

Liquidation is the most commonly used procedure for insolvent companies.

Liquidation means the end of the road for a company. Its assets are "liquidated" or turned into cash for distribution to creditors. Once the liquidation is concluded the company is dissolved.

Most companies which go into insolvent liquidation have already ceased trading and it is very unusual for a liquidator to carry on trading in order to sell the business or assets as a going concern. This is because the Liquidator, unlike an Administrator, is not an agent of the company, and is therefore personally liable for any transaction that he/she enters into.

There are two main ways that an insolvent company may be placed into liquidation.

Creditors Voluntary Liquidation ("CVL")

A CVL is initiated by the directors who pass a resolution that meetings of the company's shareholders (referred to as members) and creditors be convened for the purposes of placing the company into liquidation and to appoint a Liquidator. The directors will nominate a Licensed Insolvency Practitioner to assist in this process and to accept the appointment as Liquidator. At the meeting of members the resolution to wind up the company must be approved by a 75% majority of members voting at the meeting in person or represented by proxy.

At the creditors meeting the creditors may either confirm the appointment of the Liquidator appointed by the members or nominate another of their choosing. Voting at the creditors meeting is by a majority (in value) or creditors voting at the meeting either in person or represented by proxy.

Compulsory Liquidation

This process is usually initiated by a creditor of the company who is owed over £750 petitioning the Court for a Winding up Order. The Court must be satisfied that the company is insolvent.

One way insolvency can be demonstrated is by the creditor issuing a statutory demand and the company failing to pay the debt demanded within 21 days.

A company, its directors and its shareholders may also petition for the company to be wound up. Once a Winding up Order is made the Official Receiver automatically becomes the Liquidator. If the company has assets the Secretary of State will usually appoint a Liquidator in place of the Official Receiver or the Official Receiver will convene a creditors meeting to appoint a Liquidator.

Liquidators in CVL's and Compulsory liquidations have the same powers and duties.

A Liquidator must act in the best interests of all creditors.

A Liquidator has the power, and is under a duty to investigate the conduct of the company's directors or other parties involved in the management of the company's affairs and to provide a report to the Secretary of State for Business Innovation and Skills to help them determine whether disqualification proceedings should be initialised. It should be borne in mind that the vast majority of business failures do not involve serious misconduct. The Liquidator also has the power to bring legal proceedings, if there has been misconduct, and these may result in directors being ordered to make a contribution towards the assets of the company personally.

Liquidation may also follow on from an administration or an administrative receivership as a vehicle for distributing funds to unsecured creditors.

