



**KSA Group Ltd**

**Members Voluntary Liquidation**

**The Expert's Complete Guide to Liquidating a Solvent Company**

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## **Introduction to the Guide**

### **The Expert's Complete Guide to Solvent Liquidation of Your Company!**

**This programme includes "all you need to know" to get a solvent company wound up and assets distributed efficiently.**

We have set out the programme to be as user-friendly as possible, but please remember whenever you have questions you can email them to us for a quick answer. We will answer all questions during our office hours of 8.30 to 5pm, 5 days a week. This email support service is FREE.

**Please note that only a licensed insolvency practitioner can liquidate a company.**

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## **Solvent Liquidation or Members Voluntary Liquidation.**

Solvent companies may be subject to liquidation proceedings to bring the company to an end and distribute surplus assets. The process is known as a members voluntary liquidation "MVL" and must be handled by a licensed insolvency practitioner(s).

MVL is a formal means of bringing a company to a formal end and distributing its surplus funds or assets, such as property, to the shareholders. This is undertaken either through payment of a cash dividend (caution this is treated as a capital receipt in the hands of the individual shareholder) or a distribution "in specie" i.e. where assets are passed to the shareholders rather than cash.

MVL's are ONLY available when the directors can declare that the company is solvent and can meet all of its obligations, taxes and creditors IN FULL.

This is known as a Statutory Declaration of Solvency. This is a very important formal declaration that the company is solvent and can pay all of its liabilities in full within 12 months.

**Warning: to swear a statutory declaration of solvency knowing it to be a false declaration is a criminal offence.**

The Members Voluntary Liquidation process ends the life of a company, leaves no outstanding business matters and provides a tax efficient exit route for shareholders.

KSA Group has a number of insolvency practitioners who have extensive experience in handling MVL's. We tend to work with the company's existing tax advisers and accountants, to agree the most tax effective and appropriate strategy.

## Members Voluntary Liquidation: Why use this Method?

The majority of MVL's arise as a result of a reorganisation, a tidying up operation with or without tax implications within a group of companies, or the closing down of a family business for retirement purposes.

Some contracting companies use this method to close the company if, for example the contractor enters full-time employment and has a surplus to distribute.

Occasionally, we have seen MVL's used for the termination of a private company that was established for tax purposes.

Most directors and members (shareholders) think that it's a simple task of cessation of trade, a distribution of the assets and that's that. Of course this can be done, by simply paying out assets to the members once all liabilities have been settled, the company can then be dissolved afterwards ([see here for a guide to dissolution](#)). However this may NOT be the most cost effective and tax advantageous route!

KSA's licensed insolvency practitioners will always give free initial advice on the best route, which typically is a properly thought through MVL. We are generally prepared to discuss initially by phone and then at a face to face meeting set out the plan, the costs and the timetable.

We would generally wish to discuss matters with the company's professional advisors as part of the MVL process. This is likely to be the company's chartered accountants, tax advisors or solicitor initially, and this discussion will help obtain all necessary information concerning the company's affairs, its current position and the reasons and objectives for its liquidation.

It is possible that, as a result of such discussions, a procedure other than liquidation is recommended such as [creditors voluntary liquidation](#) (if we are not 100% sure that the company is solvent), [voluntary dissolution](#) or the use of an extra statutory tax Concession (C16).

The directors/shareholders and advisors will then be given a general verbal and written guide of the steps to be taken before the MVL process can get under way.

Obviously there will be fees to be paid (see page 13). There may be a fee for preparing the company up to the date when the resolutions to wind up and appoint a liquidator are passed. There may be another fee for dealing with the liquidation if matters turn out to be more complicated than initially envisaged.

## **First Steps**

Our normal process is as follows: a director, member (shareholder) an accountant, tax advisor or solicitor will approach KSA Group either through our websites or by phone. Typically the enquiry will be to assess whether the company is generally fit for MVL and what the process/costs may be.

In an ideal world we will be provided with sufficient information for one of our expert advisors to form an opinion as to whether KSA Group can assist with a MVL.

**KSA Group access the market by the Internet and as such is heavily dependent upon email, telephone and online solutions like this guide. We can therefore keep costs down for high quality work. This cuts down the need for multiple meetings and attendant costs.**

If our advisors believe it appropriate then the caller will be introduced as soon as possible to one of our fully licensed insolvency practitioners by telephone. He will discuss the process, most of which is covered in this guide, and agree to receive more detailed information by email and or fax.

