Insolvency Online CVL

The no nonsense guide to **Insolvent Liquidations**

[Limited companies and LLPs]

Insolvency Online Tel: 020 8549 9915
Website: www.insolvency-online.co.uk Email: enquiries@insolvency-online.co.uk

Introduction

Welcome to our No-Nonsense Guide to Insolvent Liquidations.

There is so much information out there on the web that even professionals in the insolvency sector can get bogged down in the sheer volume and detail of what can be downloaded at the touch of a button.

Working on the maxim “less is more”, we have set ourselves the task of producing a No-Nonsense Guide to Insolvent Liquidations in fewer than 10 pages.

Needless to say, this document is really only a taste of the subject matter, but we trust that it will at least throw a light on the major areas and issues relating to Insolvent Liquidations.

We would say this wouldn’t we, but at **Insolvency-Online**, we are keenly aware that no two corporate insolvency situations are the same- the people having to try and deal with the difficult issues being faced are different for a start and we never take for granted the fact that trading businesses are run by people not machines.

As a firm of highly experienced Licensed Insolvency Practitioners, we really do have the complete tool kit to both fix insolvent companies where possible and at least ensure an orderly wind down of a company’s affairs where turnaround is no longer feasible.

A Guide can help you get your thoughts in order, but at the end of the day, most directors require specific advice to address specific issues, so please never hesitate to make contact with me or any of my colleagues at **Insolvency-Online**.

Please also note that all our formal appointment takers are licensed as Insolvency Practitioners by the Institute of Chartered Accountants in England and Wales.

Contents

INSOLVENT LIQUIDATIONS

About this guide

1 General information

Definition of insolvent liquidation
Types of liquidation

2 Creditors' **Voluntary Liquidation** ["CVL"]

The process of placing a company into CVL/Deemed Consent
The meeting of Shareholders
The attitude of HM Revenue & Customs
The process after the commencement of liquidation
The duties of directors
The end of the liquidation

Compulsory Liquidation

3

The parties that can put a company into compulsory liquidation
The circumstances in which a Winding-Up Order can be made
The legal effect of the Winding-Up Petition
The role of the Official Receiver
The end of the liquidation

A brief word on the alternatives

4

Administration
Company Voluntary Arrangement

1 General information

Definition of insolvent liquidation

Liquidation is a formal process governed by the provisions of the Insolvency Act 1986 [“the Act”] and the Insolvency [England and Wales] Rules 2016 [“the Rules”] together with case law that has been built up over several centuries.

As part of the process, a Liquidator is appointed to 'wind up' the affairs of the company. His role is to realise assets, investigate the circumstances leading up to liquidation and distribute the net realisations to the creditors in the order in which they are entitled to receive such distributions. If there is a surplus after settlement of the claims of creditors [who are also entitled to Statutory Interest at 8% per annum], the Liquidator will return any surplus monies to shareholders.

At the end of the process, the company will be dissolved and will cease to exist.

Types of liquidation

i. Members' Voluntary Liquidation [“MVL”] - a solvent liquidation where from the outset it is envisaged that all creditors will be paid in full together with Statutory Interest. Thereafter, any surplus funds or assets are distributed to the shareholders. Please refer to our online No Nonsense Guide to MVLs at www.mvl.insolvency-online.co.uk

ii. Creditors' Voluntary Liquidation [“CVL”] – an insolvent liquidation when a Special Resolution is passed by the Shareholders to place the company into CVL. From the outset it is envisaged that there will be insufficient assets to settle all creditors in full.

iii. Compulsory Liquidation – an insolvent liquidation when the Court is petitioned and makes a Winding-Up Order. The main grounds for a petition to the court are that the company is unable to pay its debts as defined by the Act. Several parties can petition the Court, including the company itself, its directors or more usually by a creditor.

2 Creditors’ Voluntary Liquidation

Sometimes early recognition of the fact that an insolvent company has run its course means that directors and business owners can take decisive steps in bringing loss making enterprises to a close. Early adoption of the CVL process initially leaves directors and shareholders in charge of their own destiny and will

clearly demonstrate to third parties that the proper steps were taken at the appropriate time.

