

# LIQUIDATION OF SPV'S

The Special Purpose Vehicles (“SPVs”) used in corporate deals often need to be closed down. The favored method is to place the companies into Members’ Voluntary Liquidation (“MVL”) and to appoint a licensed Insolvency Practitioner to be the Liquidator of the Company.

The advantages of the MVL process include:

1. It removes responsibility for winding down the company from the Directors, so freeing up management time and excluding any personal liability for actions after the date of liquidation.
2. No need to file any outstanding statutory accounts.
3. The Liquidator is able to be flexible when making distributions to the shareholders and may be able distribute assets in specie.
4. With a suitable indemnity, the Liquidator may be able to make a distribution immediately upon appointment.
5. For taxation purposes a distribution from the liquidation will be treated as a capital distribution.
6. HMRC will explicitly agree the Company’s corporation tax assessments allowing the winding up to be concluded before the usual enquiry periods have expired.
7. It provides certainty. The Liquidator will give notice to creditors to submit a claim and, following agreement and payment of any liabilities, he will distribute the surplus assets to the shareholders. If subsequently a further liability is discovered, the distribution to the shareholders cannot be reclaimed to pay this liability.

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The MVL procedure is highly regulated. Despite the fact that there may not be any creditors, and any that there are will be paid in full, the rules relating to the conduct of the Liquidator are set out in the Insolvency Act 1986, the Insolvency Rules 1986 and related legislation. The legislation is prescriptive as to how the Liquidators remuneration is to be set. However, changes to the Insolvency Rules in 2010 allow Liquidators more flexibility with fees, which enables them to serve better the needs of clients with, including getting clearance from HM Revenue and Customs for the companies to be dissolved.

In our experience clients want certainty and want to know the cost of the liquidation up front; they often request a fixed fee. Under the old rules a Liquidator was limited to charging fees on a time cost basis or on a percentage of realisations. This meant that the Liquidator could not set a fixed fee. There were ways round the issue: Principally a Liquidator could agree to charge a fixed fee if the fee was not paid by the company to be liquidated, eg it could be paid by the parent company. However, this could cause tax issues, also, the parent is often an overseas company and unable to reclaim VAT which means that the Liquidation cost 20% more than necessary.

The changes to the Insolvency Rules now allow us to agree a fixed fee for acting as Liquidator in an MVL. This fee will be agreed with Directors prior to starting work and approved by the shareholders on appointment. We will then draw the fee from the Company’s assets during the liquidation process, and, if the Company is VAT registered, we can reclaim the VAT element of the fee from HMRC reducing the total cost to the shareholders.

## Why Us ?

Moorfields Corporate Recovery is a specialist firm providing restructuring and insolvency solutions to businesses, financiers, stakeholders and professionals including accountants and lawyers. So why are we considered specialists in our field ?

- We focus 100% of our time on corporate restructuring and insolvency solutions.
- We have a dedicated team of corporate simplification experts who regularly work with SME’S to blue chip companies.
- We dedicate 100% of our time
- on corporate simplification/MVL procedures and project management.
- We are committed to seeking practical solutions and provide lasting practical solutions focused on meeting our clients’ requirements.



# CASE STUDY

## COMPLETING THE DEAL

### Company Overview

- Jersey Property Unit Trust (“JPUT”) wished to purchase freehold of a hotel in London’s West End valued at £200 million.
- Seller held the property in a SPV.
- SPV had granted operating lease to Hotelco.
- JPUT purchased the shares in the SPV.

### The Challenge

- JPUT wished to hold the Property directly.
- Property needed to be transferred to JPUT before the quarter date when rent was due from Hotelco.
- SPV had guaranteed JPUT’s bank borrowings and granted security over the Property.

### Moorfields Action

- SPV placed into MVL and Moorfields appointed liquidator.
- Property distributed in specie to
- JPUT on 28 September, before rent
- due from Hotelco.
- Assisted JPUT to liaise with Bank
- for back to back release and granting of security on date of transfer of Property.
- Worked closely with JPUT’s legal and tax advisors.

### The Result

- JPUT was able to hold Property directly for more tax efficient structure.
- SPV dissolved so new owners have no legacy worries about the company.

*Thank you for all your help. We will certainly be in contact again when/if we need any assistance on any other companies”*

Large PLC based in London

“It removes responsibility of winding down the company”

## CAN WE HELP?

If you would like to discuss how Moorfields can assist in placing your company into MVL, or any of the issues raised above, please contact:

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