



4R Business Recovery Liquidation Guide

4R Business Recovery Helping You
Turnaround Your Business

A Few Words From Kevin

Here at 4R Business Recovery, we understand that no two businesses are the same. Every day we help companies of all sizes turn things around against seemingly impossible odds.

Regardless of your situation, we're here to help.

This guide has been put together to help you understand what liquidation is and what it could mean to you.

If you have any questions about what you see here, and would like to speak to one of our expert advisors, call **0800 902 0123** or email info@4rbusinessrecovery.co.uk

Alternatively, if you would like to contact me at kevinpritchard@4rbusinessrecovery.co.uk I will be happy to answer any of your questions directly.

I hope you find the guide useful. Our initial consultations are free and importantly totally confidential. We will work with you to devise an action plan that suits your circumstances.

Kindest regards,

Kevin Pritchard
 Managing Director
 4R Business Recovery Ltd



An Introduction to Liquidation

Liquidation is the closure of a business and the sale of all of its assets. This guide looks at the differences between the three types of liquidation available to UK companies:

- Voluntary
- Compulsory
- Members Liquidation

When a company is in financial trouble a liquidation can preserve the business value for creditors and shareholders, a liquidation closes the limited company but can save the value in the business.

There are ways of saving the value built up in a business no matter how much pressure it may be under. Here at 4R Business Recovery we are in the business of second chances and want you to make a success of your business.

Sometimes when a company is insolvent and cannot pay its debts as they fall due or faces a significant financial or legal cost it makes sense to restructure. Liquidation is an important tool that helps to:

- Secure the best return for unsecured creditors
- Protect Business Value
- Protect Directors from accusations of wrongful trading or becoming caught up in a Directors Disqualification Order

It gives the business and directors a second chance. 4R will walk with you every step of the way and help you through the whole process professionally and legally.

If your business is under threat, contact 4R Business Recovery for an initial consultation completely FREE of charge.

Key Points to Remember

- Close your business and sell off its assets
- Creditors' Voluntary Liquidation is the most common form for insolvent businesses
- Avoid compulsory liquidation by taking action yourself
- Gives closure after months of worry
- Explore other options first



Types of Voluntary Liquidation

When the decision to seek liquidation comes from the directors or shareholders they seek creditors approval for a 'Voluntary Liquidation'.

1. Creditors' Voluntary Liquidation (CVL)

This is the most common form of liquidation and happens when the company is insolvent – i.e. it can't pay its debts. If the company is no longer viable in its current form, closing it and selling the assets may be the best solution. This type of liquidation is initiated by the directors or shareholders, but is called a Creditors Voluntary Liquidation, as a creditors meeting is held to agree the appointment of a liquidator.

An Insolvency Practitioner draws up a statement of affairs for the company and a simple majority vote of creditors secures the CVL. Once approved the directors resign as officers of the company and have no further responsibility for the management of the company. Although the basic process is relatively straightforward, in that the company assets are liquidated for the benefit of creditors the devil is in the detail. For example, assets can be sold pre liquidation or post liquidation and staff made redundant or TUPE'd over to another company, these decision make or break a new start up and for this reason alone we would recommend giving us a call today to discuss what liquidation could mean for you and your business.

2. Members' Voluntary Liquidation (MVL)

MVL is quite different in that it only applies to a solvent company i.e. one that can afford to pay its debts. It's usually used as a tax efficient way of closing a limited company down and "liquidating" cash assets and getting money out of a business when the owners of a family firm want to retire for example.

3. Compulsory Liquidation (Winding Up Orders)

If an insolvent company doesn't take action to protect itself from creditors, a winding up petition might be issued. This asks a court to close down the company so debts can be recovered. If the court approves, they will appoint an official receiver to handle the compulsory liquidation of the company. This then results in all of the assets and business being sold so that all of the debts of the business can be paid.

Are The Results The Same?

Any type of liquidation usually results in the closure of the business. However, for an insolvent company a CVL is more desirable than a compulsory liquidation. By taking action yourself, you have taken decisive action to close an insolvent business and therefore less likely to be accused of wrongful

trading or held personally liable for the company's debts. Taking a proper decision to limit the exposure of creditors will mean that should you ever want to start another business or want to begin again you can argue you made a difficult but correct choice.

