

Members Voluntary Liquidation: A Step by Step Guide



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GUIDE TO MVL'S

What is an MVL?

A Members Voluntary Liquidation is the process by which a solvent company is wound up and dissolved. It enables shareholders to exit the business and withdraw any capital within it or arrange for assets within the company to be transferred into their personal estates.

When is an MVL appropriate?

Generally, an MVL is appropriate where the company has, for whatever reason, reached the end of its purposeful life and there are realisable assets or cash sufficient to pay all creditors within a specified period together with statutory interest. This includes the costs of the liquidation, although it is common for these costs to be paid by the shareholders or a parent or group entity. The surplus assets are distributed to shareholders, either in cash or in specie.

Common scenarios include where shareholders wish to retire; where the owners of a family business wish to retire and their children have no interest in continuing the business; where there has been a deterioration in the relationship between stakeholders and there is a need to wind up the business equitably; and where the passing of time or changes in the market or legislation have led to the business no longer being viable. The MVL process can also be used effectively in group restructuring.

What are the advantages of an MVL and what is the alternative?

The alternative to MVL is simply to apply for the company to be struck off and dissolved. Historically, by applying for an extra statutory concession from HMRC, directors were able to effectively wind up a company and distribute its surplus assets to shareholders without the need for a liquidator. Such distributions were tax advantageous for shareholders as the distributions were taxed as capital gains rather than income.

More recently, the extra statutory concession has been enacted into law and a limit of £25,000 has been imposed on the total amount that can be distributed and treated as capital, rather than income, for tax purposes. However, the legislation provides that once the £25,000 limit is reached, *all distributions will be treated as dividends* (i.e. not only distributions over and above the £25,000 cap). Placing the company into MVL ensures that *all distributions can be treated as capital without limit*.

There are further advantages of an MVL in comparison with an application to strike off, these are:-

- If creditors have not made a claim against the company for anything they may be owed whilst the Liquidator was in office, they may not (with very few rare

exceptions) later apply to have the company restored to the register in order to pursue legal action against it. Any application to restore the company must be made within 2 years of its dissolution, whereas an application may be made at any time within 20 years of dissolution in the case of strike off without liquidation.

- An application to strike off can only be made if the company has not, in the previous three months, traded or carried on business, changed its name, or sold business assets, rights or property. An MVL can be instituted immediately on cessation of trade and is the most efficient way to wind up the affairs of a solvent entity.
- Finally, in a liquidation (and once creditors have been paid) there are no restrictions on distributing funds to shareholders, including distributions of capital & reserves, which are usually prohibited as unlawful dividends outside of liquidation.

How does the process work?

Once it is decided that an MVL is appropriate, the directors call an extraordinary meeting of shareholders to consider a resolution to wind up the company and to appoint a liquidator. Prior to the meeting, the directors must swear a statutory declaration of solvency before a solicitor or commissioner for oaths. The declaration embodies a statement of assets and liabilities, and states that having made a full enquiry into the company's affairs, the directors are of the opinion that the company is capable of paying all of its debts, including statutory interest, within a specified period not exceeding 12 months from the date of the commencement of the liquidation.

The resolution to wind up the company is advertised in the Gazette within 14 days, and filed with the Registrar of Companies within 15 days. It is normal practice to advertise for creditor claims, although these may well be settled prior to the liquidation commencing.

The Liquidator then takes steps to deal with any outstanding matters, including asset realisation, payment of creditor claims and resolution of tax affairs. There is no requirement for the Liquidator to conduct an investigation into the company's affairs or the conduct of the directors, as is the case in an insolvent liquidation, as the directors have sworn a statutory declaration of solvency.

Once all claims are quantified and settled, if not already done so by the Company, the Liquidator will distribute the surplus assets (either in cash or in specie) to the shareholders.

Once the company's affairs are finalised and no assets remain, the Liquidator will call a final meeting of members and lay before it an account of the winding up. The meeting will be advertised in the Gazette one month beforehand. Within one week of the final meeting, a return of the meeting and final account will be filed with the Registrar of Companies, and after three months, the company will be struck from the register and dissolved.

Steps to be taken prior to liquidation

In practice, and in order to minimise the costs of the liquidation as far as possible, we would suggest that the following be completed prior to the commencement of the liquidation:

- If assets - obtain valuations and sell assets at market value
- Offset mutual trade debtor/creditor accounts and pay trade creditors any monies due
- Dismiss employees and pay all monies due
- Submit all pre-liquidation VAT, corporation tax and PAYE returns and pay any monies due
- Recover trade debtor monies and ensure any disputes are settled
- Ensure all books and records, including statutory books, are up to date
- Prepare management accounts to cessation of trade
- Terminate any leasing or hire purchase agreements and settle accounts

This list is not exhaustive and will be tailored to the circumstances of each case. The Liquidator may, in certain cases, be required to perform some of the above work, and if this is the case, our quote for the liquidation may be slightly higher.