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Creditors' Voluntary Liquidation (Insolvent Liquidation)

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What are the directors' duties?

As a director of a company you have a statutory duty to promote the success of the company for the benefit of its members/shareholders. Once you become aware that the company is insolvent your primary duty changes where you must consider or act in the interests of creditors of the company.

When a company becomes insolvent no further credit should be obtained and you should be extremely careful when it comes to making payments to creditors. You should ensure that company assets are not sold, transferred or otherwise disposed of, and that they are physically secure, and that adequate insurance remains in place.

It is for these reason that it important to recognise the signs of insolvency and to act accordingly. A failure to recognise insolvency may result in personal liability attaching to you as director for breaching your statutory duty if it can be demonstrated that your actions, or lack of, resulted in additional losses to the company creditors.

It is therefore vitally important that directors seek early professional advice as soon as they become aware of potential insolvency. Any decisions you take should be documented.

What is the process for placing a company into MVL?

The Board of Directors will often rely upon professional advisers when making the decision to appoint a Liquidator and the steps to be followed once that decision has been made. If instructed, Connect Insolvency Limited will assist with the necessary steps, including the preparation of all documentation, to place the Company into CVL.

Summarised below is a brief overview of the steps to be taken:

- A meeting of the Board of Directors is held to resolve that steps should be taken to place the Company into CVL and appoint an insolvency practitioner to assist in that regard.
- Once the decision has been made to wind up the Company it would normally cease to trade. The directors retain their powers of management and have certain statutory obligations. These obligations include the preparation of a statement of affairs. The statement is sent to creditors in advance of the deemed consent procedure or the virtual meeting (discussed below) and is lodged at Companies House. The directors will be requested to provide information on the Company's history and trading, including reasons for the deficiency shown on the statement of affairs.
- Notice of the special resolution that the Company be wound up must be given to a qualifying floating charge holder, as the holder of a qualifying floating charge, has the right (but not the obligation) to take steps to appoint an Administrator, before the special resolution is passed.
- A meeting of shareholders is then held. The meeting considers a special resolution that the Company be wound up. The special resolution usually requires 14 days-notice to be given and is passed if a majority of 75% of those present and voting approve it. The shareholders also nominate a Liquidator. This requires an ordinary resolution passed by a simple majority of more than 50% of those present and voting. It is at this meeting that the Company is placed into CVL and a Liquidator appointed.
- Following the meeting of shareholders, the creditors are then given the opportunity to consider the appointment of an insolvency practitioner either by deemed consent procedure or by holding a virtual meeting of creditors. Following either of these procedures the Liquidators' appointment is usually ratified. In rare instances the appointed Liquidator can be replaced by another by the creditors.

Deemed Consent

Creditors will be sent a notice detailing the resolution to appointment a Liquidator together with a copy of the Statement of Affairs of the company. The creditors will be advised of the day on which the resolution will deemed to be passed (this will usually be the day of the members meeting). The notice must be delivered to creditors 3 business days before the date the resolutions are deemed to be passed. Best practice determines that two weeks' notice is normally provided to creditors. The creditors will be informed that they have the right to object to the deemed consent. If creditors object then a physical meeting will need to be called to seek a decision from creditors on the nomination of a Liquidator. If creditors do not object then the resolution is deemed passed.

Virtual Meeting

This virtual meeting is usually held on the same day as the shareholders' meeting. The purpose of this virtual meeting is to nominate a Liquidator and a committee. If however a committee is not formed the creditors will also be asked to approve resolutions relating to fees. Notice of the virtual meeting of creditors together with the Statement of Affairs of the company is delivered to creditors not less than three business days' before the virtual meeting is held. Best practice determines that two weeks' notice is normally provided to creditors. The notice of the creditors' virtual meeting is advertised in the London Gazette and, if thought necessary, in a local newspaper. The creditors will be informed that they have the right to object to the virtual meeting. If creditors object then a physical meeting will need to be called.

Physical Meeting

Once the criteria to call a physical meeting has been met then a physical meeting of creditors needs to be held within 14 days. The notice calling the physical meeting must be delivered at least 3 business days before a meeting may be held. The notice of the creditors' meeting is advertised in the London Gazette and, if thought necessary, in a local newspaper.

What is the role of the liquidator?

Liquidating a company is a complex legal process. As the engagement develops, the insolvency practitioner's role changes and it is important that we make you aware of how this may affect you.

Initially the insolvency practitioner owes his prime duty to the Company acting through its Board of Directors, ensuring that the Board of Directors receives appropriate advice on its options.

As the insolvency practitioner become potential Liquidator, he will have to take a more independent and balanced approach. Any advice that they give from that point will have to be independent to avoid compromising the potential appointment as Liquidator.

Once appointed the Liquidator will owe his prime duty to the creditors as a whole. The principal role of the Liquidator is to realise the Company's assets and if sufficient funds are received, to agree creditors' claims and distribute the proceeds in accordance with their legal priorities.

The Liquidator also has a statutory duty to submit a confidential report on the conduct of the directors (both past and present) to the Insolvency Service. This report is then independently considered by the Insolvency Service to determine whether it is appropriate to commence [disqualification proceedings](#) against any of the Company's directors.

The Liquidator also needs to consider whether there are any matters that may lead to any recoveries being made for the benefit of creditors. This would typically include any potential claims which may be brought against parties either connected to or who have past dealings with the company.

If you would like to find out more about a Creditors' Voluntary Liquidation then please [contact us](#) for a no obligation discussion to find out how our services could help you.