Is Liquidation the End of the Company?

Liquidation is the end of the limited company but not the business, a CVL can be a means of creating a phoenix company. When the business is sold, there is nothing to stop the current directors or shareholders buying it. There are some legal

requirements to consider, but this allows a new, debt-free company to be created from the old one. When this is done usually the process will have taught the business owners some valuable lessons.



If I create a Phoenix Company can I use the name of the old liquidated company?

You need to take care not to breach what is known as Section 216 of the Insolvency Act. Clearly directors who liquidate a Company and use a Phoenix Company to purchase the assets back from the liquidator place huge value on the use of the old company name. However Section 216 is designed to ensure consumers and creditors are not deceived. So before you start trading take legal advice from 4R, your solicitor or an Insolvency Practitioner. In short the name of the liquidated company is

prohibited to the former directors to use, and although unconnected directors are free to use the same name we would recommend directors take urgent advice as any breach could end up in criminal proceedings. It is relatively simple to comply with the law and the former company name which is technically prohibited is available but you will need some specific legal advice on the correct route to enable the use of the name.

Does a Liquidation effect my Personal Credit Rating?

Not not all. The Limited Company status provides a separate legal identity for the Limited Company and its insolvency or credit rating does not impact on any of the officers.

However, you need to be aware that being a director of a liquidated company can impact on opening a new business bank account. Many high street banks may need additional information to understand the reasons for the previous failure. In general they refuse bank account applications from ex directors

of liquidated companies. It makes no sense and is easy to resolve so please call us for advice on how to secure a new bank facility.

If you make application for grants or government funding or any new bank lending you have to disclose a previous liquidation and again it may impact on getting approved for business lending purposes. It has no or little effect on raising commercial or asset based funding.

Why Liquidate?

There are a number of reasons you might want to pursue a creditors' voluntary liquidation:

- It can help avoid accusations of wrongful trading as closing the company stops debts getting worse and means you have done your directors responsibilities correctly
- It can put an end to months of worry and stress

- You're less likely to be personally liable for the company's debts
- It allows you to move on with your life – or create a phoenix company
- It puts you in control and is a good defence against a winding up petition
- We can take the pressure off and communicate with creditors on your behalf.

Key Points to Remember

- HMRC never vote in the creditors meeting
- All directors have to complete a directors questionnaire within six weeks of the creditors meeting taking place
- The Insolvency Practitioner will examine the books and records and investigate directors conduct, they report directors conduct using a confidential "D" report to the Insolvency Service
- The single biggest reason why directors

get a "D" report is the failure to cooperate with getting the questionnaire back in time!

- If you are worried about your drawings or earnings from the business or your conduct please call 4R today for independent advice
- Remember Insolvency Practitioners are essential professionals in the process, but they have an over arching duty of care to the creditors of the company and not to the directors



What to Do Next

You may have poor cash flow and unable to pay your bills but not insolvent so it is important to take professional advice. For example why not let us conduct a solvency audit and liquidity audit for free and provide all the options open to the business.

- Find out what alternatives are available. It may be possible to protect the company from legal action with a CVA or pre-pack administration
- Keep records of all meetings and decisions as there will be an investigation of your conduct

The Final Critical Key Points

- **Ensure you understand what a Directors Loan Account (DLA) is and check if you have one!**
- **If in doubt call 4R for a free audit.**
- **90% of Directors could protect themselves by taking advice early and could avoid significant personal liability to the Insolvency Practitioner or Liquidator HMRC and the Banks if they had taken advice.**
- **Don't rush into anything - liquidation is a drastic solution and shouldn't be taken lightly**
- **If you feel you have preferred other creditors or yourself at the expense of HMRC or believe your conduct as a director puts you at risk of a Director Disqualification Order call 4R now so we can talk you through how to deal with DDO's and potentially still remain a director in the future.**

If your business is under threat,
contact 4R Business Recovery for an initial consultation completely FREE of charge. We will advise you on what is best for your business.

We are here to put your mind at rest and enable you to go forward in a positive frame of mind.

Simply call us today on **0800 902 0123** to speak with one of our expert advisors, or contact us through a simple form online via our website.