



THE RESTRUCTURING CONTINUUM

Part 1 | Solvent liquidations – dealing with a ghost

Do you have a solvent company you want to retire to greener pastures?

A members' voluntary liquidation (MVL) can be used to wind up a solvent entity in a relatively cost-effective and efficient manner.

A MVL is initiated by a company's directors and subsequently ratified and effected by its members. It involves the orderly winding-up of the company's affairs, the appointment of a liquidator to cease or sell its operations, quantify and realise the company's assets, finalise payment of outstanding debts (if any), and then finally, distribution of surplus assets among members. In this form of winding up, the creditors have little to no involvement as they will be repaid in full.

A MVL is used if members have no further use for the company and it's not experiencing financial difficulty or insolvency. In our experience there are two common situations leading to a MVL:

1. The entity is an investment special purpose vehicle which was created solely as an investment entity, the investment has since been realised, and the entity is no longer required; or
2. There are a number of disputing shareholders and rather than going through a costly (and likely asset erosive) litigation process, they seek the appointment of an independent person to realise assets and distribute proceeds.

The MVL enables the company to be closed down and deregistered which brings to end compliance with the legal requirements of a registered company, including payment of the annual review fee, insurance, auditor and accounting fees, lodging tax returns and preparing financial statements (if necessary).

MVL vs voluntary deregistration?

One of the benefits of a MVL is that when the company is liquidated, it's gone for good. Hasta la vista... no chance of resurrection.

Conversely, voluntary deregistration may leave a company exposed to reinstatement if any creditors or claims subsequently come out of the woodwork. Further, voluntary deregistration requires the company to hold assets at less than \$1,000 and have no outstanding liabilities.

MVL's can be used for several purposes including:

- Tidying up group balance sheets;
- Implementing due diligence recommendations;

- Preparing for an initial public offering;
- Following a takeover of a business;
- Streamlining group structures;
- Selling a business;
- Resolving disputes;
- Improving tax effectiveness of the corporate group;
- Tax benefits of distributions to shareholders;
- Closing non-core operations;
- Decreasing compliance costs; and
- Eradicating contingent and warranty claims.

The Liquidator's role in a MVL

The liquidator will:

- Realise any remaining assets. It's common for most, if not all, physical assets to be sold before the appointment occurs. At times, the only assets remaining are cash at bank and loans to shareholders.
- Lodge outstanding tax returns, pay taxes and obtain tax clearances. No distribution to creditors or members can occur until tax clearances have been obtained.
- Call for proofs of debt and pay any outstanding creditors. It's common for all creditors to have been paid prior to the appointment.

- Distribute surplus funds (and possibly assets) to members; and
- Hold a final meeting of members.

If it turns out a company is insolvent, what then? If the Liquidators ascertain the company is unable to pay its debts in full by the date specified in the declaration of solvency, being within a 12-month period, the company is insolvent. The liquidators will be required to convene a meeting of the company's creditors to convert the MVL into a creditors' voluntary liquidation, and by doing so the company's creditors take a more active role and a liquidator then has a number of investigation requirements.

How can FTI Consulting assist?

If you have a client who is looking to wind up a solvent entity, FTI Consulting would be happy to assist your client through this process or consult with them on the ways an MVL could benefit their ongoing business or group structure.

Coming up next

Stay tuned for part 2 in this years' restructuring series on seeking Safe Harbour.

Authored by **Joseph Hansell**, Senior Managing Director and **Renee Lobb**, Managing Director, FTI Consulting.

The views expressed herein are those of the author(s) and not necessarily the views of FTI Consulting, Inc., its management, its subsidiaries, its affiliates, or its other professionals

Your local contact:

Joseph Hansell
Senior Managing Director
+61 2 8247 8058
joseph.hansell@fticonsulting.com

Renee Lobb
Managing Director
+61 7 3225 4976
renee.lobb@fticonsulting.com

Paul Allen
Managing Director
+61 3 9604 0603
paul.allen@fticonsulting.com

Daniel Woodhouse
Managing Director
+61 8 9321 8533
daniel.woodhouse@fticonsulting.com



About FTI Consulting

FTI Consulting is an independent global business advisory firm dedicated to helping organizations manage change, mitigate risk and resolve disputes: financial, legal, operational, political & regulatory, reputational and transactional. FTI Consulting professionals, located in all major business centers throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges and opportunities. For more information, visit www.fticonsulting.com and connect with us on Twitter (@FTIConsulting), Facebook and LinkedIn. FTI Consulting, Inc., including its subsidiaries and affiliates, is a consulting firm and is not a certified public accounting firm or a law firm.