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A guide to the Members Voluntary Liquidation Process

What is a Members' Voluntary Liquidation?

Members' Voluntary Liquidation ("MVL") is a process used to wind up the affairs of a solvent company. Despite its solvent nature, the MVL process is laid down in the Insolvency Act 1986 ("IA86").

The MVL process is typically used where a company has come to the end of its natural life, where reorganisations have occurred resulting in dormant companies, or the procedure can also be utilised as part of a restructuring process (see section 5.2).

The process effectively brings the company to a formal end and distributes any remaining assets through a cash or an in-specie distribution to its shareholders. The MVL process facilitates a controlled shareholder exit allowing them to realise their investment in a tax effective manner.

The procedure is not appropriate where the company will be unable to pay its debts in full, together with interest, within 12 months. If the company cannot meet these requirements then a different insolvency procedure would be more appropriate such as Creditors' Voluntary Liquidation ("CVL").

Who can act as liquidator?

The liquidator has to be a licensed insolvency practitioner.

Procedure for appointment

A summary flowchart of the appointment procedure is attached at Appendix A. More detailed information on the appointment procedure is set out below.

Board Meeting

The directors must hold a quorate board meeting in order to record their decision that it has been deemed appropriate to invite shareholders to pass a special resolution to wind up the company and that they are able to declare that the company is solvent and can pay all debts in full, together with statutory interest, within 12 months of initiating the liquidation (see 'Declaration of Solvency' below).

The following resolutions need to be passed at the board meeting:

- That the Declaration of Solvency disclosing the assets and liabilities of the company be made by a majority of directors.
- That the directors recommend to the members that the company be wound up voluntarily.
- Approve the issuing of notices convening the general meeting ('GM') required to place the Company into MVL.
- Nominate a director to act as Chairman of the GM.

Minutes of the meeting must be included in the company's minute book.

Declaration of Solvency

A Declaration of Solvency must be prepared and laid before the shareholders' meeting. The Declaration is a financial statement of the assets and liabilities of the company incorporating a statement that the company will be able to pay its debts in full, together with statutory interest, within a period of not more than 12 months of the commencement of the winding-up.

The Declaration must be sworn in the presence of an independent solicitor or commissioner of oaths by all of the directors, if there are one or two, or a majority of the directors, if there are three or more. The Declaration must be made prior to the GM.

It should be noted that it is an offence to swear this Declaration without reasonable grounds for believing the company can repay its debts within the specified time. The penalty can be imprisonment, a fine, or both.

If the Directors do not have sufficient confidence that there are not any unknown liabilities which the Company would not be able to settle should a claim be received then they should not make the Declaration and an alternative procedure such as a CVL would be appropriate. This situation could arise when seeking to liquidate dormant companies which have been acquired into a group through an acquisition and the current Directors do not know the history of these companies before the acquisition.

The sworn Declaration must be filed with the Registrar of Companies not more than fifteen days after the appointment of the liquidators.

Shareholders' Meeting

The company may be wound up voluntarily if a special resolution to that effect is passed by the company's shareholders.

The shareholders must be given at least 14 days' notice of any meeting at which a special resolution is to be passed (subject to any special provisions in the company's Articles of Association). Formal notice can be waived by a majority of the shareholders holding at least 90% of the voting rights. The short notice threshold may be slightly higher in certain companies depending on their Articles of Association.

The meeting must be quorate as defined by the company's articles of association.

Members can typically vote in person or by proxy.

The following resolutions will be considered at the meeting of shareholders:

As Special Resolutions;

- to wind the company up voluntarily; and
- to allow the company to distribute the assets in specie.

As Ordinary Resolutions;

- to appoint a liquidator or joint liquidators;
- to approve the basis of the liquidators remuneration;
- to approve the liquidators disbursements; and
- to deal with the destruction of company records.

Minutes and confirmation of appointment

The resolutions passed at the meeting of members must be signed by the chairman of the GM who must also sign a certificate confirming the liquidators' appointment.

Minutes of the shareholders' meetings must be prepared. These minutes must be signed by the chairman and detail the resolutions passed, together with any questions asked and the answers provided.

Following appointment

Notification

Once appointed, the liquidators will take the necessary steps to comply with statutory filing and advertising requirements. Steps will also be taken to advertise a notice to all creditors requiring them to prove their claims in the liquidation. In that advertisement there is a requirement to give a minimum of 21 days' notice to prove claims.