The process of placing a company into CVL/Deemed Consent

The first step is for the Board of Directors to resolve to summon a general meeting of shareholders to pass two Resolutions, namely placing the company into CVL [a Special Resolution] and the appointment of a Liquidator [an Ordinary Resolution].

The introduction of the Insolvency [England and Wales] Rules 2016 ["the Rules"] on 6 April 2017 has sought to remove the need for a physical meeting of creditors although one can be summoned if certain criteria are met. Creditors have to be given due notice of a Decision Procedure and given a Decision Date which means the date when a decision is to be made in a Decision Procedure. Effectively, the Rules aim to achieve "non-meeting" decision processes completed by correspondence which include email and electronic voting and resolutions by correspondence.

The new Rules have introduced a novel way for the appointment of a Liquidator.

It is now the case that a Liquidator may only be appointed in a CVL by means of a virtual meeting or by Deemed Consent. The Deemed Consent procedure may be used instead of a Qualifying Decision Procedure. Creditors are given due notice of the Deemed Consent and if less than the appropriate number of relevant creditors object to the proposed decision [i.e. the appointment of a particular Liquidator], they are treated as having made the proposed decision. The appropriate number of relevant creditors who may object [thereby forcing a physical meeting of creditors] is any of the following:

a. 10% in value of the creditors
b. 10% in number of the creditors
c. 10 creditors

The meeting of Shareholders

If there are only 2 shareholders, then both must agree to the Special Resolution to place the company into liquidation. Where there are more than 2 shareholders, 75% [by way of voting shares] of shareholders who vote on the Special Resolution must agree to this process taking place.

The liquidation begins from the time the resolution to wind up is passed by the shareholders.

At any meeting of creditors, the creditors can nominate an alternative Liquidator and their nomination will override that of the shareholders. The duly appointed Liquidator must be a Licensed Insolvency Practitioner.

The attitude of HM Revenue & Customs

The notice of the Deemed Consent procedure or virtual meeting of creditors for all companies registered in England & Wales is sent to a centralised unit in London and we must say that the response is hardly deafening. This must in part be down to public policy issues, in that the authorities want to see directors doing the right thing by taking appropriate steps to place insolvent companies into liquidation and do not want to discourage the correct steps being taken by seeking to influence the appointment of Liquidators.

Accordingly, HMRC very rarely votes. Nevertheless, quite often it is the largest creditor in the proceedings and therefore HMRC will take a keen interest in liquidation outcomes.

The process after the commencement of liquidation

The Liquidator takes control of the company's affairs and the powers of the directors cease.

Quite simply, the Liquidator will realise the assets and distribute the net sale proceeds to creditors.

In addition, the Liquidator will undertake investigations that are "...proportionate to the circumstances of each case" [see Statement of Insolvency Practice 2 in our library and downloads section]. In addition, the Liquidator will file a report [often known as the D Report] to The Insolvency Service on the conduct of all persons who had been directors in the three years leading up to the commencement of the liquidation.

If the CVL continues for over 12 months, the Liquidator must send a report to both shareholders and creditors of his dealings.

The duties of directors

Although the executive powers of the directors cease on liquidation, many of their duties to the company remain.

In voluntary liquidation proceedings, the company's directors must provide to the Liquidator:

- information concerning the company's affairs
- attend interviews when reasonably required to do so
- pass over company's assets
- pass over the company's books, records

The end of the liquidation

As soon as the affairs of the company are fully wound up, the Liquidator will prepare a final report for shareholders and creditors in which he will fully explain all his dealings since his appointment. The final report, including a final account, is then delivered to the Companies House and the Liquidator is then released and the liquidation comes to an end.

Within 3 months of the submission of the final report, the company is struck off at Companies House. At this time the company will cease to be a legal entity, but could be restored to the register by way of application to the court.

3 Compulsory Liquidation

This is a Court driven process with the Court making a Winding-Up Order on the petition of a relevant party.

