

# LIQUIDATION TOOLKIT



# LIQUIDATION TOOLKIT

## Liquidating a business

Should it be necessary to close down your business, you will need to go through a formal liquidation process. This will ensure all your company's affairs are dealt with properly, the end result being that the company is dissolved and ceases to exist.

Depending on the financial position of your business at the time, there are three options:

- Creditors' voluntary liquidation;
- Compulsory liquidation; or
- Members' voluntary liquidation.

## CREDITORS' VOLUNTARY LIQUIDATION

This process is where a company is insolvent (i.e. its debts are more than its assets) and can no longer meet its financial obligations as they fall due.

The process is initiated by the directors of the company and there are three steps to put a company into creditors' voluntary liquidation (CVL):

1. The directors hold a board meeting at which the financial position of the company is discussed and a decision is taken to place the company into voluntary liquidation;
2. A general meeting of the company is held at which shareholders agree the company cannot continue in view of its liabilities. Shareholders pass resolutions closing down the company and appointing a liquidator. This can be done by written resolution if the company's Memorandum and Articles of Association allow;

3. The creditors are notified of the directors' decision and receive details of the company's financial position. They are given an opportunity to object to the appointment of the proposed liquidator and nominate their own choice of liquidator by a set date.

## Next steps in a CVL

The liquidator takes control of the company's affairs and the powers of the directors cease but they remain in office. The liquidator's primary duty is to realise the company's assets for the creditors. This is done by protecting and securing the assets, with a view to selling them for best value.

If the directors intend to set up in business again, it is likely they will wish to buy the company's assets from the liquidator. The value of the database, contracts, brand, name and any other items that can be attributed to goodwill will be taken into consideration.

Whoever purchases the assets are required to pay fair market value and the liquidator will instruct an independent valuer to negotiate a sale with interested parties. The liquidator might also assist the directors in liaising with the employees being made redundant who may need help with their applications to the Redundancy Payments Office to claim for any arrears of wages, notice and holiday pay and/or redundancy payments to which they are entitled.





### Concluding a CVL

The directors are obliged to provide information about the company's affairs, assist the liquidator with their enquiries and hand over the company's books, records, bank statements and other relevant papers. Once the liquidator has settled all costs and expenses of the liquidation and distributed any remaining money to the creditors, they conclude the liquidation, the company is dissolved and ceases to exist.

### Considerations before undertaking a CVL

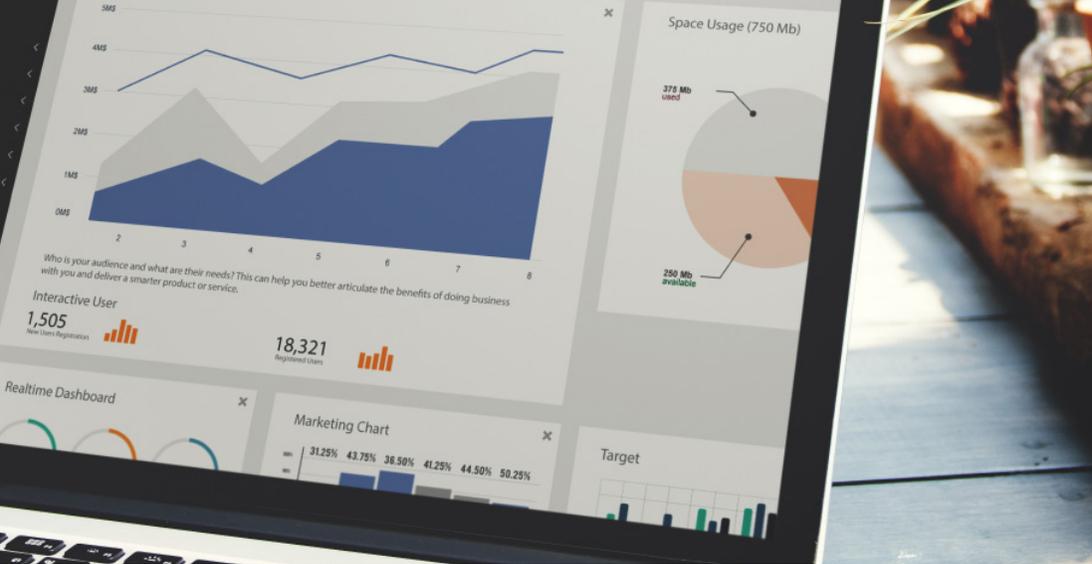
- Company debts that are personally guaranteed by directors will fall to them to pay;
- Directors may have to buy back company assets if they wish to continue trading in a new entity;
- Overdrawn directors loan accounts will have to be repaid;
- A new lease may have to be negotiated with a landlord;

- The liquidator will report on the directors' conduct in managing the business;
- The liquidator will investigate the affairs of the company and conduct of the directors in the run-up to liquidation. If any misconduct or wrongdoing is discovered and legal proceedings are necessary, they might be personally liable for the debts or have to contribute to the company's assets.

### Benefits of a CVL

- Ongoing legal actions against the company are stopped;
- Leases and hire purchase arrangements are generally terminated;
- The costs of the liquidation can often be met by the value in the company's assets;
- A voluntary liquidation avoids the hostility of a winding-up petition and ensuing court hearing.





## COMPULSORY LIQUIDATION

Compulsory liquidation is more often referred to as 'winding up a company' (WUC).

