



**INSOL**  
INTERNATIONAL



# Corporate liquidation (official liquidation – post appointment actions and case management issues

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# Agenda

## 1. House keeping matters

## 2. Presentation

- 4.3.1 Statutory post appointment requirements / notices
- 4.3.2 Stakeholder management
- 4.3.3 Liquidator oversight
- 4.3.4 Assets
- 4.3.5 Distributions

# 4.3.1 Statutory post appointment requirements / notices

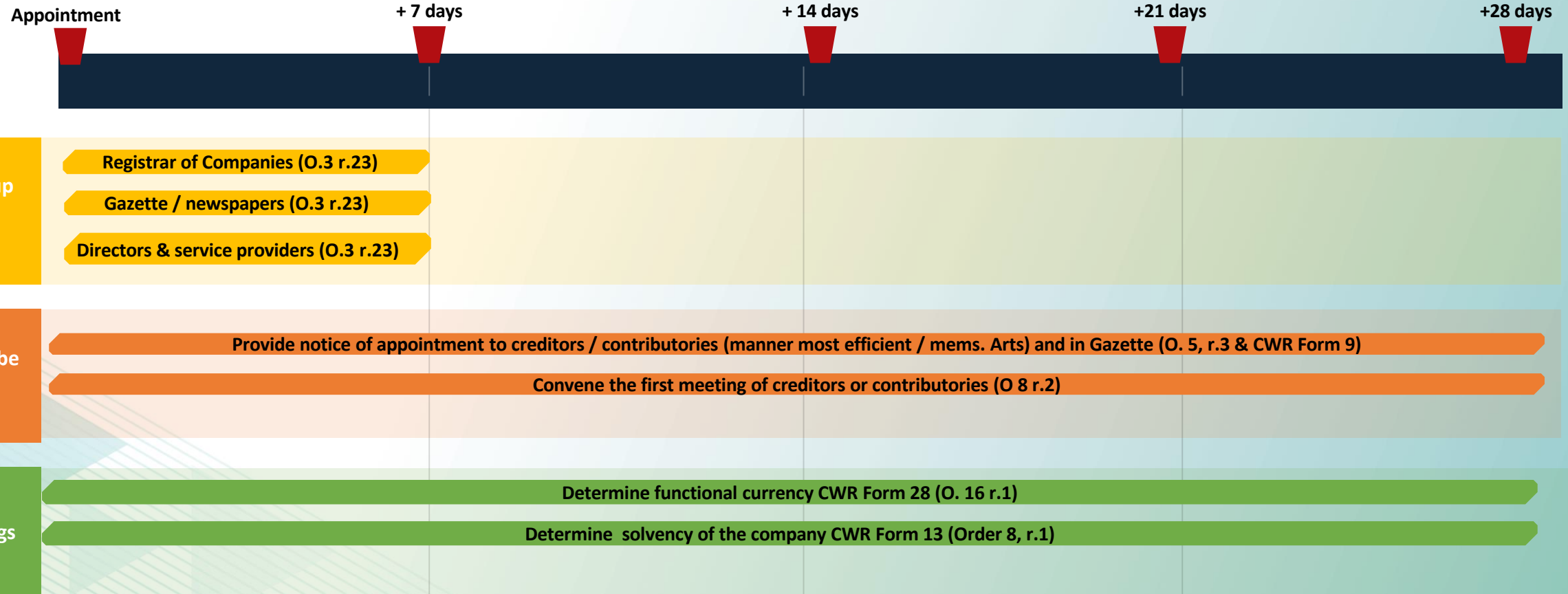
## Legislation provisions

- Sections 98 & 105(3) of the Act
- Orders 3, 5, 8 & 16 of the Rules

## Forms

- CWR Form 9 – Notice of Liquidators appointment
- CWR Form 13 – Liquidator's certificate of solvency
- CWR Form 28 – Determination of functional currency of the liquidation (only necessary if insolvent certification)

# 4.3.1 Statutory post appointment requirements / notices



# 4.3.2 Stakeholder management

## 4.3.2.1 Creditor and contributory meetings

### Legislation

- Section 115 of the Act
- Order 8 of the Rules
- Order 10 of the Rules

### Forms

- CWR 13 Certificate of Solvency
- CWR 14 Revision of Certificate of Solvency

# 4.3.2 Stakeholder management

## 4.3.2.1 Creditor and contributory meetings

### Prior to convening the meeting

Determine whether the company is (Order 8, r.1)

- Solvent - meetings to be convened of contributories only
- Insolvent - meetings to be convened of creditors only
- Of doubtful solvency - meetings to be convened of creditors and contributories, to be held on same day either concurrently or consecutively

The file the Liquidator's certified opinion on solvency with the Court (subsequently any change in opinion filed with Court using CWR Form 14)

# 4.3.2 Stakeholder management

## 4.3.2.1 Creditor and contributory meetings

Convene first meeting within 28 days of the date of the winding up order (Order 8 Rule 2)

