

Members Voluntary Liquidations

(MVLs)



24 Southernhay East
Exeter
Devon
EX1 1QL

Tel: 01392 424 063

Norfolk House
16 Lemon Street
Truro
TR1 1S

Tel: 01872 261132

53 Fore Street
Ivybridge
Devon
PL21 9AE

Tel: 01752 690101
Fax: 01752 690808

RICHARD **CO**
J. SMITH **&**

Insolvency Practitioners
Forensic Accountants



ICAEW
LICENSED INSOLVENCY
PRACTITIONERS (UK)

The Insolvency Act 1986

Members Voluntary Liquidations (MVLs)

Description

An MVL is a statutory process enabling the tax efficient distribution of the reserves of a solvent company or Limited Liability Partnership (LLP) to its members under professional control. This is often because trading has ceased and the company is no longer required but may also be because its members wish to go their separate ways.

It is tax efficient because distributions in liquidations are treated as returns of capital and taxed at a lower rate than dividends drawn from a company which are treated as income. An MVL also allows the distribution of undistributable reserves such as share premium and share capital.

An MVL is essential for tax reasons where eligible distributions exceed £25,000 because any distributions outside a formal winding up that exceed £25,000 will be treated as income attracting liability for income tax.

An MVL may also be considered where distributions are below £25,000.

While in an informal winding up and dissolution they are eligible to be treated a capital distributions for tax purposes any distributions of undistributable reserves without a formal winding up or a formal reduction of capital, are still illegal and give the company the right to recover such distributions from its members. It is unlikely that such a right would be exercised but following dissolution that right transfers to the Crown as bona vacantia.

Fortunately, the Treasury solicitor has stated that he will not attempt to recover these distributions but it is important to check that this remains the case where an informal winding up is being considered.

Following a formal members meeting a liquidator, who must be a licensed Insolvency Practitioner, is appointed to realise any remaining assets, pay the costs and fees, settle any residual creditors' claims and distribute the balance to the members by reference to their shareholdings.

Advantages

- **The procedure allows for tax efficient distributions of company funds to shareholders and tax efficient distribution of Directors' loans**
- **Subject to the provision of an indemnity there may be an early distribution of funds to shareholders**
- **Professionals conduct the winding up of company affairs providing protection to directors and shareholders**
- **Assets may be distributed in specie (in kind) where realisations are not possible or unnecessary**
- **Formal notice is given to all creditors who may have claims to finalise them**

- Liquidators ensure, with company accountants, HMRC clearance for Corporation Tax affairs
- Bonding (a form of insurance) to protect shareholders' funds is a statutory requirement during the process
- Where necessary due diligence may be undertaken by the proposed liquidators prior to appointment
- The liquidators may become involved in asset realisations if required by the directors/shareholders
- The liquidators usually work closely with company accountants in relation to tax matters

Disadvantages

- Directors pass control of the assets and funds after liquidation to the liquidators
- Liquidations are publicly advertised (but the solvent status is clarified in formal advertisements)
- Indemnities are usually sought by the liquidators from the shareholders in relation to 'early' distributions
- In exceptional cases where liabilities prove to exceed assets the procedure can be converted to a Creditors' Voluntary Liquidation (CVL)
- It is a criminal offence for a director to sign a declaration of solvency without reasonable grounds for the opinion that the company will be able to pay its debts in full together with statutory interest within twelve months

Suitability

- Where directors and shareholders wish to bring a solvent company to an end in a formal manner
- Where there is no purpose in continuing the business and shareholders wish to distribute funds tax efficiently
- Where different business interests of a company need dividing amongst existing shareholders
- Suitable for all sizes of company from the smallest to the largest in terms of funds/reserves
- Where it is clear that assets exceed liabilities and all debts can be paid together with statutory interest within a maximum of twelve months from the commencement of the winding up
- Suitable for charitable companies and those limited by guarantee
- Requires 75% by value of voting shareholders to agree to resolutions for winding up

Procedure

Pre-liquidation actions

- Pre-liquidation planning meetings are held with Richard J Smith & Co and tax advisors
- Company accounts are finalised up to the latest date
- Any residual employee matters are resolved as appropriate
- Consideration is given to any product liability run off matters, leases (property and equipment), outstanding litigation and other liabilities

Directors' Board Meeting to pass the following resolutions:

- Authorising the convening of a General Meeting (GM)
- Nominating a director to be chairman at the General Meeting

