Insolvency Online MVL

The no nonsense guide to **Solvent Liquidations**

[Limited companies and LLPs]

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Introduction

Welcome to our No Nonsense Guide to Solvent Liquidations or Members' Voluntary Liquidations ["MVL"] as they are more usually known.

There is so much information out there on the web that even professionals in this 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 Solvent 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 Solvent Liquidations.

It must seem rather odd, but the legal provisions relating to the liquidation of solvent companies are contained within a piece of legislation known as the Insolvency Act 1986. Well our Guide cannot explain why this is the case, but our team of highly experienced Licensed Insolvency Practitioners can ensure that the solvent liquidation of your company is professionally handled and as stress-free as possible.

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.

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1 General information

Definition of solvent liquidation

Members' Voluntary Liquidation ["MVL"] is a solvent liquidation where from the outset it is envisaged that all creditors will be paid in full. It 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, settle the creditors [who are also entitled to Statutory Interest at the rate of 8% per annum until they receive payment of their debts] and distribute the net realisations to the shareholders.

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

Types of liquidation

MVL is the only type of solvent liquidation.

2 Tax Considerations

What are the three main considerations when looking to place a company into MVL liquidation?

The tax! The tax! The tax!

Yes, the MVL procedure is concerned with the orderly wind down of a company's affairs, but the key people involved are the shareholders who have often risked capital or built up "sweat equity" and now need to ensure that the liquidation of the company is done to ensure the maximum return to the members.

So tax planning pre liquidation is essential and must remain the responsibility of the company's existing tax advisers who will know the history of the company's dealings with HM Revenue & Customs. If the company no longer has access to tax advisers, we can put the directors in touch with duly qualified tax practitioners. As potential Liquidators to the company, we would not wish to find ourselves in a possible conflict of interest by seeking to advise upon the tax strategy that should be adopted.

In basic terms the main tax reliefs available to individual shareholders can be summarised as follows:

- Business Asset Disposal Relief (BADR) aka Entrepreneurs' Relief - capital reliefs, such as BADR, can be applied to all capital distributions by the Liquidator to shareholders who own 5% or more of the company's shareholding. When BADR is available via an MVL, a capital distribution could be taxed at an effective Capital Gains Tax rate as low as 10%, instead of being taxed as a dividend receipt on an effective rate of up to 42.5%.

  Each eligible individual is allowed to claim up to £1 million worth of BADR in a lifetime. BADR reduces the amount of the Capital Gains Tax (CGT) on a disposal of qualifying business assets on or after 6 April 2008, as long as the shareholder has met the qualifying conditions throughout a one-year qualifying period either up to the date of disposal or the date the business ceased.

  BADR is available to individuals and some trustees of settlements, but it is not available to companies or personal representatives of deceased persons or in relation to a trust where the entire trust is a discretionary settlement.

- Annual Exemption - in addition, there are available to all shareholders that are individuals, the usual annual exemption tax free allowance [known as the 'Annual Exempt Amount'] which allows shareholders to make a certain amount of gains each year before tax has to be paid- the annual tax-free allowance for the Tax Year 2022/23 is £12,300 – a 5 Year freeze up to and including 2025/26.

3 Members' Voluntary Liquidation

When a company has served its purpose, the correct course of action is to place it into an MVL particularly if the directors are unsure as to whether or not all historic creditors have been settled in full [e.g. warranty provisions in contracts/ old leases with potential residual liabilities/former employee claims]. The MVL process will hopefully flush out such creditors and will demonstrate to third parties that the directors have taken all reasonable steps to identify such creditors.

The process of placing a company into MVL

There are two routes to liquidation:

Route One

It is now very common, especially for companies where there are 4 or fewer shareholders, for the company to be placed into liquidation by way of Written Resolution. On a date agreed by the directors, Written Resolutions [including the resolution to liquidate] are sent out to shareholders and at the time that holders of 75% of the voting shares give written approval to the Special Resolution, the company goes into liquidation. If the members do not approve the Special Resolution within 28 days from the date of circulation, it will lapse and will not be passed.

Route Two

In cases where there are more than a handful of shareholders, it is usual for the company to proceed into liquidation as a result of a vote at a General Meeting of shareholders. The first step is for the Board of Directors to resolve to summon a general meeting of shareholders to pass a Special Resolution to place the company into MVL and an Ordinary Resolution for the appointment of a Liquidator. One of the company's directors will be nominated by the Board to act as Chairperson of the meeting of shareholders. The shareholders will be sent a formal notice of the meeting and the notice period must comply with the notice provisions as contained within the company's Articles of Association [usually 21 days]. The shareholders can consent to a shorter notice period [95% of the voting shares required to give such consent].