Initial meetings will be arranged only after the provision of initial information and where deemed necessary. These initial meetings are free. Before the meeting our IP's staff will prepare a file to include the following

- A KSA Group Enquiry Data Capture Sheet to trigger a file in our systems

- A search at Companies House for company statutory information and to see if the company has been dissolved for example.
- A search of Creditsafe (a credit reference tool) to assess any outstanding legal actions such as County Court Judgments.
- We will require a copy of the memorandum and articles of association.
- We will require a copy of the latest signed accounts, and management accounts.
- We will require the name and the branch of the bank(s) the company uses currently, and has used in the recent past.
- The current tax position according to the professional advisors or tax experts advising the company to be liquidated.

Once we have the above we will usually arrange a meeting with directors and representatives of the company, or its parent company officers, who have background knowledge of the company's affairs

In our experience there is always the possibility that the company may have assets or liabilities other than those disclosed in the balance sheet.

Given the requirement to swear a statutory declaration of solvency it is CRITICAL that all liabilities are visible and understood.

## **Example**

In a recent example we were instructed to wind up a solvent property development company which had £240,000 of net cash at bank, all taxes were paid. During discussions with the directors we uncovered a hidden but potential claim from a builder for £300,000! MVL was still the correct solution but we had to speak to the liquidator of the builder to determine if the claim was now considered settled.

Similar to this example, any outstanding contracts or obligations e.g. pension funds, hire purchase arrangements, leases and service contracts, will be settled, preferably before the liquidation commences, but they

must be settled before the winding up is completed.

### **Hidden Assets?**

It is important to assess whether the company has any other assets that may not be "carried" on the balance sheet. For example intellectual property (IPR), web domains or sites that may have value, patents, or trademarks registered in the name of the company, whether beneficially owned or not. These assets must be sold or re-assigned within the group if there is one, before the company is fully wound up.

If not, title of these hidden assets may pass to the crown under Bona Vacantia ("Bona Vacantia" literally means vacant goods and is the legal name for ownerless property that passes to the Crown).

Similarly, any outstanding contracts or obligations e.g. pension funds, hire arrangements and service contracts, will be settled, preferably before the liquidation commences, but certainly before the winding up is completed.

Dormant subsidiary companies can be at risk in this respect particularly where, in the process of an earlier reorganisation, the company's business (including its assets and liabilities) has been hived down, up or across, or transferred to another group company, and that company has incorporated those assets and liabilities into its balance sheet either without having obtained proper title or without having assumed legal responsibility for its contracts or obligations with the consent of the creditors concerned.

### **Tax**

As ever, this is one of the most important areas to consider before starting the solvent liquidation process. In an ideal world all tax computations are up to date, all relevant returns have been filed and agreed with the revenue or HMRC and there are no tax liabilities.

This imputes that trade ceased, or was transferred within the group, sometime well before the liquidation process was considered.

Of course it's not an ideal world and some work may be required to get the company to a stage where MVL can get under way.

## Pre-liquidation distributions

It is important to ensure that full consideration has been given to the taxation implications both from the company's and the members points of view. We regularly suggest the following to enquirers who call or email us:

- Where a company's balance sheet shows capital or revenue reserves, consideration should be given to paying a pre-liquidation distribution of all, or part, of them in order to minimise the effect of capital gains tax when the liquidator distributes the surplus assets.
- In a close company, consideration should be given to the pre-liquidation distribution of all distributable income, in order to avoid a shortfall assessment. All distributions a liquidator makes to shareholders are deemed to be returns of surplus assets.

Other general tax points to be considered are:

- When a company resolves to wind up, an accounting period ends for corporation tax purposes at the date of the resolution and a new corporation tax accounting period commences.
- HMRC will expect to receive accounts and the tax computations up to the date on which the resolution to wind up is passed and the new liquidation accounting period will be for 12 months from the date of the liquidation resolution.
- Any income received in the liquidation period is subject to corporation tax.
- Consideration should be given to any inter-company debts; waiver of such can create tax issues.

For any liquidation which is part of a larger reconstruction of a group of companies, or where the method of passing surplus assets to shareholders is to be done in a way that plans to avoid adverse tax consequences, proper tax clearances should, of course be obtained at all stages of the process.

## **The MVL Process in Simple Terms**

As above, the first steps (see page 6) are to meet the advisors, board of directors and or members to discuss the strategic issues and set out the OBJECTIVES of the solvent liquidation.

