



# A creditor's guide to compulsory liquidation (‘CL’)

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A licensed insolvency practitioner ('IP') has given you this because you, or your business, may be owed money by a company in respect of which a CL process is imminent or where the company is in CL.

This guide aims to help you understand your rights as a creditor and to describe how best these rights can be exercised. It is intended to relate only to England and Wales. It is not an exhaustive statement of the relevant law or a substitute for specific professional or legal advice.

We have made every effort to ensure the guide is accurate, but R3 cannot accept responsibility for the consequences of any action you take in reliance on its contents. If, having read the guide, you remain in any doubt about your rights, you should consult a licensed insolvency practitioner ('IP') or solicitor.

We hope that you will read this guide carefully and consider whether taking an active role as a creditor in this case would benefit you or your business.

### **What is a compulsory liquidation?**

A compulsory liquidation occurs when a company is wound up by an order of the court. The purpose of the winding up order is to appoint a responsible person who has a duty to collect the company's assets and distribute them to its creditors in accordance with the law.

### **When does a company find itself in compulsory liquidation?**

The most common circumstances are when a petition is presented to the court on the grounds that the company is unable to pay its debts, or it is proved to the court that the company's liabilities are greater than its assets.

### **Who can present a petition to wind up the company?**

Amongst others, a creditor, the company itself, a director, and the Secretary of State, can present a petition to the court to wind up the company.

A petitioning creditor may feel that the company's assets might be in jeopardy in the period after presentation of the petition. If so, the petitioning creditor may apply to the court for an order to appoint a provisional liquidator whose function is to preserve the company's assets until the company is wound up by the court and a liquidator is appointed.

### **Who deals with the company's affairs?**

Once a winding up order is made, the Official Receiver ('OR') is the liquidator and will administer the liquidation estate.

The OR is a civil servant and an officer of the court. The OR will remain in office unless either:

- The majority of creditors (50% or more by value of creditors) support a particular IP to replace the OR; or

- 25% of creditors request a decision making procedure and creditors resolve that the OR is replaced as liquidator; or
- The OR considers the case requires the skills and expertise of an IP.

You can find information on when the OR acts as liquidator [here](#).

Instead of the OR becoming the liquidator, the court may appoint an IP as liquidator on the making of the winding up order, for example where the Supervisor of a Voluntary Arrangement issued the petition or the IP was previously appointed as provisional liquidator.

### **What are the consequences of a winding up petition?**

Any disposition of the company's property after the presentation of the petition is void, unless the court orders otherwise. This means that any payment, or purported sale of goods by the company will be reversed unless the court decides it can be validated. Furthermore, a company's bank account is likely to be frozen after a petition is advertised.

### **What are the consequences of a winding up order?**

After the liquidation has commenced, any legal action against the company is stayed, except with leave of the court. In addition, no new legal proceedings may be brought against the company without leave of the court.

Furthermore, the powers of the director cease and the liquidator takes control of the company and its assets when the liquidation has commenced

### **What are the powers of the liquidator?**

The powers and duties of the liquidator are set out in law by the Insolvency Act 1986 and the Insolvency (England and Wales) Rules 2016. Such powers are wide and include powers to sell the company assets, to bring and defend legal proceedings and to pay dividends to the company's creditors. Liquidators have a general duty to act in the interests of creditors and shareholders and to act impartially and independently.

### **Does the liquidator pay unsecured creditors the money owed to them?**

There is an order of priority set out in law for paying creditors - any payment is dependent on what funds, if any, have been realised from the company's assets. In simple terms, secured and preferential creditors are paid before unsecured creditors. Secured creditors are those that have some form of security over the company's property for instance a bank with a fixed and floating charge debenture. Secured creditors are entitled to be repaid their debt out of the proceeds of sale of the secured assets in priority to ordinary unsecured creditors. Where there is a floating charge relating to the property of the company (a charge over assets which change in the course of business, for example stock), the liquidator must usually ring fence a fund available to unsecured creditors (up to certain financial limits) which is known as the prescribed part.

Preferential creditors are a special category of unsecured creditor. Preferential creditors consist mainly of certain debts due to employees (inc. pension scheme contributions) and the Redundancy Payments Service and, in insolvency procedures commencing after 1 December 2020, there is a secondary class of preferential creditor for specified HMRC debts. In addition to VAT, these are debts that relate to the following taxes:

- Pay As You Earn (PAYE) Income Tax
- Employee National Insurance contributions (NICs)
- Students loan repayments
- Construction Industry Scheme deductions

Preferential creditors are paid in priority to all other unsecured creditors.

If sufficient funds are available to pay a dividend to unsecured creditors, the liquidator will adjudicate or provide for claims prior to declaring a dividend. The dividend will be a percentage (pence in the pound) of each creditor's total claim, based on the total cash available for distribution to the creditors and the total of all creditors' claims.

In summary, the monies realised from the realisation of assets are used in the following order of priority:

1. Secured creditors with fixed security which is usually enforced outside of the liquidation.
2. Costs of the liquidation, including the liquidator's fees and expenses.
3. Debts to preferential creditors.
4. A prescribed part fund for unsecured creditors.
5. Amounts owed to floating charge holders.
6. All other unsecured creditors whose claims rank *pari passu* (equally).
7. Interest payable on debts.

Six months after writing off the debt in your account you can claim back debt relief from HM customs and Excise for VAT you have paid.

