

## **Bretts Business Recovery: GUIDES: Liquidation**

**Liquidation is the most commonly used procedure for insolvent companies.**

- Liquidation signals the end of a company's trading.
- 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's 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:**

### **1) Creditors Voluntary Liquidation ("CVL")**

- A CVL is initiated by the Directors and Shareholders, who decide the company is insolvent, and pass a resolution to this effect (and also appoint a liquidator).
- These directors pass a resolution that meetings of the company's shareholders (known as members) and creditors are convened.
- This is done to place the company into liquidation, because they decide the company is insolvent, and to appoint a Liquidator.
- The directors nominate a Licensed Insolvency Practitioner to assist in this process and 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, either in person or represented by proxy.
- The company ceases to trade and any assets will be realised by the liquidator for the benefit of creditors.

## 2) Compulsory Liquidation

- This process is usually started 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.

They also provide a report to the Secretary of State for Business Innovation and skills to help them determine whether disqualification proceedings should be initialised.

The vast majority of business failures do not involve serious misconduct.

The Liquidator also has the power to bring legal proceedings. If there's been misconduct, it may result in directors being ordered to make a contribution towards the assets of the company.

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

## For More Information, Please Contact BBR Today

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