

Liquidation in BVI for a Solvent Company

Voluntary Solvent BVI Liquidation Procedure

Process to Appoint a Voluntary BVI Liquidator:

Standard due diligence procedures are applied and the Relevant Individual Due Diligence Form must be completed. It is required that the proposed liquidator give consent in writing to act as a liquidator. We also require that an Indemnity Form to be executed for each voluntary liquidation.

The directors make a Declaration of Solvency in the approved form which confirms that, in their opinion, the company is and will be able to continue to discharge, pay or provide for its debts as they fall due; and the value of the company's assets equals or exceeds its liabilities. A recent statement of assets and liabilities should accompany and support the declaration.

The directors should prepare a Liquidation Plan for approval which specifies the following:

- The reasons for the liquidation.
- Estimated time required to liquidate the company.
- Whether the liquidator is authorized to carry on the business if he determines that to do so is necessary or in the best interest of the creditors or members of the company.
- The name and address of each individual to be appointed as liquidator and the remuneration proposed to be paid to each liquidator.
- Whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.

Once the Plan has been approved by a Resolution of the Directors, it must then be authorized by a Resolution of the Shareholders. It is required that the liquidation plan be sent to all shareholders (regardless of voting rights) regardless of whether such resolution is to be passed at a general meeting or in writing.

After being formally appointed, the liquidator has strict time frames to undertake the BVI liquidation process:

Within 14 days of the commencement of the liquidation, the following documents should be filed at the Registry of Corporate Affairs:

- A notice of his appointment in the approved form;
- The executed declaration of solvency made by the directors, and
- A copy of the liquidation plan and

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Within 30 days of commencement of the liquidation, advertise notice of his appointment in the BVI Gazette, a local newspaper and if the company has been active internationally in any country where it has conducted significant business.

The liquidator needs to be an individual, and should not be connected with the company (i.e. not a director).

The principal duties of the liquidator are to:

- Take possession of, protect and realize the assets of the company;
- Identify all creditors of and claimants against the company;
- Pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the company;
- Distribute the surplus assets of the company to the members in accordance with the memorandum and articles;
- Prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator and send a copy of the statement of account to all members, if so required.
- Upon completion of a voluntary liquidation, the liquidator is required to file a notice of completion which is a statement that the liquidation has been completed and upon receiving the statement, the Registrar of Corporate Affairs (Registrar) shall:
 - **Strike the company off the Register of Companies, and**
 - **Issue a certificate of dissolution in the approved form certifying that the company has been dissolved**

Where the Registrar issues a certificate of dissolution, the dissolution of the company is effective from the date of issue of the certificate. Immediately following the issue of the certificate of dissolution, the liquidator publishes a dissolution notice in the Gazette, that the company has been struck off the Register of Companies and dissolved.

Please note that the above details are the standard manner in which voluntary solvent liquidations proceeds. It is possible that there may be specific provisions of the Memorandum and Articles of Association of any company seeking a voluntary liquidation that dictate that non-standard procedures will apply.

It is also important to note that a Director who makes a Declaration of Solvency without having reasonable grounds for forming the opinion that the Company is and will continue to be able to discharge, pay or provide for its debts in full as they fall due, commits an offence and is liable on summary conviction to a fine of \$10,000.00.

Liquidations in BVI for Business Insolvency

Insolvent BVI Liquidation Procedure

- **Minimum Fee (Voluntary Insolvent) \$5,000.00 plus disbursements**
- **Minimum Fee (Court Ordered) \$10,000.00 plus disbursements**

Fees are subject to change based on the specifics of the liquidation

An Insolvent Liquidation when compared to a Solvent Liquidation has a much more complex and involved process and generally does not lend itself to swift processing. For the sake of completeness below is a general outline of the applicable rules and regulations, however if it is determined that a Insolvent Liquidation is required please do not hesitate to contact us for further details and guidance.

Business Insolvency may be established by showing any of the following:

- **A failure to comply within 21 days with a statutory demand for an undisputed debt exceeding \$2,000.00**
- **Execution on a judgment being returned unsatisfied**
- **Balance sheet insolvency (i.e. where the liabilities exceed the assets of a company)**
- **An inability to pay debts as they fall due.**

Once it has been determined that a company is Insolvent, there are two ways of applying for the appointment of a liquidator.

- **Members can appoint a liquidator out of Court by a 75% qualifying resolution**
- **By an application to the Court.**

The liquidator of an insolvent company must be a BVI Licensed Insolvency Practitioner. An overseas practitioner who is not BVI-licensed may be jointly appointed with a BVI Licensed Insolvency Practitioner. The liquidator has wide ranging powers including the power to sell the company's property and to borrow money and grant security over assets.

The liquidator in carrying out his duties generally is required to call a meeting of creditors and a creditor's committee may be appointed. The liquidator is subject to the control of the court and has strict advertising, notice and reporting obligations under the Insolvency Act 2003.

For further information on **BVI Liquidation Services**, please call us at [\(284\) 494 4150](tel:2844944150) or email us at forwardassociatesbvi@gmail.com.