



# Members Voluntary Liquidations: How to extract cash!

Practical applications of a solvent liquidation for  
Directors of SME's

By Tom Murray



A solvent liquidation is known as a *Members' Voluntary Liquidation* ("MVL"). The Liquidator is appointed by the shareholders of the Company where the assets of that company are sufficient to discharge all known creditors with a surplus to pay to shareholders. Such cases are usually dealt with within a twelve month period. There is no reporting requirement for the Liquidator to the Office of the Director of Corporate Enforcement.

The majority of MVLs arise as a result of:

- Tax planning
- A desire to transfer freehold property held by a company to its shareholder through a distribution in specie to avoid stamp duty
- A desire to unlock capital for shareholders who wish to exit the business by selling assets (such as on retirement)
- Group Reorganisations - Simplifying your group structure by closing down a subsidiary within a group which is no longer required or reorganised in anticipation of the sale of one or more businesses
- Splitting assets between shareholders in a shareholders dispute scenario
- Secure the orderly winding up of a company when the company has reached the end of its 'useful life'

## Tax planning

As can be evidenced by the increasing number of MVL's notified to the Companies Registration Office over the past five years they are a popular way of extracting accumulated funds and distributing them to shareholders so that they only pay Capital Gains Tax at a rate of 20%, as opposed to higher rates of PAYE/PRSI on an income type distribution.

It is important that the process is planned and the company suitably reorganised in order to minimise tax liabilities and maximise any commercial advantages

In certain circumstances

- The shareholders may be able to avail of Retirement Relief, and not pay any Capital Gains Tax.

- It may be possible to maximise the "net" return to the shareholders, if they are executive Directors, by arranging for the company to make them redundant, and to pay them a Tax Free Redundancy lump sum.
- It may also be possible to avail of pension planning opportunities.
- It is possible to transfer freehold property to shareholders as a distribution "in specie". The main benefit of such a transfer is that no stamp duty is payable on the transfer. However, such scenarios require a detailed review to ensure that the circumstances are appropriate for such a transfer.

## Distribution In Specie

A popular way for dealing with freehold property held by a company is to do a distribution in specie to shareholders. Such a distribution avoids stamp duty. It is important that if a distribution in specie is envisaged, that the resolution appointing the Liquidator provides him with specific authorisation to do such a distribution.

There is a drawback to doing a distribution in specie if the freehold property has a large mortgage attached to it. To avail of the stamp duty exemption, the property must be transferred without the mortgage. This means that the mortgage would have to be paid off in full, possibly by the shareholders subscribing for additional shares.

## Group Reorganisations

As a result of mergers and acquisitions or transfers of business and assets between group companies, a group structure may over time become overly complex. There is additional corporate governance and accounting requirements in respect of dormant group companies which takes up a lot of 'wasted' management time. Groups that implement a realignment of the group structure tend in the majority of circumstances to utilize Members' Voluntary Liquidations facilitate the restructuring and dissolution of surplus group companies.

## Shareholders Disputes

There are three categories of dispute that can typically arise within a company:

- i. Management disputes which can revolve around day to day matters, such as contracts, suppliers, human resources, premises and so on. Deeper divisions can arise in relation to strategic decisions such as mergers and takeovers.
- ii. Personal disputes which can arise around matters such as succession and divorce.
- iii. Finally, issues can arise around misconduct, such as loans to directors, transactions with connected persons, diversion of corporate opportunity and exclusion/removal from management.

In some cases that I have dealt with it, the solution has been to place the company into a Members Voluntary Liquidation, and sell the business to the highest bidder, and distribute the proceeds among the shareholders, or in some cases, distribute the assets in specie to the shareholders.

Finally when a company has achieved the purpose which it was set up to achieve, or has reached the end of its life cycle, a Members Voluntary Liquidation can be a very 'tidy' way of resolving all outstanding issues.

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