



# A Quick Guide to Members' Voluntary Liquidation



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# 1. What is a Members' Voluntary Liquidation?

A Members' Voluntary Liquidation ("MVL") is a solvent liquidation of a limited company. It is a formal process used to close a limited company and distribute the assets to shareholders. The main advantage to the MVL is it turns accumulated profits into capital. When distributed, the rates of Capital Gains Tax are less than the dividend tax rates. Capital Gains Tax starts at 10% on trading companies for the first £1m per shareholder and then goes up to 20%.

You need a Licensed Insolvency Practitioner like us to act as the liquidator. We will prepare all the legal paperwork for you and present you with all the forms and documents you need to sign. We will also arrange to open a client bank account to collect in the company assets. We will also use this bank account to pay out all the shareholders.

The directors will need to swear a Statutory Declaration of Solvency before the liquidation. This is a document summarising the assets and liabilities of the company and declaring that the company is solvent and that all creditors can be paid in full, with statutory interest, within 12 months. It can be a criminal offence to make a false declaration.

Everything needed to liquidate can be done online. There is no need to meet us in person unless you want to.

## **In summary a Members' Voluntary Liquidation:**

- is a solvent liquidation.
- you must be able to pay all liabilities in full, with interest, within 12 months.
- is used to return funds to shareholders as capital.
- the distribution to shareholders is capital taxed at 10% on the first £1m then 20%.
- brings the company to a proper closure.
- can usually be done in a couple of weeks.
- it is often seen as a barrier between now and the past.

If the company has final assets below £25,000 in total, then it is possible to do an 'informal liquidation' where HM Revenue and Customs recognise an 'informal closing down' but still recognise the payment to shareholders as capital. This used to be known as Extra Statutory Concession C16.

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## 2. What do I need to do to get ready for a Members' Voluntary Liquidation?

Firstly, the directors must agree by a majority decision at a board meeting that they want to liquidate. Secondly, you will need 75% of the shareholders that vote to agree to liquidate. We will produce this paperwork for you.

To be ready to go into liquidation, here are some matters that should be dealt with before you can proceed:

- You cannot liquidate a company until you have ceased trading.
- It is always worth preparing the last year end accounts as soon as possible after ceasing to trade so that the Corporation Tax due can be paid. It is possible to change the company year-end to just after the date the company has ceased trading to accelerate this process.
- Collect in any debtors from customers to simplify the liquidation (and what we have to deal with).
- Sell any equipment, vehicles and other assets before we start the process even if this means a director or shareholder buying them at market value. If you buy assets at market value, you need to keep a record of how you valued those assets e.g. comparable values on eBay or an auctioneers valuation.
- Pay off any final creditors and suppliers.
- Complete all VAT returns to date and pay the VAT due.
- Pay any final Corporation Tax due based on the cessation accounts.
- Deal with all employee issues including making them redundant or transferring them if applicable.
- Make sure you know the true financial position as you will have to swear an oath. The company must be solvent.

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# 3. What happens next in a Members' Voluntary Liquidation – step by step

I will assume you are about to stop trading your limited company or have already done so. You would normally then speak to your accountants and check that you qualify for Business Asset Disposal Relief if you use a Members' Voluntary Liquidation. You can also check you qualify by reviewing page 6 of this guide.

1. Once you are certain you want to liquidate get in contact with us and we will send you a list of what we need. This list is set out on page 9. Once you give us that list of information, we agree a target date with you to liquidate.
2. We cannot accept any funds from you until we have identified all the directors and any shareholders with over 25% of the shares. We usually do this by asking you to certify ID and posting it to us. We can also do it by Teams/Zoom or by using a digital identify service.
3. We then prepare all the statutory paperwork. We will send it to you to sign online using Adobe sign or a similar digital signature service.
4. We will also ask you to sign an undertaking to repay funds to us if we overpay you. This may happen if an unexpected creditor comes forward after the date of liquidation.
5. One of the documents we will send you is the Declaration of Solvency. You will need to swear this as true before a solicitor. The Declaration of Solvency sets out the assets and liabilities of the limited company. It is important that it is accurate.
6. We will ask you to send us the company funds to a bank account called a client account in your company name opened by us for the purpose of the liquidation. You can verify this with the bank we use if you need to.
7. There is then a directors meeting and shareholder meeting, but this can be done online by Teams, in person or by telephone. We send you all these documents you need to sign. If your company has only one director and you are the only shareholder, it is of course very easy. It does get more complicated if there are lots of shareholders and we may in that case recommend a scheduled Teams or Zoom meeting.
8. Once step 7 is complete the company is then in liquidation.
9. We then pay out all the funds within seven days to the shareholders. We do usually hold back a small balance of about £1,000 for any unexpected bills. We also hold back enough to pay our fee plus the disbursements.
10. We will issue a final report and the company will be dissolved at Companies House.

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# 4. Business Asset Disposal Relief issues (formerly Entrepreneur's Relief)

As already mentioned, the advantage of a Members' Voluntary Liquidation is that the accumulated profits within a company will be distributed as capital. The tax rate on capital is lower than the tax rate on dividends.

