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MEMBERS' VOLUNTARY LIQUIDATION: A HOW-TO GUIDE

HOW TO CLOSE A CLIENT'S COMPANY AND EXTRACT THE PROFITS EFFECTIVELY

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WHAT IS A MEMBERS' VOLUNTARY LIQUIDATION (MVL)?

MVL is a solvent liquidation process which allows a company to be wound down and the remaining value to be returned to shareholders once all creditors have been paid.

Although it is a solvent procedure, introduced in 1986, it has to be conducted by an Insolvency Practitioner.

Once the wind down is complete, generally within one year, the company is dissolved.

WHEN DO YOU NEED AN MVL? AND WHEN DON'T YOU?

Since the withdrawal of Extra Statutory Concession ESC C16 on 1 March 2012, any company wishing to distribute reserves in excess of £25,000 has to use a formal MVL in order for it to qualify as a capital distribution.

Distributions below this threshold are automatically treated as capital (as opposed to income) so there is no need for a formal process.

In essence, the £25,000 threshold is 'all or nothing.' If a company holds assets worth more than £25,000 and does not use an MVL then the total is treated as income on distribution, rather than just the amount over the threshold. Where the level of capital is marginal, it may be best to take some out as dividends, taxable as income - to reduce the balance to the threshold and then treat the balance as capital.

This guide is brought to you by the Leonard Curtis Business Solutions Group (LCBSG) - providers of the **Lifecycle** accountants network.

THE LEGAL & TAX BENEFITS OF AN MVL

It may be that the company has reached the end of its useful life, the business owners wish to sell the trade and retire, the company may have achieved a specific purpose for which it was created, or it is simply a housekeeping exercise to tidy up a group company that is no longer required.

The type of company that finds itself in this position is limitless ranging from any type of trading business to a special purpose vehicle (SPV) which has become merely a cash shell.

An MVL is also often a favourable option during a Section 110 Insolvency Act Reconstruction, which enables the liquidator to accept shares in a new company or companies as part or full consideration for the transfer of the whole or part of the business of the company in liquidation.

Whatever the reason, shareholders will generally wish to convert their interest in the company into cash in the most tax-efficient way possible. This is especially the case for individual shareholders who, from a tax perspective, may be faced with the choice of treating the distribution as either income or capital, which can have significant cost implications for them – especially in the case of higher rate tax payers.

THE MVL PROCESS

The catalyst for MVL is a decision by the directors that the company has no further purpose and that available assets should be realised and distributed to shareholders.

MVL can be commenced at very short notice but, generally speaking, it is better to wind the business down to a clean position and then plan for between four and six weeks in advance to ensure as smooth a process as possible. As any creditors remaining in the MVL attract statutory interest, it is recommended that most liabilities are settled pre-MVL.

It is sometimes beneficial to make distributions from the company either side of a tax year end to maximise the use of annual Capital Gains Tax allowances.

Declaration of Solvency

An essential requirement for MVL is that the directors (or a majority of them) must make a statutory Declaration of Solvency (DOS) that they have made a full inquiry into the company's affairs and have formed the opinion that the company will be able to pay its debts in full, in addition to statutory interest, within a specified period, less than 12 months from the commencement of the liquidation.

There are very serious consequences for directors who knowingly make a declaration that is untrue – resulting in up to two years in prison and/or a significant fine.

Members' resolution

A special resolution for winding up must be passed by at least 75% of the company's members within five weeks of the DOS. It is at this point that the directors' powers cease and the liquidator takes responsibility for the company.

THE MVL PROCESS

The liquidator

The liquidator must be an authorised Insolvency Practitioner and will have a wide range of powers to enable realisation of the company's assets, agreement and payment of creditors' claims and distributions to members.

Once provision has been made for liabilities and costs, cash and other tangible assets can be distributed to members.

Conversion of MVL to Creditors' Voluntary Liquidation (CVL)

If the liquidator decides that the company is after all not capable of paying all its creditors in full it is effectively insolvent and must be converted to a Creditors' Voluntary Liquidation.

