

## COMPANY SOLVENT LIQUIDATIONS

### Reasons for Voluntary liquidation

A company may terminate its existence for a wide variety of reasons, apart from insolvency and the inability to pay its debts. A winding up where the company is solvent is a so called "members" or "shareholders" voluntary winding up. Many of the procedures are similar to those for a creditors voluntary winding up. The principal difference is that the shareholders rather than the creditors have control.

A voluntary winding up may occur because the purpose of the company has been achieved. This may be appropriate in the case of a single purpose company for a particular project. It may also be appropriate in the case of a company where the shareholders have decided that company's value is best realised by break up and division of its assets than by continued trading.

Shareholders may have "fallen out" and may wish to terminate the company and distribute its assets in order to go their own ways. See our commercial guides on our website in relation to Company Shareholder Agreements. Where there is a deadlock between shareholders which can not be satisfactorily resolved, a winding up is a possible outcome. The shareholders liquidate the company's assets and separate.

Sometimes companies are wound up voluntarily in the context of a group re-organisation. Re-organisations are frequently undertaken for tax and management purposes. Some times a redundant company is left which has transferred its assets to a new entity in exchange for shares in that new entity being issued to a third party. This company is then wound up. A company may not transfer its assets unless it is in fact solvent. The better way to ensure that this occurs is to undertake the transfer by a liquidator in a solvent liquidation.

## Procedure

The directors must recommend the motion for voluntary liquidation to the members and call a general meeting. Fourteen days' notice of the general meeting must be given. A special resolution to wind up the company requires 75% majority of the votes cast. The members may pass other resolutions at the meeting including those in relation to liquidator's remuneration, permitting distribution in specie and certain other authorities.

The special resolution must be filed with the Companies Offices and advertised in the London Gazette within 14 days. The liquidator is obliged to give notice of his appointment to all creditors within 28 days, to the London Gazette within 14 days and to the Registrar of Companies within 14 days.

The directors must complete a declaration of solvency. In a voluntary winding up, a declaration of solvency must be made in the five weeks preceding the resolution to wind up. It must be sworn by all directors or if there are more than two, a majority. It must contain details of the company's assets and liabilities and be filed with the Registrar of Companies. It must confirm that the directors have made enquiries of the company's affairs and that they are satisfied that the company is able to pay its debts together with interest within a period not exceeding 12 months of the date of the commencement of winding up.

If the liquidator becomes aware the company will be unable to pay its debts within the 12 months period he must:-

- summon a meeting of creditors within seven days to be held within 28 days;
- advertise the meeting in the London Gazette and at least two newspapers in the locality of the principal place of business and

- prior to the meeting, provide creditors with information concerning the affairs of the company

### **Duties of Liquidator**

The liquidator collects in the assets and distributes them or their sale proceeds, to the shareholders in the required order. If the collection and distribution of assets takes more than a year, the liquidator must call a general meeting at the end of each year in order to keep the shareholders informed.

A final meeting of shareholders is held prior to dissolution of the company. The liquidator shows that the affairs have been fully wound up and lays an account before the meeting. The meeting is advertised in the Gazette. After the meeting the liquidator sends an account to the Companies Office and files returns of the holding of the meeting and its date. The company is then dissolved three months afterwards.

In a voluntary liquidation, certain of the liquidator's powers require sanction. These can be from a special resolution of the company, a creditors committee (in an insolvent winding up) or the Courts. Actions requiring sanction, include payment of creditors in full, making compromises with creditors, comprising claims by the company against third parties and bringing certain legal proceedings.

Certain other powers do not require sanction in any type of liquidation. They include selling property, signing documents, claiming against debtors, raising money on the security assets, appointing agents and such other matters as are generally necessary for the winding up of the company.

### **Conversion to Creditors Voluntary Winding Up**

It is possible that a members' voluntary winding up may have to be converted into a creditor's winding up. If the liquidator reaches the opinion in the course of a member's voluntary winding up that the company is insolvent, it is converted into a creditor's

winding up. The liquidator then calls a meeting of the creditors to present a full statement of affairs. The winding up then proceeds in the same way as a creditor's winding up.

The meeting would be deemed to be the creditor's meeting for the purpose of a creditors voluntary liquidation. The liquidator must set out the statement of affairs of the company in the prescribed form, attend and chair the meeting. The members voluntary liquidation is thereby converted into a creditors voluntary liquidation.

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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.