

Compulsory Liquidation

What is company liquidation?

Liquidation of a company simply means turning its assets into cash and distributing the cash to its creditors. Liquidation is a legal process in which a liquidator is appointed to 'wind up' the affairs of a limited company and at the end of the process the company ceases to exist. **Liquidation of a company** does not mean that its creditors will necessarily get paid. The purpose of liquidation is to ensure that all the affairs of the company have been dealt with properly.

What company affairs are dealt with in its liquidation?

Company contracts including employee contracts must be completed, transferred or otherwise brought to an end; the business of the company must cease; legal disputes must be settled; company assets must be sold; monies owed to the company must be collected; any available funds must be distributed to creditors and any surplus available after repayment of all debts must be returned as share capital to shareholders. When these matters have been dealt with, the liquidator applies to have the company removed from the register at Companies House and dissolved, which means it ceases to exist.

What types of company liquidations are there?

There are three types of company liquidations:

Members' Voluntary Liquidation or MVL: This is sometimes called a solvent liquidation. The shareholders decide to put the company into liquidation and there are enough assets available for the company to pay all of its debts, including any applicable interest. The company is therefore stated to be solvent. This type of liquidation arises when the company has fulfilled its purpose, when shareholders wish to realise their investments or when a group (of companies) is being reorganised and companies that are surplus to requirements need to be tidied away.

Creditors' Voluntary Liquidation or CVL: This is sometimes called a creditors' voluntary winding up. The shareholders decide to put it into liquidation and there are not enough assets available for

the company to pay all of its debts, including any applicable interest. The company is therefore stated to be insolvent.

Compulsory Liquidation or CL: This is sometimes called a compulsory winding up. It occurs when the court makes an order for the company to be wound up – a 'winding-up order' – on the petition of an appropriate person. If there is more than one director, all the directors must jointly present the winding-up petition.

Where can I get advice about liquidation?

Sources of advice include your local Citizens Advice Bureau, a solicitor, a qualified accountant, a licensed and authorised insolvency practitioner, a reputable financial adviser or a debt advice centre. Before you take any action to place a company into liquidation, you should obtain your own legal and financial advice on the liquidation processes and on other options that may be open to you. See below for a summary of the options.

Who can put a company into Compulsory Liquidation (CL)?

Any creditor may present a petition to court for the winding-up of a company, usually on the grounds that the company owes a debt to that creditor, which it has refused or neglected to pay. Less frequently the company itself, its directors or a shareholder may petition for the winding-up of the company. In certain circumstances, the winding-up petition may be presented to court by an administrative receiver, an administrator, a supervisor of a voluntary arrangement, the Secretary of State for Business, Innovation and Skills, the Financial Services Authority, the clerk of a 'magistrates' court, the official receiver or a Member State Liquidator. The petition can still be presented even if the company is already in administrative receivership or voluntary liquidation.

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In what circumstances can a winding-up order be made by the court?

The court can make a winding-up order if the company:

- » is unable to pay its debts or
- » has not begun trading within one year of its incorporation or
- » has suspended its trading for a whole year or
- » has decided that it should be wound up by the court or
- » has less than two shareholders, unless it is a private company limited by shares or guarantee or
- » is an 'old' public company or
- » has reached the end of a moratorium without approval of a voluntary arrangement or
- » registered as a public limited company more than a year previously but has not yet been issued with a trading certificate or
- » should be wound up because the court forms the opinion that this would be just and equitable

How does the court decide if a company is unable to pay its debts?

The court will regard the company as being unable to pay its debts if:

- » a creditor who is owed more than £750 serves a 'statutory demand' for the money due and it is not paid or secured or a settlement is not agreed, within 21 days or
- » it is proved to the court that the company's total debts exceed its total assets or
- » it is proved to the court that the company cannot pay its debts when they fall due as, for example, no payment is made in response to a letter of demand or
- » a creditor obtains judgement against the company and execution is unsatisfied as for example when the sheriff or bailiff is unable to seize enough assets to clear the debt.

In which court should a winding-up petition be presented?

In England and Wales, the winding-up petition may be presented in The High Court in London or in any District Registry of the High Court in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester, Newcastle upon Tyne or Preston.

If the company's paid up share capital is £120,000 or less, the winding-up petition may be presented in a county court which deals with insolvency matters and that county court covers the area where

the company's trading address or registered office is situated.

What are the forms and procedures for presenting a winding-up petition?

To ensure that all legal requirements are met, it is usual to instruct a solicitor to deal with issuing a winding up petition. The winding-up process is not simply a matter of completing a petition form and presenting it to the court. The court hearing for example, can result in costs being awarded against either party i.e. the petitioner or the company against whom the petition has been presented. The petitioner should take care to ensure that the winding-up process is used appropriately particularly where the company has good reason for claiming that it does not owe the petitioner the money claimed. The rules and regulations are detailed and specific and are summarised in our fact sheet Procedures for Presenting a Winding-up Petition.

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