Members Voluntary Liquidations in Ireland: A Comprehensive Overview

by Tom Murray

Members Voluntary Liquidation (MVL) is a process in Ireland through which solvent companies can be wound up voluntarily. Unlike other forms of liquidation, a MVL is initiated by the company's members (shareholders) rather than creditors. This process allows the company to distribute its assets to its shareholders in an orderly manner, ensuring all debts and liabilities are fully settled prior to finalising the liquidation.

Understanding the Members Voluntary Liquidation Process

The MVL process in Ireland is governed by the Companies Act 2014. To initiate a MVL, a company must meet specific legal requirements, primarily ensuring that it is solvent and capable of paying its debts in full within a specified period, not exceeding 12 months from the commencement of liquidation.

1. **Declaration of Solvency:** The process begins with the directors of the company making a Declaration of Solvency. This declaration must state that the directors have conducted a thorough review of the company's financial position and believe that it can pay its debts in full within the specified period. The declaration must include a statement of the company's assets and liabilities dated within 3 months of the date of declaration and be made no more than 30 days before the resolution to wind up is passed.

2. **Resolution to Wind Up:** Following the Declaration of Solvency, the shareholders must pass a special resolution to wind up the company voluntarily. This resolution typically requires a 75% majority of the votes cast by shareholders at a general meeting. The resolution must then be filed with the Companies Registration Office (CRO) within 15 days.

3. **Appointment of a Liquidator:** Once the resolution is passed, a liquidator is appointed. The liquidator's primary role is to wind up the company's affairs, including collecting and realising assets, settling any outstanding liabilities, and distributing the remaining assets to the shareholders. The liquidator must be a licensed insolvency practitioner.

4. **Notification and Publication:** The company must notify the CRO and advertise the resolution passed in Iris Oifigiúil (the official gazette). This step ensures transparency and notifies any potential creditors or interested parties of the liquidation.

5. **Realisation of Assets and Settlement of Liabilities:** The liquidator takes control of the company's assets, sells them if necessary, and uses the proceeds to pay off any debts. All outstanding debts and liabilities must be settled before any distributions are made to shareholders.

6. **Distribution of Surplus Assets:** After settling all liabilities, the liquidator distributes any remaining assets to the shareholders according to their entitlements. This distribution marks the final stage of the liquidation process.

7. **Final Meeting and Dissolution:** Once the liquidation process is complete, the liquidator must call a final meeting of the company's shareholders. At this meeting, the liquidator presents an account of the winding-up process, detailing how the assets were realised and distributed. Following the final meeting, the liquidator files their forms E5 - Liquidator's Final Statement of Accounts and E6 - Return of final winding up meeting with the CRO, and the company is officially dissolved three months later.

Advantages of Members Voluntary Liquidation

1. **Orderly Wind-Up:** MVL allows for an orderly and controlled winding-up process. By appointing a liquidator, the company ensures that all assets are realised, and liabilities settled in a structured manner.

2. **Cost Efficiency:** Compared to other liquidation methods, MVL is generally more cost-effective. Since the company is solvent, there are typically fewer complexities involved, reducing administrative and legal costs.

3. **Tax Efficiency:** MVL can be tax-efficient for shareholders, especially if capital gains tax rates are lower than income tax rates. Distributions made during an MVL are often treated as capital distributions, which may attract a lower tax rate. In certain cases, shareholders may avail of further reliefs such as Retirement Relief or Entrepreneur Relief should the relevant criteria be met.

4. **Preservation of Reputation:**
   Winding up a company voluntarily through MVL helps maintain its reputation. It shows that the company is acting responsibly, fulfilling its obligations to creditors, and not waiting until insolvency forces a compulsory liquidation. Furthermore, a major difference from a Members Voluntary Liquidation to an insolvent liquidation is that in a MVL the Liquidator does not have to submit a report to the Corporate Enforcement Agency.

5. **Flexibility:**
   The MVL process offers flexibility to shareholders and directors, allowing them to decide the timing and method of winding up the company. This control can be beneficial in planning the distribution of assets and managing the financial implications.

6. **Key Advantage over Strike Off:**
   With a MVL a creditor or a member can only apply for restoration of the company within two years of the dissolution whilst with voluntary strike off, the company can be restored up to 20 years.

Distribution in Specie

A popular way to distribute certain assets to shareholders in a member's voluntary liquidation is to distribute them in specie i.e. in kind. Thus, freehold property may be transferred to shareholders directly. A significant advantage of in specie distributions is that no stamp duty is payable if the asset is unencumbered (i.e., there is no mortgage attached)

Challenges and Considerations

1. **Declaration of Solvency:**
   The directors must be confident in the company's financial position to make a Declaration of Solvency. If it later emerges that the company cannot pay its debts, the directors could face legal consequences, including personal liability.

2. **Cost of Liquidation:**
   Although generally cost-effective, MVL still involves costs related to appointing a liquidator, legal fees, and administrative expenses. Companies must ensure they have sufficient funds to cover these costs.

3. **Tax Implications:**
   While MVL can be tax-efficient, it is crucial to seek professional tax advice to understand the implications fully. Misunderstanding the tax consequences can lead to unexpected liabilities for shareholders.

4. **Timelines:**
   The MVL process can be time-consuming, particularly in realising assets and settling liabilities. Companies should plan accordingly and be prepared for potential delays.

Value for Money!

The best value way to carry out a member's voluntary liquidation of a company is to realise all assets, pay all creditors and just hand over a bank account with the remaining monies to the liquidator. To minimize the costs - between the date of the decision to liquidate and the appointment of the Liquidator, the Directors should undertake the following steps.

- The position of the employees needs to be carefully considered. If there is a Trade Union involved, then it should be consulted. The employee's redundancy entitlements may be calculated using the online redundancy calculator at the Department of Employment Affairs and Social Protection.
- Any staff mobile phones should be cancelled on the day they leave to avoid recurring rental and phone charges. Keys to the Company's premises should also be collected and alarm codes changed. Employees should be allowed to collect personal possessions from their desks and lockers.
- All property leases should be carefully reviewed to check for dilapidation clauses etc.
- The Company Pension Plan should be wound up before the Company is placed into a Members Voluntary Liquidation.
- All assets of the Company should be sold. If selling IT equipment all data should be backed up first before the data on the equipment is erased.
- VAT and PAYE returns should be brought up to date. The last pre-liquidation Corporation Tax return is generally submitted shortly after the Company is placed into a Members Voluntary Liquidation.

Conclusion

Members Voluntary Liquidation is a valuable tool for solvent companies in Ireland looking to wind up their affairs in an orderly and efficient manner. By following the structured process set out in the Companies Act 2014, companies can ensure all obligations are met, assets are distributed fairly, and the company's closure is handled responsibly. However, it is essential to approach MVL with careful planning and professional advice to navigate the legal, financial, and tax complexities involved.

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