

# Liquidation of Companies

by Tom Murray

The insolvency of a company can be a very distressing and stressful time for its directors. In many cases, the financial difficulties facing a company have been caused by factors beyond the company's control. As such the number of companies being placed into an insolvent liquidation will increase in the last quarter of 2022 and throughout 2023 as the companies deal with the withdrawal of government Covid-19 supports, tax warehousing and geopolitical impacts on interest rates, fuel prices and supply chains.

Creditors' Voluntary Liquidations remain the most common way for directors and shareholders to deal voluntarily with their company's insolvency. The procedure allows directors to deal with the winding up of their company in a responsible manner.

Whatever the cause of the company's insolvency, much of the stress and anxiety can be reduced if the directors seek advice from Professionals. In the first instance, we recommend that directors seek advice from their existing accountants, who will have had experience of advising similar companies previously.

Once the directors take a decision to wind up the company, there are certain formal legal steps that must be taken.

There are 3 stages to placing a company into Liquidation:

- Pre-liquidation planning.
- The Shareholders and the Creditors meetings
- Post Creditors Meeting Liquidation activities

## Pre-Liquidation Planning

The first step is to agree on the appointment of a Liquidator. Generally speaking, the company's existing accountant will introduce the company directors to an insolvency practitioner (IP). (The company's existing accountant is precluded by the Companies Acts from acting as liquidator).

An experienced IP will consider all options for the company with the Directors including whether the company can be rehabilitated or rescued using informal or formal restructuring procedures such as SCARP or Examinership.

On the assumption that the company needs to be placed into liquidation, a meeting of the shareholders and a meeting of the creditors must be held to put the Company into liquidation and to appoint the Liquidator.

The shareholder's meeting is normally held just before the Creditors meeting.

Notices of the meeting of the shareholders and notices the meeting of creditors must be sent to the respective shareholders and creditors at least 10 days before the date of the meeting.

The notice sent to the creditors convening the meeting must attach a general and special form of proxy.

Notice of the creditors meeting must also be advertised in two daily newspapers circulating in the area of the registered office or principal place of business of the Company. The advertisement must be placed at least 10 days before the date of the meeting.

The Directors should ensure they control the Registered Office of the Company (i.e. have access to the post) as the proxy forms may be sent back by Creditors to that address. If the Directors do not control the Registered Office, it should be changed to an address the Directors control.

Between the date of the decision to liquidate and the appointment of the Liquidator, the Directors should undertake the following steps.

- The Company must decide if it will continue trading up until the liquidation date or cease trading immediately. In certain cases, the Company may decide to finish certain contracts in order to maximise realisations.
- A decision to continue trading will impact on what employees should be retained until the liquidation date.
- The position of the employees needs to be carefully considered. If there is a Trade Union involved, then it should be consulted. It is vital that the liquidator be provided with the correct salary information and holiday entitlements so that their claims may be processed correctly in the liquidation.
- Any staff mobile phones should be cancelled on the day they leave to avoid recurring rental and phone charges. Keys to the Company's premises should also be collected and alarm codes changed. Employees should be allowed to collect personal possessions from their desks and lockers before the company is placed into liquidation.
- If employees are members of a Company Pension Plan they should be advised what will happen their pension plan.
- The assets of the Company e.g. fixed assets such as plant & equipment,

stocks and laptops should be physically secured. Laptops should not be sold to employees as the Liquidator may need access to them.

- The Directors should organise to deposit any monies collected in a separate bank account if the existing bank account is overdrawn.
- The Company may be faced with Creditors calling to enforce Retention of Title (ROT) clauses over stocks. As ROT can be a complex legal matter, the Directors should take legal advice before agreeing to any ROT claims or alternatively leave it to the Liquidator.
- Perishable stocks should probably be returned to suppliers. If suppliers are not prepared to accept the stock back, then it should be safely disposed of. Perishable food stocks that cannot be quickly sold may be donated to the charity Food for Ireland for distribution to people in need.
- Any fridges, display cabinets for food and cold stores should be cleaned out and turned off to save electricity charges.
- The Directors should collect as much of the collectible debt as possible. All previous deliveries to customers should be invoiced if not invoiced already. Any payments which are received should be allocated against specific invoices. If the Company has a Credit Controller/Credit Manager it might wise to retain them until the liquidation date.
- No monies should be paid from the Company's bank accounts other than payments required to safeguard the Company's assets.
- VAT and PAYE returns should be brought up to date.
- The Director's should prepare for the creditors meeting.
  - A Chairmans Statement which gives an outline of the history of the company and reasons for its failure. This should be as detailed as possible.
  - A statement of Affairs. The Statement of Affairs will show the book values of the company's assets with the Directors' estimated realisable values in a liquidation. It is important to include all

creditors such as the Revenue Commissioners and utility suppliers.