Meetings, reports and returns

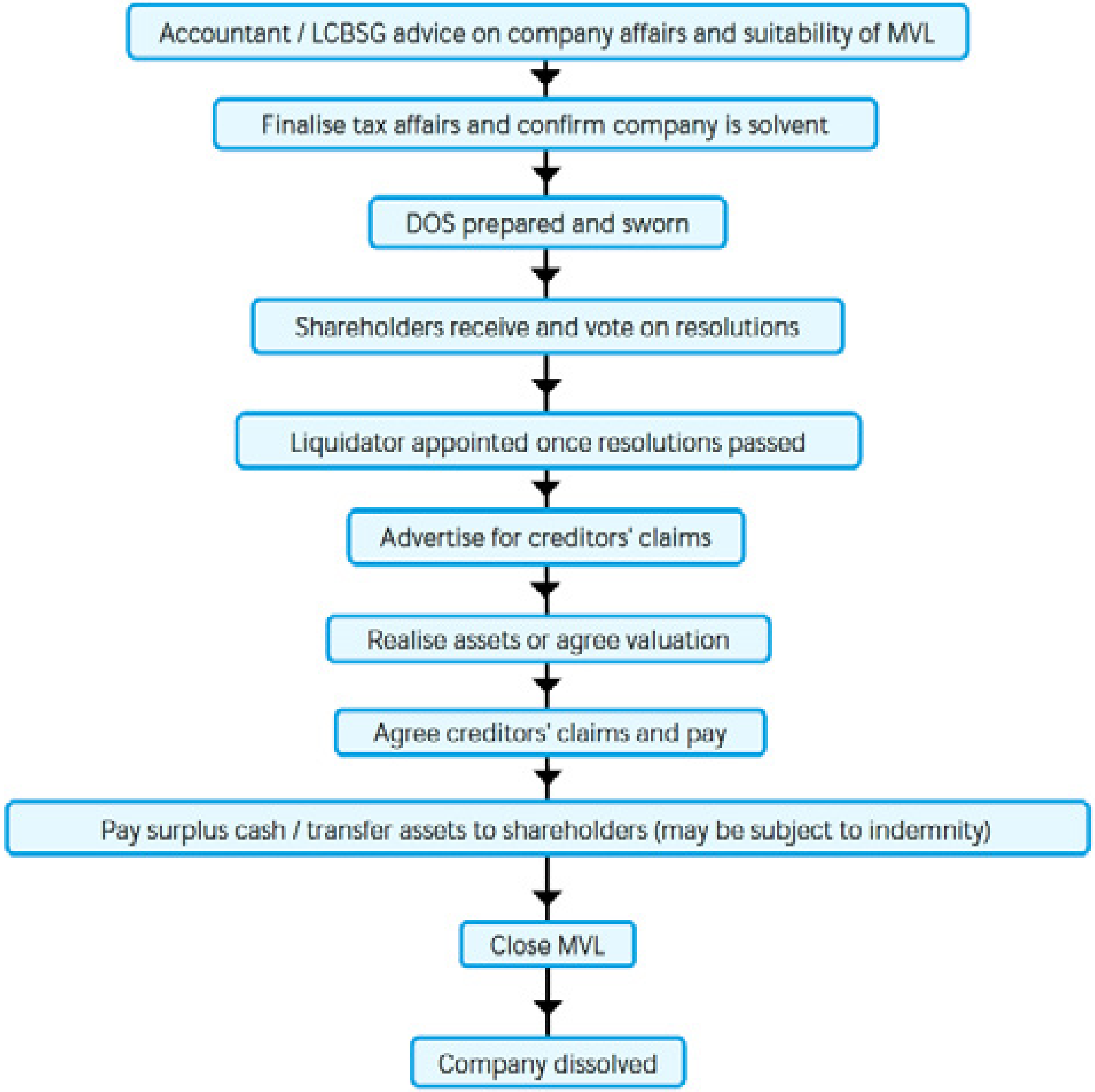
During the course of an MVL, formal meetings of shareholders are no longer required.

Where the liquidation continues for more than one year, the liquidator must send an annual report (containing a statement of receipts and payments and details of how the MVL has been conducted) to shareholders and Companies House within two months of the anniversary.

Closure

Once the liquidation is completed, the liquidator sends a final report to shareholders and Companies House. The company will be dissolved three months after the final report has been filed at Companies House.

THE MVL PROCESS



BENEFITS OF AN MVL

Due to the difference in rates between Capital Gains Tax and Income Tax, the benefits to shareholders of winding up a company in a solvent liquidation are attractive.

Put simply, instead of the higher rate taxpayer paying 40% or 45% tax on a distribution as income, assets distributed via MVL are generally subject to Capital Gains Tax (CGT) at 10% or 20%.

Furthermore, the ability to claim Entrepreneurs Relief in some circumstances will reduce the tax charge to 10%.

Additional tax benefits can be achieved by splitting capital distributions over two tax years to maximise the use of individual CGT allowances along with extracting some income as dividends up to tax free allowance levels to further optimise the benefits available to individual shareholders.

Whilst the ability to further reduce tax in some cases has recently been withdrawn by HMRC, there are still many cases where such benefits will be available, therefore the team at LCBSG always works closely with the accountant to ensure all tax considerations are addressed at the outset.

BENEFITS OF AN MVL

Another benefit of using the MVL procedure is that it provides a formal mechanism to `flush out' any residual claims and crystallise the position. The fact that the liquidator has to follow a prescribed procedure for dealing with creditor claims, including advertising a final date for proving in the London Gazette, means that if a creditor does not come forward in time then they will be excluded from the process and the liquidator can distribute the surplus funds to shareholders and have the company dissolved.

This may include potential claims against the company that the directors are unaware of. It may also include liabilities that are subject to personal guarantees.

