

Overview

The costs associated with maintaining company structures that are no longer required are easy to overlook. Corporate restructures allow rationalisation of a group structure and dissolution of any unnecessary and potentially costly companies within a group.

However, careful consideration of the related asset transfer and taxation issues is needed in order to maximise efficiency and avoid unnecessary costs and taxes.

This guide has been designed for companies considering a members' voluntary liquidation (MVL) in order to demystify the process and provide a way for companies to manage the associated costs.

In the following pages you will find out how to prepare for a MVL, what the MVL process is and an indication of the costs associated with a MVL.

Preparing for a members' voluntary liquidation

These issues should be attended to when considering placing a company into MVL:

- ▲ Ensure that the company is solvent. The directors are required to sign a declaration of solvency (DoS) confirming that the company will be able to pay all debts in full within 12 months of lodging the DoS.
- ▲ Preferably the company will have ceased trading.
- ▲ Decide which company assets are to be distributed in specie and where possible, realise any assets NOT to be distributed in specie.
- ▲ Ensure all trade creditors, leases, loans and other liabilities are paid in full or have been otherwise dealt with.
- ▲ Ensure that all contracts involving the company have been completed.
- ▲ Ensure that all security interests in relation to the assets of the company have been dealt with.
- ▲ Ensure that all of the company's business activity

statements are completed and lodged, any GST liability paid and the GST registration cancelled prior to liquidation.

- ▲ Ensure the company's other statutory commitments such as payment of WorkCover, superannuation, payroll tax, PAYG withholding tax and stamp duty have been met and registrations cancelled.
- ▲ Unless the company is part of a consolidated group for tax purposes, ensure that the accounts and income tax returns of the company are prepared up to the date of liquidation and that the appropriate tax is paid. Should this not be possible the most recent set of financial accounts should be used for the purpose of preparing the DoS. The final accounts and income tax return can then be prepared shortly after liquidation. Typically, we would expect this work to be done by the company's tax agent.
- ▲ Ensure all company reserves (realised and unrealised) have been identified as relating to either pre or post CGT assets as each category of reserve is treated differently for tax purposes.
- ▲ Ensure that the franking account is up to date in order to determine if all available franking credits are able to be distributed to the company shareholders.
- ▲ As the tax issues in relation to a MVL may be complex and are different for each company, we recommend that a preliminary assessment of the taxation consequences of liquidating the company be undertaken. The company's tax advisor is best qualified to provide this analysis.
- ▲ Any transfer of assets to shareholders must be done at market value. This may necessitate a formal valuation in the case of property transfers.

Ideally, prior to liquidation, the company should have a balance sheet containing only assets and equity items i.e. there should be no liabilities present in the balance sheet, with the possible exception of a provision for tax liability pending the completion of a final tax return.

Members' voluntary liquidations

The MVL Process

Once the company is ready to be placed into MVL, the following will be sent to the directors of the company:

- ▲ A consent to act as liquidator.
- ▲ A draft DoS for signing by the directors.
- ▲ A draft notice and draft minutes of a meeting of directors for signing by the directors. The meeting of directors is held to consider the winding up of the company and approve the DoS for lodgement with the Australian Securities & Investments Commission (ASIC).
- ▲ A draft notice of a meeting of shareholders for signing by a director of the company. The meeting of shareholders is held to appoint the liquidator and must be convened after the DoS has been lodged with ASIC.
- ▲ Once the DoS has been lodged with ASIC we will provide draft minutes of the meeting of shareholders. A consent to short notice of the meeting of shareholders will be also be provided, if appropriate.
- ▲ Shareholders will be asked to sign a deed indemnifying the liquidator against claims made upon the company.
- ▲ The liquidation will commence at the conclusion of the meeting of shareholders.

Upon appointment, the liquidator must:

- ▲ Notify ASIC of the appointment and lodge the minutes of the meeting of shareholders and details of the special resolution to wind up the company.
 - ▲ Advertise the appointment on the ASIC published notices website.
 - ▲ Advertise for any claims against the company on the ASIC published notices website, giving 14 days for claims to be submitted.
 - ▲ Notify the Australian Taxation Office (ATO) and other statutory bodies of the appointment of the liquidator.
- ▲ Take possession of all of the company's assets. In practice, we would open a new bank account for the liquidation and ensure that all physical assets of the company (if any) are secure and insured. Accordingly, we require the details of the pre-appointment company bank account to enable its closure.
 - ▲ Ensure the final accounts up to the date of liquidation and a final income tax return are prepared (usually by the company's tax agent) and the final tax payment is made. Once the final tax payment is made, the liquidator is able to write to the ATO requesting confirmation that all tax commitments have been met and that there is no further liability by the company to the ATO.
 - ▲ Only when tax clearance is received, is the liquidator able to make any distribution of cash and assets in specie to the shareholders of the company and call the final meeting of shareholders to complete the liquidation. The final meeting of shareholders is merely a formal procedure and there is no requirement for the shareholders of the company to attend.
 - ▲ Once the date of the final meeting passes, the liquidator is required to lodge a notice stating that the final meeting was called, no quorum was present and provide an account of the liquidation to ASIC. The company is dissolved 3 months after the lodgement of this notice.
 - ▲ The liquidator is required to account to the shareholders and prepare a formal report to ASIC of all cash receipts and payments made during the course of the liquidation.

Members' voluntary liquidations

Indication of Cost

In order to provide you with a quote for your client to undertake a MVL, please contact us on the number or email address below.

As a general rule, the starting cost for undertaking a simple and 'clean' MVL of a company is usually in the order of \$5,000 plus disbursements and GST, assuming the following is attended to by the company:

- ▲ 'Cleaning' up the company's balance sheet prior to the company being placed into liquidation (i.e. ensuring all liabilities and claims against the company are dealt with and the assets not being distributed are realised).
- ▲ The final accounts and income tax return up to the date of liquidation are completed in a timely manner either prior to or shortly after appointment.
- ▲ There is no delay in receiving information in relation to the company.
- ▲ Appropriate professionals are engaged to attend to accounting and tax matters and arrange the transfer of assets in specie (i.e. a stockbroker is engaged to transfer any listed company shareholdings that the client requires to be distributed in specie, or a conveyancer or lawyer is engaged to transfer real estate).
- ▲ The liquidation is able to be finalised within one year.

Find out more

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Author

George Divitkos

Director, BRI Ferrier SA

Registered Liquidator

T: (08) 8233 9900

george.divitkos@briferriersa.com.au

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Sydney

T: 02 8263 2300

info@briferriernsw.com.au

Melbourne

T: 03 9622 1800

info@briferriervic.com.au

Adelaide

T: 08 8233 9900

info@briferriersa.com.au

Perth

T: 08 6316 2600

info@briferrierwa.com.au

Brisbane

T: 07 3220 0994

info@briferriersq.com.au

Cairns

T: 07 4037 7000

info@briferriernq.com.au

Townsville

T: 07 4755 3300

info@briferriernq.com.au

Mackay

T: 07 4953 7900

info@briferriernq.com.au

www.briferrier.com.au

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