### How do I make a claim in the liquidation?

The liquidator will write to all known creditors asking them to submit claims (sometimes referred to as a creditor providing their debts). You must submit your claim to the liquidator in writing, providing sufficient supporting evidence of your claim for example copy statements, invoices, correspondence etc to allow the liquidator to decide whether your claim is valid. Any costs incurred in submitting your claim will not be reimbursed. If you have a debt of £1,000 or less this is regarded as a small debt and provided the liquidator has clear and undisputed evidence of the small debt from the statement of affairs or accounting records, the debt will be deemed to be proved and you do not need to submit a formal claim in the liquidation. In some circumstances, you may not be required to submit a formal claim should the liquidator use the small debt provision option. If this option is taken, the liquidator will inform you accordingly.

You may claim interest on your outstanding debt up to the date of liquidation if it bore interest, if it was payable at a previous date under a written instrument, or if you had previously demanded it in writing with notice that you would claim interest. You will not get interest on your claim accruing after liquidation unless all creditors are paid in full.

If you believe that you own something in the company's possession, you should contact the liquidator as soon as possible with full proof of ownership and be prepared to identify what you are claiming. The liquidator will examine your claim carefully before deciding whether to release the goods in question, pay you for them, or otherwise.

**How will the liquidator adjudicate my claim?**

The liquidator will compare your claim to the company's records and any other information and may discuss the claim with the director(s). The liquidator may ask you for additional information or evidence if you have not sufficiently proved your claim to the liquidator's satisfaction. For example, if you have supplied goods to the company, the liquidator may agree your claim in full or in part, or reject your claim if the liquidator does not think it is valid.

**What can I do if I believe the liquidator has unfairly rejected my claim?**

It is best to contact the liquidator in the first instance to discuss any amounts under dispute. If you cannot reach agreement, you can, within 21 days of receiving the written statement of rejection, appeal to court. After 21 days, if you do not apply to court, the adjudication is final.

**Is the liquidator bound by contracts entered into by the company prior to his appointment?**

No. The liquidator may refuse to perform or formally disclaim any onerous or unprofitable contract entered into by the company prior to liquidation. The other party will then have a claim for breach of contract which will rank as an unsecured claim. However, a contracting party that has acquired a beneficial interest in property of the company will still be able to enforce it.

**Is the liquidator liable for sums due under contracts entered into by the company subsequent to his appointment?**

The liquidator can cause the company to enter into new contracts in which event the associated liabilities of the company rank as an expense of the liquidation.

**As an unsecured creditor, what information am I entitled to?**

The OR must send at least one report to creditors after their appointment. This will usually contain a statement of affairs completed by the directors showing details of the company's assets and liabilities.

Within two months after the end of the first year and of each succeeding year and on conclusion of the liquidation, the liquidator will send to creditors a progress report. This will include a receipts and payments account for the period and a report setting out the liquidator's conduct of the liquidation.

**Can the unsecured creditors form a liquidation committee?**

Yes, a liquidation committee may be appointed using one of the decision procedures and must consist of at least three creditors.

The liquidation committee receives reports from the liquidator and may meet periodically. Broadly, the committee's function is to be consulted and to give guidance to the liquidator (where the liquidator seeks the committee's assistance) and approves the liquidator's remuneration and expenses. The first meeting of the committee must be called by the liquidator within six weeks of its establishment and subsequent meetings will be held as agreed, requested or needed. The liquidator must report to the committee on the progress of the liquidation at least every six months unless the committee directs otherwise.

If no creditors' committee has been previously formed, the liquidator must invite creditors to form a committee when any decision of the creditors is sought.

Creditor committee members are not paid.

R3 has produced a separate guide explaining insolvency creditors' committees, which is available [here](#) or from the person who gave you this guide

### **How is the liquidator's fee determined?**

The creditors' committee (if there is one) or the general body of creditors agree the liquidator's fee, failing which it will be determined in accordance with the statutory scale or fixed by the court. The fee can be fixed:

- As a percentage of the assets realised or distributed (or both); or
- By reference to the time spent properly spent by the liquidator and their staff taking into account the complexity of the case; any exceptional responsibility borne by the liquidator; the effectiveness with which the liquidator carries out their duties; and the value and nature of the company's assets; or
- As a set amount.

A combination of the above is also appropriate.

R3 has produced a separate guide explaining insolvency officeholders' remuneration, which is available [here](#) or from the person who gave you this guide.

### **When is liquidation complete?**

The liquidation is complete when all the assets have been realised, and where there are funds available to creditors, their claims have been adjudicated and net realisations (after expenses of the liquidation) have been distributed to them.

The liquidator has statutory formalities to complete including providing creditors with the final account of the winding up.

### **What should I do if I am dissatisfied with the liquidator's handling of the case?**

You should first contact the liquidator to try to resolve the problem. If you are still not satisfied, you can submit a complaint to the IP's regulator via the Insolvency Service complaints portal.

R3 is the UK's leading trade association for licensed insolvency practitioners and business recovery professionals. R3 does not license or discipline its members; this is the responsibility of the practitioner's regulatory body. The regulatory bodies are:

**The Institute of Chartered Accountants in England and Wales**

Tel: 01908 248100 [www.icaew.co.uk](http://www.icaew.co.uk)

**The Insolvency Practitioners Association**

Tel: 0330 122 5237 [www.ipa.uk.com](http://www.ipa.uk.com)

**The Institute of Chartered Accountants of Scotland**

Tel: 0131 347 0100 [www.icas.org.uk](http://www.icas.org.uk)

**Chartered Accountants Regulatory Board**

Tel: 028 9043 5858 [www.carb.ie/en/CARB/](http://www.carb.ie/en/CARB/)

**Disclaimer**

Information in this guide is intended to provide an overview only and relates to Company Voluntary Arrangements in England and Wales. It is not a replacement for seeking advice specific to your circumstances.