Additionally, the MVL procedure is backed up by legal precedent which allows the liquidator to quantify, compromise and ultimately pay future and contingent claims against the company therefore bringing the liquidation to an early end.

One final benefit is that, when it comes to distributing value from a company, not all assets have to be turned into cash. Once creditors and costs have been settled, any non-cash assets, having been formally valued, can be distributed `in specie' in accordance with members' wishes.

As well as dealing with property and plant & machinery etc. such a distribution can also include debtors and Directors' Loan Accounts.

KEY MVL CONSIDERATIONS

Despite their many advantages, MVLs do not provide the most favourable solutions to certain situations due to the sophistication of the rules of the liquidation process.

LCBSG has been approached in a number of cases by companies anticipating the issue of an Accelerated Payment Notice (APN) in respect of a previous tax planning scheme. While each case must be considered on its own merits, this would generally not be an appropriate solution because of the requirement to swear a DOS. To falsely do so – pledging that the company is able to meet all creditor claims plus interest within the timescales set – could have serious personal consequences for directors.

Another area in which to exercise caution is where there are group pension schemes where the MVL of one company could trigger a group pension liability elsewhere.

Other examples of where an MVL may not be suitable include some financial services businesses or professional practices where run-off insurance cover may be required for a number of years after the company ceases to trade. This may make it impractical to wind up until the period has come to an end and the cost may also be so significant that the company is no longer solvent.

Similarly, where there are outstanding overdrawn Directors' Loan Accounts, S455 tax may be payable and so we would always ensure that appropriate tax advice is taken beforehand.

KEY MVL CONSIDERATIONS

And finally, changes to tax legislation in 2016 have introduced further restrictions on when it would be appropriate to use an MVL.

A reminder on the new tax rules

The new tax rules introduced in April 2016 mean that a liquidation distribution will not automatically be taxed as capital. This applies particularly in situations where HMRC suspects tax avoidance as a motive, or where shareholders continue to carry on a similar business, either individually or through a new company, a practice known as 'phoenixism'.

While the new tax rules are complex, they do not put in place a blanket restriction on the beneficial tax treatment of MVL. It is important to remember that all circumstances are different and no general rule should be adopted, so it is crucial to get advice from specialists that is tailored to fit individual circumstances.

PROVIDING SUPPORT IN AN OFTEN COMPLICATED PROCESS

Whilst MVLs can be quite straightforward, there are often a number of complicating factors. This is why it is important to take specialist advice before beginning the process on behalf of a client. Not handling the process diligently could result in delays and a loss to shareholders.

LCBSG is an expert in MVLs, with a designated department dealing solely with this type of liquidation.

The Group provides MVL services from its offices across the country for businesses and contractors nationwide. It provides a competitively priced fixed fee quote and a comprehensive breakdown of the disbursements.

LCBSG will always work closely with the accountant to ensure the client gets the best advice, including on tax matters.

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MY-MVL: AN EVEN SIMPLER SOLUTION

In addition to the traditional route, LCBSG has simplified the process – and given accountants more control of it – with the introduction of **My-MVL**.

This easy-to-use specialist software facilitates MVLs for straightforward cash shells, where creditors have been paid and tax matters finalised – supporting professional advisers who are members of the **Lifecycle** network by streamlining the entire MVL process for a fixed professional fee of £1,500 + disbursements of £500 + VAT.

As well as cash, the software can also deal with overdrawn Directors' Loan Accounts, intercompany debtors and tax refunds or liabilities.

As a result, accountants are able to extend their service lines and capabilities by offering this specialised, professional and managed service to clients through a bespoke, white-label platform.

Consequently, advisers can provide an enhanced offering and enjoy greater control of the MVL fee and its process. In return, clients benefit from a seamless online documentation journey via a simple, transparent process that can be undertaken remotely, removing the need for face-to-face meetings.

To take advantage of the **My-MVL** service and the many other **Lifecycle** benefits, simply click here to register.

Click here to request a demonstration of the software.

For further information or to discuss requirements in more detail, call **03300 242 333**.

WATCH OUR HOW-TO VIDEO GUIDE

Our how-to video guide provides a visual explanation of how the MVL process works, legal and tax benefits, plus key considerations for your clients.

WATCH VIDEO

ABOUT THE LIFECYCLE NETWORK

Lifecycle is a unique network for accountants - provided by the Leonard Curtis Business Solutions Group.

It provides member accountants with a comprehensive range of specialist services - and the expert support required - to improve their client offering at every stage of a business' lifecycle. From company formation to cessation and all stages in between.

Lifecycle is free to join and also offers members many additional benefits. These include eligibility for a highly competitive Professional Indemnity insurance scheme, a regular programme of free training and education and discounts on products and services relevant to their business and clients' needs.

Services offered by **Lifecycle** include: Company secretarial and formation; equity finance for SMEs; debt advisory for SMEs; personal debt advice; corporate restructuring, insolvency and cessation; debt finance for SMEs; cashflow maximisation; property solutions and legal services.

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