



DebtcolTM
Intelligent Debt Collection

The process of Compulsory Liquidation for creditors



A Guidance Paper by  Debtcol
Intelligent and cost-effective debt collection

The process of Compulsory Liquidation for creditors

An overview

What is a compulsory liquidation?

A compulsory liquidation occurs when a company is wound up by an order of the court.

The purpose of the winding-up order is to appoint a responsible person who has a duty to collect the company's assets and distribute them to its creditors in accordance with the law.

When does a company find itself in compulsory liquidation?

The most common circumstances are when a petition is presented to the court on the grounds that the company is unable to pay its debts, or it is proved to the court that the company's liabilities are greater than its assets.

Who can present a petition to wind up the company?

Amongst others, a creditor, the company itself, or the Secretary of State can present a petition to the court to wind up the company.

A petitioning creditor may feel that the company's assets might be in jeopardy in the period after presentation of the petition. If so, he may apply to the court for an order to appoint a provisional liquidator whose function is to ensure the security of the company's assets between the petition date and the hearing (usually several weeks later).

Who deals with the company's affairs?

Once a winding-up order is made, the Official Receiver becomes the liquidator. The Official Receiver is a civil servant and an officer of the court.

The Official Receiver must decide within twelve weeks of the winding-up order whether to call a meeting of creditors to appoint a licensed insolvency practitioner to act as liquidator. In certain circumstances the Secretary of State or the court may make such an appointment.

This guide assumes that a licensed insolvency practitioner has been appointed liquidator.

What are the consequences of a winding-up order?

Any disposition of the company's property after the presentation of the petition is void, unless the court orders otherwise. After the liquidation has commenced, any legal action against the company is stayed, except with leave of the court. In addition, no new legal proceedings may be brought against the company without leave of the court. The powers of the directors cease and the liquidator takes control of the company and its assets.

What are the powers of the liquidator?

A liquidator's powers are wide and include powers to sell the company's assets, to bring and defend legal proceedings and to pay dividends to the company's creditors. Some of the liquidator's powers can only be exercised with the agreement of the liquidation committee or the court.

Is the liquidator bound by contracts entered into by the company prior to his appointment?

No. The liquidator may refuse to perform or formally disclaim any onerous or unprofitable contract entered into by the company prior to liquidation. The other party will then have a claim for breach of contract, which ranks as an unsecured claim. However, a contracting party that has acquired a beneficial interest in property of the company will still be able to enforce it.

What if the company holds something which I own?

If you believe that you own something in the company's possession you should contact the liquidator as soon as possible with full proof of ownership and be prepared to identify what you are claiming. The liquidator will examine your claim carefully before deciding whether to release the goods in question, pay you for them, or otherwise.

Does the liquidator pay unsecured creditors the money owed to them?

Secured and preferential creditors are paid before unsecured creditors. Secured creditors are those that have some form of security over a company's property (for instance a bank with a fixed and floating charge debenture). Secured creditors are entitled to be repaid their debt out of the proceeds of sale of the secured assets in priority to ordinary unsecured creditors.

Preferential creditors are a special category of unsecured creditor. They consist mainly of certain debts due to employees and the Redundancy Payments Service and are paid in priority to all other unsecured creditors.

The liquidator will pay a dividend to unsecured creditors if enough funds have been realised from the company's assets after paying costs incurred.

When all claims have been adjudicated or provided for, the liquidator will declare a dividend. The dividend will be a percentage (pence in the pound) of each creditor's total admitted claim, based on the cash available for distribution to the creditors and the total of all creditors' claims. All unsecured creditors, which includes HMRC for VAT and PAYE arrears, are treated equally.

If there is no return to the unsecured creditors can I get any money back from my debt?

Six months after writing off a debt in your accounts, you can claim VAT Bad Debt Relief from HMRC for the VAT that you have paid.

How do I make a claim in the liquidation?

