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Technical Release

TR 05/2016 - Guidance for Members of the Committee of Inspection in Court and in Creditors' Voluntary Liquidations

July 2016

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Contents

| | <i>Paragraphs</i> |
|---|-----------------------|
| Introduction | 1–5 |
| Scope | 6–7 |
| Committee of Inspection | |
| Establishment | 8–11 |
| Initial membership | 12–14 |
| Interaction with the liquidator | 15–21 |
| Approval of liquidator's remuneration | 22–28 |
| Control of directors' powers | 29 |
| Proceedings | 30–39 |

Appendices:

- 1. Sections 666 to 668, Companies Act, 2014.*
- 2. Paragraphs 40 and 41, Order 74, Rules of the Superior Courts, 1986 to 2015.*
- 3. Form 14, Appendix M, Rules of the Superior Courts, 1986 to 2015.*

4. Sections 627 to 629, Companies Act, 2014.

INTRODUCTION

1.This Technical Release has been produced to assist committee of inspection members to be aware of:

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

together with practical implications arising from the committee's activities.

2.Liquidation is the formal winding up of a company's affairs, entailing the realisation 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 and known as a "Court liquidation", or voluntary, when it is instituted by resolution of the shareholders.

3.An insolvent voluntary liquidation is known as a "creditors' voluntary liquidation". A solvent voluntary liquidation, in which all creditors are paid in full within a specified period, is known as a "members' voluntary liquidation".

4.This Technical Release is intended to inform members of the Committee of Inspection and thus help them to fulfil their role in a practical and effective manner. However, it does not purport to be a detailed analysis of all aspects of that role.

5.Statutory references are to the Companies Act, 2014, unless stated otherwise.

SCOPE

6.The guidance, set out below, applies to both Court liquidations and creditors' voluntary liquidations unless specified to the contrary.

7.It does not apply to members' voluntary liquidations, there being no committee of inspection in such proceedings.

COMMITTEE OF INSPECTION

ESTABLISHMENT

8.In a Court liquidation, the liquidator may, and shall if so directed by a creditor or creditors representing at least 10% in value of all creditors of the company, summon a meeting of the creditors of the company to determine whether a committee of inspection should be formed and, if so, who are to be the members of that committee (*Section 666(1)*).

9.In a creditors' voluntary liquidation, the creditors at the meeting to be held pursuant to *Section 587* (or at any subsequent creditors' meeting) may appoint a committee of inspection (*Section 667(1)*).

10.The purpose of the committee of inspection ("the committee") is to represent the interests of the creditors as a whole, not just the interests of its individual members.

11.The committee assists the liquidator in the performance of his or her duties. Members may have knowledge of specific activities of the insolvent company or relating to the company's industrial sector which could provide useful information for the liquidator.

INITIAL MEMBERSHIP

12.The creditors can appoint up to five members of the committee (*Sections 666(2)* and *667(1)*).

13.Where the committee has been established, the company may appoint up to three members, provided that total membership of the committee shall not at any time exceed eight. However, the creditors (by formal resolution) can decide that one or more of those appointed by the company shall not be members of the committee of inspection (*Section 667(3)*).

14.On application to the High Court ("the Court"), it can appoint other persons to the committee as replacements of those company nominees rejected by the creditors.

INTERACTION WITH THE LIQUIDATOR

15.The liquidator will, at the first meeting with the members of the committee, discuss their requirements and identify matters of particular concern to them. As noted earlier, members' knowledge of specific activities of the insolvent company or relating to the company's industrial sector could provide useful information for the liquidator.

16.The liquidator shall report to the committee at agreed regular intervals on the progress in the liquidation. Furthermore, the liquidator will report to the committee all such matters as appear to him or her as being of concern to it with respect to the liquidation.

17.Where the liquidator exercises powers in relation to legal proceedings, continuing to carry on the company's business, making a compromise with creditors, or paying certain creditors in full, *Section 629(1)* requires him or her to notify the committee within fourteen days of such action.

