

Guide To Members Voluntary Liquidations



Index

1. Introduction to Purnells.
2. Introduction to Members Voluntary Liquidations ("MVLs").
3. What is an MVL?
4. How to place a Company into MVL.
5. Liquidators' Costs and Disbursements.
6. What happens if a Company cannot pay all of its debts after being placed into MVL?



Introduction to Purnells

Welcome to Purnells' guide to Members Voluntary Liquidations.

We are a firm of Licensed Insolvency Practitioners not Accountants and therefore can give you and your Company the professional advice you require.

With two qualified Licensed Insolvency Practitioners and seven offices we provide **FREE advice throughout the UK.**

As insolvency practitioners we also specialise in interpreting the legislation set out in The Insolvency Act 1986, The Insolvency (England and Wales) Rules 2016 and related case law to provide insolvency help and advice to our clients.

Our initial meetings are free and we always provide a letter of advice to our clients without charge, so they can always rely on what we have said in writing.



Wherever you are in the UK one of our qualified licensed insolvency practitioners can provide you with fast, free and confidential insolvency advice over the telephone or in person. We will explain in clear and plain English all of the insolvency options open to you to enable you to make an informed decision as to which option you wish to follow.

Our aim is to provide **identifiable, measurable and financial benefits** by providing clear insolvency advice to you and your limited company.

Introduction

Where the life of a solvent company is to be brought to an end a Members Voluntary Liquidation ("MVL") would be the typical process to follow. An MVL is sometimes known as a "solvent liquidation" as all creditors are paid in full and the surplus is paid back to the shareholders. The main reason why an MVL is used is to obtain the benefit of much lower tax rates on the capital you extract from your company.



Following the withdrawal of Extra Statutory Concession C16 ("ESC 16") if your limited company has served its purpose and you now wish to close it down and withdraw any funds or assets by way of a capital distribution, and those funds or assets are in excess of £25,000, a formal MVL will be required.

There can be significant tax savings by receiving those funds by way of a capital distribution because they will be subject to the more favourable capital gains tax rates. Also entrepreneurs' relief may be available which could reduce your tax bill even further to 10%.

This is now even more relevant following the increase in the rate of tax on dividend income to 32.5%. However it is always best to discuss these tax matters with your accountant.



What is a Members Voluntary Liquidation?



A MVL is often called a "solvent liquidation" because it is a legal process designed to bring the life of a Company to an end (often with beneficial rates of tax).

The definition of a solvent company for liquidation purposes is found in Sections 89 and 90 of The Insolvency Act 1986. Essentially solvency is defined as being able to pay, in full, all the company's debts within one year in full with statutory interest at the official rate of 8%. The definition recognises that in a liquidation "cash" may not be sitting there but the assets of the company have to be sold or realised before creditors can be paid. That is why the definition allows for twelve months to settle creditors' claims in full.

An MVL is a legal process under The Insolvency Act 1986 whereby a Licensed Insolvency Practitioner is appointed as Liquidator of the Company to take control of the Company and its assets. Once the Liquidator is satisfied that all liabilities have been paid in full the liquidator then seeks to distribute the funds to the shareholders by way of a capital distribution and then dissolves the Company.

How to place a Company into Members Voluntary Liquidation?

Directors' Meeting and Declaration of Solvency

The first step to place a company into MVL is for the Director/Directors of the Company to hold a meeting to pass a resolution to call a meeting of shareholders to place the Company into liquidation and swear the Declaration of Solvency of the Company.

The Insolvency Act 1986 says that the directors must thoroughly review the financial position of the company. When satisfied they must prepare a statement of affairs and swear a Declaration of Solvency that the assets and liabilities are accurately recorded and that there are sufficient assets to pay all creditors in full with interest, within twelve months. That statement of affairs sets out:

- the value of creditors claims
- the estimated realisable value of the company's assets
- an estimate of the cost of the liquidation process
- and a balancing figure being the estimated monetary return to shareholders after all creditors have been paid in full and the costs of the process have been settled.



This Declaration of Solvency is then sworn by a majority of the directors (or by both of them if there are two) in front of a local solicitor.

The Declaration of Solvency is an important document and it is a criminal offense to swear a materially incorrect or misleading declaration.

Shareholders Meeting

In small owner managed businesses the directors and shareholders are usually one and the same. Accordingly, the directors resolve, by way of a board meeting, to call a meeting of shareholders to pass a special resolution to Wind Up the company and for it to be placed into Members Voluntary Liquidation.