**To qualify for Business Asset Disposal Relief there are some key requirements:**

1. The company must have been a trading company. This means it cannot be an investment company. An example of an investment company is one owning and letting out property.
2. You must have been a director or employee for over two years.
3. You must have held at least 5% of the voting shares.
4. Under the Targeted Anti Avoidance Rules introduced in 2016 you cannot go back into owning the same type of business within two years of the date of liquidation. If you breach these rules the capital paid out will be taxed as income and taxed at higher rates.

## **Capital Gains Tax rates**

The first £1m of any gain per qualifying shareholder will be taxed at just 10% tax. In addition, the shareholder will also have their tax free annual capital gains allowance. Gains above £1m are then taxed at 20%.

It is important to note that the £1m limit is for life. Once you have used it up you cannot claim it again. However, note that a husband and wife each have a £1m limit.

It may also be worth considering liquidating around the 5th April tax year end as we can distribute funds before and after that date to get two tax free capital gains allowances.

## **Freehold property**

We can distribute non cash assets out of a company. This is called a distribution in specie. This might apply to a freehold property or car.

It is useful to note that mortgage free property can be distributed out of a company stamp duty free. Yes, you read that correctly. The only issue is to make sure the property has been valued and any company tax paid on the gain before it is transferred out. The recipient then acquires the property at the new market value.

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# 5. Common questions on Members' Voluntary Liquidations

## **How long does it take?**

Once the company is ready it takes about one week to liquidate. We have an established and quick process to liquidate. We know our clients like the fact that they will have their money very quickly after liquidation.

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## **What is an undertaking?**

This is an agreement we ask you to sign before we send you all of the company funds. This states that if a forgotten (and correct) creditor comes forward you will pay us back the funds to cover them.

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## **What is a statutory Declaration of Solvency?**

This is a balance sheet summarising the assets and liabilities of the company at the date of liquidation. We prepare this for you based on what you tell us. It must be accurate and show that the company is solvent. This is a sworn document – it is a criminal offence to make a false Declaration of Solvency.

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## **When do I get my money?**

Within seven days of liquidation.

## **I have an overdrawn directors' loan will I have to pay more tax?**

No. We distribute the overdrawn directors' loan account to you in specie. Therefore, what you owe back is set off against what you are owed as a shareholder.

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## **How do you verify bank details for payment to me?**

We identify you for Anti-Money Laundering purposes for our files and make sure we are dealing with you. We may carry out an electronic verification of you at your home address. We telephone to check your bank details with you and may also send you a random test payment we ask you to confirm. For sums over £1m we may let you do the bank transfers direct on the day of liquidation.

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## **Will this solvent liquidation affect my credit rating?**

No.

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## **Can I start another business?**

Yes, but not within two years if you are going back into the same trade or profession. However, you can still work in the sector if you are just an employee (and not a shareholder).

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## 6. What can go wrong?

### **Tax refunds are delayed**

The most common problem for us is that once the company is in liquidation HM Revenue and Customs for some unknown reason delay giving any tax refunds properly due. This can go on for months and in some cases, has exceeded a year for Section 455 tax refunds. A section 455 tax refund is one due back on a repaid directors' loan. It is not easy for us to contact HM Revenue and Customs. They ask us not to chase them.

The way to help this run smoothly is if you can repay the directors' loan before the start date of liquidation and make sure that all PAYE, VAT and Corporation Tax returns are up to date and paid.

### **Not actually being a solvent company**

The majority, by number of directors, who swear the Declaration of Solvency must be able to honestly declare the company is solvent and can repay all its liabilities with statutory interest within 12 months.

If the company is not solvent, we have to move the liquidation to a Creditor's Voluntary Liquidation. We also can no longer be liquidators and a new one will be appointed. They will then recover any assets and investigate what happened and make sure creditors are paid before any shareholders. The fees and costs will escalate. They may also report the directors to the Insolvency Service for misconduct which may lead to a ban on being a director for a period from 2 to 15 years.

If the directors knowingly or recklessly make a false statement that the company was solvent it is a criminal offence.

### **You cannot trace all the shareholders**

This does happen and usually with a second or third generation company where share ownership has split. We do need to pay the actual shareholder who properly owns the shares. We can not pay a third party.

### **After dissolution a further asset is found**

We can restore a dissolved company to the Companies House register provided it has not been dissolved for more than six years. You will need to weigh up the costs of doing this against the value of the assets. Assets not claimed by the company belong to the Crown under the Bona Vacantia rules.

### **The Targeted Anti Avoidance Rules**

As I have mentioned before, to be able to claim Business Asset Disposal Relief ("BADR") you must not go back into the same or similar business within two years of liquidation. If you do you will pay income tax on the funds you have received instead of the lower rate of Capital Gains Tax. A common example is a house builder who had a single purpose company. Once they have liquidated, they should not start another development project for two clear years.



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## 7. Why use Kirks?

### **Experienced, professional and supportive**

We are a dedicated and friendly team of licenced insolvency professionals who are committed to providing you with the very best advice. We understand that going through the Members' Voluntary Liquidation process can be daunting and stressful. Our team will help you, your staff, directors and shareholders to identify the best possible outcomes for all concerned. We have been operating for over 25 years and are nationally recognised as experts in the field of insolvency.