18. The liquidator need not comply with any request for information where:
- (a) it appears that the request is frivolous or unreasonable; or
 - (b) the cost of complying is excessive having regard to the relative importance of the information; or
 - (c) there are insufficient assets to enable the liquidator to comply; or
 - (d) the information sought is commercially sensitive; or
 - (e) the enquiring committee member may have a conflict of interest.
19. The liquidator can refuse to provide documentation to, or answer questions posed by, the committee in situations where legal proceedings are either being contemplated or have been issued in relation to the affairs of the company.
20. If, in the liquidator's opinion, a committee member may have a conflict of interest in relation to a particular matter, he or she can exclude that member from the relevant meeting of the committee.
21. Generally, the liquidator will have regard to the views of the committee of inspection. However, he or she may always refer matters of contention to a general meeting of creditors or to the Court.

APPROVAL OF LIQUIDATOR'S REMUNERATION

22. *Section 646(2)(a)* empowers the committee to fix the terms upon which the liquidator has an entitlement to remuneration. Before the committee decides on those terms, the liquidator will provide it with details of the terms he or she proposes.
23. The liquidator's remuneration is usually fixed by reference to the time properly given by the liquidator and his or her staff in attending to matters arising in the winding up.
24. The Statement of Insolvency Practice "*Remuneration of Insolvency Office Holders – Republic of Ireland*" - SIP 9B – is based on the following principles:
- (a) Payments to the office holder or his or her associates should be appropriate, reasonable and commensurate with the work necessarily undertaken.
 - (b) Those responsible for approving the basis or bases of calculating payments should have sufficient information to make an informed judgement as to the reasonableness of the office holder's requests.
 - (c) Requests for additional information on payments should be considered as to their merits and proportionality in the circumstances of the particular assignment.
25. To assist the committee to make an informed decision, the liquidator provides details of the minimum time units used and current charge-out rates, split by grades of staff, of those people who are likely to be involved in the assignment.
26. Payment of the liquidator's remuneration (whether for all or part of the work carried out or as a payment on account) requires approval by the committee (*Section 647(2)(a)*).
27. In periodic reports to the committee, the liquidator provides an explanation of what was achieved in the reporting period and how it was achieved to enable the progress of the case to be assessed. This facilitates the committee's understanding of whether, in the circumstances of the case, the remuneration charged is reasonable.
28. The liquidator makes available an up-to-date receipts and payments account. He or she is able to disclose the amount of time spent on the case and the charge-out value of the time spent, together with such additional information as may be reasonably required having regard to the size and complexity of the case.

CONTROL OF DIRECTORS' POWERS

29. Generally, all the powers of the company's directors cease on the appointment of a liquidator. However, *Section 677(2)* empowers the committee to sanction the continuance of certain of those powers. Where the committee so decides, the sanction requires the approval of the liquidator.

PROCEEDINGS

30. *Section 668(1)* provides the committee "... shall meet at such times as they [the members] from time to time appoint ...". The liquidator or a committee member can call a meeting "... as and when he or she thinks necessary."
31. Provided a majority of the committee is present, the committee acts by a majority of the members present at the particular meeting.
32. Committee members do not receive remuneration, but may be reimbursed for travelling costs incurred in attending meetings.
33. *Section 668(9)* prohibits a member from making a profit from the winding up, except with the leave of the Court or, in a creditors' voluntary liquidation, by a resolution of the creditors.
34. A member of the committee may resign by notice in writing delivered to the liquidator.
35. If a member of the committee becomes bankrupt, or compounds or arranges with his or her creditors, or is absent from two consecutive meetings of the committee without leave, that person ceases to be a member (*Section 668(4)*).

36. A member of the committee can be removed by an ordinary resolution passed by a majority of those who appointed him or her (members or creditors) at a meeting of which seven days' notice has been given (*Section 668(5)*).

37. Notwithstanding any vacancy, the remaining members may act providing that the committee consists of not less than two persons.

38. When a vacancy occurs, *Section 668(6)* obliges the liquidator to convene a meeting of the company's creditors or members, as appropriate, to fill the vacancy.

39. However, the vacancy need not to be filled if the liquidator is of the opinion that it is unnecessary to do so and if, on the application of the liquidator, the Court has ordered that the vacancy shall not be filled (*Section 668(7)*).