

## **The foundations of a successful Members' Voluntary Liquidation**

For directors wishing to close down their solvent company, a members' voluntary liquidation ('MVL') can be a tax-efficient method of distributing the remaining assets to shareholders and putting the company to rest in an organised, legally-compliant manner. As it's a formal, structured process that must be conducted in strict accordance with The Insolvency Act 1986, only a licenced insolvency practitioner is able to offer the option of an MVL.

Although the liquidator will run the liquidation procedure once they have been appointed by the shareholders, there are a number of matters that directors will need to address in order to prepare their company for an MVL. However, the insolvency practitioner will, firstly, work with directors to agree upon a suitable strategy and then provide them with the necessary guidance and documentation to ensure that the appointment of liquidators is as efficient as possible, while complying with all legal requirements.

### **The right, professional advice**

As a starting point, any director intending to close a solvent company, should discuss the matter with the company's accountant who will advise if an MVL is appropriate and whether, from a personal tax perspective, it would provide the best outcome for individual shareholders. The accountant may then refer the director to an insolvency practitioner for a more detailed appraisal of the company's circumstances and for guidance on the next steps. In any event, an insolvency practitioner would be happy to talk to any prospective client about the feasibility of an MVL.

### **Preparing to liquidate**

In order to keep liquidation costs to a reasonable minimum, a company's financial affairs should be simplified as far as possible in preparation for an MVL. All employees will need to be dismissed and paid any redundancy compensation from the company's funds. Any occupational pension scheme must be closed as, once appointed, the liquidator would automatically assume the company's responsibilities in that respect and any actions required would increase the cost of the process. Preferably, all tangible assets should be sold before liquidation and the proceeds deposited into the company's bank account, however, if this isn't possible or desirable, the liquidator would be able to distribute, for example, the company's interest in a motor vehicle or a piece of machinery, to shareholders, once appointed.

### **Creditors and the MVL process**

Ideally, by the liquidation date, a company should have no outstanding liabilities whatsoever. If, for any reason, it has not been possible to pay a specific creditor, the liquidator would be able to make a distribution to the party in question, but this should be planned for in advance of the appointment and, usually, additional distribution costs would be payable to the liquidator.

Clearly, once all of the funds in a liquidation have been distributed to the shareholders, it will not be possible to pay any unexpected claims from creditors, including HM Revenue & Customs. Therefore, prior to appointment, an insolvency practitioner will need assurance that there are no tax liabilities payable or due for payment in the future. For that reason, - as well to ensure that all filing requirements have been satisfied - the director would be expected to provide the insolvency practitioner with copies of all company tax returns for the two year period up to the date of liquidation.

## Warranties and guarantees

In preparing for an MVL, it will also be essential to discuss the possible implications of any warranty or guarantee agreements that the company has with its customers. As they will have legal responsibility for all of the company's affairs following appointment, a liquidator must avoid acquiring liability for customers' claims that could arise at any point in the future. The nature of any such agreements would, therefore, need to be scrutinised as soon as possible in the early planning stages.

## Distribution options

At an early stage of the planning process, directors will need to consider how soon shareholders will require their share of the company's assets. Funds can be drawn as directors' or shareholders' loans prior to appointment and the balances – having become assets of the company – can be distributed via a paper exercise after the liquidation date. The clear advantage over a liquidator distributing the cash is that shareholders will have their money sooner. Following appointment, there is a legal requirement for liquidators to advertise the liquidation online and allow any potential creditors 21 days to make a claim. This normally results in delay of about one month in making the first distribution. Directors should seek tax advice before making a decision as regards drawing a loan as this will have varying personal tax implications depending on the shareholder.

## BRI; The MVL Experts - from start to finish

With many years' experience of successfully conducting members' voluntary liquidations, we at BRI know that planning and preparation are the key to a smooth, trouble-free experience for our clients. While, inevitably, the onus is on the director to close down their company's affairs, we can provide clear, reliable guidance at every step of the process. And when the time comes to start the appointment process, our staff will provide easy-to-understand explanations for the various legal requirements that line the route towards liquidation, with exemplary customer care always being our main priority.

If you feel that an MVL may be appropriate for your client, please don't hesitate to refer them to us for a free-of-charge, confidential discussion.

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