



Creditors' Voluntary Liquidation (CVL)

Should a company's members and/or shareholders agree that a company can no longer meet the requirements of its debts then that company can enter Creditors' Voluntary Liquidation. The company in question is deemed by the relevant parties to be insolvent, or likely to become insolvent.

A Creditors' Voluntary Liquidation occurs when the company's members/shareholders determine that the company can no longer satisfy its debts and deem the company to be insolvent, or likely to become insolvent. A majority of the company's shareholders must resolve to place the company into Liquidation. The Liquidator appointed will deal with the company's assets, including realisation of those assets. During the Liquidation the Liquidator is required to act as an independent third party to ensure that the process is conducted appropriately and according to the relevant law.

A Creditors' Voluntary Liquidation may also arise as a result of creditors of a company(s) in Administration resolving that the company be wound up.

A company(s) that has a winding up application commenced against it cannot resolve to be wound up whilst the application remains on foot, however directors can opt to place the company(s) into a Voluntary Administration. There are many factors that must be determined prior to this occurring.

A secured creditor's right to enforce their security is not affected by a company going into a Creditors' Voluntary Liquidation. A secured creditor will often allow a Liquidator to sell charged assets during the course of the Liquidation, provided the rights of the secured creditor are maintained.

If the company is placed into Liquidation, the employee entitlements (including wages, superannuation, leave and termination pays, etc.) are afforded a priority pursuant to the Corporations Act 2001 (Cth) ("the Act") ahead of ordinary unsecured creditor claims in the event of a distribution to creditors in a liquidation.

If there are insufficient realisable or recoverable assets in the Liquidation, the Federal Government through the Attorney-General's Department has implemented a scheme to protect employee entitlements. This is called the Fair Entitlements Guarantee (FEG) Scheme. This scheme provides funds to employees of companies that are subject to a Liquidation in order to satisfy outstanding wages, leave entitlements and termination pays. This scheme does not cover unpaid superannuation.

The appointment of a Liquidator suspends an unsecured creditor's rights to pursue a company(s) for unpaid debts. Unsecured creditors are able to lodge a claim in the Liquidation for the amount of their debt and will rank equally with all other unsecured creditors in the event of any distribution. However, an unsecured creditor that holds a personal guarantee in respect of company debts can proceed to enforce its rights against the guarantor pursuant to the guarantee once the Liquidation commences.

Directors often provide personal guarantees to creditors for debts incurred by the company and as such, the Director(s) may become liable for some company debts once the Liquidation commences.

Shareholdings generally have no value once a Creditors' Voluntary Liquidation is commenced as the company is insolvent and therefore has insufficient assets to satisfy its liabilities. Accordingly, shareholders will most likely not receive a distribution in a Creditors' Voluntary Liquidation.

The powers of a director(s) are suspended upon the appointment of a Liquidator and only the Liquidator is able to bind the company in any transaction. The Director(s) is however, required to assist the Liquidator in the conduct of the winding up including providing information and/or documents concerning the company's affairs. The Director(s) has an obligation to comply with any requests made by the Liquidator pursuant to the Act.

Once the Liquidation has commenced, the Liquidator has control of the company's assets and affairs and is the only one with the power to bind the company. In general, the Liquidator is required to identify, secure and realise company assets, investigate failures of the company, report to creditors, hold meetings, report to the Australian Securities and Investments Commission (ASIC) on any offences committed by company officers, distribute any assets to creditors and apply to ASIC to deregister the company.

Once all assets have been realised, investigations are completed and any distributions to creditors are made, the Liquidator will lodge an end of Administration return with ASIC. The Liquidator will then resign as Liquidator and ASIC will take steps to deregister the company.