

RE|SOLVENCY

Members' Voluntary Liquidations (MVLs) v Striking-off

In this guide we compare MVLs to Strike-offs and summarise the advantages and disadvantages of each.

	MVL	Strike-off
Act of Governance	<ul style="list-style-type: none"> The Insolvency Act 1986 	<ul style="list-style-type: none"> The Companies Act 2006
Conditions necessary to enable process	<ul style="list-style-type: none"> Company must be solvent 75 per cent or more of members voting must agree to resolve to liquidate A liquidator must consent to act 	<ul style="list-style-type: none"> In the three months prior to strike-off must not have traded or carried on a business, changed name, disposed of property it used in the business or engaged in any other activity Must not be an application for administration, or notice of intention to appoint filed in place Must be no voluntary arrangement proposed or in place or application to Court for the sanctioning of a scheme of arrangement Must not be subject of active winding up petition or liquidation proceedings Must not be a receiver appointed over property
Process	<ul style="list-style-type: none"> Directors convene board meeting to resolve to wind up company and swear a declaration of solvency Director, both or majority if more than two must make a statutory declaration in front of a solicitor that they have conducted a full inquiry into affairs and company can pay its debts plus interest due within 12 months of the liquidation date and accompany it with a statement of assets and liabilities Must be done within 5 weeks and filed at Companies House within 15 days of liquidation Members resolve to liquidate on passing of special resolution (75 per cent or more) at meeting or by written resolution Resolution filed with Companies House and advertised in the Gazette within 14 days of passing Members resolve to appoint a liquidator by ordinary resolution Notice of appointment filed with Companies House and advertised in Gazette within 14 days of appointment by the liquidator 	<ul style="list-style-type: none"> Application to Registrar of Companies on prescribed form by directors and payment of small fee Notification to members, creditors, employees, directors or parties with an interest in affairs of the company Companies House publishes notice in the Gazette inviting objections to striking off Company struck off two months after notice published and further notice published in Gazette signalling dissolution
How are assets dealt with?	<ul style="list-style-type: none"> A liquidator distributes the assets as capital following appointment Assets may be distributed as cash or 'in specie' if the Articles of the company allow (if not, it may be worth amending pre-liquidation) Tax advice is highly recommended prior to the liquidation to ensure tax efficiencies are maximised 	<ul style="list-style-type: none"> Assets fall into possession of the Crown on dissolution If there are assets that need dealing with prior to strike-off, distribute from distributable reserves in accordance with the Companies Act Or, a company can reduce its share capital (and share premium reserve or capital redemption reserve, if any), creating reserves to enable distributions of assets As this will require a declaration of solvency it can cost to prepare and tax advice is highly recommended
Tax effect of removal of assets	<ul style="list-style-type: none"> A liquidator distributes as capital meaning the members account for assets as capital receipts and may take advantage of available reliefs meaning only ten per cent tax is payable 	<ul style="list-style-type: none"> Directors may distribute assets in accordance with the Companies Act and members' distributions may be subject to income tax rates unless well managed
What happens if the company has creditors?	<ul style="list-style-type: none"> The creditors are invited to prove their debt in liquidation and the liquidator agrees the claim and pays them in full plus any statutory interest Contingent claims can be valued and admitted or rejected as appropriate by a liquidator If a creditor has a claim that is contingent, a liquidator can still agree and finalise the claim (usually with expert help) A creditor has 21 days to apply to court to vary a decision by a liquidator Creditors cannot disturb the process of declaration of a dividend if late in proving a claim and lose out A liquidator has the power to disclaim onerous contracts, reducing the level of potential claims 	<ul style="list-style-type: none"> Creditors' claims remain in existence and creditors could, if they felt the need, apply to restore the company to the Register of companies and appoint a liquidator to investigate its affairs