Once KSA has agreed to proceed, our files are commenced, strategy agreed, consent to act notices finalised and the board meeting is called.

### **Board meeting**

It is usual for a board meeting to be held to resolve to start the MVL process. Resolutions are passed and the following business agreed and minuted:

- Resolving to take the necessary steps to place the company into liquidation.
- Preparing a statutory declaration of solvency.
- Passing a resolution to take steps to place the company into liquidation.
- Instructing the company secretary to summon an EGM, or extraordinary meeting, of members and agreeing the resolutions to be proposed at that meeting.
- Agreeing the notice period for the EGM, whether short notice consent is required for example.

The board meeting must be properly convened in particular with regard to notice, quorum, voting, the number of directors in office, and any other procedures prescribed by the company's memorandum and articles of association.

Minutes of the meeting should be prepared, and signed by the chairman. Whenever possible, all the directors should be encouraged to attend the meeting, and a "quorate majority" must attend in order that the declaration of solvency may be made.

## Statutory declaration of solvency

The declaration of solvency should be sworn before a solicitor or notary public. The declaration of solvency is made at a directors' board meeting where all (or a majority if more than two) of the directors will swear that they have made full enquiries into the affairs of the company and have concluded that the company is able to pay its debts in full within 12 months of the commencement of the proposed MVL.

This is completed on a standard statutory form and as well as the information contained in above, it will include a statement of the company's assets and liabilities at the latest date before the making of the declaration. This is known as a Statement of Affairs or (SOFA) and should be drawn up as close as possible to the swearing date.

In any event the declaration must be made no more than 5 weeks before the date of the passing of the resolution for winding up.

Assets in the SOFA must be stated at their realisable value, not their book value. It's sometimes a good idea to have any assets valued by a RICS Chartered Surveyor for this purpose, as the declaration of solvency carries serious risks for the directors.

It will still be a valid declaration notwithstanding any errors or omissions that may subsequently come to light. But and it's a BIG BUT: should a declaration be **sworn without reasonable grounds** that the company will be able to pay all its debts, then the director(s) making the declaration are liable to a fine or imprisonment or both (i.e. a criminal offence)!

If the company's debts are not paid in full within the period specified in the declaration, then it is generally presumed that the directors did not have reasonable grounds for their opinion.

In this scenario the solvent liquidation would convert to an insolvent [or creditors voluntary liquidation \(see a guide to CVL here\)](#).

If there is any doubt that the company will be unable to pay its liabilities in full, a sensible course of action by the directors would be to commence with a CVL, thereby avoiding any possible penalties.

## **Notice of meeting of members**

At the meeting of members, which must be held within five weeks of the statutory declaration, a Special Resolution is passed by members agreeing to the company being placed into liquidation and for the appointment of a liquidator.

Except where short notice is agreed by the members, either through consent to short notice being obtained or if there is more than 95% shares held by say parent or holding company, the company must generally give 21 days' notice of a meeting of shareholders at which a special resolution is proposed.

The period of notice must be reckoned, and the notice served in the manner prescribed in the articles of association. The notice period normally excludes the day on which notice is served and the day of the meeting, and notice is deemed to be served 24 hours after it has been posted by first class post. In practical terms the notice period is often 24 days or more.

### **Form of notice to members**

The notice to members must include:

- The date, time and location of the general meeting.
- The type of meeting e.g. extraordinary general meeting.
- The resolution to wind up.
- The resolution to appoint the named liquidator.
- The fact that the resolution is proposed as a special resolution.
- The text of any other special resolutions to be proposed.
- A statement that the member is entitled to appoint a proxy to attend and vote in his place, and that the proxy holder need not be

a member.

## **Notices**

Notice of the EGM must be sent to the registered/last known address of all members who are entitled to attend and vote.

## **Meeting of members**

The meeting is subject to the normal provisions for general meetings, and the chairman needs to be aware of any provisions that may affect the conduct of the meeting.

The main provisions likely to be relevant are as follows:

### **Voting**

Ordinary resolutions require a simple majority of the votes cast, either in person or by proxy, by those entitled to vote. Special and extraordinary resolutions require the votes of at least three quarters of those members who, being entitled to do so, vote either in person or by proxy.

### **Quorum**

The quorum is two members who are present, subject of course to any other provision in the company's articles of association.

### **Proxies**

Proxy forms must be submitted in the manner specified by the articles of association.

When the company issues an invitation to each member to appoint a nominated person or persons to act as proxy, that invitation must be sent to all members who are entitled to receive notice of the meeting.