In 2021 to 2022 we liquidated over 100 companies and dealt with assets exceeding £100m.

### **Concise, efficient , compliant and cost effective**

You will find us easy to work with as we set out your options in plain English and are totally transparent about costs quoting fixed fees in advance.

Once liquidated we can pay the funds out to shareholders within seven days provided the shareholders sign an undertaking.

We hold all funds in separate client accounts. The client funds are not held collectively.

We have established procedures to identify who we are dealing with, identify directors and test and check the bank details we have are correct for returning shareholder funds.

If funds in your company are above £1m we can make special arrangements for you to make the payments to shareholders direct on the date of actual liquidation.

We are Licensed Insolvency Practitioners authorised by the Institute of Chartered Accountants in England and Wales.

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## 8. The costs of a Members' Voluntary Liquidation

We work on a fixed fee rate for Members' Voluntary Liquidations.

### Fee scale

We try and keep our fees clear and simple. There are three costs to a liquidation, and these are: our fee, an insurance bond and statutory advertising in the London Gazette.

If the company owns freehold property that needs to be transferred out as a distribution in specie then we will charge an additional £500 plus VAT for each property that we have to deal with. We will also need to instruct a solicitor to do the property transfer and form TR1 but we can use your solicitor and you can negotiate this fee direct.

### Disbursements

We must pay out two costs as disbursements. These are an advert in the London Gazette which costs at present £356.94 plus VAT and then a bond fee to an insurance company based on the value of the assets we handle. By law, every Licensed Insolvency Practitioner must have an individual case bond for every liquidation.

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### What it costs

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ASSETS	FIXED FEE	BOND	ADVERT	TOTAL
£25,000 to £100,000	£2,000	£95	£356.94	£2,451.94
£100,000 to £250,000	£2,500	£150	£356.94	£3,006.94
£250,000 to £500,000	£3,000	£205	£356.94	£3,561.94
£500,000 to £1 Million	£3,500	£273	£356.94	£4,129.94
£1 Million to £2 Million	£4,000	£435	£356.94	£4,791.94
Above £2 Million	By Quote	By Quote	£356.94	By Quote

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## 9. What we need to start

1. The exact company name, registered number, and trading address.
2. The name, address, and email address for all shareholders.
3. Certified ID for all directors and shareholders. We need this for any shareholder owning 25% or more. Please then post this original certified ID to us.
4. An original utility bill or bank statement less than three months old for each shareholder over 25% and director showing their home address.
5. The Corporation Tax, PAYE, and VAT Registration number.
6. The company bank name, account name, sort code and account number.
7. Details of the banks you would like the funds returned to within the first days of liquidation.
8. Details of any pension scheme in place with the 10-digit letter code regarding Auto Enrolment.
9. The date on which the company has or will cease trading.
10. Details of all company assets and liabilities.
11. We will need a copy of the final accounts to the date you have ceased trading. The year end can be changed to accommodate this date.

### Notes

\*We need certified identification (“ID”) where we do not meet you in person. You can have your ID certified at the Post Office for £12.75 or certified by a qualified accountant or solicitor. The words on the copy certified should be “I certify that this is a true copy of the original”. Don’t forget we also need a separate document to prove your home address such as a utility bill less than three months old.



# 10. Reviews

*"They promised a straightforward process and certainly delivered – I highly recommend the team at Kirks to assist with your MVL."* **Danielle F**

*"A fixed fee arrangement provided us with reassurance and David explained the process clearly to us at the outset. A very professional service all round."* **David M**

*"Thank you for winding up and finalising the tax affairs associated with our limited company. Everything was done smoothly and professionally, and we are very happy with Kirk's work throughout. You provided a flexible and efficient level of service. Your charges were very reasonable too. I would be happy to recommend you to friends."* **Karl M**

*"We have just worked with Kirks to complete the closure of our company. Everything went smoothly and professionally. I would recommend this firm and the staff who were very helpful and quickly finalised everything. Thank you, Kirks."* **Carol H**

*"A good service and no drama. Recommended."* **Mark S**

*"Kirks provided a very efficient and cost-effective service. They offered support and advice throughout the process and made prompt payments. It was a very professional and helpful service."* **Richard T**

*"Kirks and their team recently advised me on the Members Voluntary Liquidation ('MVL') process. They made it very simple for me to understand the process, they kept me up to date with progress throughout the liquidation and expertly answered any queries I had. All interactions with Kirks were highly professional and it gave me confidence that my liquidation was safe in their hands. They promised a straightforward process and certainly delivered – I highly recommend the team at Kirks to assist with your MVL."* **Daniel W**

*"Kirks Dealt with the liquidation of my company. Nathan was very professional, explained the process, and was able to give excellent advice throughout. Highly recommended."* **Garry J**

*"I had instructed Kirks to deal with the liquidation of my company. Based on personal research they were the best in terms of giving me access to the most amount of funds in the quickest manner with reasonable costs. All in all I definitely made the right choice and would recommend them to anyone."* **Wissam M**