



OFFICIAL RECEIVER'S OFFICE

破產管理署

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12 November 2020

來函請註明本署檔號

IN REPLY PLEASE QUOTE THIS REF.: ORO CMD/1-50/2/3

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OFFICIAL RECEIVER'S OFFICE CIRCULAR NO. 2 / 2020

Disqualification of Directors - Revised Arrangement on Submission of Form D1 and Form D2

This circular sets out the revised arrangement on submission of Form D1 and Form D2 by provisional liquidators / liquidators to the Official Receiver.

Questionnaire to be submitted with Form D1

2. Under s. 168I(3) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and s. 2 of the Companies (Reports on Conduct of Directors) Regulation (Cap. 32J), provisional liquidators / liquidators are required to report to the Official Receiver by way of a statutory Form D1 (Schedule to Cap. 32J) if they become aware of any conduct of a person as a director that makes him / her unfit to be concerned in the management of a company. For more information on report of directors' unfit conducts, please refer to the Official Receiver's Office Circular No. 6/2017 dated 9 February 2017.

3. To facilitate provisional liquidators / liquidators in discharging their duties and save time and costs in engaging in the exchange of further correspondence between provisional liquidators / liquidators and this office to ascertain further details of the case, provisional liquidators / liquidators are required to submit to the Official Receiver a questionnaire ("**Questionnaire**") when they file a Form D1. A copy of the Questionnaire is attached. The Questionnaire is designed in the form of checklist with focused questions for the purpose of assisting provisional liquidators / liquidators in providing supporting information and documents to the Official Receiver.

4. The Questionnaire is not an exhaustive list, which is for reference only. Provisional liquidators / liquidators are reminded to refer to the relevant provisions of Cap. 32 and Cap. 32J and the Official Receiver's Office Circular No. 6/2017 in discharging their duties.

Submission of Form D1 and Form D2

5. For better logistic arrangement, provisional liquidators / liquidators are requested to submit the Form D1 and Form D2 (Schedule to Cap. 32J) with a covering letter marked for the attention of the "Prosecution & Directors Disqualification Section, Official Receiver's Office" (Fax No. 3580 0642 / 3580 0682).
6. Your co-operation in this matter is appreciated.
7. This circular takes effect on 1 December 2020.

Signed

(Ms. Phyllis McKenna)
Official Receiver

To all insolvency practitioners

- via (1) The Hong Kong Institute of Certified Public Accountants
(2) The Hong Kong Institute of Chartered Secretaries
(3) The Law Society of Hong Kong

Questionnaire to be submitted with Form D1

Company: _____

- Remarks: (1) Please answer all the questions according to your available information and documents.
- (2) Please insert additional papers if required.
- (3) Please put a [✓] or relevant information into appropriate places.
- (4) Please provide supporting documents if necessary.

A. Directors

(1) Can the directors be contacted?

(a) _____

(Name of the director)

Yes _____

No _____ Please state why.

No such information _____

(b) _____

(Name of the director)

Yes _____

No _____ Please state why.

No such information _____

(2) Are you aware that the directors have given personal guarantees for any of the Company's debts?

Yes _____ Please provide the details.

No _____

No such information _____

(3) Whilst the Company was trading, were the directors either bankrupt, disqualified or otherwise restricted from acting?

Yes Please provide the details.

No

No such information

(4) Is there evidence that the directors benefited directly or indirectly in an unreasonable or excessive manner from the Company's trading?

Yes Please provide the details.

No

No such information

(5) Are you aware of the directors suffering any serious ill-health either currently or whilst the Company was trading?

Yes Please provide the details.

No

No such information

(6) Did you receive any complaint from a creditor or other persons about the conduct of the directors?

Yes Please provide the details.

No

No such information

B. Creditors

(1) What is the number of the Company's creditors? _____

(2) Is there a majority creditor?

Yes Please provide the details.

No

No such information

C. S. 274 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and Ss. 373, 374 and 377 of the Companies Ordinance (Cap. 622)

(1) Is there any breach of the above sections?

Yes (a) Please state the particulars of the breaches.

(b) Whether accounting records have been recovered?

Yes

No Please provide the details.

(c) If only some accounting records have been recovered, please state the particulars as to non-compliance with the relevant sections, such as S. 373(2) of Cap. 622 – the accounting records must be sufficient, and S. 373(3) of Cap. 622 – the accounting records must contain the relevant information.

D. Suspicious bank transactions

(1) Please confirm whether you have checked the bank statements of the Company.

Yes Please state: -

(a) the length of time over which the bank statements covered.

(b) whether you have found any suspicious transactions.

Yes Please provide the details

No No
No Please explain why.

No such information

E. Misuse of bank account

(1) Please confirm whether there were any dishonoured cheques.

Yes Please: -

(a) state the number of cheques dishonoured, the amount involved and the length of time over which such activities took place.

(b) provide the copies of the dishonoured cheques.

(c) state whether the directors knew or ought to have known that the cheques they had caused to be drawn on the Company's bank account would not be met on presentation.

Yes No

Please explain your answer.

No such information

No

No such information

F. Misfeasance/breach of duty

(1) Have the directors received any money or other consideration from the Company in the nature of a gift out of capital, rather than the remuneration of a service, which has resulted in a material loss to the Company?