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.

Shareholders can nominate the Chairman or any other individual attending the meeting as their proxy to vote on their behalf.

The Declaration of Solvency

Prior to the passing of the Special Resolution to put the company into liquidation, both directors [if there are only 2] or a majority of directors must declare before a solicitor [where the directors are based overseas, the declaration usually takes place before a Notary Public] a Declaration of Solvency stating that they have made a full enquiry into the affairs of the company and are satisfied that the

company can pay all its debts in full [together with Statutory Interest at 8% per annum] within 12 months of the commencement of the MVL.

The Declaration of Solvency, which is drawn up to a date as close as reasonably possible to the declaration date, incorporates a Statement of Affairs which shows the company's assets and liabilities at estimated to realise values. It is a criminal offence [leading potentially to a fine or imprisonment or both] for a director to make the Declaration without reasonable grounds to do so. Needless to say, if the solvency of the company is considered marginal, it should proceed into a Creditors' Voluntary Liquidation [CVL].

The Declaration of Solvency is filed at Companies House as part of the liquidation process.

The process after the commencement of liquidation

The Liquidator takes control of the company's affairs and the executive powers of the directors cease. Quite simply, the Liquidator will realise the assets, pay the creditors and distribute the net sale proceeds or remaining assets in their physical form ["in specie"] to shareholders. At the very outset, it is envisaged that a MVL liquidation will be done and dusted well within 12 months. They do sometimes go on for a longer period of time and accordingly, shareholders are kept informed by an annual report that must be sent out by the Liquidator explaining what he has been doing in office.

Distributions to shareholders

The key to the timing of distributions to shareholders tends to be the calculation of the likely Corporation Tax liability in respect of pre-liquidation trading and post liquidation disposals of assets [which may give rise to chargeable gains]. In most cases, there is a very early initial distribution to shareholders whilst the tax clearance is being obtained from HM Revenue & Customs. A sensible Liquidator will only make such an early distribution if he holds clear and unambiguous written undertakings from the directors and major shareholders stating that the distributed funds will be returned to him should they be required to meet the claims of creditors or the costs of the liquidation.

If the company's Articles of Association provide for it or if the shareholders duly resolve at the initial meeting of shareholders, the Liquidator can distribute assets "in specie", that is to say he can distribute the physical assets to the shareholders rather than first sell them and convert them into cash. This often happens in the case of freehold land or large items of plant and machinery.

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 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.

4 Section 110 Reconstruction

This is again a reference to a section of the Insolvency Act 1986 which has nothing to do with an insolvent company.

Section 110 is a tax efficient way of reconstructing the financial affairs of a company. Done correctly and a capital gains charge at both the corporate shareholder level can be avoided.

It allows for a liquidator in a MVL to accept shares in a new company or companies as consideration for a part or whole disposal of the business and assets of the company in liquidation. It is useful where a company operates more than one business and wants to dispose of one of its businesses or where the shareholders of the company wish to split between themselves assets [i.e. investment properties] and go their separate ways.

In virtually all cases, it is advisable for the company's existing tax advisers to obtain tax clearance for the proposed reconstruction prior to liquidation.

5 A brief word on the alternative

Voluntary Strike Off and Dissolution

If the company's assets available for distribution are less than £25,000 it may well be advisable to take advantage of Sections 1030A and 1030B of the Corporation Tax Act 2010 [provisions previously contained in the Extra-Statutory Concessions Order 2012 aka ESC C16].

The provisions provide that there is an automatic right to be able to treat up to £25,000 as a return of capital to shareholders [rather than dividends] in anticipation of the dissolution of the company. In most cases this will achieve a

better tax outcome for the shareholders. What directors cannot do is make such a distribution themselves and then seek to put the company into liquidation to enable a liquidator to distribute any funds in excess of £25,000. Care must be taken by directors adopting this course of action and needless to say the company's tax advisers must be consulted.

Assuming that the disposal of assets can be done, then the actual strike off can be achieved fairly simply. The application for voluntary strike off cannot be made if, at any time in the last 3 months, the company has:

- traded or otherwise carried on business

or

- changed its name;

However, a company can apply for strike off if it has settled trading or business debts in the previous three months.

Contact Us

Maximising recoveries to shareholders in a solvent liquidation is an absolute priority.

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:

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