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Compulsory Liquidation
Implications for the creditors of the business

Introduction

In a compulsory liquidation the assets of a company are sold by order of the court, and the proceeds are shared between the company's creditors. After this process, the company is dissolved. The most common reason for a winding up order is that the company is insolvent, i.e. unable to pay its debts when they fall due. Any creditor owed more than £750 by the company can petition for the company to be wound up.

What are the implications for creditors?

The proceeds of the sale of the insolvent companies' assets (after any security on them has been discharged) are shared equally between its unsecured creditors, in proportion with the debts due to each creditor.

Each unsecured creditor may be eligible to receive a dividend paid in proportion to the debts owed to that creditor and possibly an interim dividend (paid during the course of the liquidation). Often the dividend paid to unsecured creditors will be a small percentage of what was owed, i.e. just a few pence in the pound, or nothing at all.

Secured creditors are in a far better position, and can apply the proceeds of the sale of the secured assets to their debt (subject to some restrictions).

The person or persons appointed to be liquidator have a duty to act fairly and impartially. The liquidator will ask all known creditors of the business to lodge with them a form detailing what is owed, known as a proof of debt form. This, amongst other things, details when the debt accrued, how much it was for and what if any interest is claimed.

Any legal proceedings against the insolvent company are automatically stayed, i.e. 'put on hold', so that no further action can be taken in those proceedings for the time being. Any creditor wishing to bring an action against the company must then apply for permission from the court to do so.

The liquidator is compelled to give creditors a regular progress report on the liquidation. Creditors can also form a liquidation committee, to assist the liquidator in undertaking the liquidation and its various processes.

What are the creditors remedies if they are dissatisfied with the liquidator?

Creditors can object to and challenge:

- the level of the liquidator's remuneration.
- the liquidator's decision in relation to any proof of debt.

Where the liquidator is guilty of some form of impropriety, they can be removed from office by a meeting of the creditors or by order of the court.

Our Litigation Team advises and represents clients who are owed money by a company in liquidation or about to enter into insolvency proceedings. We would be happy to speak with you without commitment to see if we could help you, whatever your problem.

Please call Martin Stevens, Darren Thorneycroft or Marcus Self on 01233 625 711 for more information, or email them on ms@hallettandco.co.uk.

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