The parties that can put a company into compulsory liquidation

A petition for the winding up of a company is usually presented to Court by a creditor. However, the following parties can also petition the court:

- directors
- company itself
- shareholder
- administrator
- Supervisor of a company voluntary arrangement
- administrative receiver
- Secretary of State for Business, Innovation and Skills
- Financial Conduct Authority
- Others

A winding-up petition can still be presented even if a company is already in administrative receivership or voluntary liquidation.

The circumstances in which a winding-up order can be made There are a variety of reasons why the court can make a Winding-Up Order, but by far the commonest reason is by virtue of the fact that the company cannot pay its debts.

A company is deemed unable to pay its debts if:

i. A creditor gives written notice of a debt exceeding £750 and it remains unpaid for 3 weeks thereafter [more usually known as "the Statutory Demand" or "21 Day Notice"]

ii. Execution or other process issued on a Judgment remains unsatisfied

iii. It is proved to the Court that the company is unable to pay its debts as they fall due [often known as the "cash-flow test"]

iv. It is proved to the Court that the company's assets are less than the liabilities [often known as the "balance sheet test"]

The legal effect of the Winding Up Petition

The serving of a Winding Up Petition on the company [and even sometimes on its Bankers] almost always sounds the company's death knell.

It is important to note that a Compulsory Liquidation actually commences on the date that the Winding Up Petition is filed at court which may be many weeks or indeed months before the petition is heard at Court and the Winding Up Order made.

In that intervening period, any disposal by the directors of the company's assets is void unless ordered by the court. Effectively, trading must cease until such time as a Validation Order can be obtained from the court [i.e. an order allowing the company to continue to trade and deal with its assets]. Such Validation Orders are difficult and expensive to obtain as they require an application to court, backed up with detailed evidence showing how the creditors' interests will not be prejudiced.

If there is a better alternative than liquidation, directors can petition the court for an Administration Order which is treated as a priority application and can provide both protection from creditor action [including putting a hold on the Winding Up Petition] and provide them with a breathing space to allow for the preparation of a Business Plan for the company's rehabilitation that can then be put to all creditors for their approval.

The role of the Official Receiver The Official Receiver [an Officer of the Court and an employee of The Insolvency Service], will be appointed Liquidator on the making of the Winding Up Order. Most Compulsory Liquidations stay in the Official Receiver's office and he will carry out the same functions as a Liquidator of a CVL, including investigating the affairs of the company and the causes of failure. In addition, the Official Receiver will report on the conduct of directors [the D-report see above].

The Official Receiver may seek to have a Licensed Insolvency Practitioner appointed as Liquidator by use of virtual meetings of creditors, electronic voting, and the Deemed Consent procedure [see above]; however, he will still continue his role as investigator into the company's affairs and reasons for failure.

The end of the Liquidation

The process is very similar to a CVL [see above].

4 A brief word on the alternatives

Well, a brief stroll through the burial of a limited company, but needless to say, where the corporate pulse is beating strongly and appropriate medicine can be administered, there are the following alternatives

• Administration/Pre-pack – please refer to our No-Nonsense Guide on Administration for a complete review of the process, a protection procedure which can result in the company being returned to viability.

• Company Voluntary Arrangement (CVA) – please refer to our No-Nonsense Guide on CVA, a binding agreement with creditors that leaves the directors in charge of the company's destiny.

Contact Us

We accept that making that initial contact with a professional can be very difficult for directors who have been trying their best, for probably several months, to resolve a company's distressed financial position. It is our job to give you the right advice and ensure that, as far as possible, the directors' decision making cannot be challenged at a later date.

We really are a good team to deal with, so please do not hesitate to contact us:

Tel: 020 8549 9915

Email: enquiries@insolvency-online.co.uk

Disclaimer: This information and the descriptions are designed for general understanding; they may or may not be absolutely
correct in every circumstance. We disclaim any potential or actual liability arising from any reliance upon any description in this Guide. The information and opinions expressed in our website are not necessarily comprehensive and do not purport to give professional advice. Insolvency-Online and its associated web-sites are trading styles of WSM Marks Bloom LLP which is a limited liability partnership registered in England and Wales [Number: OC398909] with offices in Guildford and Kingston upon Thames whose registered office is Connect House, 133-137 Alexandra Rd, Wimbledon, London, SW19 7JY.