### **Resolutions to be passed**

A special resolution must be passed to wind up and to appoint a named liquidator. Alternatively, the appointment of a liquidator may be made separately by ordinary resolution.

The liquidator's remuneration is fixed by the company in general meeting

and it is usual to include this as part of the special resolution. This resolution could include, for example that the liquidator's remuneration is a combination of fixed and variable fees. (See fees page 16).

It is advisable to include a resolution to deal with the disposal of the company's books and records. This will be an extraordinary resolution.

It is advisable, especially where a company has only one beneficial shareholder, to include a resolution authorising the liquidator to distribute assets *in specie*. The company's articles of association will determine what sort of resolution is required: usually an extraordinary resolution. If the articles of association contain no such provision, it is suggested that a distribution *in specie* is sanctioned by a special resolution. This may be done at the same meeting.

### **Formal business and Minuting**

The following matters should be dealt with at the time of the EGM:

- The minutes of the meeting are prepared, and are signed by the chairman.
- The necessary forms for filing the special resolutions and The London or Edinburgh Gazette/local newspaper are completed, and signed by the chairman of the meeting, and attested as necessary.

The liquidator will take copies of these documents in order to ensure that they are properly filed and dealt with in the statutory period.

### **Appointment of the liquidator**

The liquidator must give a written statement to the chairman of the Extraordinary General Meeting (EGM) that he is suitably qualified under the Insolvency Act 1986 and that he or she consents to act. The chairman will certify the appointment on the appropriate form.

Within 14 days of his appointment, the liquidator must publish in The London Gazette (or the Edinburgh Gazette in Scotland) and deliver a statutory notice of his liquidator's appointment for registration.

As soon as possible after his appointment the liquidator must obtain a specific bond of insurance (or bordereaux) in order to cover the value of the assets subject to his appointment.

The cost of such bond will be determined by the insurance company and is generally dependent upon the value of assets included in the liquidation process. This can be up to or more than 1% of the value of the assets in question and is an expense of the MVL, or "disbursement").

## **Distribution and period of Liquidation**

Once appointed the liquidator carries out his duties according the Act and the Rules. His role is to ensure that the liquidation is properly completed; all assets are distributed pro-rata according to shareholding.

When the company is in liquidation the liquidator has duties as he would in any other type of liquidation. He must gather in the assets and distribute them in accordance with the statutory order.

However, it is rare in practice that any detailed investigation is undertaken. Quite simply, the reason for this is that the whole nature of the members' voluntary liquidation is that all the creditors will be paid in full plus Statutory Interest.

If creditors are paid in full there is usually very little to complain about! In order to carry out his duties, the liquidator is given extensive powers under Sch.4 to the Insolvency Act 1986. These include the power to

- Sell assets or distribute them to the members "In Specie"
- Use the company bank account(s).
- Appoint any agents he requires, such as Chartered Surveyors or lawyers.
- Litigate or defend litigation against the company.
- Carry on the company's business.

## Liquidator's Fees?

Licensed insolvency practitioners (IP's) are heavily regulated by statute, their regulatory professional body and the Government. The IP also has to obtain insurance cover for the assets in question and this can be up to 1% of the value of the asset. In addition specific notices have to be produced and meetings held.

### **So the process is not fee free!**

Of course every case may be different so it's impossible to state what a MVL will cost without more detailed information. However as a general guide see below.

At the initial meetings we would generally set an initial fee of £3,000-3,500 plus VAT. We would inform directors and shareholders that say if our fee was to be £3,500 plus VAT on an MVL, we take £1,500 plus Vat immediately for the costs of summoning the meetings and helping with the declaration of solvency. The balance will be held in the case account to cover disbursements and any liquidator's remuneration.

All disbursements and liquidator's final remuneration to be agreed with the directors and shareholders before the liquidation is drawn to a close.

It should be noted here that following MVL there is no need to file further accounts with the Registrar of Companies, but HMRC will require accounts to agree final trading period corporation tax liabilities if these have not already been agreed.

Should the solvent liquidation of the company not be possible as it was not solvent, and requires conversion to creditors voluntary liquidation then a further insolvency fee will be payable.

**Thank you for reading and using our guide. If your company or your client's company requires a members voluntary liquidation, please call 0800 9700539 now and ask about our MVL Services.**

**Please email any comments to [info@ksagroup.co.uk](mailto:info@ksagroup.co.uk)**

