The duties and functions of the committee.
- Their rights as members of the committee.
- The procedural rules relating to committee business.

1.1.2 This introduction gives a brief explanation of liquidation procedures, and summarizes the principal functions of the committee and the liquidator's primary duties in relation to it.

1.1.3 The authority for the liquidation committee is derived by Practice Direction No. 2/2003. Whereby it is the practice of the Grand Court of The Cayman Islands to require that liquidation committees should be established in every case unless:

- a) The number of creditors, or shareholders as the case may be, is so small that the functions normally performed by the committee can be performed conveniently by the whole body of creditors or shareholders.
- b) It is anticipated that the liquidation will be completed in less than six months.

1.2 Liquidation

1.2.1 Liquidation (also termed winding up) is the formal winding up of a company's affairs, entailing the realization of its assets and the distribution of the proceeds in a prescribed order of priority. Liquidation may be either compulsory, when it is instituted by order of the court usually on the application of a creditor, or voluntary, when it is instituted by resolution of the shareholders. As the laws of the Cayman Islands do not distinguish between a solvent liquidation and an insolvent liquidation, for the purpose of this guide an insolvent voluntary liquidation will be referred to as a 'creditors voluntary liquidation' and a solvent voluntary liquidation will be referred to as a 'shareholders voluntary liquidation'. The latter are not covered in this guide as there is no committee in such liquidation proceedings.

1.2.2 The guidance which follows applies to both compulsory liquidations and creditors' voluntary liquidations unless otherwise indicated.

1.3 The Liquidator

1.3.1 The liquidator appointed to conduct the winding up has wide powers, which are detailed in the Companies Law (2004 Revision).

1.4 The Liquidation Committee

1.4.1 The committee in liquidations is known as the liquidation committee'. In the majority of cases the liquidation committee will consist entirely of creditors of the insolvent company.

1.4.2 The purpose of the liquidation committee is to represent the interests of the creditors as a whole, not just the interests of its individual members. The principal functions of the committee are to sanction the exercise of certain of the liquidator's powers and to fix his remuneration. In addition to its statutory functions the committee may also serve to assist the liquidator generally and act as a sounding board for him to obtain views on matters pertaining to the liquidation.

1.4.3 The liquidator is required to report to the committee on matters relating to the liquidation and to submit copies of his accounts when required. Meetings are generally held when determined by the liquidator, and voting is by majority in number.

1.4.4 Committee members are not entitled to remuneration, but they may be reimbursed for reasonable traveling expenses incurred on committee business.



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1.4.5 Although the liquidator should normally have regard to the views of the liquidation committee, he may always refer matters of contention to a general meeting of creditors or to the court. It has been held that the court has a residual discretion not to follow the wishes of a committee where the special circumstances of the case warrant it.

2. THE FUNCTIONS OF THE COMMITTEE

2.1 Liquidator's Remuneration

2.1.1 The committee is responsible for fixing the liquidator's remuneration. For additional information, reference should be made to Practice Direction 2/2003.

Such remuneration must be fixed either:

- a) As a percentage of the value of the assets which are realized, or distributed, or of the one value and the other in combination.
- b) By reference to the time properly given by the liquidator and his staff in attending to matters arising in the winding-up.

It is for the committee to determine whether the remuneration is to be fixed under a) or b), and if under a), to determine a percentage to be applied.

2.2 Expenses and Disbursements

2.2.1 There is no statutory requirement for the committee or the creditors to approve the incurring of expenses or disbursements. However, where the liquidator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the liquidator's own firm), they should be disclosed and be authorized by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

2.3 Court Assessment of Costs

2.3.1 Where any costs, charges or expenses are payable out of the assets (for example agents or legal fees), the liquidator may agree them with the person entitled to payment however, if the committee resolves that any such costs, charges or expenses should be determined by the court, the liquidator must require the person entitled to payment to deliver his bill of costs for assessment.

2.3.2 Where such costs, charges or expenses are to be assessed, this does not preclude the liquidator from making payments on account against an undertaking from the payee to repay any amount which proves, on assessment to have been overpaid.

2.4 Liquidator's Security

A liquidator must meet the requirements of the court with regard to his insurance requirements.

3. Liquidator's Obligation to the Committee

3.1 The liquidator has a duty to report to the committee all such matters as appear to him to be, or as they have indicated to him as being, of concern to them with respect to the liquidation.

3.2 The liquidator need not comply with any request for information where it appears to him that the request is frivolous or unreasonable, or the cost of complying would be excessive having regard to the relative importance, or there are insufficient assets to enable him to comply.