The liquidator will write to all known creditors asking them to submit their claims. You should submit your claim to the liquidator in writing within the specified time limit. You should also send enough supporting evidence of your claim, e.g. copy statements, invoices, correspondence etc. to allow the liquidator to decide whether or not your claim is valid. The liquidator will not necessarily acknowledge receipt of your claim, but will advise you when he has adjudicated your claim. Any costs incurred in submitting your claim will not be reimbursed.

Can I claim interest and penalties for non payment?

You may claim interest on your outstanding debt up to the date of liquidation if it bore interest, if it was payable at a previous date under a written instrument, or if you had previously demanded it in writing with notice that you would claim interest. You will not get interest on your claim accruing after liquidation, unless all creditors are paid in full.

How will the liquidator adjudicate my claim?

The liquidator will consider your claim and any supporting information. He will compare your claim to the company's records and any other available information, and may discuss the claim with the directors. The liquidator may ask you for additional information or evidence if he thinks you have not sufficiently proved your claim.

For example, if you have supplied goods to the company, the liquidator may ask you to provide copies of signed delivery notes. The liquidator may agree your claim in full, or in part, or he may reject your claim if he does not think it is valid.

What can I do if I believe the liquidator has unfairly rejected my claim?

It is best to contact the liquidator in the first instance to discuss any amounts under dispute. If you cannot reach agreement you can, within 21 days of rejection, appeal to court. After 21 days, if you do not apply to court the adjudication is final.

As an unsecured creditor, what information am I entitled to?

The Official Receiver will have sent a report to creditors. If you would like information on progress at any time, you should contact the liquidator. Meetings of creditors are normally convened only at the beginning and the end of the liquidation. Creditors may demand a meeting of creditors if they constitute 10% in value of the creditors as a whole.

How can I help the liquidator to achieve the best possible outcome for creditors?

The unsecured creditors can form a liquidation committee to help the liquidator (see below). You should also tell the liquidator if you believe that the company has assets, income or business interests that the directors have not disclosed, or if you think you may have any information that might be useful to the liquidator. We will advise you when he has adjudicated your claim. Any costs incurred in submitting your claim will not be reimbursed.

Can the unsecured creditors form a liquidation committee?

Yes. A liquidation committee may be appointed at a meeting of creditors and must consist of at least three and not more than five creditors. The liquidation committee receives reports from the liquidator and may meet periodically. It assists the liquidator, approves his remuneration and sanctions the exercise of some of his powers.

Liquidation committee members are not paid, but will receive their reasonable travelling expenses as a cost of the liquidation.

How is the liquidator's fee determined?

The liquidation committee (if there is one) or the creditors agree the liquidator's fee, failing which it will be determined in accordance with a statutory scale or fixed by the court. Although the fee can be fixed as a percentage of the assets realised or distributed (or both), it is normally based on the following factors:

- the time properly spent by the liquidator and his staff;
- the complexity of the case;
- any exceptional responsibility borne by the liquidator;
- the effectiveness with which the liquidator carries out his duties;
- the value and nature of the company's assets.

When is the liquidation complete?

The liquidation is complete when all the assets have been realised, all creditors' claims have been adjudicated (where there are sufficient funds) and net realisations after expenses of the liquidation have been distributed to the creditors.

The liquidator will call a final meeting of creditors and present his final receipts and payments account, together with a report showing how the liquidation has been conducted.

What should I do if I am dissatisfied with the liquidator's handling of the case?

You should contact the liquidator to try to resolve the problem. If you are still not satisfied you may be able to make an application to court. If you believe that the liquidator is guilty of professional misconduct, you should contact his regulatory body.



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This document explains the relevant position only in general terms and omits details less commonly experienced for the sake of brevity. It is not intended to be used as formal advice about your actual situation, for which you should consult us specifically and not rely upon this document.

Debtcol would be pleased to advise you formally and you should contact Paul Davies (Director) to arrange this by calling 01489 550 496.

Debtcol regrets it is unable to accept any responsibility to anybody who seeks to rely on this document.

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