

SOLVENT MEMBERS' VOLUNTARY LIQUIDATION ["MVL"]

OUTLINE PROCEDURE

NB: Although this note relates to a solvent company, the procedure is governed by the Insolvency Act 1986 and associated Rules.

Board meeting to initiate process

The process commences with the board resolving to wind up the affairs of the company utilising the MVL. At the same time, the board usually sets a date for the meeting of Members at which it will be proposed that a resolution to wind the company up is passed. In the interim, the directors will need to put in hand arrangements to prepare the information for inclusion in the Declaration of Solvency and Statement of Assets and Liabilities to be presented to the Members at the meeting. This is essentially an up-to-date balance sheet put into a particular statutory format. As an alternative to convening a meeting of the members, the Directors can resolve to deal with the passing of the Members' Resolutions by way of Written Resolutions.

Declaration of Solvency

All, or a majority, of the directors must make a statutory declaration that states that the company is able to pay its debts in full within 12 months of the commencement of liquidation. It is important to ensure that all liabilities are identified at this stage, including any contingent liabilities or guarantees and that these are addressed before the process is commenced. There are penalties for knowingly making a false declaration.

Members' Meeting/Written Resolution

Usually, where there are 5 or fewer shareholders, the company is placed into liquidation by way of Written Resolutions, thereby negating the need for a physical meeting of shareholders. Written Resolutions are deemed passed once 75% or more of those entitled to vote have consented.

If a meeting is required, the Members' meeting is usually convened at 21 days' notice unless 95 % or more of the Members consent to the meeting being held at short notice. The statutory requirement was reduced to 14 days and 90% under the Companies Act 2006 or as governed by the company's Articles of Association. At the meeting of shareholders the Declaration of Solvency and Statement of Assets and Liabilities are presented and Resolutions are proposed to wind up the company and appoint a Liquidator/Joint Liquidators. It is our firm's policy to have Joint Liquidators appointed in all cases. With careful planning, and so long as Members consent to short notice is obtained, the formal meetings referred to above can all be held at the same time.

Notice in London Gazette

The resolution putting the company into liquidation, along with the notice of the Liquidator's appointment, is filed with the Registrar of Companies and also advertised in the London Gazette. It can also be advertised in an appropriate newspaper or other media. At the same time the Liquidator advertises in the London Gazette for claims against the company to be delivered to him, by a set date.

Settlement of Creditors' Claims

As part of the liquidation process, the Liquidator must agree and pay all creditors' claims plus Statutory Interest at the prevailing rate (currently 8%) from the date of liquidation to the date of payment. It is recommended that as many of the creditors as possible are paid prior to the commencement of the liquidation. The taxation affairs of the company will need to be agreed and tax clearance obtained as part of the liquidation process.

Distributions to the Members

In the majority of cases, we make a substantial "Day 1" capital distribution to shareholders as soon as the company is placed into liquidation. Once the claims of the creditors have been agreed and settled, the Liquidator then distributes the balance of the surplus assets to the Members. As stated above, the Liquidator will often make an early interim distribution to Members in return for an indemnity from them, having ensured that sufficient funds are retained to meet any anticipated liabilities.

Annual Progress Report

If the winding up continues for more than 12 months the Liquidator must send an Annual Progress Report to the Members.

Conclusion of the Liquidation

Once the affairs of the company have been fully wound up, the Liquidator must send a final account to the Members at least eight weeks before the proposed date for the completion of the winding up. Once the time set has passed, the Liquidator must send a copy of the final account to the Members and to Companies House. The Liquidator will be released from office two days later. The eight week period referred to above can be abridged with the consent of all the Members.

Dissolution of the Company

Three months after the Registrar receives the final account and report referred to above, the company is deemed to be dissolved.

Books and Records

The company's books and records must be held by the directors and can only be destroyed 12 months after the company has been dissolved. The Liquidator will hold his papers for a period of 6 years after dissolution.

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