

# Creditors Voluntary Liquidation

## What Is Creditors Voluntary Liquidation?

This is the most common form of liquidation in use in England and Wales and brings to an end the operation of the company.

## Who can benefit from it?

It is used for those companies which are simply no longer viable, which have run out of cash and cannot pay their liabilities on time, and which our free business review has shown not to be in a position to benefit from alternative reconstruction and recovery procedures.

## The Procedure in Brief

The directors hold a board meeting during which it is resolved that by reason of its liabilities the company cannot continue to trade and that a meeting of shareholders and creditors is called to resolve that the company be placed into liquidation. During this meeting, one of the directors of the company, usually the Managing Director is appointed to chair the meetings of creditors and shareholders.

In practice, a Licensed Insolvency Practitioner ("IP") will produce the relevant board meeting minutes and notices calling the meeting of shareholders and creditors.

Following the board meeting, the notices to shareholders (21 days notice required or shorter in the event that consent to short notice can be approved by 95% of the shareholders in value) and the notices to creditors are sent advising of the date, times and locations of the respective meetings.

Between these notices being sent and the meetings taking place, the IP prepares a report for presentation at the respective meetings which includes the following information: -

- Statutory information on the company.
- History of the business
- Historical financial information of the company.
- Deficiency account.
- Statement of affairs
- List of creditors

The meeting of shareholders is held prior to the meeting of creditors and although the creditors meeting must be held within 15 days of the passing of the resolution to wind-up the company up by the shareholders, more often than not, in practice it is held immediately following the shareholders meeting. Please note that it is the shareholders by passing a resolution requiring 75% of shareholders in value, voting in person or by proxy, that appoint

the liquidator. This appointment is however, subject to formal ratification at the meeting of creditors.

At the meeting of creditors, theoretically the Chairman presents the report prepared with the assistance of the IP to creditors before opening the meeting to any questions they may have. In practice, the IP conducts the meeting. Creditors are entitled to ask the Chairman, directors and liquidator questions regarding the affairs of the company.

After all questions have been dealt with the meeting moves to the formal business stage at which a liquidation committee can be formed to assist the liquidator in his duties. In order for a committee to be formed, a minimum of 3 and a maximum of 5 creditors must be prepared to be on the committee. If as is often the case no committee is formed, a number of resolutions are passed to include confirmation of the liquidator's appointment, how the liquidator will be remunerated, the choice of solicitors and agents the liquidator wishes to utilise to assist in the liquidation and certain ancillary powers contained within Schedule 4, part 1 of the Insolvency Act 1986, such as the ability to compromise the debts of the company.

It is possible for creditors to change the liquidator at the formal business stage of the meeting of creditors assuming a majority in value of creditors wish to nominate an alternative liquidator. In these circumstances the alternative liquidator will take control of the affairs of the company.

Following the appointment of a liquidator it is his responsibility to realise the assets of the company and distribute them in accordance with the Insolvency Act 1986. In calculating a dividend available, a liquidator must take into consideration the rights of secured creditors and preferential creditors prior to payment of a dividend to unsecured creditors. It is also the liquidator's duty to adjudicate the claims of creditors.

The liquidator will also investigate the affairs of the company, particularly in relation to those areas contained within the director's responsibility section of this web site and bring actions against directors or such other parties as appropriate.

## **Key Components for a Successful CVL**

The true sense of success in respect of this procedure can only really be governed by how smoothly the liquidation process operates and ultimately whether a dividend becomes available to creditors. Although the liquidator can attempt to influence the latter, this can be difficult as he only has the ability to work with the assets available in the liquidation. If realisations from the assets are insufficient with which to enable a dividend to be paid to creditors, there is very little he can do to influence this other than by identifying alternative actions which may result in a recovery for the benefit of creditors.

## **Advantages of a CVL**

### *Directors*

Assuming proper insolvency advice has been taken, the appointment of a liquidator may minimise the directors' exposure in respect of a wrongful trading action.

It will provide peace of mind to the directors who no doubt would have been suffering during this difficult period.

### *Creditors*

It enables creditors to immediately recover the VAT element of the outstanding liability.

In those circumstances where creditors have concerns regarding the actions of the directors, it provides them with the ability to raise these issues with the liquidator for subsequent investigation, which may lead to one of the actions indicated within the director's responsibilities section of this web site. A successful action may enhance the return to creditors from the liquidation.

## **Disadvantages of a CVL**

### *Directors*

The conduct of the directors will be investigated by the liquidator who is under an obligation to file a report to the Disqualification Unit of the Department of Trade & Industry. The Disqualification Unit at the Department of Trade & Industry will consider the contents of the liquidator's report before deciding whether or not to bring an action against the directors for a disqualification order.

Liquidators can bring those actions included within the director's responsibilities section against the directors and such other parties as are deemed appropriate.

### *Creditors*

Generally the procedure provides a poor dividend return to creditors.