

Liquidation

If a company is insolvent, and has no prospect of trading on or restructuring its affairs and consequently has no prospect of avoiding liquidation, it can be wound-up either by creditors or the company directors and shareholders can initiate the process.

Creditors can petition the Court and place the company into compulsory liquidation. The Court appoints the Official Receiver (OR) as liquidator with the responsibility for winding-up the company and reporting on the conduct of directors. Where there are more significant assets the OR can arrange for an Insolvency Practitioner to be appointed as liquidator to realise the assets and distribute to creditors. There are substantial fees payable to the Insolvency Service on the realisation of assets as well as the costs and fees of the OR.

Shareholders, at the directors' request, can initiate a creditors' voluntary liquidation (CVL) where an Insolvency Practitioner is appointed to take control of liquidating the company without the need to go to Court. A creditors' meeting is convened at which creditors confirm the appointment of the proposed liquidator or suggest an alternative liquidator. A CVL is the most common way for directors and shareholders to deal voluntarily with their company's insolvency.



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WHEN TO CONSIDER THIS

Compulsory liquidations are usually instigated by creditors when the company has no assets and its directors have not taken steps to address the position of the company. This is generally the least preferable option for all concerned as it is expensive, bureaucratic and the directors have no control over who is appointed. If a company has assets available to distribute to creditors a CVL is the better option. The directors have some initial control on the choice of Insolvency Practitioner although this can be overruled by creditors.

OUR APPROACH

When we are approached to advise a company that is insolvent, we will consider all the appropriate options. If there is no realistic prospect of a restructuring or going concern sale of the business and assets, or the company has already ceased trading, it is likely that a CVL will be the preferred option and we will help the directors and shareholders to initiate that process. Once appointed we will notify creditors of the position and invite them to a meeting scheduled within 14 days of the winding-up resolution. At the meeting, creditors can question the company directors about the company's failure and if they wish suggest an alternative liquidator. The company must also present a statement of affairs at the meeting providing details of the company's assets and liabilities. After the meeting, we send the statement of affairs to Companies House and then complete four main tasks:

- » Convert the assets of the business into cash
- » Determine how much is owed by the company and to whom
- » Investigate and report upon the conduct of the company directors
- » Where sufficient funds are available make payments to creditors in order of priority.

SOME EXAMPLES OF WHAT WE DO

We assisted an insolvent UK company, owned by Spanish and Italian parent companies, which had ceased trading. We implemented a voluntary winding-up, agreed by the parent companies and creditors to maximise the available assets, including those overseas, on behalf of creditors in a cost effective way.

We advised a venture capital start-up, which was burning cash at an unsustainable rate, as to whether it should seek another round of investment or wind-up. We reviewed and revised the cash flow forecasts and concluded that further investment was not a viable option. We advised on a public sales process with the business and assets sold enabling jobs to be preserved and the business to continue with new owners. The sale proceeds were distributed to creditors through a CVL as there were insufficient funds to pay creditors in full.

We are acting for creditors on a compulsory liquidation after broken promises made by an alleged 'insolvency consultant' on behalf of the debtor company. We established that this individual was disqualified from acting as a director and may have been acting as a shadow director. As liquidator, we are pursuing a claim on behalf of the company creditors and also assisting the authorities in connection with possible civil and/ or criminal offences.