

# Guide to solvent liquidations

Business Restructuring and Insolvency



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## 1. Solvent liquidations

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A solvent liquidation or Members' Voluntary Liquidation ("MVL") is a statutory process in which a company's assets are realised and distributed to the shareholders so that the company can then be dissolved.

An MVL can be of assistance in a number of circumstances such as when the activities of a company have run their course or when streamlining a group structure by eliminating unwanted dormant companies.

It can also be used to 'de-merge' two or more trading activities of a single company in what is known as a Section 110 demerger. This might be helpful, for example, when grooming a business for sale or as a mechanism to resolve a shareholder dispute.

## 2. The benefits of a solvent liquidation

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The MVL procedure has a number of benefits.

- A prompt and tax efficient return of capital in excess of £25,000 (the cap imposed on capital distributions outside of liquidation following the withdrawal of Extra Statutory Concession 16) to shareholders. This allows distributions to be treated as capital rather than income in the hands of a shareholder which may be a more favourable tax treatment.
- Elimination of compliance costs such as audit and tax fees and insurances.
- A process to 'de-merge' with the potential to channel each trading activity and / or property only to those shareholders wishing to retain an interest in it without crystallising a capital gain for tax purposes.



### 3. The stages of a solvent liquidation

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#### **Choosing when to liquidate**

The client and his advisor will consider efficient tax planning for extracting the profits to shareholders. The advisor needs to establish whether it is more favourable for the client to suffer income tax or capital gains tax (CGT) on distributions from the company. If the disposal qualifies for Entrepreneur's Relief then in the majority of cases a capital receipt will be favoured as a CGT rate of up to just 10% will be achievable.

#### **Preparing for the liquidation**

Where a solvent liquidation is appropriate to facilitate a capital distribution, the client and advisor will need to instruct a qualified insolvency practitioner (IP) to undertake the liquidation. A solvent liquidation can be put in place surprisingly quickly - in some cases within a matter of days.

A liquidation plan and timetable for distributions will be drawn up by the proposed liquidator in consultation with the client and advisor. The IP will then prepare and provide the client with: a directors' minute for the proposed liquidation, a declaration of solvency together with a statement of assets and liabilities and a notice of a meeting of shareholders.

Once a majority of directors have sworn the declaration of solvency the shareholders can pass the resolution to liquidate where upon the directors' obligations to file accounts and annual returns cease.

The resolution to wind up normally requires 21 days notice however this can be reduced to no notice with shareholder agreement and if desired can be dealt with by way of a written resolution.

#### **Planning and cost control**

Controlling the costs of the solvent liquidation will help maximise the return to shareholders. There are a number of simple things that directors can do in advance that will help to control costs:

- Pay creditors ahead of the liquidation to save the liquidator incurring costs in making the payments. This will also save statutory interest, currently 8%, which is payable on creditor claims in a liquidation.



- Make sure the company's books and records are accurate and up to date.
- Transfer any contracts for personal items, such as mobile phones, prior to the liquidation.

### **Distributions to shareholders**

When using a solvent liquidation to make a capital distribution the timing of the distribution is an important consideration for the client. The liquidator can make distributions from the day of his appointment provided that he is in funds and, if the distribution is to be made before creditors are paid, he holds suitable indemnities from shareholders.

Payments might be made either side of the tax year end to enable shareholders to use their annual capital gains tax exemption in both years.

Distributions need not be in cash. Distributions of underlying assets themselves are called distributions in specie. Where a distribution in specie is made there needs to be agreement as to the value of the asset being distributed such that other shareholders receive appropriate recompense and so that any tax payable by recipients can be calculated.

Where desirable, shareholders can agree to receive distributions in different proportions to their shareholding. All that is required is a written agreement of the shareholders.

### **Dealing with creditors and dissolving the company**

The liquidator has an obligation to ensure that any creditors of the company, including contingent or prospective creditors, are given the opportunity to make a claim. The liquidator will write to all creditors that he is aware of and will advertise for claims.

The liquidator will give creditors notice of the intention to make a distribution. The notice will give a last date for creditors to prove their debt and after this date the liquidator may make a distribution without regard to creditors who have not proved. If this is a final distribution and the creditor does not prove then he may lose his opportunity to do so.

After the payment of creditors and shareholders the liquidator will conclude his assignment. Three months after the closure of the liquidation Companies House will automatically strike the company off the register.



## 4. Section 110 reconstruction

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A Section 110 reconstruction utilises a solvent liquidation in order to demerge or partition a group. We work alongside tax advisors to ensure that the process is tax efficient and to ensure relevant tax clearance is received from HM Revenue and Customs prior to the procedure. A Section 110 procedure can be used to:

- Prepare for the sale of part of a group.
- Separate out divisional trades.
- Separate property from a trading entity.
- Allow different shareholders to take parts of a business forward as separate entities.

The procedure may be used when grooming a business for sale, as part of retirement planning or as a tool to assist in shareholder disputes.

## 5. The alternatives to a solvent liquidation

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Where a solvent liquidation is not likely to be cost effective, we can also advise on how a company can apply to be struck off at Companies House and the pitfalls to be aware of in following this course of action.

## 6. Further information

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The partners and staff take pride in providing a quality service in a timely manner offering:

- An efficient cost effective service with capped or fixed fee solutions.
- Special rates for groups of companies.



- Same day cash and asset distributions (subject to safeguards).
- Written resolutions and electronic communication if shareholders would prefer not to meet in person.

All partners are experienced chartered accountants licensed to act as insolvency practitioners by the ICAEW. The partners are supported by qualified experienced staff.

Please contact one of our team for more information or a quote.