Yes Please provide the details including the directors' explanations for their action.

No

No such information

(2) Have the directors otherwise authorized any payment or other disposition of property to themselves or connected persons, which were in the nature of a gift out of capital?

Yes Please provide the details including the directors' explanations for their action.

No

No such information

(3) Have the directors been responsible for the non-disclosure to the Company of any contracts, dealings or other transactions in which use was made of the Company's assets or property (including goodwill) and which resulted in a material loss to the Company?

Yes Please provide the details including the directors' explanations for their action.

No

No such information

(4) Have the directors been responsible for any material loss to the Company occasioned by the sale, assignment, transfer or other disposal of any company assets or property?

Yes Please provide the details including the directors' explanations for their action.

No

No such information

(5) Please supply the details of the proceedings for recovery against the directors (if any).

No such information

G. Misapplication or retention of the Company's money or property

- (1) Have the directors retained or misapplied, or been responsible for, any money or other property of the Company resulting in an obligation to account which has not been fulfilled, or resulting in a trading, capital or other loss?

Yes ___ Please provide the details including the directors' explanations for their action.

No ___
No such information ___

- (2) Please supply the details of the proceedings for recovery against the directors (if any).

No such information ___

H. S. 190 of Cap. 32

- (1) Have the directors submitted a signed statement of affairs acceptable for filing?

Yes ___

No ___ Please state what the directors' responsibility for the default was and their explanations therefor (if any), such as no accounting records available, lack of fund to engage an accountant to the statement etc.

- (2) If a statement of affairs has been lodged but there are material omissions or deficiencies, please provide the details thereof and state what the directors' responsibility for the default was and their explanations therefor (if any).

I. Non-cooperation

- (1) Please state whether the directors are cooperative with you in the administration of the

winding-up?

Yes

No Please provide the details.

J. Trading whilst knowing the Company to be insolvent

(1) Was there insolvent trading?

Yes Please answer the following questions.

(a) On what date did the Company first become insolvent?

(b) Was the said date evidenced by the Company's accounts or events such as dishonoured cheques, distraint, judgment debt, execution, statutory demand etc.?

(c) When did the directors first become aware of the said date?

(d) How quickly did the directors respond once they were aware that matters were starting to go wrong?

(e) Did the directors have any valid reasons to believe that the Company would restore to solvency?

(f) Did any individual director resign and make his concern known to others?

(g) Did the directors inject further capital or caused further capital to be injected?

(h) Did the directors seek professional advice, and was the advice

acted upon?

- (i) For how long after the said date, did the Company continue to trade, and by what amount did the Company's debts increase as a result?

- (j) Having regard to the size and nature of the Company's business, and the directors' own qualification and experience, did the directors have available sufficient management accounts and information to make effective policy decisions?

- (k) Throughout the Company's period of trade, was sufficient regard given to the potential viability of the business?

No ____

No such information ____

K. Causes of the Company becoming insolvent

- (1) What events occasioned the Company's insolvency?

No such information ____

- (2) Please state the causes of the Company's failure in your opinion.

No such information ____

- (3) Please state the directors' responsibility for such causes.

No such information ____

**L. Failure by the Company to supply any goods or services
which have been paid for (in whole or in part)**

- (1) Were any of the Company's outstanding debts at the date of winding-up the result of non-supply of goods and/or services for which customers/consumers paid, wholly or partly in advance?

Yes ___ Please provide the details and continue to answer (2) and (3) below.

No ___

No such information ___

- (2) Over what period, had the depositors been received?

No such information ___

- (3) Please state the directors' responsibility in relation to the acceptance of prepayment, and their explanations therefor (if any).

No such information ___

M. Transactions liable to be set aside under Ss. 182, 265D and 266 of Cap. 32

- (1) Were there any dispositions of property after the date of commencement of winding-up, which is void under S. 182 of Cap. 32?

Yes ___ Please provide the details and answer (4) below.

No ___

No such information ___

- (2) Were there any transactions by the Company at any time in the period of 5 years ending with the day on which the winding-up of the Company commences, which is liable to

be set aside under s. 265D of Cap. 32?

Yes Please provide the details and answer (4) below.

No

No such information

- (3) Were there any transactions by the Company at any time in the period of 2 years ending with the day on which the winding-up of the Company commences, which is liable to be set aside under S. 266 of Cap. 32.

Yes Please provide the details and answer (4) below.

No

No such information

- (4) Please state the directors' responsibility for such dispositions and/or transactions and their explanations therefor (if any).

No such information

N. Transfer of business

- (1) Were there any transfers of business of the Company?

Yes Please provide the details and answer (2) below.

No

No such information

- (2) Please state the directors' responsibility for such transfers and their explanations therefor (if any).

No such information ____

O. Wages and MPF

- (1) Has the Company failed to pay wages and other termination payments, and MPF or other pension contributions?

Yes ____ Please provide the details and answer (2) below.

No ____

No such information ____

- (2) Have the directors taken steps to remedy the situation?

Yes ____ Please provide the details.

No ____

No such information ____

P. Investigations or proceedings by law enforcement agencies

- (1) Are you aware of any investigations or proceedings against the Company and/or directors by other regulators (e.g. Police/ICAC/MPFA/Labour Department etc.)?

Yes ____ Please provide the details.

No ____

No such information ____