

# **GUIDE TO LIQUIDATIONS**

## **INTRODUCTION**

Many people are unclear about the statutory obligations to be met by the liquidators and therefore we have prepared some general comments for you to review over the next few days. We hope that this brief summary will help you to understand the process of administering the affairs of the company now that the tough calls have been made.

The guide has been prepared in bullet format rather than as a detailed script.

## **1. APPOINTMENT, DUTIES & ROLES OF LIQUIDATORS**

### **General Rule**

- Liquidations and receiverships are for companies
- Bankruptcies are for individuals
- Appointment methods vary
- Duties and roles are governed by the Companies Act 1993

## **2. WHO APPOINTS A LIQUIDATOR?**

- Shareholders by way of resolution
- High Court - usually on application of creditor

## **3. WHAT ARE THE PRIMARY DUTIES AND ROLES OF A LIQUIDATOR?**

- Statutory requirement to ensure fair play
- Take possession of, protect, realise and distribute the proceeds of the realisation of assets to the creditors
- Investigate opportunities for recovery:
  - From errant debtors
  - From preferred creditors

#### **4. SPECIFIC TASKS CARRIED OUT BY LIQUIDATORS**

- The first task is to secure assets
- The second task is to realise these assets to best advantage.
- The third task is to identify creditors and their status within the insolvency
- The final task is the distribution of proceeds from recovery of assets

#### **5. WHO CAN BE A LIQUIDATOR?**

The Companies Act 1993 details:

- The qualifications of liquidators
- How liquidators are appointed and the principle duties of liquidators.

#### **6. WHAT DOES A LIQUIDATOR DO ON DAY 1?**

This varies, but in most cases, the following is done:

- Elicit background information
- Contact directors, obtain basic information including :
  - Who is the accountant, solicitor, banker?
  - Any assets, what / where / Insured? etc
  - Books and records, what / where ?
- Meet with the director
- Complete a Statement of Affairs
- Contact all the above parties by telephone and follow up with standard letters
  - Advertise appointment
  - Redirect mail.
- Interview director

- Review records
  - Landlord distraint
  - Book debts
  - Retention of Title
  - Employee issues / claims
  - Locate / disposing of assets
  - Review and follow up voidable transactions
  - Trading while insolvent / reckless trading
  - Inadequate books and records
  - Current account claims
  - Unpaid share capital
  
- Issue a report to all creditors commenting on issues and detailing ongoing issues

## **7. TRADING COMPANY**

If a company is continuing to trade, the liquidator will also:

- Meet the director on site
  - Secure the premises
  - Meet the staff
  - Contact the landlord and negotiate ongoing use of the premises
  - Deal with retention of title claims
  - Arrange a valuation of assets
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- It is not usual for a liquidator to trade a company. It is within his/her duties or powers, but consideration must be given on how best to maximise recovery for creditors.
  
  - Once the above issues are dealt with the usual review/investigation of company records is completed.
  
  - Creditors meetings are not common, but if a dividend is going to be 20 cents in the dollar or higher, or at the request of a creditor, a meeting must be held.

## 8. WHAT ARE THE LIQUIDATORS' POWERS?

These are shown in the Companies Act 1993, commencing from Section 253 and include:

- Power to obtain documents and information 261
- Documents in possession of receivers 262
- Restriction on enforcement of lien over documents 263
- Delivery of documents creating charge over property 264
- Examination by liquidator 265
- Powers of Court 266
- Self incrimination 267
- Power to disclaim onerous property 269

## 9. CREDITORS MEETINGS

### 9.1 Why Are Creditors Meetings Held?

- The meeting is to resolve whether to appoint another liquidator in place of the liquidator appointed by either the shareholders or by the Court.
- The liquidator may dispense with meeting of creditors if the liquidator considers that having regard to the assets and liabilities of the company, the likely result of the liquidation of the company, and any other relevant matters, a meeting is not necessary.
- To appoint a creditors committee if considered to be appropriate.

### 9.2 Other duties of the liquidator required by the Act:

- Forthwith after being appointed or being notified of his/her appointment, the liquidator must give public notice of his/her appointment, the date of the commencement of the liquidation and the address and telephone number to which creditors or shareholders may direct enquiries.
- Within 10 working days of appointment, deliver a notice of appointment to the Registrar; and

- Within the applicable period (5 days for a voluntary liquidation, 25 days for a Court liquidation):
  - Prepare a list of every known creditor of the company; and
  - Prepare and send to every known creditor, shareholder and the Registrar;
    - A report containing a statement of the company's affairs, proposals for conducting the liquidation, and, if practicable, the estimated date of its completion; and
    - A notice explaining the right of a creditor or shareholder to require the liquidators to call a meeting of creditors.
  
- Within 20 working days of the end of each period of six months following the commencement of the liquidation prepare and send to every known creditor and shareholder, and send or deliver to the registrar, a report on the conduct of the liquidation and any proposals which the liquidator has for completing the liquidation. However, the liquidator can obtain a dispensation of this requirement.

## **10. MODIFICATION OF LIQUIDATORS POWERS**

- Courts have the power to modify the duties of the liquidator
- The liquidator is not required to comply with the provisions requiring a report to creditors if the distribution to unsecured creditors is not likely to exceed 20 cents in the dollar. However. The policy of McDonald Vague is that reports will be issued irrespective of the likely dividend amount.

## **11. DUTY TO HAVE REGARD TO VIEWS OF CREDITORS AND SHAREHOLDERS**

- The Companies Act 1993 sets out what the liquidator must have regard to.
- The liquidator has a duty to summons meetings.
- The liquidator must hold a meeting of shareholders if written notice is given by the shareholders holding shares on which has been paid not less than 10% of the total amount paid up on all shares issued by the company.

## 12. LIQUIDATION COMMITTEE

### 12.1 What if there is a Liquidation Committee?

- i) Membership – must consist of not less than 3 persons who are:
  - a) Creditors or shareholders; or
  - b) Persons holding general powers of attorney from creditors or shareholders; or
  - c) Authorised directors or representatives of companies that are creditors or shareholders of the company in liquidation.
  
- ii) Powers of the committee:
  - a) Call for reports on the progress of liquidation;
  - b) Call a meeting of creditors or of shareholders;
  - c) Apply to the Court for direction under section 284 (Court supervision of liquidation) and 286 (orders to enforce liquidators duties).
  - d) Assist the liquidator as appropriate in the conduct of the liquidation.

## 13. CONCLUSION

We **attach** a brochure for further reference. Please telephone one of our partners or senior staff members if there is any aspect of the administration of your company for which you require further classification.

You may wish to visit our website at [www.mvp.co.nz](http://www.mvp.co.nz) for further information, including articles concerning insolvent companies.