



Guide to the Creditors' Voluntary Liquidation Process

What is a Creditors Voluntary Liquidation ("CVL") ?

Creditors' Voluntary Liquidation ("CVL") is a legal process defined in the Insolvency Act 1986 ("IA86") and associated legislation.

It is a process instigated by the shareholders of the Company (and hence 'voluntary') when the Company has insufficient assets to meet its liabilities or it is unable to pay its debts when they fall due. In a CVL, one or more liquidators are appointed to 'wind up' the affairs of a Company in an appropriate manner. Once completed, the Company will cease to exist.

It should be distinguished from a Members' Voluntary Liquidation ("MVL"); where the Company has sufficient assets to meet its liabilities and from a Compulsory Liquidation where the Court appoints a liquidator to wind up the Company, usually at the request of one of the Company's creditors.

The alternative procedures to a CVL include; informal arrangements with the creditors, Company Voluntary Arrangements ("CVAs") where creditors are asked to approve a legally binding proposal for repayment, Administration or Compulsory Liquidation. Professional advice should be sought as to which process is most appropriate.



Appointment process

Directors' Meeting

A meeting of the Company's directors is held. At this meeting they consider the financial position of the Company and resolve to convene meetings of members and creditors of the Company.

This meeting would also resolve which of the directors were to sign the Statement of Affairs (see below) and which director would act as chairman of the meeting of members and creditors.

Notice of meetings

Members

A meeting of the members (shareholders) of the Company would be called in order to resolve to wind up the Company and appoint a liquidator.

14 days notice of this meeting must be provided to the members although the members can agree to waive this notice period.

Creditors

A date for the meeting of creditors would be set (normally after the meeting of members) and all known creditors would be circulated with these details. The meeting would be set for a time and location convenient for the creditors of the Company.

A minimum of 7 days notice must be provided before the meeting and it must also be advertised in the London Gazette and may also be advertised in a newspaper circulating in the locality of the business. This notice must be sent no later than the notice of the meeting of members and as such typically 14 days notice is provided.

The meeting must be held within 14 days of the members meeting where the resolution to wind up has been passed.

In many cases the meeting of creditors is held on the same day as the members meeting at a time shortly after it.

Shareholders' Meeting

Creditors who may be entitled to appoint Administrative Receivers or Administrators should be informed of the proposed liquidation. The latter of these must receive a minimum of 5 days notice.

The secured creditor would then have the option to appoint an Administrator or Receiver prior to the meeting. The former of these would prevent the appointment of a liquidator. A liquidator could still be appointed if a receiver is appointed but advice should be sought as to whether this is necessary or appropriate.

Period leading up to the meeting

Directors remain responsible for the Company up until the appointment of a liquidator. They must, at all times, act in the interests of the Company's creditors to ensure that their position does not deteriorate. Failure to take all steps to minimise losses to the creditors could result in the directors becoming personally liable for the Company debts.

Directors should seek advice from qualified Insolvency Practitioners as to what action should be taken during this period.

Statement of Affairs'

Prior to the meetings the directors must prepare a Statement of Affairs. This lists all of the assets, liabilities, creditors and members of the Company and details of security granted.

The purpose of this document is to illustrate the insolvency of the Company and provide information to the creditors on the likely return to creditors.

A director must sign a statement of truth to confirm the contents of the Statement of Affairs.

Report

In advance of the meetings with the directors would be responsible for the preparation of a report detailing the statutory information of the Company, its history, reasons for its financial difficulties and details of the financial position. The directors often seek the assistance of a professional in the preparation of this report but it would remain the directors' ultimate responsibility.

Meeting of members

The director nominated to chair the meeting, reports to the shareholders on the financial position of the Company and presents the Statement of Affairs.

At the meeting of members, resolutions are passed for the Company to be wound up and the Company is placed into liquidation. A liquidator is appointed but has limited powers pending the ratification of the creditors. This member nominated liquidator has the power to:

- Take control of the Company's property
- Dispose of goods of wasting nature
- Do all necessary to protect the Company's assets

Meeting of creditors

Creditors of the Company may attend and vote at the meetings of creditors either in person or by proxy. In order for them to be entitled to vote they must provide details of their claims.

The nominated director acts as chairman of the meeting. The Insolvency Practitioner presents often conducts the meeting on request off the chairman.

Those present at the meeting have the opportunity to ask questions and detailed minutes are maintained of such questions and the response.

