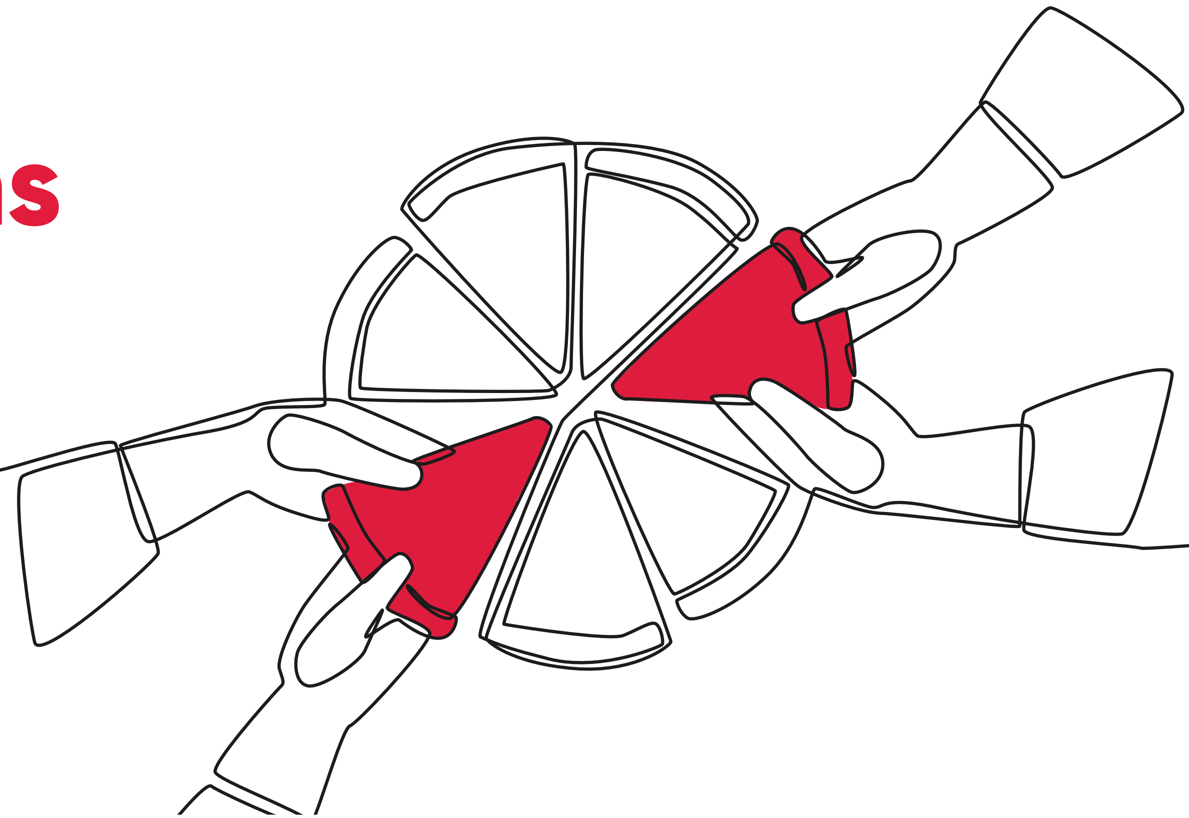
Oury Clark Quick Guides:

Solvent Liquidations

(MVLs)



Insolvency: B23

Overview

- A solvent liquidation is a statutory process in which a company's assets are distributed to the shareholders so that the company can then be dissolved.
- A MVL is an obvious route for business owners to choose when they no longer have any use for the company or are looking to close it down but have assets.
- There are key tax advantages when opting for a MVL as business owners can often make use of entrepreneurs' relief. This can mean they pay as little as 10% tax on the cash they receive as a capital receipt.
- The business owner should seek their own tax advice before embarking on this process.

How an MVL works

A licensed insolvency practitioner will need to be instructed to undertake the liquidation on behalf of the company.

A solvent liquidation can be put into place surprisingly quickly, sometimes within a matter of days.

The Insolvency Practitioner will prepare:

- Suggested board minutes for the directors' meeting which will need to be held.
- A declaration of solvency together with a statement of assets and liabilities.
- Notices to convene a meeting of shareholders.
- Once a majority of directors have sworn the declaration of solvency, the shareholders can pass the necessary resolutions for the company to be wound-up and appoint a liquidator.

The Insolvency Practitioner will walk the business owners through the entire process.

A 'Straightforward' MVL

In the vast majority of cases, the company will have ceased to trade (or trading activity will be pretty minimal) by the time a solvent liquidation is considered, and the company's main asset will be cash at bank with the main liability being final tax to pay. In these circumstances, it will be deemed a 'straightforward' solvent liquidation, and the costs are kept to a minimum where a fixed fee can normally be agreed.

To ensure the professional costs of the process are kept as low as possible, directors should make sure that:

- All liabilities are paid prior to the company going into liquidation.
- Transfer any personal items, such as mobile phone numbers, etc ahead of the liquidation.
- Make sure the company's books & records are up to date.

FAQs

How long does the company stay in liquidation?

This usually depends on how long it takes to obtain tax clearance from HMRC. Usually, this is around 6-9 months.

When do the shareholders receive the cash at bank and any other assets?

Typically, any physical assets can be distributed as a distribution in specie immediately upon the appointment of a liquidator. The cash at bank is distributed in two parts, firstly an initial distribution that is paid within 7 days from the date of the liquidation – this can be around 75% or higher of the balance of funds held. A second and final distribution of the cash at bank is normally paid once tax clearance has been obtained and prior to the company being dissolved.

What happens if it turns out that the company is not solvent and cannot pay its debts within 12 months?

Here the company will normally be transferred from a solvent liquidation to an insolvent liquidation. Directors should be careful they are aware of the company's financial position before entering into a solvent liquidation.

Why do I need to provide the liquidator with an indemnity?

The insolvency practitioner taking the appointment as liquidator will normally always seek an indemnity from the shareholders of the business or any recipient of an early distribution of cash, before tax clearance is obtained. This acts as a form of security for the insolvency practitioner, as they will typically be under pressure from shareholders to distribute out a large amount of cash, sometimes within a few days of their appointment, and certainly before the liquidator has obtained tax clearance and dealt with any other creditor claims. The appointed liquidator needs to be able to have recourse to the shareholders if they have distributed out too much cash and need shareholders to return some of the funds they were distributed early to settle creditor liabilities.

As a director of the company, should I have any concerns about it going into a formal liquidation process?

No, solvent liquidations are used frequently by business owners as a responsible way of closing down a company, appointing an independent liquidator to ensure that all of its debts are settled and to distribute any surplus assets to shareholders.

What is a declaration of solvency?

This is a key document in the liquidation process. Broadly, the directors must declare before a solicitor that they have made a full enquiry into the affairs of the company and are satisfied that it will be able to settle all its debts within 12 months of the company being placed into liquidation.

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