
Court Liquidation Overview

A court liquidation is a Court appointment that takes place as a consequence of an applicant, usually a creditor, applying to the Court for an order that a company be wound up in insolvency. In making the winding up Order, the Court will also appoint a liquidator for the purposes of conducting the winding up. The applicant creditor, generally nominates the liquidator.

Objective of a Court liquidation

The objective of a court liquidation is to:

- wind up the affairs of a company; and
- provide for a fair and equitable distribution of the company's property amongst its creditors.

The company must cease to carry on its business except insofar as is in the opinion of the liquidator continuation of trading is required for the beneficial disposal of assets or the winding down of the business.

Role of a liquidator

The role of a court appointed liquidator is to take control of the company's business and:

- wind up the affairs of a company;
- conduct investigations into the affairs of the company to determine if any offences have been committed by any past or present officer, member or contributory, and report their findings to ASIC;

- conduct investigations into insolvent trading and if applicable commence recovery action in respect to these investigations;
- conduct investigations into voidable transactions under the *Corporations Act 2001* (such as preference claims) and if applicable commence recovery action in respect to these investigations; and
- provide for a fair and equitable distribution of the company's property amongst its creditors.

In some circumstances the Court may make specific orders as to certain tasks and investigations that the liquidator must perform.

Length of a Court liquidation

There is no prescribed timeframe within which a court liquidation must be finalised. The length of a court liquidation is subject to the complexity of the work required to be undertaken by the liquidator.

Reports and meetings during a Court liquidation

A court appointed liquidator is required to send an initial notice to creditors within 20 business days of his or her appointment setting out the circumstances of the appointment and the method upon which he or she proposes to be remunerated.

Within three months of the date of liquidation, the liquidator is required to provide creditors with a report setting out the investigations undertaken and to be undertaken and the likelihood of a return to creditors.

A liquidator is not required to hold a meeting of creditors unless requested by creditors to do so.



Consequences to officeholders, employees, members, & creditors in a Court Liquidation

Officeholders

The powers of the directors of an entity cease except to the extent the liquidator or the Court consents to the continuance of the directors' powers.

Directors have an obligation to assist the liquidator in conducting the liquidation.

Directors can be held liable for debts incurred by a company for a period where a liquidator establishes that the director of a company has allowed the company to incur debts whilst insolvent.

Once an application to have the company wound up by the Court has been made, the directors/members of a company can no longer voluntarily select a liquidator to wind up their company. However, a company in this situation may appoint a voluntary administrator.

Should the directors decide to appoint a voluntary administrator, they will be required to demonstrate the merits in doing so, specifically that the company will be able to provide a return to creditors which would be greater than the return in a winding up through the proposal and execution of a deed of company arrangement.

Employees

Employee entitlements are frozen upon the company being wound and rank as a priority claim in the winding up.

In the event that there are insufficient funds in the liquidation to pay employee entitlements, with the exception of outstanding superannuation, in certain circumstances they are covered by the Commonwealth Government Fair Entitlements Guarantee Scheme.

Members

Shareholders of an entity are not entitled to transfer their shares without consent from the liquidator and may be liable for the unpaid portion of their share capital.

Creditors

All civil proceeds are stayed and creditors may prove in the liquidation by lodging a proof of debt with the liquidator. It is important to know that creditors have certain rights in liquidations being:

- make a reasonable request for a meeting of creditors to be held;
- make reasonable requests for information;
- in certain circumstances give directions to me in regard to the conduct of the liquidation;
- appoint a reviewing liquidator; and
- to replace the liquidator.

Secured are not prevented from realising or dealing with their security. Similarly, owners or lessors of property are also not prevented from exercising their rights.

For more information on
Court liquidations visit: slaventorline.com.au