- Purpose - election of a liquidation committee
- Any matters the liquidator thinks fit or as directed by the Court

Convene subsequent meetings (Order 8 Rule 2)

- When liquidator considers appropriate
- The Court directs him to do so (see s115 of the Act)
- Liquidator receives a valid request to do so (within 21 days)
- Not less than once a year
- NB: where a meeting is convened p.t Order 8 r.2 the liquidator shall send a report and account (Order 10 r.1) to all those entitled to receive notice of the meeting

# 4.3.2 Stakeholder management

## 4.3.2.1 Creditor and contributory meetings

### Order 8 Rule 4 - Notice and advertisement

	<b>Creditors Meeting</b>	<b>Contributories Meeting</b>
<b>Who?</b>	All who appear to be a creditor, and	All who appear to be a contributory, and
	All without a rejected PoD	All recorded on register of members
<b>Advertising</b>	On a website and/or	No advertisement requirement
	Newspaper(s) in area likely to come to creditors attention at least 14 days prior to meeting	
<b>Notice</b>	21 days	As per mem & arts
<b>How?</b>	Post, fax or email	As per mem & arts



# 4.3.2 Stakeholder management

## 4.3.2.1 Creditor and contributory meetings

### Procedural matters

- Order 8 Rule 5 – Venue
- Order 8 Rules 6 & 10 - Proceedings/recordings at meetings
- Order 8 Rule 9 - Voting on resolutions

# 4.3.2 Stakeholder management

## 4.3.2.1 Creditor and contributory meetings

Procedural matters – exercise

Were you listening?

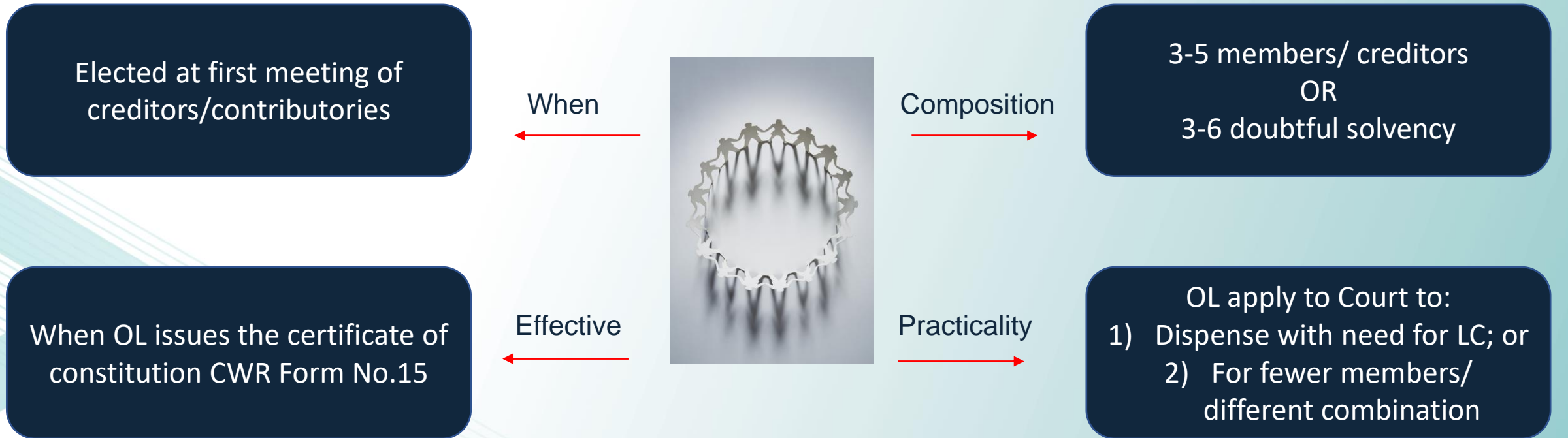
Can you spot the errors?



# 4.3.2 Stakeholder management

## 4.3.2.2 Liquidation committee (LC)

### Establishment of the LC



# 4.3.2 Stakeholder management

## 4.3.2.2 Liquidation committee (LC)

### Reporting requirements (O. 9, r. 4)

- OL has duty to report to LC
- Reporting method: as agreed with LC

### Frequency

OL provides written report + convenes 1<sup>st</sup> LC meeting **within 3 months** of establishment

- Thereafter meetings held:
  - On dates/intervals resolved by LC
  - If requested in writing by 2 LC members
  - In any event, **at least once every 6 months**

# 4.3.2 Stakeholder management

## 4.3.2.3 Liquidators' remuneration

OL remuneration payable out of company assets in priority to all other claims

Key legislation Insolvency Practitioner's Regulations (**IPRs**)

Basis of remuneration (Reg 11 of the IPRs)

- a) time spent; or
- b) % of distribution; or
- c) % of realisations; or
- d) fixed fee; or
- e) combination of some/all the above.

