

## CREDITORS' VOLUNTARY LIQUIDATION

### Overview

A creditors' voluntary (insolvent) liquidation is initiated in the following manner. The directors recommend a proposal to the members (shareholders) to wind up on the basis that the company is unable to pay its debts. The shareholders' resolution authorises a meeting of the creditors. A statement of affairs is prepared. Fourteen days' notice must be sent to all members. This can be waived under certain circumstances.

The shareholders meeting requires a special resolution (75% majority) to wind up the company and an ordinary resolution (50% in value) to appoint a member's liquidator. It must be advertised in the London Gazette and two newspapers circulating in the locality within 14 days. A copy must be sent to the Registrar of Companies within 15 days.

A meeting of creditors must be held within 14 days of the shareholders' meeting. Creditors must be given at least seven days notice. The notice must identify the proposed insolvency practitioner and will furnish creditors with information regarding the company as they reasonably require. The meeting must be held in a convenient place and location. A list of the names and addresses of the company's creditors must be available for inspection prior to the meeting.

A director of the company chairs the creditors' meeting. The directors must prepare a statement of affairs in the prescribed form. The resolutions to be passed by the meeting include one for the appointment of the liquidator and for the establishment of the liquidation committee (if so chosen) and the basis of the liquidator's remuneration (time or commission). The meeting may be adjourned, if necessary, for up to three weeks.

The creditors are given an opportunity to appoint a liquidator. If there is a conflict between the members and creditors, the creditors' liquidator is appointed. If no liquidator is appointed by the creditors, the members' choice remains appointed.

If either group is unhappy with the liquidator appointed, an application can be made to Court within seven days for replacement. The nominated liquidator must provide the chair with a completed form confirming his qualifications and his consent to act.

The liquidator must then advertise his appointment in the London Gazette and send it to the Registrar of Companies within 14 days. He must advertise the appointment in one local newspaper and file a statement of affairs to the Registrar of Companies.

### **Creditors' Committee**

The creditors' committee may be formed by the creditors at the initial creditors' meeting or any subsequent meeting of creditors in order to assist the liquidator. The creditors' committee acts on behalf of the creditors as a whole. It consists of at least three but not more than five creditors who have debts not fully secured. The liquidator must give a certificate once he is satisfied that the committee is properly constituted. This must be filed in Court and copies must be sent to the Registrar of Companies.

The committee represents the creditors as a whole. It must assist the liquidator and act as a sounding board. The liquidator has certain obligations to the committee. He must give them seven days' notice and chair the meeting. They can request access to the liquidator's records.

The committee must meet within three months of the later of the appointment of the liquidator or formation of the committee. Subsequent meetings are held within 21 days of request being received or on a date previously agreed. The liquidator must give committee members notice of the meeting at least seven days in advance, chair the meeting or nominate a chair.

A liquidation committee member and their representative must not receive any payment for services or goods provided in connection with the liquidation, make any profit or acquire any asset in liquidation. Certain powers of the liquidator may only be exercised with the sanction of the Court or with prior sanction by the committee.

The liquidator must report on all matters which appear to be or have been indicated by the committee as being of concern in the winding up. No report is required on matters which are not of concern. If the request for a report is unreasonable or the cost of complying excessive, no report is required. The liquidator must provide a written report to every member of the committee on the progress of the winding up. This must be done at least every six months.

The committee can sanction the continuation of the directors' powers and exercise certain powers of the liquidator. They can require the liquidator to report certain matters of concern. They can require the liquidator to convene a meeting. They can agree the liquidator's remuneration. They can resolve that costs, charges and expenses be payable out of the assets or as determined by the Court.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.