A number of resolutions are typically proposed at this meeting:

- To appoint a liquidator – creditors can nominate a different Insolvency Practitioner to that already acting as the members' nominated liquidator. The Insolvency Practitioner that obtains

votes of more than 50% in value would be appointed liquidator. In the case of several nominations and no person receiving in excess of 50%, a process would be undertaken whereby the Practitioner with the lowest votes would be 'knocked out' and a new vote undertaken. Only when a Practitioner receives over 50% of the votes would they be appointed.

- Remuneration – the liquidator would seek for a resolution to be passed approving the basis of the remuneration
- Liquidation Committee – creditors have the option of forming a committee. The purpose of this committee is to assist the liquidator in the performance of their duties and to approve their remuneration. Such a committee must have 3, 4 or 5 members.

Following these resolutions the meeting would be drawn to a close.

Following appointment

Effect of appointment

Once a liquidator is appointed they take responsibility for the Company and its assets.

If the Company has continued to trade in the lead up to the liquidation, the liquidator would consider whether the trade should be continued for a period of time and would, as necessary, close the business down.

The powers of the directors of the Company would be suspended and the provisions relating to 'phoenix companies' would take effect. These provisions restrict the re-use of the Company's name (or names similar to it) and impose severe consequences on those who breach this.

Notification

Notices are sent to the Registrar of Companies informing it of the appointment and the details advertised in the London Gazette.

Creditors would also be circulated with the outcome of the meeting and a copy of the report (see report section above).

Powers of the liquidator

The Liquidator has certain statutory powers to obtain and take control of the Company's records from parties holding such documents. The directors and employees (including former) of the Company also have a statutory obligation to assist the liquidator in their inquiries.

Realisation of assets

The liquidator would make an inventory of the assets of the Company and arrange for them to be realised. The funds from such a process would be held by the liquidator and distributed in accordance with the priority defined by the IA86.

Ongoing statutory matters

The liquidator has a duty to send a progress report to creditors following the anniversary of the appointment. There is also a statutory obligation to send with that progress report an account of the receipts and payments made by the liquidator.

The liquidator also has other statutory duties including a duty to prepare a confidential report to the Insolvency Service on the conduct of the directors (both current and former) in the lead up to, and subsequent to the liquidation.

Distributions

Funds realised from the disposal of assets are utilised to discharge the costs of the liquidation process and, if sufficient, are used to pay off elements of the Company's indebtedness. The priority of the relative debts is complex in light of recent court cases but can be summarised as follows:

Fixed charge creditors

Where the liquidator disposes of assets subject to fixed charges, the process (less costs) are available to the fixed chargeholder (providing the security documentation is valid)

Preferential creditors

Since the introduction of the Enterprise Act 2002, the Inland Revenue and Customs and Excise (now known as HM Revenue & Customs) no longer have preferential status. Therefore the primary preferential creditors relate to employee and certain pension liabilities.

Assets that are not subject to fixed charge are made available to the preferential creditors in priority to the floating chargeholder (and after certain costs).

Prescribed Part

The funds available (if any) after paying the preferential creditors are subject to what is known as the Prescribed Part. The purpose of this fund is to make the amount lost to preferential creditor as a result of the abolition of Crown Preference available to the unsecured creditors (thus by-passing the floating chargeholder).

This fund is only applicable to chargeholders who have charges dated after 15 September 2003. Those with charges prior to this date benefit from the loss of Crown Preference and do not suffer from the allocation of the funds to the Prescribed Part.

The Prescribed Part is an amount set aside for the unsecured creditors and is calculated based upon the amounts available for the floating chargeholders as follows:

- First £10,000 – 50%
- Next £2,975,000 – 20%

This results in a maximum Prescribed Part of £600,000.

It may be necessary to dispense with the Prescribed Part should it be considered not effective to distribute the funds and the Court agrees. Otherwise the amount set aside is to the unsecured creditors.

Floating charge creditors

Any funds available after the payment of preferential creditor and after deducting the Prescribed Part (if applicable) are available for floating charge creditors.

Unsecured Creditors

The unsecured creditors would participate in any funds from the Prescribed Part and any funds remaining after the payment of the floating chargeholders. The level of dividend varies from case to case.

Case closure

Once the liquidator has realised all of the assets and fulfilled their statutory obligations then they may seek an end to the liquidation. This would result in the Company being dissolved and taken off the Registrar of Companies.

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If you would like to discuss how Moorfields can assist you with a CVL or any other issues please contact

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