

Members Voluntary Liquidation: A Step by Step Guide



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MEMBERS VOLUNTARY LIQUIDATION (MVL)

What is an MVL?

A Members Voluntary Liquidation is the process used by shareholders, who have a solvent Company and want to take out their funds from the business but pay as little tax as possible on the sums taken out. Typically, shareholders who wish to take out their funds would be subject to higher tax rates as the sums drawn often must be classed as dividends and therefore, given the values involved, most dividends are subject to higher rates of tax (currently as much as 40%). However, in an MVL shareholders are able to receive their cash as a capital distribution which lowers the tax rates, then providing certain criteria is met, they can benefit from business asset disposal relief ("BADR") which enables the shareholder to apply the lower capital distribution tax rate of 10%.

This MVL process can only be done with the assistance of a licensed insolvency practitioner who acts as the MVL Liquidator and who must distribute the funds (or do an on-paper distribution) in the liquidation.

You should consult with your accountant on whether the requirements of BADR apply to you as IP's rely on the professional advice of qualified accountants as to whether a client is suitable for an MVL. However, you can also check the criteria laid down by HMRC by clicking on the following link

<https://www.gov.uk/business-asset-disposal-relief>

Is an MVL right for me?

Generally, an MVL is appropriate where the Company has, for whatever reason, reached the end of its purposeful life and there are either realisable assets, or cash, which are sufficient to pay all creditors within 12 months together with statutory interest and liquidation costs, leaving a considerable value left over. The surplus assets can be distributed to shareholders either in cash or on paper (in specie).

Common scenarios where an MVL is suitable are: -

1. The shareholders wish to retire, for example, where the owners of a family business wish to retire and their children have no interest in continuing the business;
2. Where the Director of the Company has passed away and the shareholders have no desire to continue to run the business;
3. Where there has been a deterioration in the relationship between shareholders leaving each shareholder wishing to go their separate ways with an equitable wind up of the business; and
4. Where, over the passing of time, changes in the market or in legislation have led to the business no longer being viable but the Company has built up a reserve of profits over time which need to be taken out.

The MVL process can also be used effectively in group restructuring.

What are the advantages of an MVL and what is the alternative?

The alternative to MVL is simply to apply for the Company to be struck off and dissolved. Historically, by applying for an extra statutory concession from HMRC, directors were able to effectively wind up a company and distribute its surplus assets to shareholders without the need for a liquidator. Such distributions were tax advantageous for shareholders as the distributions were taxed as capital gains rather than income.

More recently, the extra statutory concession has been enacted into law and a limit of £25,000 has been imposed on the total amount that can be distributed and treated as capital, rather than income, for tax purposes. However, the legislation provides that once the £25,000 limit is reached, all distributions will be treated as dividends (i.e. not only distributions over and above the £25,000 cap). Placing the company into MVL ensures that all distributions can be treated as capital up to a limit of £1 million and therefore shareholders can benefit from the lower tax applied against capital gains, and may also qualify for additional relief to further maximise the tax advantages of the MVL process.

There are further advantages of an MVL in comparison with an application to strike off:

- If creditors have not made a claim against the Company whilst the Liquidator was in office, for anything they may be owed by the Company, they may not (with very few rare exceptions) apply to have the Company restored to the register in order to pursue legal action against it. Any application to restore the Company must be made within 2 years of its dissolution, whereas an application may be made at any time within 20 years of dissolution in the case of strike off without liquidation. Therefore if you have contingent creditors or the risk of legal claims, providing you dispute these creditor amounts, sign the declaration that the company's debts can be paid in 12 months and the MVL successfully proceeds to dissolution, then those creditors cannot come out of the woodwork later and seek to restore the company to the register to make a claim, whereas they would in a strike off action.
- An application to strike off can only be made if the Company has not, in the previous three months, traded or carried on business, changed its name, or sold business assets, rights or property. Whereas an MVL can be instituted immediately on cessation of trade and is therefore the most efficient way to wind up the affairs of a solvent entity quickly.
- Finally, in a liquidation (and once creditors have been paid) distributions to shareholders can be made up to £1million, including distributions of capital & reserves, which are usually be classed as unlawful dividends outside of an MVL.

How does the process work?