What happens to any employees?	<ul style="list-style-type: none"> Employees can claim in the same way as other creditors and will be paid in full It may be best to make employees redundant in advance of a liquidation so as to manage the known liability at the point of declaring solvency 	<ul style="list-style-type: none"> Employees will need to be made redundant and paid in full prior to strike-off. If they are not paid in full, they may apply to prevent striking-off or restore the company to the Register and appoint a liquidator to investigate the affairs
When is 'the end'?	<ul style="list-style-type: none"> The liquidation continues until a final meeting of members is advertised in the Gazette and called by a liquidator A final receipts and payments account is filed with the Registrar within seven days of the meeting This notification discharges the liquidator from liability and office as liquidator The company is dissolved approximately three months thereafter by the Registrar 	<ul style="list-style-type: none"> When the striking-off notice is filed the Registrar advertises the striking-off in the Gazette The company is dissolved approximately two months after the notice is published
Period within which company can be restored	<ul style="list-style-type: none"> Six years 	<ul style="list-style-type: none"> Six years
What happens if the company is found to be insolvent?	<ul style="list-style-type: none"> The liquidator has the power to convert the MVL into an insolvent liquidation. The affairs of the company are investigated and directors' actions reported The directors may suffer from a fine or imprisonment or both if penalised for swearing solvency (it is presumed the directors should know if it is insolvent at the time of swearing). It is imperative that directors are sure before signing this declaration 	<ul style="list-style-type: none"> Nothing will be done unless a creditor acts to restore the company following dissolution. In that case the creditor may seek a liquidator appointment to investigate affairs A creditor may postpone the striking off and dissolution by objection to the Registrar following the publication of the initial notice in the Gazette. This could delay matters and the creditor may wish to explore further before allowing the striking-off to proceed
Do the directors retain their powers?	<ul style="list-style-type: none"> No. The directors' powers cease on appointment of a liquidator unless sanctioned by a liquidator Official capacity remains in place and directors are not automatically terminated from being directors 	<ul style="list-style-type: none"> Yes
Cost	<ul style="list-style-type: none"> Flexible but will include costs of a liquidator, his disbursements and the costs of any professionals engaged to assist 	<ul style="list-style-type: none"> Minimal as does not require an insolvency practitioner There is a cost associated to the process of reducing capital to enable distributions of assets

Advantages and disadvantages

Speed	<ul style="list-style-type: none"> Can be relatively quick process, especially in making initial distribution of assets 	<ul style="list-style-type: none"> Quick process to dissolution assuming no objection
Tax effectiveness	<ul style="list-style-type: none"> Very good, as receipts in the hands of members are capital receipts and taxed at rates as low as ten per cent 	<ul style="list-style-type: none"> Assets may need to be removed prior to striking-off by way of dividend, attracting income tax rates significantly in excess of ten per cent that may be available in a liquidation
Cost	<ul style="list-style-type: none"> Flexible but will involve an insolvency practitioner and potential professional costs 	<ul style="list-style-type: none"> Minimal at the time of strike off but may cost if a requirement to reduce capital in advance
Protection from creditors	<ul style="list-style-type: none"> Good. Once the liquidator has advertised for claims, the process of agreement of creditors proving debts is underway Creditors late in proving cannot participate in dividends and lose ability to claim A liquidator has the power to disclaim onerous contracts, such as property leases 	<ul style="list-style-type: none"> Creditors have the ability to restore the company to the Register and pursue directors through appointment of a liquidator Risk if dealing with a dormant entity with an unknown history owing to loss of 'corporate memory'
Who can carry out the process	<ul style="list-style-type: none"> A UK qualified insolvency practitioner 	<ul style="list-style-type: none"> A director, accountant or insolvency practitioner The director, both of them, or a majority if more than two, must sign the application form
PR	<ul style="list-style-type: none"> A solvent liquidation is not seen to be a negative event, rather a tax efficient process to enable capital to be repaid 	<ul style="list-style-type: none"> No negative PR unless an unpaid creditor is determined to frustrate the process or seek to restore the company

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