Carter Clark

Financial Recovery

Members Voluntary Liquidation

A guide to winding up a solvent company

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Introduction

Companies are incorporated for all sorts of reasons, and the incorporation process is now quick and inexpensive. But what happens when the company is no longer needed, due perhaps to the cessation of trade, a property being sold or the shareholders wishing to retire? The process of distributing a solvent company's assets to shareholders and bringing a company's life to an end is called a members' voluntary liquidation, or MVL. Recent statistics from Companies House show that last year 3,290 companies were wound up in this manner.

Why an MVL is useful

Prior to 1 March 2012, HMRC allowed companies to make a capital distribution of assets to shareholders and then be struck off the register at Companies House. The rules have now been changed so that this approach is only allowed where distributions are below £25,000. If a company's assets exceed this sum, then a formal winding up is required. As a result it is likely the number of members' voluntary liquidations will rise, especially as HMRC rules on Entrepreneurs Relief for trading companies mean the process can be very efficient in overall tax terms.

The process

The initial steps required to wind up a solvent company are similar to those adopted for insolvent companies, including the requirement that a licensed insolvency practitioner acts as liquidator. The team at Carter Clark will normally assist company directors in preparing a declaration of solvency, convening a general meeting of shareholders and preparing resolutions to wind up the company's affairs.

Board meeting

A meeting of directors is required to consider the company's solvency and recommend to shareholders that they pass resolutions to place the company into liquidation. It is extremely important to show that the company is, and will be, solvent.

The Declaration of Solvency, which is similar to a balance sheet, must be sworn by a majority of directors. They are required to confirm that, after making full enquiry into the company's affairs, they believe the company will be able to pay both its debts and the costs of winding up in full within a 12 month period following liquidation. Once sworn, the statutory declaration is filed at Companies House.

General meeting

A meeting of shareholders must be convened and held within five weeks of the swearing of the Declaration of Solvency. This general meeting will pass the necessary resolutions to place the company in liquidation. A 75% majority of the members attending and voting at the general meeting is required. The general meeting must be held on 14 days' notice unless 90% of shareholders consent to short notice. In addition, where all shareholders agree, written resolutions can be passed without the need for a meeting. In this case, the company enters liquidation when the shareholders sign the written resolutions. It is often the case that the board meeting and the general meeting occur on the same day.

Accounts and corporation tax

Accounts and computations of corporation tax will be required up to the date of cessation of trade and to the date of liquidation. These need to be submitted to HMRC, agreed, and the corporation tax liability paid.

Distributions

Once the company is in liquidation, statutory notices need to be advertised and filed at Companies House. Assets are then realised and liabilities agreed and settled. Once all liabilities and costs have been paid, surplus funds can be distributed to shareholders. In many cases a company may have physical assets remaining after trade has ceased. Instead of converting all assets to cash, it is possible to distribute surplus assets by way of a 'distribution in specie' to shareholders. Where liabilities are paid prior to their normal settlement date, the Insolvency Rules allow a discount to be applied. Interest is payable, however, on creditors' claims at the statutory rate, currently 8%, for the period from liquidation to settlement of the liability.

Closure

Once all the company's assets have been distributed, a final meeting of shareholders is convened. The liquidator is required to present a report to members together with a summary of receipts and payments. Once the liquidator's final report has been filed at Companies House, the company will be automatically dissolved three months after the final meeting.

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