

Exit Strategies for Solvent Companies

Insolvency Practitioners do not only deal with the affairs of Insolvent Companies.

There are two ways that a solvent Company may be dissolved – by means of a Member's Voluntary Liquidation ("MVL") or by Voluntary Striking Off.

The former requires the appointment of a Licenced Insolvency Practitioner to act as Liquidator while the latter does not.

Members' Voluntary Liquidation (MVL)

A Members' Voluntary Liquidation is a shareholder-led process, which is a tax efficient method for bringing to an end the life of a solvent company. All creditors of the Company are paid in full and the surplus thereafter is distributed to the shareholders.

There are various reasons why the shareholders of a solvent company might wish to bring the life of their Company to an end and these include:

The Company has ceased trading and the shareholders want to "unlock" the value of the business.

The retirement of the directors/shareholders.

Directors/shareholders are in dispute and want to go their separate ways.

Groups of companies may include dormant subsidiaries which are no longer required.

To demonstrate that the Company is solvent all or the majority of directors must swear a declaration of solvency, incorporating a Statement of Affairs, declaring that

They have made a full enquiry into the company's financial affairs and

They have formed the opinion that the company will be able to pay all its debts in full plus interest within a period of 12 months.

The Declaration of Solvency includes a simple form of balance sheet for the company as at the date it is placed into liquidation. We will assist you in preparing a Declaration of Solvency from information that you and A4G provide, but it remains your statement.

We are drawing this particular requirement to your attention because a director who makes this declaration without having reasonable grounds for forming the opinion that the company will be able to pay its debts plus interest within 12 months is liable to imprisonment or a fine, or both.

Since 1 March 2012 HM Revenue & Custom's Extra Statutory Concession, C16 (ESC C16) introduced a cap of £25,000 on the amount that can be paid out on the dissolution of a Company and be treated as a distribution of capital rather than income.

The main advantage of an MVL is that all distributions made to the shareholders in the liquidation are classed as distributions of capital rather than income.

Capital distributions are subject to Capital Gains Tax rather than income Tax which is charged at a lower rate. The tax payable by the shareholder can therefore be reduced even further by applying the various capital reliefs that are available including entrepreneurs relief.

In an MVL the shareholders control the appointment of the Liquidator not the creditors who will be paid in full. A meeting of the shareholders will be held at which the Company will be placed into Liquidation and a Liquidator appointed.

If during the administration of the Liquidation the Liquidator concludes that there are insufficient assets to settle creditor's claims in full then the MVL can be converted to a Creditor's Voluntary Liquidation ("CVL") i.e. an Insolvent Liquidation.

Before concluding the Liquidation, the Liquidator will obtain the appropriate tax clearances from HM Revenue & Customs.

Section 110 Insolvency Act Reconstruction

Section 110 of the Insolvency Act 1986 allows a liquidator to accept shares in a new company or companies as part or full consideration for the transfer of the whole or part of the business of the company in liquidation.

This process can be used when shareholders wish to split the assets of a business into two or more companies for example in the situation where the shareholders want to carry on the business of the Company but want to do so separately. It may also be used as a means of separating loss-making activities on order to minimise risk to other parts of a business for example to separate a property investment division from a trading division.

Under a S110 reconstruction a new company or companies may be set up into which the business and/or assets of the company which is to be placed into liquidation will be transferred.

Upon liquidation the Liquidator will accept shares in the new company(ies) as consideration for the transfer of the whole or part of the business of the liquidated company. The Liquidator will then transfer the shares in the new company (ies) to the shareholders of the liquidated company.

Clearance can be obtained from HM Revenue & Customs in advance of liquidation that no chargeable gain will occur upon the transfer of the whole or part of the business to the new company (ies) but instead that the cost of the new shares acquired by the shareholders be deemed to be equivalent to the value of the business and/or assets transferred. The only tax charge that would then arise would be a capital gain if and when the shareholders dispose of their shares in the new company(ies).

Striking-Off

Under the Companies Act 2006 the directors of a Company can make an application to the Registrar of Companies to have their Company struck off the Register.

The Company must not, within the three months preceding the application, have:

Traded or otherwise carried on business

Changed its name

Disposed of property that, immediately before ceasing to be in business or trade, it held for disposal or gain in the normal course of that business or trade, or

Engaged in any other activity except one necessary or expedient for making a striking-off application, settling the Company's affairs or meeting a statutory requirement.

The striking off process involves submitting Form DS01 together with a £10 filing fee to Companies House signed by all or the majority of the directors. Within seven days of filing the directors must send a copy of the form to all interested parties. The Registrar will advertise the proposed striking-off in the London Gazette to allow interested parties, including HM Revenue & Customs, to object.

If no objections are received within three months of publication of the advertisement then a further notice will be published confirming that the Company has been dissolved.