



A creditor's guide to Members' Voluntary Liquidation

Scotland Edition



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Introduction

A licensed insolvency practitioner (IP) has given you this because you, or your business, may be owed money by a company in members' voluntary liquidation (MVL). It is important to note that this process is for solvent companies where all creditors should be paid in full plus statutory interest.

This guide aims to help you understand the process and your rights as a creditor and to describe how best these rights can be exercised. It is intended to relate only to companies registered in Scotland under the Companies Act 2006. It is not an exhaustive statement of the relevant law or a substitute for specific professional or legal advice.

We have made every effort to ensure the guide is accurate, but R3 cannot accept responsibility for the consequences of any action you take in reliance on its contents. If, having read the guide, you remain in any doubt about your rights, you should consult an IP and/or solicitor.

R3, the insolvency and restructuring trade body, can provide you with a list of members near you, through the member search function on its website. If you're looking to speak to someone about insolvency advice, or find a local IP, insolvency lawyer, or restructuring expert and they're a member of R3, they'll be on there – and many will offer a free consultation to people who are looking for help with their business finances – [find a R3 Member](#).

What is MVL?

MVL is a formal process that enables a company's members to appoint a liquidator (or liquidators), who must be an IP, to wind up a solvent company, that is a company that can pay all its debts. Essentially, the liquidator will realise the company's assets and use the proceeds to pay the company's creditors including statutory interest (which is the higher of the statutory rate, currently 8% per annum, or the rate applicable to the specific debt) and make a distribution to its members. After conclusion of the liquidator's work, the company will be dissolved.

For the purposes of this guidance, the term 'member' should be read as meaning a member, shareholder and contributory as appropriate.

When is a company placed into MVL?

The most common circumstances where the process is used include:

- when a director wants to retire or no longer wants to run the business and perhaps there is nobody who wants to take over;

- as part of a reorganisation or restructuring of a group of companies, including as part of a consolidation exercise post acquisition;
- when a company was set up for a particular purpose or contract that has been completed; and
- where members wish to get back their investment in a solvent company.

What involvement do creditors have in putting a company into MVL?

None. Creditors do not have any involvement in putting the company into MVL, as they will be paid in full plus statutory interest, following the realisation of the company's assets.

The directors take the initial steps to place the company into MVL by all directors, or the majority if the company has more than two directors, agreeing to make a solemn declaration under the Statutory Declarations Act 1835 that the company is solvent and can pay all its creditors, in full, within 12 months with statutory interest (known as a 'declaration of solvency'). The directors will propose that resolutions be put to members to place the company into MVL. The directors will then also convene a meeting of the company's members at which the members will consider resolutions that the company be wound up voluntarily (which requires a majority of at least 75% of those members voting by value of shares to agree) and that they nominate an IP (or in some cases more than one) to act as liquidator. Should those resolutions be passed, the company is formally in MVL, with a liquidator appointed. This process can also be achieved by written resolutions of the members if permitted by the Company's constitution (which requires a majority of 75% of total members).

What are the powers and duties of the liquidator?

The powers and duties of the liquidator are set out in law and include powers to sell the company assets, to bring and defend legal proceedings, to pay the company's creditors and to distribute any surplus funds to its members. The liquidator has a general duty to act in good faith, and to exercise their powers with reasonable care and skill, and for proper purposes in the interests of creditors and members. The liquidator must act impartially and independently.

On the appointment of a liquidator, the powers of the directors cease, except to the extent the liquidator or the members in general meeting sanctions their continuance (and in a capacity that they specify).

What information am I entitled to?

The liquidator must notify creditors of their appointment within 28 days of their appointment. Creditors are not entitled to any further information (unless the liquidator forms the view that the company will not pay its debts within the period stipulated in the declaration of solvency).

Does the liquidator pay unsecured creditors the amount owed to them?

Yes. Also, any creditor claim that is paid after the commencement of the MVL is entitled to receive interest at the statutory rate.

Understandably creditors are keen to be paid and members would like a distribution as soon as possible after the start of the MVL. Creditors will include the company's contingent and prospective liabilities, for example a landlord, and HMRC. Until such time as these liabilities have been agreed, or crystallised, it may not be possible for the liquidator to make any distribution (partial or full) to members or even pay all creditor claims.

If at any time during the MVL, the liquidator forms the opinion that the company will not be able to pay its debts in full with statutory interest within the period stated in the directors' declaration of solvency, the liquidator must, within seven days of forming that opinion, send notice to that effect to the company's creditors. The liquidator will provide a statement of the company's financial affairs (known as a statement of affairs) and seek the nomination of a liquidator from the company's creditors. If no other IP is nominated by the creditors, then the liquidator (in the MVL) will become the liquidator in the creditors' voluntary liquidation ('CVL') and the MVL becomes a CVL. A CVL is an insolvent liquidation.

Even when a company is in MVL, a creditor or member can still present a petition to have the company wound up by the court. However, before proceeding down this route, you should seek specific legal advice.

How do I make a claim in the MVL?

As referred to above, the liquidator will notify creditors of their appointment. Usually at the same time, the liquidator will give notice to creditors to submit their claims in the MVL. The notice will have the last date by which you need to submit your claim, and will usually be around 18 weeks from the liquidator's appointment. The liquidator will usually ask for documentation in support of the claim. They will also advertise for creditors' claims to be submitted.

How long does the MVL take?

The MVL should be concluded within 12 months. However, the time estimated for case closure is uncertain as it will depend on the complexity of the business and the company's assets and liabilities.

How is the MVL concluded?

Provided the MVL has been successful, the liquidator will provide a report to members on the winding up and the company will be automatically dissolved three months from the date of registration of the final report with the Registrar of Companies.

What should I do if I am dissatisfied with the liquidator's handling of the case?

You should first contact the liquidator to try to resolve the problem. If you are still not satisfied, you can submit a complaint to the IP's regulator via the Insolvency Service complaints portal or discuss the issue you are concerned about with your legal adviser.

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The Institute of Chartered Accountants in England and Wales

Tel: 01908 248 250 www.icaew.com

The Insolvency Practitioners Association

Tel: 0330 122 5237 www.insolvency-practitioners.org.uk

The Institute of Chartered Accountants of Scotland

Tel: 0131 347 0100 www.icas.com

Chartered Accountants Ireland (CAI)

Tel: 00 353 1 637 7200 www.charteredaccountants.ie

Disclaimer. Information in this guide is intended to provide an overview only and relates to debt arrangement schemes. It is not a replacement for seeking advice specific to your circumstances. Whilst every care has been taken in its preparation, this guide is intended for general guidance only, and does not constitute legal advice

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