TruSolv business recovery

A GUIDE TO MEMBERS' VOLUNTARY LIQUIDATIONS

A TRUSOLV GUIDE

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WHAT IS A MEMBERS' VOLUNTARY LIQUIDATION?

A Members' Voluntary Liquidation ("MVL") is a process used to wind up the affairs of a solvent company. Despite its solvent nature, the MVL process is laid down in the Insolvency Act 1986 ("IA86").

The MVL process is typically used where a company has come to the end of its natural life, where reorganisations have occurred resulting in dormant companies, or the procedure can also be utilised as part of a restructuring process.

The process effectively brings the company to a formal end and distributes any remaining assets through a cash or an 'in specie' distribution to its shareholders. The MVL process facilitates a controlled shareholder exit thus allowing them to realise their investment in a tax-efficient manner.

WHO CAN ACT AS A LIQUIDATOR?

The liquidators have to be licenced insolvency practitioners.

WHY IS AN MVL USED?

Whilst the MVL process enables a company to be wound down and closed properly, providing the appropriate criteria of HMRC is met, there are a range of potentially significant tax advantages that an MVL can provide for shareholders.

When a company has cash or asset reserves (after all creditors have been repaid in full) totalling more than £25,000, it is likely to be more tax efficient to place the company into MVL. Where eligible for Business Asset Disposal Relief, Tax is charged at a rate of 10% as opposed to shareholders drawing the monies as a dividend, which will be treated as ‘income’ for tax purposes and therefore chargeable at anything up to 50%.

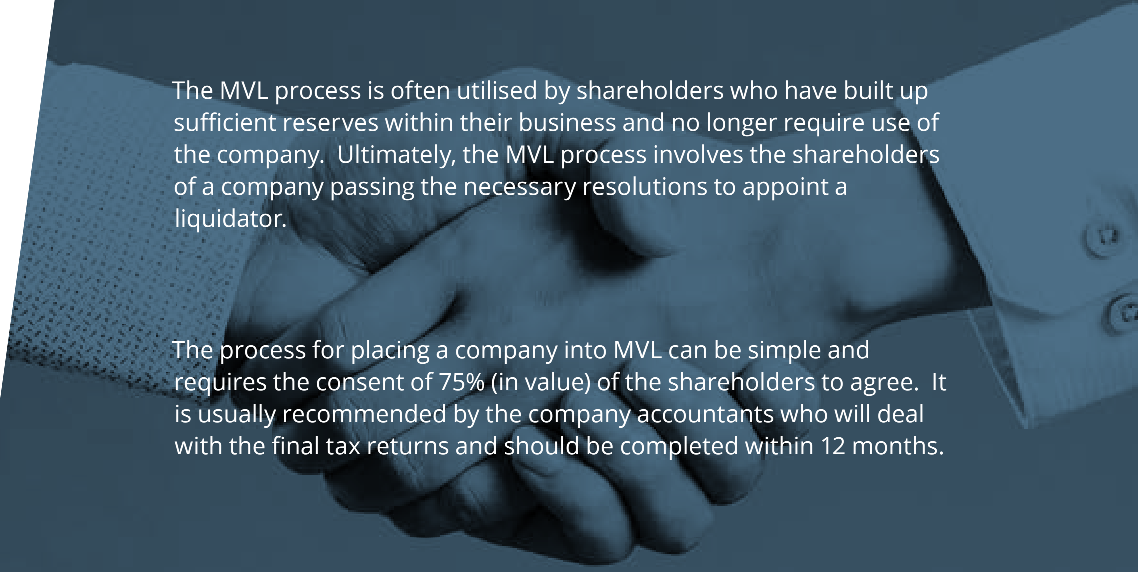
WHEN TO USE AN MVL

An MVL can only be used when a company is solvent and able to meet any contractual obligations and /or debts, and clear any legal disputes. The company's affairs must be in order and all documentation must be readily available for the liquidator when the MVL proceedings start.

There are a few reasons as to why shareholders propose that a company is liquidated when it is still solvent, such as:

- Business owners wish to retire and may have nobody to pass the company over to.
- Business owners may want to start a new venture.
- The company may have fulfilled its purpose or completed a contract.
- The company may be redundant or unnecessary due to external changes.

HOW DOES AN MVL WORK?



The MVL process is often utilised by shareholders who have built up sufficient reserves within their business and no longer require use of the company. Ultimately, the MVL process involves the shareholders of a company passing the necessary resolutions to appoint a liquidator.

The process for placing a company into MVL can be simple and requires the consent of 75% (in value) of the shareholders to agree. It is usually recommended by the company accountants who will deal with the final tax returns and should be completed within 12 months.

PROCEDURE FOR APPOINTMENT

BOARD MEETING

The directors must hold a quorate board meeting in order to record their decision that it has been deemed appropriate to invite shareholders to pass a special resolution to wind up the company and that they are able to declare that the company is solvent and can pay all debts in full, together with statutory interest, within 12 months of initiating the liquidation.