Once it is decided that an MVL is appropriate, the directors can either resolve to call a general meeting to pass the necessary resolutions to place the Company into MVL, or as done by Bridge Newland, the directors resolve to consider the resolutions by way of a decision by written resolutions. The written resolution method enables all actions to be

dealt with by post (or e-mail), doing away with the need of a physical meeting of all shareholders and once 75% or more of the written resolution votes from shareholders have been returned to the Liquidator's office, the resolutions are considered passed. You also often do not need to receive more than one vote (quorum) if one shareholder has 75% or more of the shares as their vote passes all resolutions if the written resolution method is followed allowing for less delays if there are a number of minority shareholders or fail to vote. The written resolution method is the process of choice for Bridge Newland as it enables a company to be placed into MVL within a matter of days, being solely reliant on how fast shareholders return their forms.

Prior to the date intended to return all written resolutions the directors must swear a statutory declaration of solvency before a solicitor or commissioner for oaths. The declaration embodies a statement of assets and liabilities and states that having made a full enquiry into the company's affairs, the directors are of the opinion that the company is capable of paying all of its debts, including statutory interest, within a specified period not exceeding 12 months from the date of the commencement of the liquidation.

The Liquidator will then take steps to deal with any outstanding matters, including asset realisation, payment of creditor claims and resolution of tax affairs. There is no requirement for the Liquidator to conduct an investigation into the company's affairs or the conduct of the directors, as is the case in an insolvent liquidation, as the directors have sworn a statutory declaration of solvency.

Once all claims are quantified and settled as appropriate, the Liquidator will distribute the surplus assets, either in cash or in specie, to the shareholders.

Typically, most MVL's are now done on a clean case basis, meaning that the Directors have already settled their creditors prior to Liquidation, de-registered the Company for VAT and closed the PAYE scheme. All assets will have also been sold and therefore the only remaining task for the liquidator to take on in the Liquidation is to realise and distribute a cash balance. This way, the liquidation can be done quickly and no delays are experienced in seeking to agree creditor claims or to finalise the Company's tax affairs barring ensuring that a Corporation Tax return, covering the period from the day after the Company's final accounts, to the day before the liquidation appointment date, is filed concluding all outstanding queries. This final CT return should be a NIL return as all trading and transactions will have been included within the final set of accounts already filed pre-liquidation with no material transactions following this.

Once all the administrative duties are done by the Liquidator and the funds paid out the Liquidator sends a final account to the shareholders which summarises his/her administration of the case and the receipts and payments. Then the shareholder can either provide consent to waive the 8-week prescribed period (to provide any objections to the liquidator's dealings/fees), so that the final account can be filed at Companies House early, or the Liquidator waits for the 8 week to pass and files the account once passed. Once filed the Company is then dissolved from the register at Companies House 3 months after the filing date.

Steps to be taken prior to liquidation

In practice, and in order to minimise the costs of the liquidation as far as possible, we would suggest that the following be completed prior to the commencement of the liquidation:

- Sell any remaining assets that aren't needing to be distributed to shareholders in specie.
- Offset mutual trade debtor/creditor accounts
- Pay all creditors any monies due including taxes, accountants and trade suppliers
- Dismiss employees and pay any monies due
- Pay all outstanding contributions to the Company's pension scheme and close the pension account
- Prepare final year end accounts to the cessation of trade date and file these with a final corporation tax return with HMRC
- Submit all pre-liquidation VAT and PAYE returns and evidence the payment of the taxes due to this office
- De-register the Company for VAT and PAYE/NIC
- Recover trade debtor monies and ideally ensure any debtor disputes are settled
- Ensure all books and records, including statutory books, are up to date and personal data is securely destroyed or stored
- Terminate any leasing or hire purchase agreements and settle accounts
- End any insurance no longer required
- Transfer all funds to this office on the day of appointment only (not before).

This list is not exhaustive and will be tailored to the circumstances of each case. The Liquidator may, in certain cases, be required to perform some of the above work, and if this is the case, our quote for the liquidation may be slightly higher.

Bridge Newland supply a full list of the information required for you to work through together with instructions. We also draft all liquidation forms for completion and return.

With governments regularly changing and with calls made to tax the rich, we believe business asset disposal relief will not be around forever, and that the government will continually seek to reduce the level of assets that can be distributed whilst still gain these reliefs, and that Capital Gains Tax rates will also shortly rise. Therefore, if you consider that you may benefit from an MVL then please feel free to get in touch on 0800 612 6197