3.3 Where the committee, has come into being more than 3 months after the appointment of the liquidator, he should report to the members in summary form what actions he has taken since his appointment and answer such questions as they may put to him regarding the conduct of the proceedings. A person who becomes a member of the committee at any time after its



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establishment is not entitled to require a report to him by the liquidator, otherwise than in summary form, of any mailers previously arising.

3.4 Nothing in these provisions disentitles the committee or any member of it from access to the liquidator's records of the liquidation, or from seeking an explanation of any mailer within the committee's responsibility.

3.5 The liquidator should, as and when directed by the committee (but not more than once every two months), send a written report to every member of the committee setting out the position generally as regards the progress of the liquidation, and matters arising in connection with it to which the liquidator considers the committee's attention should be drawn. In the absence of such directions by the committee the liquidator must send such a report not less than once every six months.

3.6 The liquidator should, at their first meeting with him, discuss with committee members their requirements for reports and obtain their directions. He should also discuss with committee members at that meeting the types of matters which they wish to have reported to them so that matters of particular concern to them are identified.

4. Liquidator's Accounting Records

4.1 The liquidator should prepare and keep financial records in relation to the liquidation, and such supporting documents as are necessary to explain the receipts and payments entered in the records, including an explanation of the source of any receipts and the destination of any payments, must obtain and keep the bank statements relating to any local bank account opened in the name of the company.

4.2 If the company's business is carried on, the liquidator must also keep a separate trading account including, where appropriate, details of all local bank account transactions.

4.3 The liquidator should submit the financial records to the committee as and when the committee requires them for inspection, and if the committee is not satisfied with their contents it may apply to the Grand Court of the Cayman Islands (giving the reasons for its dissatisfaction). The Grand Court of the Cayman Islands may then take such action as he thinks fit.

5. Establishment of the Committee

5.1 Compulsory Liquidation

5.1.1 The committee will be established by general meetings of the company's creditors and contributories. It is recommended that the committee should consist of at least three, and not more than five, creditors.

5.2 Formalities of Establishment

5.2.1 The committee does not come into being, and accordingly cannot act, until the liquidator has issued a certificate of its due constitution.

5.2.2 The liquidator will not issue the certificate until the minimum number of persons required to be members of the committee have agreed to act.

5.3 Formal Defects

5.3.1 The acts of the committee are valid notwithstanding any defect in the appointment, election or qualifications of any committee member or the representative of any committee member, or in the formalities of its establishment.

6. MEMBERSHIP

6.1 General

6.1.1 It is the creditors or contributories themselves who are the members of the committee, not the individuals who represent them. Thus a company which is a creditor may be a member of the committee but can only act through a representative appointed in accordance with paragraphs 6.2.1 to 6.2.3 below.



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6.1.2 Any creditor (other than one whose debt is fully secured) may be a member of the committee, so long as :

- Has lodged proof of his debt.
- Their proof has neither been wholly disallowed for voting purposes nor wholly rejected for the purpose of distribution or dividend.
- He has agreed to act as a member of the committee

6.2 Representatives

6.2.1 A member of the committee may be represented by another person duly authorized by him. Such representative must hold a letter of authority entitling him so to act (either generally or specially) signed by or on behalf of the committee member. The chairman at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority and may exclude him if it appears that his authority is deficient.

6.2.2 No member may be represented by :

- A body corporate.
- An un-discharged bankrupt.
- A person who is subject to a bankruptcy restrictions order or undertaking.

6.2.3 No person may act as representative of more than one committee member, or both as a member and as a representative of another member, on the same committee.

6.2.4 Where the representative of a committee member signs any document on the members behalf, the fact that he so signs must be stated below his signature.

6.3 Resignation and Termination of Membership

6.31 A member of the liquidation committee may resign by notice in writing delivered to the liquidator. A person's membership of the committee is automatically terminated if:

- He becomes bankrupt
- At three consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this rule is not applied in this case)
- He ceases to be, or is found never to have been, a creditor.

6.3.2 However, if the cause of termination is the members bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.

6.3.3 A creditor member of the committee may be removed by resolution at a meeting of creditors; 14 days notice must be given of the intention to move the resolution.

6.4 Vacancies

6.4.1 If there is a vacancy among the members of the committee it need not be filled if the liquidator and a majority of the remaining members so agree provided the number of members do not fall below three. If another creditor is to be appointed he can be appointed either by the liquidator (provided the majority of the remaining committee members agree to the appointment and the creditor consents to act) or by a resolution passed at a duly convened meeting of creditors, after at least 14 days' notice of the resolution has been given.

6.5 Composition of Committee when Creditors paid in Full

6.5.1 If the liquidator issues a certificate that the creditors of the company have been paid in full with interest, the creditor members of the committee cease to be members of the committee.