The following resolutions need to be passed at the board meeting:

- That the Declaration of Solvency disclosing the assets and liabilities of the company be made by all, or a majority, of the directors.
- That the directors recommend to the members that the company be wound up voluntarily.
- Approve the issuing of notices convening the general meeting ("GM") required to place the company into MVL.
- Nominate a director to act as Chairman of the GM.

Minutes of the meeting must be included in the company's minute book.

DECLARATION OF SOLVENCY

A Declaration of Solvency must be prepared and laid before the shareholders' meeting. The Declaration is a financial statement of the assets and liabilities of the company incorporating a statement that the company will be able to pay its debts in full, together with statutory interest, within a period of not more than 12 months from the commencement of the winding-up.

The Declaration must be sworn in the presence of an independent solicitor or Notary Public by all of the directors, if there are one or two, or a majority of the directors, if there are three or more. The Declaration must be made prior to the GM.

It should be noted that it is an offence to swear this Declaration without reasonable grounds for believing the company can repay its debts within the specified timeframe. The penalty can be imprisonment, a fine, or both.

The sworn Declaration must be filed with The Registrar of Companies not more than 15 days after the appointment of the liquidators.

PROCEDURE FOR APPOINTMENT

SHAREHOLDERS' MEETING

The company may be wound up voluntarily if a special resolution to that effect is passed by the company's shareholders.

The shareholders must be given at least 14 days' notice of any meeting at which a special resolution is to be passed (subject to any special provisions in the company's Articles of Association). Formal notice can be waived by a majority of the shareholders holding at least 90% of the voting rights. The short notice threshold may be slightly higher for certain companies depending on their Articles of Association.

The meeting must be quorate as defined by the company's Articles of Association.

Members can typically vote in person or by proxy.

The following resolutions will be considered at the meeting of shareholders:

As Special Resolutions:

- to wind the company up voluntarily; and
- to allow the company to distribute the assets in specie.

As Ordinary Resolutions:

- to appoint a liquidator or joint liquidators;
- to approve the basis of the liquidators' remuneration;
- to approve the liquidators' disbursements; and
- to deal with the destruction of company records.

MINUTES AND CONFIRMATION OF APPOINTMENT

The resolutions passed at the meeting of members must be signed by the Chairman of the GM, who must also sign a certificate confirming the liquidators' appointment.

Minutes of the shareholders' meeting must be prepared and signed by the Chairman. They must detail the resolutions passed together with any questions asked and the answers provided.

Note that a company can also be placed into MVL via Written Resolution.

FOLLOWING APPOINTMENT

NOTIFICATION

Once appointed, the liquidators will take the necessary steps to comply with statutory filing and advertising requirements. Steps will also be taken to advertise a notice to all creditors requiring them to prove their claims in the liquidation. In that advertisement there is a requirement to give a minimum of 21 days' notice to prove claims.

Other parties interested in the liquidation will also be informed of the liquidators' appointment. These include HMRC, the company's insurers, pension scheme administrators, auditors, solicitors and any regulatory bodies.

REALISATION OF ASSETS

The liquidators will proceed to realise the assets of the company so far as necessary to deal with payment to creditors and in accordance with any agreement to make distributions in specie to members.

DISTRIBUTION TO CREDITORS

Once creditors have provided details of any claim they may have against the company, the liquidators will evaluate their claim and, if deemed valid, admit it into the proceedings. Once all claims have been received and agreed, the liquidators would seek to make a payment to creditors in full settlement of their claims. Statutory interest at 8% is payable on every claim accruing from the date of liquidation to the date of payment.

Where claims are subject to dispute, it may be necessary for the liquidators to invite the creditor concerned to prove their position in Court.

DISTRIBUTION TO SHAREHOLDERS

The liquidators will deal with distributions to members, whether in specie or by way of a cash dividend, in accordance with their entitlements. This is usually undertaken after settlement of all outstanding creditor claims. In certain circumstances, interim dividends may be made by the liquidators where there are unresolved issues.

The shareholders will be required to provide an indemnity to protect the liquidators should any unforeseen creditor claims arise.

COSTS AND REMUNERATION

The remuneration of the liquidators is agreed between the liquidators and the shareholders. Should the liquidators be unsatisfied then they may apply to Court for their remuneration to be set.

The costs of the process (such as any legal advice) and the liquidators' remuneration are payable out the of the funds of the company or, if there are no assets, by an external party.

ONGOING STATUTORY MATTERS

Should the liquidation not be completed within 12 months, an annual progress report will be prepared and distributed to the members. The report will outline the conduct of the liquidation to date and provide a note of the outstanding matters preventing the closure of the liquidation. This report needs to be filed with The Registrar of Companies within two months of the anniversary of the liquidation.

LIQUIDATION CLOSURE

Once all matters are satisfactorily resolved, the liquidators will circulate a draft final account to the company's members, providing them with an 8-week notice period in which to request further information or object to the liquidators' release. After the expiration of this notice period, a final account will be circulated to the company's members and filed with The Registrar of Companies. The 8-week notice period can be shortened should all members confirm they do not wish to make any requests.

