

MEMBERS' VOLUNTARY LIQUIDATION (MVL)



Members' Voluntary Liquidation (MVL) is available for solvent companies when the company members or shareholders no longer wish to retain the current structure of the company. This may occur when a company is no longer needed and is therefore not serving a useful purpose.

An MVL, or a members' voluntary winding up, is the process for solvent companies when its members no longer want to retain the company's structure as the company is no longer required and is serving no useful purpose, or the members want to distribute company assets in an ordinary manner and through an independent party, particularly if there is a dispute amongst members. A liquidation is able to distribute assets without necessarily selling assets such as property or plant and equipment.

A members' voluntary winding up is the only way to fully wind up the affairs of a solvent company. In a members' voluntary liquidation all creditors are paid in full, with any surplus assets being distributed to its members/shareholders. A members' voluntary winding up also ensures the protection of members' interests while the company structure is dismantled.

A company is usually only considered solvent if it can pay all of its debts as and when they fall due. However, this is the strict definition and is not applicable to a members' voluntary winding up as the appointment can last up to 12 months. In the event the liquidator determines that all creditors will not be paid in full within the 12 month period, the members' voluntary liquidation must convert to a creditors' voluntary winding up liquidation.

The first step to entering into a members' voluntary liquidation, is to have the directors resolve to call a meeting of members to wind up the company. Directors must complete a 'declaration of solvency' that states the company is solvent and can pay all its debts within 12 months. The declaration of solvency is then lodged with the Australian Securities and Investments Commission (ASIC) before the members meeting. The solvent company is then wound up on the resolution of its members at the meeting.

During the members' voluntary liquidation, a liquidator may continue to trade a company, but only if it is in the best interests of the stakeholders involved. Continuing to trade usually occurs in the event that there is a prospect to sell the business as a going concern, or to complete and sell any work-in-progress. A liquidator is obligated to end trading and wind up a company's affairs as quickly as possible but may continue to trade if there is a viable and beneficial reason to do so.

The normal investigations that are conducted in a creditors voluntary or court liquidation are not required under a members' voluntary winding up. This is because the company is deemed to be solvent with creditors to be paid in full. This means there is normally no need for any recovery actions to be initiated such as preferential payments and insolvent trading as these recovery actions are only applicable if the company was insolvent at the time of the transaction, or if there is a loss to creditors.

Once all assets are realised and all dividends are paid, the members' voluntary liquidation process ends with the liquidator calling a final meeting of the company's members. This meeting can only be called after all creditors' claims are satisfied, all other issues are resolved, and any surplus funds are distributed to the members. The meeting is a statutory process and attendance by members is optional.

After this meeting, the liquidator resigns as liquidator of the company and the company is automatically deregistered by ASIC three (3) months after the final meeting is held.

Should you have any queries regarding the above information or any other matters, please do not hesitate to contact our team via hamiltonmurphy.com.au or send us an email at info@hamiltonmurphy.com.au.

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