- Authorising the preparation of a statutory Declaration of Solvency
- Instructing the Insolvency Practitioners (Richard J Smith & Co)

Declaration of Solvency

- Preparation of the Statutory Declaration of Solvency to be reviewed and signed by the majority of the directors

General Meeting to pass resolutions

- Convening of the GM and the holding of the meeting
- Passing of the Resolutions to Wind Up the company and appointment of the liquidators
- Other resolutions including the use of other professionals and authority to distribute assets in specie, if any

Advertisement, insurance and filing requirements

- The liquidators advertise for claims in the London Gazette (a legal newspaper)
- The liquidators bond (insure) for the value of the assets
- The necessary notices at Companies House are filed
- The advertising for claims will state that 'all claims have been or will be paid or settled in full'

Liquidators' actions

- The liquidators assume control of the company, realise the remaining assets, pays costs and creditors
- In conjunction with the accountant/tax advisers they regularise the tax affairs of the company
- With accountants they ensure HMRC/Inland Revenue clearance
- Liquidators distribute the residual funds/assets to shareholders

Timescale

- The liquidation lasts as long as it takes to realise assets and to pay costs and claims including tax
- The liquidators need to obtain tax clearance, pay any tax, and distribute the assets
- The Declaration of Solvency states that the creditors are capable of being paid or settled within 12 months
- If the Company is subsequently unable to settle all claims against it, the liquidation will become insolvent and it will have to be converted into a Creditors' Voluntary Liquidation

Reporting

- The liquidators are required to report to the shareholders on each anniversary of the winding up
- They need to send a return of receipts and payments to Companies House
- A final meeting of shareholders is held (usually by proxy)
- On conclusion a final report is filed at Companies House which is followed by dissolution of the company

Indemnities

- Before any early distribution to shareholders (i.e. before the process of agreeing and paying claims has been completed), the liquidators will normally require an indemnity from shareholders
- The indemnity would allow the liquidators to recover funds from the shareholders in the event that too much has been distributed
- The indemnity is normally restricted to the value of the amount distributed plus costs to closure

Fees and Costs

Liquidators' fees

- The fees of the liquidators are agreed by the shareholders and paid from the assets of the company
- In normal circumstances we would seek to agree liquidation fees based on time costs
- Generally we will quote an estimated sum for all work from instruction to closure and dissolution

Disbursements

- An insurance bond for a specific sum, a statutory requirement, based on the value of the assets
- The costs of statutory advertising in the London Gazette
- Indemnities (where necessary) drafted by lawyer
- The costs of Deeds of Assignment where assets are to be distributed to members in specie
- In addition there may be incidental disbursements

Accountants' fees and tax advice fees are additional

- Fees for the company's accountants to prepare final figures
- Fees for the preparation of the final tax computation and any other advice
- These will all be additional sums payable by the company

For more in
depth advice,
ask for:

Hamish Adam (Partner)
hamish.adam@richardjsmith.com

Sam Bailey (Partner)
sam.bailey@richardjsmith.com

Jonathan Trembath (Partner)
jonathan.trembath@richardjsmith.com

Ivybridge
(01752) 690101

Truro
(01872) 261132

Exeter
(01392) 424063

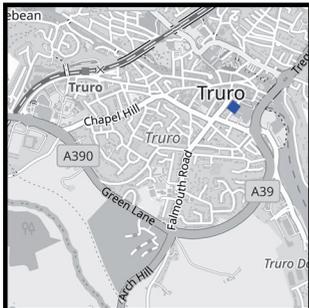
Website:
www.richardjsmith.com
Email: info@richardjsmith.com



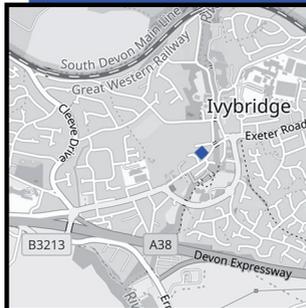
good reasons to contact us first:

- 1** Consultation up to one hour free of charge at either our Truro or Ivybridge or Exeter offices or at your or your client's premises
- 2** Complete independence
- 3** Confidentiality
- 4** Comprehensive experience in all insolvency matters
- 5** Competitive fees
- 6** Established local practice

16 Lemon Street, Truro



53 Fore Street, Ivybridge



24 Southernhay East, Exeter