Other parties interested in the liquidation will also be informed of the appointment including HM Revenue and Customs, the company's insurers, pension scheme, auditors, solicitors and any regulatory bodies.

Realisation of assets

The liquidators will proceed to realise the assets of the company so far as necessary to deal with payment to creditors and in accordance with any agreement to make distributions in specie to members.

Distribution to creditors

Once creditors have provided details of any claim they may have against the company the liquidators will evaluate their claim and, if considered valid, admit it into the proceedings. Once all claims have been received and agreed the liquidators would seek to make a payment to the creditors in full settlement of their claims. Statutory interest at 8% is payable on every claim accruing from the date of Liquidation to the date of payment.

Where claims are subject to dispute, it may be necessary for the liquidators to invite the creditor concerned to prove their position in court.

Distribution to shareholders

The liquidators will deal with distributions to members, whether in specie or by way of cash dividend, in accordance with their entitlements. This is usually undertaken after settlement of all outstanding creditor claims. In certain circumstances interim dividends may be made by the liquidator where there are unresolved issues.

If a distribution is to be paid within 21 days of liquidation the shareholders would be required to provide an indemnity to protect the liquidator should any unforeseen creditor claims arise.

Costs and Remuneration

The remuneration of the liquidators is agreed between the liquidators and the shareholders. Should the liquidators be unsatisfied then they may apply to court for their remuneration to be set.
The costs of the process (such as any legal advice) and the liquidators' remuneration are payable out of the funds of the company, or if there are no assets, by an external party.

Ongoing Statutory Matters

Should the liquidation not be completed within 12 months, an annual progress report will be prepared and distributed to the members. The report will outline the conduct of the liquidation to date and provide a note of the outstanding matters preventing the liquidators from bringing the liquidation to a close.

Liquidation closure

Once all matters are satisfactorily resolved the liquidators will distribute a draft final account to the company's members, providing them with eight week notice period in which to request certain information or make certain applications to court. After expiry of this notice period, a final account will be distributed to the company's members and filed with the Registrar of Companies. The eight-week notice period can be shorted should all members confirm they do not wish to make any requests or applications.

The company will be formally dissolved at Companies House three months after the registration of the final account on the company's register.

Special Cases

Insolvency

If during the course of the Liquidation it comes to the attention of the liquidators that the company will be unable to pay its debts in full, including interest and costs of the liquidation, within 12 months they must take steps to convert the MVL into a CVL.

In this event it is presumed that the Declaration of Solvency was not made on reasonable grounds. If the Declaration was not made on reasonable grounds the Directors, under the Insolvency Act 1986, may be liable to a fine or imprisonment.

Reorganisation

The MVL process can facilitate the reorganisation of a business by divesting different trading activities to separate limited companies. This is done through Section 110 of the IA86, which allows a Liquidator to transfer particular assets of the company to another company. In return for the transfer, the Liquidator will receive shares in the transferee company which will be distributed to the shareholders of the Company. A Section 110 scheme (the "Scheme") must be approved by a special resolution of the shareholders.

Any shareholder who does not approve the Scheme may elect within seven days not to receive shares in the transferee company, and may require the Liquidator to either abstain from implementing the scheme or to purchase the dissenter's interest in the Company. For this reason, if there is a chance that not all

the shareholders will approve the Scheme, it is normal practice to hold two General Meetings. The first to approve the Scheme, and the second, after the period for dissent, to approve the winding up of the Company. This means that should there be dissent to the Scheme then the Company is not committed to winding up, and the shareholders can negotiate an alternative exit strategy.

These Schemes are usually complex transactions requiring additional documentation and prior clearance from the tax authorities to ensure there are no adverse tax consequences. Any companies contemplating such a reorganisation should consult Moorfields as early as possible in the planning process.

About Moorfields

Moorfields is one of the UK's leading independent firms of business restructuring specialists. We are a firm constantly adapting to the ever-changing economy and the demands and pressures this has on businesses. Our focus is on providing a specialist professional service and delivering pro-active solutions in finance, recovery and risk management.

Our clients range from small businesses and family–run companies to major multinationals. Regardless of the size of the project our values remain the same, to offer a dedicated service with straightforward options and realistic solutions.

If you would like to discuss how Moorfields can assist you with a Members Voluntary Liquidation or any other issues please contact:

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Appendix A: Members Voluntary Liquidation Process