

De-enveloping Solvent Voluntary Liquidation Q&As

This is a short guide to solvent voluntary liquidations of companies incorporated in the British Virgin Islands in the context of the de-enveloping of residential property. It is not intended as a substitute for full legal advice but more as an aide memoire to the procedures involved.

Why is the company being put into solvent voluntary liquidation/being “wound up”?

A BVI company generally has no limit on its duration. However, like all good things, a company may come to the end of its useful life. This may be because the assets it held have been transferred out or sold or recent changes to a relevant tax regime trigger a need to restructure the way in which assets are held.

What should the directors/shareholders of the Company do next?

Once the company has served its purpose, the directors/shareholders should look to bring the affairs of the company to an orderly close. The method chosen will depend on the financial condition of the company. If the company is solvent it may be put into solvent voluntary liquidation under the provisions of the BVI Business Companies Act 2004 (as amended)(the **BCA**). If the company is insolvent, then the provisions of the Insolvency Act 2003 will be relevant.

How long will the process take?

Generally, from the point at which the company is put into liquidation and a liquidator has been appointed, the winding up process can take as little as four to six weeks. However, the number of creditors and the degree of reliance on third parties (for example, HM Revenue and Customs in the United Kingdom, if the company held property in the UK which was subject to the annual tax on enveloped dwellings (**ATED**)) required to identify and deal with the assets of the company may mean the process is a little longer.

What needs to be done to put the company into liquidation?

The directors and shareholders need to pass the relevant resolutions, approve a liquidation plan and the appointment of a suitable liquidator. The directors also need to swear a statutory declaration of solvency with respect to the company.

Who can act as a liquidator?

Assuming the company is not regulated in the BVI, the liquidator must be an individual but does not need to be resident in the BVI nor hold any particular qualifications. Companies and other body corporates cannot act as liquidators nor can, inter alia, any person who has in the past two years acted as a director, or been involved at senior management level in the financial management, of the company or of an affiliated company.

What does the liquidator do?

The primary responsibilities of the liquidator are to identify, take possession of and realise the assets of the Company and to identify and settle the debts and obligations of the company to its creditors before distributing the surplus assets of the company to its shareholders in accordance with the memorandum and articles of association of the company and any agreement between the shareholders and the liquidator. The liquidator will prepare a statement of account and will advertise notice of the liquidation in the BVI and in any

other relevant jurisdiction in which the company operates or has an interest. For example, if the company holds residential property in the United Kingdom, then advertisements will be placed in the United Kingdom. Once the liquidation has been completed, the liquidator will make the necessary filings in the BVI with the Registrar of Corporate Affairs who will then issue a certificate of dissolution.

I have heard about striking-off as an alternative to liquidation, why shouldn't I use that approach for my BVI company?

Simply allowing a company to be struck off the Register of Companies by not paying the annual Government fees is sometimes used as an alternative to voluntary liquidation but it is not a procedure which should be followed without first seeking expert legal advice. A company which has been struck off for non-payment of fees is, in many respects, still alive, meaning that it and its stakeholders can still incur liabilities. In particular, any director of a company which is considering strike-off should understand that he will continue to have fiduciary and statutory duties as a director and will be liable for his own acts and omissions and those of the company. The company can still be sued in its struck-off state until the time when it has been continuously struck off the register for a period of seven years. It will only be at this time that the company will be deemed automatically dissolved and have the same status as a company which has been placed in voluntary liquidation and dissolved under the BCA procedures.

Another important consideration is that, if for any reason, previously forgotten about assets of a company which has been struck-off come to light, in order for the company to deal with those assets, all outstanding fees and penalties will need to be paid in full and a willing registered agent found and appointed. This can be an expensive and time consuming process. Taking a company through the formal liquidation process means the likelihood of assets failing to be identified is greatly reduced as this is a key part of the liquidator's duties and obligations to the company, its creditors and shareholders.

What can Harneys do?

Harneys can assist with all aspects of a voluntary liquidation including any pre-liquidation restructuring of debt or equity if needed as well as dealing with the release of any outstanding security (a BVI company cannot be wound up if there are charges on its register of relevant charges held by the Registrar of Corporate Affairs). We can also provide a highly experienced liquidator and a team of expert lawyers familiar with the matters which need to be dealt with in connection with the liquidation of a company. Alternatively, we are happy to work with a liquidator of your choosing.

Our liquidator is able to work closely with your onshore tax, property and company advisers to ensure that the liquidation process runs as smoothly and efficiently as possible.

For more information and key contacts please visit www.harneys.com/corporate.

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