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7. PROCEEDINGS

7.1 Chairman

7.1.1 The chairman at any meeting of the committee will be the liquidator, or a person nominated by him to act. A person so nominated must be either —

- One who is qualified to act as an insolvency practitioner in relation to the company.
- An employee of the liquidator or his firm who is experienced in insolvency matters.

7.2 Quorum

7.2.1 A meeting of the committee is duly constituted if due notice of it has been given to all members and at least two creditor members are present or represented.

7.3 Meetings

7.3.1 General

The committee will meet where and when determined by the liquidator, subject as follows:

7.3.2 First Meeting

The liquidator must call the first meeting to take place within three months of his appointment or of the committees establishment (whichever is the later).

7.3.3 Subsequent Meetings

- Subsequent meetings of the committee must be called by the liquidator
- If so requested by a creditor member of the committee or his representative the meeting must be held within twenty one days of the request being received by the liquidator
- For a specified date, if the committee has previously resolved that a meeting be held on that date.

7.4 Notice of Venue

7.4.1 The liquidator must give seven days' notice in writing of the venue of any meeting to every member of the committee (or his representative, if designated for that purpose), unless this requirement has been waived by or on behalf of any member. Such waiver may be signed either at or before the meeting.

7.5 Voting Rights and Resolutions

7.5.1 At any meeting of the Committee each member (whether present himself or by his representative) has one vote, and a resolution is passed when a majority of the members present or represented have voted in favor of it.

7.6 Records of Meetings

7.6.1 Every resolution passed must be recorded in writing, either separately or as part of the minutes of the meeting. The record must be signed by the chairman and kept with the records of the liquidation.

7.7 Postal Resolutions

7.7.1 It is possible for resolutions to be passed by post or other agreed upon communication medium. The liquidator must send to every member (or his representative designated for the purpose) a copy of any proposed resolution on which a decision is sought which must be set out in such a way that agreement 'with, or dissent from, each separate resolution may be indicated by the recipient on the copy so sent.

7.7.2 However, any member of the committee may, within seven business days from the date of the liquidator sending out a resolution, require the liquidator to summon a meeting of the committee to consider the matters raised by the resolution. In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the liquidator is notified in writing by a majority of members that they concur with it.



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7.7.3 A copy of every resolution so passed, and a note that the concurrence of the committee was obtained, must be kept with the records of the liquidation.

8. CONFIDENTIALITY OF DOCUMENTS

8.1 Where the liquidator considers that any document forming part of the record of the liquidation :

- Should be treated as confidential.
- Is of such a nature that its disclosure would be calculated to be injurious to the interests of the creditors; he may decline to allow it to be inspected by a person (including a member of the committee) who would otherwise be entitled to inspect it.

8.2 A person refused inspection may apply to the court for the refusal to be overruled.

9. CHARGES FOR COPY DOCUMENTS

9.1 Where the liquidator is requested by a member of the committee to supply copies of any documents, he is entitled to charge 80 cents per page or where significant copying is required, an hourly rate of \$95 per hour plus out of pocket costs.

10. EXPENSES OF COMMITTEE MEMBERS

10.1 My reasonable expenses directly incurred by committee members or their representatives either in attending meetings of the committee or otherwise on the committee's business will be paid by the liquidator out of the assets in the due order of priority.

11. DEALINGS BY COMMITTEE MEMBERS AND OTHERS

11.1 The position of all committee members is fiduciary and they must be careful not to expose themselves to a conflict between their duty as members of the committee and their personal interest. Accordingly, no member of the committee, or his representative, or any person who is an associate of a committee member or his representative, or any person who has been a committee member at any time in the previous twelve months, can enter into a transaction whereby he:

- Receives out of the company's assets any payment for services given or goods supplied in connection with the administration of the liquidation.
- Obtains any profit from the administration of the liquidation
- Acquires any asset forming part of the estate.

Unless :

- he first obtains the leave of the court to the transaction, or
- he enters into the transaction as a matter of urgency or by way of performance of a contract in force before the date of the winding-up order or resolution to wind up and he obtains the leave of the court, having applied for such leave without undue delay, or
- he enters into the transaction with the prior sanction of the committee where the committee is satisfied (after full disclosure of the circumstances) that he will be giving full value transaction.

11.2 Where a resolution is proposed in the committee that sanction be given to such a transaction, no member of the committee, and no representative of a member, can vote on the resolution if he is to participate directly or indirectly in the transaction.

11.3 The costs of obtaining the leave of the court are not payable out of the assets unless the court so orders.

11.4 Circumstances may occasionally arise where a legal action or dealing involving a member of the committee or a person connected with him make it inappropriate for him to attend discussions on the subject in the committee, in such circumstances the member may be asked not to attend a meeting, or part of a meeting, at which the matter is discussed.



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