What is involved in a WUC?

A WUC is quite different to a CVL and involves a company being forced into liquidation, or wound up, by the court. It is usually the last resort for a creditor to get paid. A winding-up petition can be lodged by any creditor, director, a non-administrative receiver or an assignee of a debt.

Grounds for winding up include:

- when a company cannot pay its debts;
- the court concludes that it is just and equitable that it be wound up.

### The WUC process

Before WUC compulsory liquidation occurs, a statutory demand (which gives the company 21 days to pay in full or negotiate a settlement) is sometimes issued. If the debt is still unpaid after 21 days, the creditors will usually apply for a winding-up petition to be heard at court.

Once seven days have expired, the petition is advertised. The impact on the company can be devastating as the bank account is closed immediately without notice and it becomes extremely difficult to secure credit.

Any other creditor can use the same petition for their debt, so even if the original debt is paid, it does not mean the petition will go away. While it is sometimes possible to convince a creditor to settle the petition, the company will be expected to pay legal costs.

A winding-up petition that has been heard and approved at court becomes a winding-up order. At this stage, the company is placed into compulsory liquidation and the official receiver is appointed liquidator.

In some scenarios, the creditors may request that an insolvency practitioner is appointed in place of the official receiver. The duties of a liquidator in a WUC are exactly the same as in CVL.

## MEMBERS' VOLUNTARY LIQUIDATION (MVL)

If the company is solvent (i.e. has more assets than liabilities), the directors can put the company into solvent liquidation. This may also generate some tax advantages for the members (shareholders).

The process is normally used where the company has come to the end of its useful life, the directors wish to retire or the shareholders wish to extract the profits from the company.



### Four steps to put a company into MVL

1. The directors hold a board meeting at which the financial position of the company is discussed and a decision is taken to place the company into voluntary liquidation;
2. The directors nominate their chosen liquidator, who assists the directors in compiling a statement of affairs setting out the company's assets and liabilities;
3. The directors swear a declaration of solvency stating they have formed the opinion that the company will be able to pay its debts in full (including all HMRC liabilities), together with statutory interest within 12 months from the commencement of the process;
4. Shareholders pass resolutions to close down the company and appoint a liquidator. When resolutions are passed from shareholders whose shares added together are at least equal to 75% of the total voting shares of the company, the company is deemed to be in liquidation.

### What to expect from MVL

The liquidator takes control of the company's affairs and almost all powers of the directors cease. The liquidator's primary duty is to ensure all creditors are paid in full, including any statutory interest, within 12 months. To do this, the liquidator realises assets of the company as required.

Once the costs of the liquidation are settled, all creditors have been paid and HMRC provides their consent that all final returns have been filed and all crown liabilities paid, the liquidator is able to distribute any surplus money or assets to the company's shareholders in accordance with their shareholding. The remaining assets are distributed in cash.

### Conclusion of MVL

The duration of the liquidation will depend on the nature of the assets involved, but once the process has been completed, the company will be dissolved and cease to exist.

### Considerations before undertaking MVL

- All creditors may be paid in advance of liquidation to make the liquidation process quicker and more straightforward;
- All final tax returns must have been filed, paid and schemes closed;
- All pension schemes must be closed or transferred;
- An accountant is instructed to complete final cessation accounts;
- Advice must be sought on any personal tax implications.

### Benefits of MVL

- Potential tax advantages for shareholders through distribution of capital;
- Liquidator assumes responsibility, deals with all assets and adjudicates on creditor claims;
- Liquidation crystallises liabilities;
- Creditors who do not claim are not entitled to disturb any distributions made by the liquidator.

# MOORE KINGSTON SMITH LICENSED INSOLVENCY PRACTITIONERS

As licensed insolvency practitioners, we have long-standing relationships with many stakeholders including alternative funders, creditors and HMRC and can handle negotiations on your behalf. You can trust us to secure the optimal commercial solution for your business whether via a solvent or insolvent route. At every stage, you'll find us straight-talking, sympathetic and flexible. Our expert restructuring team has decades of experience in creating positive outcomes from difficult situations.

If you have any concerns or wish to discuss any of the options available, please contact us. The sooner you do, the greater our chances of guiding you towards a successful outcome.

## CONTACT US

City:

+44 (0)20 7566 4020

Heathrow:

+44 (0)20 8848 5507

Redhill:

+44 (0)1737 781572

Romford:

+44 (0)1708 759716

St Albans:

+44 (0)1727 896015



**Ian Robert**

Partner

irobert@mks.co.uk



**Brian Baker**

Partner

bbaker@mks.co.uk



**Michaela Hall**

Partner

mhall@mks.co.uk



**Chris Purkiss**

Partner

cpurkiss@mks.co.uk



**Ryan Davies**

Partner

rdavies@mks.co.uk



**Dale Hernon**

Director of Client Services

dhernon@mks.co.uk



**MOORE Kingston Smith**  
Licensed Insolvency Practitioners

[www.mks.co.uk/recovery](http://www.mks.co.uk/recovery)

Views expressed in this Moore Kingston Smith & Partners LLP publication are those of the contributors. No responsibility for loss occasioned by any person acting or refraining from action as a result of the material in this brochure can be accepted by the LLP or any of its associated concerns.

An independent firm associated with Moore Stephens International Limited.

© Moore Kingston Smith & Partners LLP May 2019

LQTK0819

