

## FREQUENTLY ASKED QUESTIONS

### **As a director, what are my duties once a liquidator has been appointed?**

A director is required to co-operate fully with the liquidator in all matters relating to the company. All books and records must be handed over.

### **What about the re-use of the company's name?**

The same or similar names can only be used in very specific circumstances. Any breach of this is treated seriously by the court and could result in personal liability for the directors for company debts.

### **Can the assets be sold to the directors?**

Yes. The liquidator can sell the assets to any interested party. His duty is to maximise the value of the assets.

### **Will I receive a copy of the report made by the liquidator to the DTI?**

No. This is privileged information and is not available to anyone – including creditors.

### **How are fees agreed?**

The method of charging fees is fully explained at the outset. All details of fees and costs are agreed at the creditors' meeting.

## WHAT TO DO NEXT?

Call us for a free consultation – we will be delighted to help.  
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GRIFFIN & KING

LICENSED INSOLVENCY PRACTITIONERS

LIQUIDATION

## CREDITORS' VOLUNTARY LIQUIDATION AND COMPULSORY LIQUIDATION

### LIQUIDATION – WHAT IS IT?

To liquidate a company is to formally wind up its affairs – trade ceases, assets are realised and the liabilities quantified. If the debts exceed the value of the assets the company is insolvent. In this situation it is the creditors that control the liquidation process. There are two types of formal process to deal with an insolvent Liquidation;

- Creditors Voluntary Liquidation.
- Compulsory Liquidation.

Often the most difficult decision for directors to make is when to commence a formal insolvency procedure. There are numerous definitions of insolvency but the one most commonly quoted is that a company is insolvent if it is unable to pay its debts as they fall due.

Other factors, relevant to the particular company, may also need to be taken into account when the board of directors are considering this question. It is important to have financial information to assist in the decision making process. The most important thing is that the directors act reasonably. Taking professional advice at this point and documenting reasons for decisions is essential.

*Directors can be made personally liable for company debts if they continue to trade beyond the point when they should have thrown in the towel. We would be pleased to advise the board of directors and help the directors make the right decision.*

### CREDITORS VOLUNTARY LIQUIDATION (CVL)

Despite the title, it is the directors that commence the proceedings in this case. The directors will formally resolve that the company cannot continue to trade by reason of its debts. The directors will appoint an Insolvency Practitioner to assist with the preparation of a statement of affairs to be presented to creditors at a meeting of creditors which will usually take place within 28 days. In practice, of course, it is the firm of Insolvency Practitioners that prepare the statement of affairs.

On the day of the meeting of creditors there is also a meeting of shareholders. There must be at least 75 per cent of shareholders voting at that meeting supporting the resolution to proceed.

### THE CREDITORS' MEETING

At least one director must attend and chair the creditors' meeting. The creditors are invited to attend this meeting and must be given at least 7 days notice. The Insolvency Practitioner will present the financial information to the creditors and will, in practice, control and assist with the smooth running of the meeting.

Questions will be invited from the creditors to the directors that they may have in connection with the information produced or generally they may have about the conduct of the directors. The creditors will take a formal vote on the appointment of the Liquidator. In practice the creditors usually appoint the same Insolvency Practitioner as the directors. The financial/statutory information that is made available is;

- Statutory information – officers of the company, registered office, etc.
- Copies of the company accounts or extracts from those accounts.
- Written report from the Directors explaining the trading history and the reasons for the company failure.
- Sworn statement of affairs summarising the company's assets and liabilities.
- Schedule of the company's creditors.
- Deficiency account dealing with the overall losses in the final period of trade.

### DUTIES OF THE LIQUIDATOR

- To maximise the realisation of the assets.
- To bring and defend legal proceedings.
- To agree creditor claims and to pay dividends to the company creditors.
- To report to the Insolvency Service at the Department of Trade and Industry (DTI) within 6 months into the conduct of the directors.

### COMPULSORY LIQUIDATION (CL)

The key difference between a CL and a CVL is that a CL is driven by a creditor, or a number of creditors – not the directors. The creditor, often HM Revenue and Customs, will issue a winding up petition and serve it at the company's registered address.

In practice, the service of the petition can have a devastating effect. The petition is advertised in the London Gazette – the company's bankers will become aware of this and may well freeze the company bank account. In practice, this is most likely to put the company out of business.

The court hearing of the petition will take place approximately 6 weeks after the issue of the petition. Once the hearing takes place it is likely that a winding up order will be made. The Official Receiver (OR) - a civil servant will be appointed Liquidator. Creditors must be notified within 12 weeks. Creditors will also be advised whether the OR thinks it necessary to call a meeting of the company's creditors. An Insolvency Practitioner will be appointed by the creditors at the creditors' meeting or through a Secretary of State appointment where the OR will liaise between the major creditors and the Insolvency Practitioner of their choice.

The OR will carry out the investigation into the conduct of the directors and subsequent report to the DTI.

Should a winding up petition have been issued this CL procedure will take precedence over the CVL procedure.

