JBC Corporate

Liquidation

Liquidation is the process of winding up a company's financial affairs to dismantle the company's structure by conducting appropriate investigations and enabling a fair distribution of company's assets to its creditors. Liquidation occurs either because the company cannot pay all of its debts (i.e. it is insolvent), or its members want to end the company's existence and have it struck off from the Australian Securities and Investments Commission's (ASIC) register.

Court Liquidation

The applicant must demonstrate to the court that the company is insolvent or can be deemed to be insolvent. The court will then appoint a liquidator, usually one nominated by the applicant (creditor). The court may also wind up a company when there are irreconcilable disputes between shareholders or directors, or for a limited number of other reasons.

Voluntary Liquidation

A voluntary liquidation is a process whereby the company voluntarily appoints a liquidator. Creditors have the right to change the appointed liquidator at any time. A voluntary liquidation can occur by a creditors' voluntary winding up or through voluntary administration.

Members Voluntary Winding Up

A members' voluntary winding up is the process for members who wish to dismantle the company structure. Usually the company will be solvent, and a members' voluntary winding up is chosen as the company has no useful future.

Creditor's Voluntary Winding up

A creditors' voluntary winding up is a process where the directors determine that the company is insolvent and resolve to place the company into liquidation and they appoint a liquidator. A meeting of creditors is held within 18 days (with an 11-day convening period and a 7-day notice period) of the resolution to wind up the company. At this meeting, the creditors have the opportunity to change the liquidator.

A creditors' voluntary winding up is commonly used when a company is insolvent and a Deed of Company Arrangement (DOCA) is not possible and the company simply needs to be liquidated.

How do you prove that a Company is Insolvent?

A company is insolvent if it cannot pay all its debts as and when they fall due, even if the company has an asset surplus but no way to liquidate those assets quickly. A company is deemed to be insolvent when it does or fails to do certain things prescribed by law. Most commonly a company is deemed insolvent if it fails to satisfy a creditor's statutory demand.

Who Administers a Liquidation?

Liquidations can only be administered by specialist accountants who are registered liquidators with ASIC. They can take all types of corporate insolvency appointments, including those ordered by the courts.

What Powers do Liquidators have?

The Corporations Act sets out liquidator's powers. These powers include all the powers vested in the directors of the company, plus the powers to:

- Investigate and examine the affairs of a company;
- Identify transactions that are considered void;
- Examine the directors and others under oath;
- Realise the assets;
- Conduct and sell any business of the company; and
- Admit debts and pay dividends.

What Does the Liquidator Do?

The liquidator will:

- Identify and protect the assets of the company;
- Realise those assets;
- Conduct investigations into the financial affairs of a company and any specific transactions;
- Make appropriate recoveries;
- Issue reports to ASIC and creditors;
- Make a distribution to creditors;
- Make a distribution to shareholders; and
- Apply to ASIC to deregister a company.

What Investigations are Undertaken by the Liquidator?

- Why the company is insolvent;
- When a company became insolvent;
- A potential insolvent trading claim against the director;
- Any recoverable preferential payments to creditors;
- Any possible offences committed by the company officers;
- if any void transactions can be overturned; and
- if any recoveries may be made.

These powers include holding public examinations, seizing books and records and gaining access to property. The liquidator must also identify any offences committed by the directors and report these to ASIC.

How Does the Liquidation End?

The liquidation ends when:

- The company is dissolved by a court order on the application of the liquidator;
- The company is struck off the register of companies by ASIC at the request of companies by ASIC at the request of the liquidator; or
- The Winding up is set aside or stayed by the court.

Should you have any questions or require further information on this subject please don't hesitate to get in touch.

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