Fees and expenses incurred by accountants advising the Company on the procedures to be followed in relation to placing the company into liquidation can be paid by the Company or by the appointed liquidator.

By properly preparing for the liquidation, the Directors will go a long way to organising an orderly Liquidation which will help them to meet their legal obligations and remove some of the stress involved. It will also enable the liquidator to submit a more positive report to ODCE.

### The Shareholders and the Creditors meetings

A formal meeting of the shareholders needs to be held to put the company into liquidation and to appoint a liquidator. 51% of the shareholders must vote in favour of the resolution placing the company into liquidation.

A creditors' meeting must also be held. During the Covid-19 pandemic physical meetings of members and creditors could not take place, and in order to allow meetings of creditors and other meetings of members and creditors to take place legislation was enacted to allow the meetings be held remotely by telephone and/or video conferencing facilities. At the end of April 2022, the government extended the ability to hold these meetings virtually until the end of December 2022.

The manner in how the telephone video conferencing is to be carried out, is dependent on the facilities available to each firm and will also depend on the number of creditors in each case.

As you cannot assume that all creditors will have access to the internet, it is recommended that telephone conferencing is also offered. As with physical meetings, it is important to know who is in attendance, therefore it is recommended asking creditors to register in advance of the virtual meeting so they can be sent details, rather than sending any log-in details with the notice. IPs may also consider emailing a copy of the directors statement of the position of the company's affairs, list of

creditors with estimated claims and any other information being provided to the meeting on the morning of the virtual meeting to those creditors who have submitted proxy forms and requested attendance.

In order to comply with current government and health care advice during the Covid-19 pandemic a physical meeting of members and creditors cannot take place. In order to provide creditors with the opportunity to participate in the meeting, the meeting will be held remotely by telephone and/or video conferencing facilities. In order to make suitable arrangements to ensure that all those wishing to participate are able to take part, creditors are requested to submit their proxy form in advance of the meeting and indicate that they wish to be sent details by email of how they may participate in the meeting at the required time.

### Format of the Creditors' Meeting

Generally speaking, the creditors' meeting will take the following format:

- The creditors will be handed a copy of the directors' estimated statement of affairs.

The directors are obliged to present a full statement of the position of the company's affairs, together with a list of creditors of the company and the estimated amount of their claims to the meeting of creditors. This statement will show the book values of the company's assets with the directors estimated realisable values in a winding up.



- The nominated director will read out his statement outlining the company's history and causes of failure.

It is advisable for the director to seek professional advice on the preparation of this statement.

- Any creditors present may then ask questions.
- At an earlier meeting of shareholders, a liquidator would have been appointed by the company. However, the creditors have an opportunity to nominate an alternative liquidator. If an alternative nomination for a liquidator is proposed, a formal vote needs to be taken.

The nominated liquidator should not have previously acted for the company or its directors in a professional capacity. Under existing legislation, in order for the creditors to overturn the company's nomination of liquidator, they must have sufficient votes in value of the creditors represented to carry the resolution.

Generally speaking, if a company wishes to ensure that its choice of liquidator remains appointed, then it needs to seek the support of as many creditors as possible and encourage them to return proxies that are validly completed and are in favour of the chairman.

The creditors of the company will either be limited companies or creditors who are owed monies personally. The rules governing the conduct of creditors' meetings state that a proxy representing a limited company must be appointed:

- under the common seal of the

company; or

- under the hand of some officer duly authorised who must state that fact on the proxy form.

In practice, to avoid any dispute over the admissibility of a proxy submitted by a limited company, it is advisable that the person duly authorised who signs the proxy on behalf of the creditor writes in beneath his name the following: "Duly authorised officer of the company".

- The creditors may decide to appoint a committee of inspection. The creditors are entitled to nominate up to five people onto this committee, and the shareholders are entitled to appoint three people. The purpose of the committee is to assist the liquidator in carrying out his duties. The committee can also approve the liquidators' fees.

### Post Creditors Meeting Liquidation activities

Once a Company is placed into liquidation the liquidator undertakes the following duties:

- Secures books, records and assets of the liquidation.
- Process employee claims for arrears of wages, minimum notice and redundancy.
- Investigates reasons for the liquidation.
- Sells assets. (We are experts in valuing investments and shares).
- Submits report to the Office of the Director of Corporate Enforcement.

- Agrees claims of creditors, particularly Preferential Creditors.
- Pays dividends to creditors if asset realisations in the liquidation are sufficient.

Directors do need to be conscious if they have personal guarantees or if the company has significant PAYE/ PRSI liabilities as they may be made personally liable for the tax on their wages. In this regard, it is not unusual to see companies pay PAYE and PRSI over other taxes such as Corporation Tax or VAT in the periods leading up to liquidation.

For the vast majority of Directors who have acted honestly and responsibly, in the stewardship of their business, the liquidation process can be a relief to substantial stress they are under and allows them to focus on their future rather than firefight legacy issues.



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