



Factsheet regarding Members' Voluntary Liquidations ('MVL's)

Purpose of MVL

This procedure is used to wind up a solvent company, which is no longer required. It generally has tax advantages for the shareholders, and must be used if the assets, including share capital, are £25,000 or more.

Procedure

The MVL must follow the procedure set out in the insolvency legislation. We will assist you with the preparation and administration at each stage, including drafting notices, minutes and other documents where appropriate. We will also prepare the documents to commence the liquidation process including the Declaration of Solvency, but the ultimate responsibility remains with the directors.

The following main steps must take place in each appointment:

Board meeting: A quorate meeting of the Board of Directors will have to approve the issue of notices convening the Members' meeting required by statute to place the Company into MVL, nominate someone to act as chairperson at the meeting of Members and state the Director(s) who are to sign the Declaration of Solvency on behalf of the Company.

Notices: Notices have to be issued convening a meeting of Members to pass resolutions to wind up the Company voluntarily, appoint Liquidators, set the basis of the Liquidators' remuneration, and any other resolution necessary in the circumstances of the Company for the administration of the liquidation, such as granting the Liquidators the power to distribute assets in specie to the Members.

Declaration of Solvency: The Director(s) nominated by the meeting (which must be all of them if there is only one or two Directors, or a majority if there are three or more Directors) will be required to sign a Declaration of Solvency on behalf of the Company. The Declaration must confirm that the Company will be able to pay its debts in full, including interest, within no more than 12 months of the commencement of the date of the liquidation. We will prepare the Declaration of Solvency from the information that you provide, but it remains your Declaration. In the event it transpires the Company is in fact insolvent, and it is placed into creditors' voluntary liquidation by the Liquidator(s), it is presumed that the Declaration of Solvency was not made on reasonable grounds, which leaves the Director(s) who swore it liable to a fine and/or imprisonment.

VAT

There is no need to de-register for VAT pre-liquidation as this can be done post liquidation by the liquidator(s) but it is generally quicker if the directors do de-register pre winding up.

Assets

When a company is wound up, the assets (including any cash in the bank) vest in the liquidator and the directors have no power or authority to deal with them. Some banks tend to be very slow at closing company bank accounts with large credit balances following the winding up. When this occurs, we usually notify the directors. Direct contact between the directors and the bank at this stage is often sufficient for the bank to transfer the funds and close the account. Alternatively, the directors may prefer to transfer the funds to our client account a day or so before liquidation.

Indemnity

Shareholders will be required to provide the liquidators with an indemnity before any distribution can be made. In certain circumstances the indemnity may have to be supported by security.

Distribution

Shareholders can usually have a distribution of about 75% of the estimated surplus, approximately seven weeks from the date of winding up. The balance will be paid when the liquidators are satisfied that to the best of their knowledge there are no matters outstanding including liabilities or contingent liabilities.

HMRC

The Liquidators need to be satisfied there are no outstanding returns or liabilities due to HM Revenue and Customs before the liquidation can be finalised and balance of funds paid to the shareholders.

In advance of winding up the proposed liquidators will require the directors to provide print outs from the company's Government Gateway account. The print outs must include copies of all returns submitted in the preceding two years along with confirmation that there is no liability owing to HMRC, or a statement showing how much is due in respect of VAT, PAYE and Corporation Tax.

After winding up, the Liquidators will instruct the Company's accountants to prepare and submit all outstanding returns to the date of liquidation. The accountants' reasonable costs of preparing the accounts and preparing and submitting all returns will be payable as an expense of the liquidation.

HMRC is currently charging statutory interest on all liabilities due to them from the date of liquidation to the date of payment, including on Corporation Tax, even where this is paid before it is due. Therefore, we would recommend that all debts to HMRC are paid prior to winding up and if necessary, we would suggest the directors pay what is estimated will be due, as any overpayment will be repaid to the liquidators for the benefit of the estate in due course.

Claims Arising

In the event a valid claim is received by the liquidators after the funds have been distributed to the shareholders, the liquidators will make demand of the members under the terms of their indemnity to repay such funds as they deem necessary to pay the debt in full plus statutory interest.

If the liquidators have already received their release when the liability comes to light, the company may be restored to the register, the liquidators re-appointed, and a claim made under the terms of the shareholders indemnity, which would have significant cost implications for the shareholders.

Distribution in Specie

Assets may be transferred in specie post liquidation by the liquidators. It should be noted though that any tax advantage will be lost if the transfers are effected pre-liquidation.

Closing and Release

Steps are always taken to make the final distribution and close the liquidation as soon as possible, but on occasions this may take longer than hoped.

Dissolution

The company will automatically be dissolved by Companies House about three months after the release of the liquidators.

Undisclosed Assets

Any assets not disclosed to the liquidators and therefore are not dealt with within the liquidation will become 'bona vacantia' which effectively means they have no owner and will belong to the Crown.