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Slaven Torline
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Creditors Voluntary Liquidation Fact Sheet

Creditors Voluntary Liquidation Overview

A creditors' voluntary liquidation is initiated by a company when the director(s) believes that the company is insolvent, or likely to become insolvent in the near future, and the company and/or business should not remain in existence.

The members resolve by special resolution at a meeting of members to place the company into liquidation and appoint a liquidator to wind down the affairs of the Company.

Objective of a creditors' voluntary liquidation

The objective of a creditor's voluntary 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 it is in the opinion of the liquidator, required for the beneficial disposal or winding up of the business.

Role of a creditors voluntary liquidator

Upon appointment, the liquidator takes full control of the company's business and the powers of the directors and other officeholders cease. The role of the liquidator is to: 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;
- conduct investigations into voidable transactions under the *Corporations Act 2001* (such as unfair 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.

Length of a creditors' voluntary liquidation

There is no prescribed timeframe for a liquidator to carry out the winding up of a company. The length of a creditors' voluntary liquidation is subject the complexity of the work required to be undertaken by the liquidator.

Reports & meetings during a creditors' voluntary liquidation

The liquidator must cause an initial notice to be sent to creditors within 10 business days from the date of the passing of the resolution by a company's members to liquidate the company setting out the circumstances of appointment and disclose the method by which the liquidator proposes to be remunerated. A liquidator may also seek remuneration approval from creditors in the initial notice.

Within three months of the date of liquidation, the liquidator is required to provide creditors with a report setting out the investigations undertaken to that point and to be undertaken and comment regarding the likelihood of a return to creditors. The liquidator's three month report is also lodged with ASIC.

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

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Consequences to officeholders, employees, members, & creditors in a creditors' voluntary liquidation

Officeholders

The powers of the directors cease except to the extent that the liquidator or the Court consents to the continuance of powers.

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

Directors can be found 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.

Employees

Employee entitlements are frozen upon the appointment of a liquidator to a company and rank as a priority claim in the winding up.

In the event that there are insufficient funds to pay employee entitlements, with the exception of outstanding superannuation, such entitlements up to prescribed limits, are covered by the Commonwealth Government Fair Entitlements Guarantee Scheme.

Members

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

Shares cannot be transferred without the consent of the liquidator.

Creditors

All civil proceedings 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 including the ability to:

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

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

For more information on creditor voluntary liquidations visit: slaventorline.com.au