Normally, a Special Resolution requires 14 days notice however if 90% of the shareholders agree this 14 day notice period can be waived. This makes it possible to undertake the entire process of calling and holding a meeting of shareholders the same day.



At the Shareholders meeting the shareholders also appoint their choice of liquidator and pass the necessary resolutions to agree the costs of the liquidation.

Following the Shareholders' meeting there is little for the Directors to do and the liquidator's duties usually consist of the following:

- advertising his/ her appointment
- realising all assets
- settling creditors' claims
- paying the costs of the proceedings
- closing down all tax schemes, for example: PAYE, VAT and Corporation Tax
- obtaining written tax clearance
- making a capital distribution to the shareholders

Liquidators' Costs and Disbursements

In a Members Voluntary Liquidation the shareholders directly control the liquidator's costs, fees and liquidation expenses.

If you are the main or only shareholder - then it is you who decides how the liquidator is to be paid. The resolution as to the basis of the liquidator's costs and fees is taken at the shareholders meeting - a meeting that you control and over which you have voting power!

You should always get a **written** quote of the agreed liquidation costs and fees.

A liquidator may be remunerated by way of:

- a set fee, or,
- on the basis of the time spent by the liquidator/s and their staff.



In connection to the disbursements in a liquidation, there are four types:

Advertising

It is a statutory requirement that in each MVL the liquidator must advertise three notices in the London Gazette to advertise the liquidation. Each notice costs £85.20 inc VAT and therefore the total sum payable will be £255.60.

Bordereau Insurance

It is a statutory requirement that every Liquidator obtains a bond for the assets that come into his possession. The cost of the bond depends on the value of the assets over which the Liquidator is to obtain control and is set out in the table below:

<u>Asset Value</u>	<u>Premium</u>
£0 - £499,	£15
£500 - £5,000,	£22
£500 - £10,000,	£22
£10,001 - £25,000,	£40
£25,001 - £50,000,	£93
£50,001 - £100,00,	£138
£100,001 - £250,000,	£255
£250,001 - £500,000,	£360
£500,001 - £1,000,000,	£515
£1,000,001 - £2,000,000,	£760
£2,000,001 - £3,500,000,	£910
£3,500,001 - £5,000,000,	£1,365
£5,000,001+	£1,520

Banking Charges

On the appointment of a Liquidator a designated client account is opened in the name of the Company. A liquidator may be charged for opening an operating an account and this can range from anywhere between £50 and £100.

At Purnells the charge is £50 which is what our bankers charge to open the client account.



Sundries

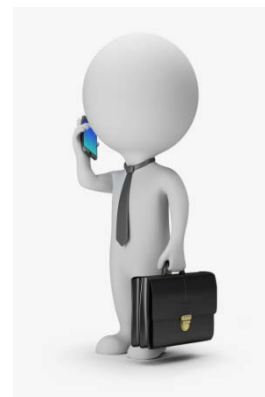
These costs are essentially company searches and are usually only a few pounds and therefore would not normally exceed £10.

What happens if a Company cannot pay all of its debts after being placed into MVL?

If the liquidator forms the opinion, at any time during the MVL, that the company will be unable to pay its debts in full (together with interest at the official rate) as stated in the directors' statement of truth and declaration of solvency then Section 95 of The Insolvency Act 1986 must be followed.

The liquidator must:

1. Requisition a decision procedure for creditors for a day not later than the 28th day after the day on which he formed that opinion.
2. Send notice of the decision procedure to the creditors by post not less than 7 days before the day on which that decision procedure is to be held.
3. Advertise the decision procedure once in the London Gazette.
4. Provide creditors, free of charge, with such information concerning the affairs of the company as they require during the period up to and including the day of the decision procedure.
5. Produce a statement in the prescribed form as to the affairs of the company.
6. Provide that statement before the decision procedure, and
7. Attend and preside at that decision procedure.





The MVL then converts to a Creditors Voluntary Liquidation (CVL). As from the day of the creditors meeting held as above, the Insolvency Act has effect as if:

1. The directors' declaration of insolvency had not been made, and
2. The decision procedure and the company meeting at which it was resolved that the company be wound up voluntarily were the meetings mentioned in Section 98 of The Insolvency Act 1986.

