

# Guide to Solvent Company Liquidations

Your options explained:

Corporate Simplification, Member's Voluntary Liquidation, Company Deregistration



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## Corporate Simplification Review

Simplifying your corporate structure by disposing of redundant companies can save you money and time. Significant savings can be achieved by dissolving companies by either members' voluntary liquidation or company deregistration. You will eliminate annual return fees, reduce your cost of compliance and simplify the consolidation process, among other cost savings.

In many cases, the costs of a members' voluntary liquidation or company deregistration are recouped by other cost savings within one year. Is Corporate Simplification appropriate? A winding up of the affairs of a company may be required:

- to save ongoing costs of administering a company or group of companies;
- when it has outlived its commercial use;
- to achieve taxation benefits (for example, it may enable the distribution of certain reserves "tax free");
- when a decision is made to distribute its assets to its shareholders;
- following the death of a principal; or
- as part of a restructuring plan for a group of companies.

### Tax issues

It is important to consider the tax effect that will result from the distribution of assets to shareholders with a view to minimising any tax liabilities:

- Are there any capital gains tax implications to the shareholders?
- Does the company have available franking credits?
- Are there any stamp duty implications?
- Will any tax losses or capital losses lapse as a result of liquidation?
- Will the distribution of assets be taxable as a deemed dividend?
- Will a company shareholder be entitled to a dividend rebate?
- Can the company claim any capital gains tax rollover relief?

### Actions needed prior to winding up

There are many issues that need to be considered before winding up a company. At Dissolve we have developed an extensive Corporation Simplification Checklist to assist us in conducting a detailed review of your group structure.

Our main focus is to reduce the balance sheet of a company to its simplest form prior to winding up. Once the company has been placed into liquidation, if it still has assets such as debtors, plant and equipment, property, external creditors or is a party to any contracts, then the liquidator must deal with these matters. At Dissolve, our professionals are well equipped to deal with these matters, however, it is usually more cost effective for the company to deal with as many of the matters as it can prior to liquidation.

## Members' Voluntary Liquidation

A members' voluntary liquidation is a process detailed in the Corporations Act which allows a company's affairs to be wound-up. In a members' voluntary liquidation, a liquidator is appointed to sell the assets of the company, to pay all creditors and then distribute any surplus assets to the shareholders.

### Prerequisites and procedures

A members' voluntary liquidation is only applicable when a company is solvent – the legislation details this to mean that the directors believe that the company will be able to pay all of its debts within 12 months.

It is usual that the company will have ceased to carry on its business prior to liquidation. Once the company is in liquidation, the company must cease to carry on business unless the liquidator decides it is necessary to carry on the business for a brief period in order to finalise its affairs.

After the liquidation has commenced, a liquidator will advertise the liquidation and call for any creditors of the company to notify the liquidator of their claim by a specific date. This will allow the liquidator to assess all potential claims against the company and settle them. It will also ensure that any creditors that do not respond to the notice will find it extremely difficult to enforce their claim at a later date.

After that, a number of procedures must be complied with, including formal meetings, forms to be lodged with ASIC, notifications to government authorities, and the placement of advertisements in newspapers and the Commonwealth Government Gazette. In a practical sense, the affairs of the company must be wound up, including the disposal of all assets, and payment of all liabilities.

### Effects of members' voluntary liquidation

Placing a company into liquidation has far-reaching effects on the company and on what it can and cannot do. Those effects will be set out in the company's constitution and also in the Corporations Act.

Most importantly, upon the appointment of a liquidator, all of the powers of the directors cease. The liquidator effectively replaces the directors. In practice, the liquidator will consult with the directors and shareholders and seek their views on issues that arise. The corporate structure and corporate powers of the company continue until it is dissolved.

The Corporations Act states that various acts of the company after the commencement of the liquidation will be null and void including any transfer of shares or transfer of the company's property, unless the liquidator consents.

Commonly, contracts are terminated by the commencement of the liquidation. Should a breach of contract have occurred as a result of the winding up, the other party will be a creditor in the liquidation.

## Company Deregistration

A company or the shareholders of a company can apply for the deregistration of a company by application to ASIC. This is a quick, cheap and simple method to dissolve a company where the relevant conditions are met. However, there are few occasions when the process can be implemented.

### Prerequisites and procedures

If you decide the affairs of a company should be wound up, an application for deregistration can be made when all of the following conditions are met:

- all the members of the company agree to the deregistration; and
- the company is not carrying on business; and
- the company's assets are worth less than \$1000; and
- the company has paid all fees and penalties payable under the Corporations Act; and
- the company has no outstanding liabilities; and
- the company is not a party to any legal proceedings.

Provided ASIC is satisfied that the company meets the above requirements, it will give notice of the proposed deregistration on the ASIC database and publish a notice in the Commonwealth Government Gazette. After two months have passed since the Gazette notice, ASIC will deregister the company.

### Effects of company deregistration

The main consequences of deregistration are that the company ceases to exist as a separate legal entity and any undistributed property of the company "vests" in ASIC. That is, after deregistration, ASIC will be the party who deals with any assets of the company. For this reason, all assets of the company should be transferred prior to the deregistration application being lodged.

## Liquidation v Deregistration

Company deregistration is clearly simpler, quicker and cheaper than a members' voluntary liquidation. So why not always choose company deregistration?

### Try answering the following questions:

- Do you want a high level of assurance that a company cannot be reinstated?
- Will any members of the company disagree on the proposed deregistration of the company?
- Is the company carrying on a business?
- Does the company have assets worth more than \$1000?
- Does the company have any outstanding liabilities?
- Is the company a party to any legal proceedings?
- Did the company operated in a high-risk industry, for example, where public liability claims sometimes arise?
- Will any franking credits or tax free dividends be lost by the deregistration of the company?

If you said **"Yes!"** to any of the above questions, then we recommend a members' voluntary liquidation rather than a company deregistration.

### Why choose Dissolve

By focusing on a highly specialised service area our processes are **streamlined and timely**. We are free of conflicts inherent in using a company's auditor for non-audit services. Our fee is often half that of other service providers. Why not **CALL US NOW** for **CONFIDENTIAL, FREE ADVICE**

### Contact us

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