The company will be formally dissolved at Companies House three months after the registration of the final account on the company's register.

HOW LONG DOES AN MVL TAKE?

Assuming that all liabilities have been settled prior to the liquidators' appointment, and all required information provided, a distribution of the company's assets to shareholders can take place in as soon as 21 days (the minimum time given for creditors to submit claims following liquidation). This can be sooner if an indemnity is provided by the shareholders.

The time estimated for case closure, and subsequent dissolution, is more uncertain, however, as it is dependent on receipt of clearance from HMRC. As a guide, we have historically estimated six months from appointment but recently it has been taking longer.

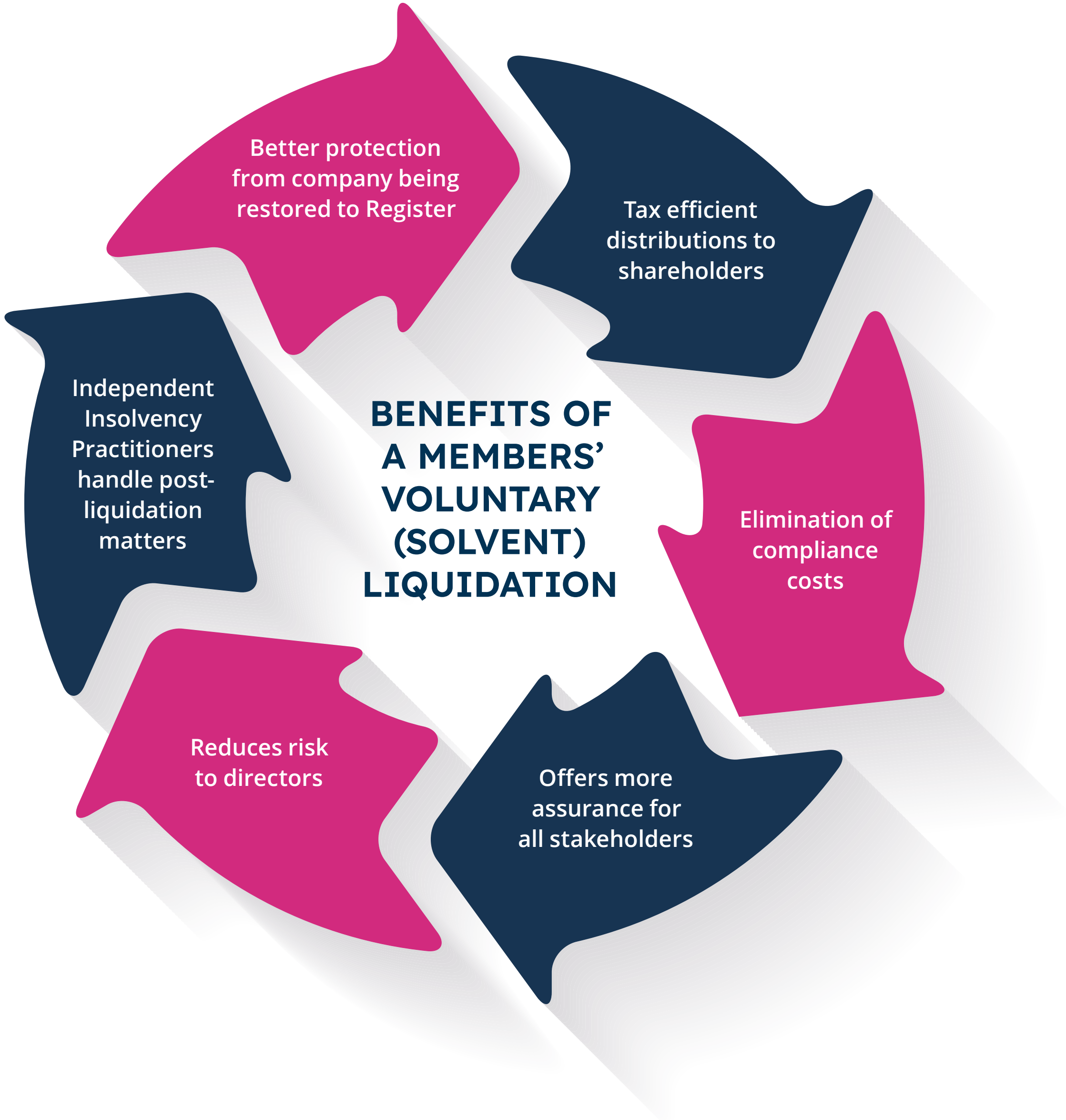
HOW MUCH DOES AN MVL COST?

Depending on the level of work required by the liquidators, fees usually range from £3,000 plus VAT and disbursements upwards.

The fees involved in an MVL will be communicated to you by the proposed liquidators.

BENEFITS OF AN MVL

There are many benefits of an MVL for limited companies.
These include:



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