# 4.3.3 Liquidator oversight

## 4.3.3.1 Reports and Accounts

It is the function of an official liquidator *“to report to the company’s creditors and contributories upon the affairs of the company and the manner in which it has been wound up.”*

- Section 102 of the Companies Act: Investigation by liquidator
- Order 10 of the CWR: Official Liquidator's Reporting Obligations
  - Official Liquidator’s Reporting Obligations (O.10, r.1)
  - Form and Content of Liquidators’ Reports and Accounts (O.10, r.2)
  - Publication of Reports and Accounts (O.10, r.3)
- Trade secrets

# 4.3.3 Liquidator oversight

## 4.3.3.2 Sanction applications

- Powers exercisable with and without sanction
- Ability for a creditor / contributory to curb OL powers
- Costs
- Procedural requirements

# 4.3.3 Liquidator oversight

## 4.3.3.3 Legal costs

### Key considerations

- Must obtain sanction to engage attorneys
- Engagement terms must comply with Order 25
- Fees incurred rank as an expense of the liquidation



# 4.3.4 Assets

## 4.3.4.1 Collection and distribution of assets - overview

Primary function of the official liquidator is to: (i) collect assets; (ii) realise assets; and (iii) distribute assets according to a statutory order of priority

As covered in the course, assets come in all shapes and sizes (e.g. causes of action, books and records etc). The liquidator is seeking to maximize value for the stakeholders.

# 4.3.5 Distributions

## 4.3.5.1 Proof of debt process and the quantification of claims

The fundamental principle: *pari passu*

Latin: “*with equal step*” (i.e. at the same rate or on an equal footing)

In an insolvency context, the *pari passu* principle means that all unsecured creditors must share equally any available assets of the estate, or any proceeds from the sale of any of those assets, in proportion to the debts due to each creditor

It is possible to depart from this principle by agreement

# 4.3.5 Distributions

## 4.3.5.1 Proof of debt process and quantification of claims

### True or False Quiz

- Type sli.do into your web browser/ mobile device
- It will ask you for your event code
- Our event code is #3367013
- Choose **true** or **false** and hit send



# 4.3.5 Distributions

## 4.3.5.2 Settling list of contributories and rectification of the share register

### Settling List of Contributories

- Section 112
- Order 12
- Case study

# 4.3.5 Distributions

## 4.3.5.2 Settling list of contributories and rectification of the share register

### Settling List of Contributories

112. (1) The liquidator shall settle a list of contributories, if any, for which purpose he shall have power to adjust the rights of contributories amongst themselves.
- (2) In the case of a solvent liquidation of a company which has issued redeemable shares at prices based upon its net asset value from time to time, the liquidator shall have power to settle and, if necessary rectify the company's register of members, thereby adjusting the rights of members amongst themselves.
- (3) A contributory who is dissatisfied with the liquidator's determination may appeal to the Court against such determination.

# 4.3.5 Distributions

## 4.3.5.2 Settling list of contributories and rectification of the share register

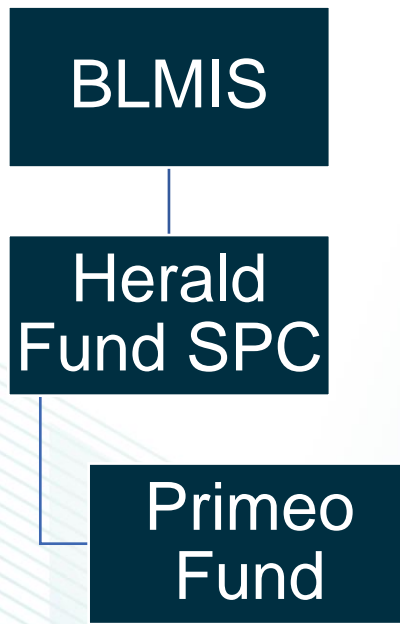
### Order 12: Settling List of Contributories

- Consideration of Solvency – (O.12, r.1).
- Rectification of the Register of Members – (O.12, r.2).
- Notification of Rectification – (O.12, r.3)
- Appeal Against Rectification – (O.12, r.4).

# 4.3.5 Distributions

## 4.3.5.2 Settling list of contributories and rectification of the share register

### Investment Structure



### Ruling

The Privy Council found that the effect of section 112(2) is to permit a liquidator to do two things:

- (a) settle (i.e. complete or create) and/or
- (b) rectify (i.e. correct) a register of members

*so as to make sure that the register is a reliable basis for distributing the surplus because it fully and accurately reflects the members' legal rights.*

# 4.3.5 Distributions

## 4.3.5.3 Order of payment priority from the liquidation estate

The Cayman waterfall:

1. Secured Creditors
2. Preferential debts
3. Expenses of liquidation - (see also separate waterfall at O.20, CWR)
4. Ordinary unsecured creditors
5. Subordinated debts

Other points to think about:

(Redemption creditors)

(Additional interest)

(Failed subscribers)

Finally, the balance will be divided amongst contributories



# 4.3.5 Distributions

## 4.3.5.9 Existing contracts, netting, set off

### Quantification matters

- credit and set-off
- Set-off
- Contractual position