

# The powers of a Liquidator in Corporate Insolvency

Following the 2008 financial crash and more recently during the COVID-19 pandemic, there was a stream of news headlines announcing the liquidation of many well-known corporate powerhouses and household names. Yet many business owners may still be unclear on what liquidation actually entails or what the role of a liquidator is. Here, we discuss the circumstances leading to liquidation, as well as the powers of a liquidator.

## When does liquidation occur?

Liquidation is a terminal insolvency procedure applied to a company deemed unable to pay its debts following either a cash flow test or balance sheet test. While there are insolvency processes that may rescue an insolvent company, such as administration or a company voluntary agreement, liquidation is a terminal process that ultimately results in the company's dissolution.

## Types of liquidation

There are two types of liquidation: compulsory liquidation and voluntary liquidation. Compulsory liquidation is ordered by the court, usually after a creditor submits a winding-up petition on several grounds, or if the court believes that liquidating the company is just and equitable. On the other hand, voluntary liquidation is initiated either by the company's directors and shareholders (members' voluntary liquidation) or by its creditors (creditors' voluntary liquidation).

## What does liquidation entail?

Essentially, liquidation entails the conversion of a company's assets into their cash value, in order to pay

creditors. In both types of liquidation, an appointed liquidator leads the liquidation process and the directors no longer have any powers; the company remains in existence and liable for its existing contracts until the liquidation process is complete.

## What is the liquidator's role?

During the liquidation process, the liquidator serves as the company's agent, occupying a fiduciary position, and acting in the interests of the company and its creditors.

The liquidator has many far-reaching powers, but they must only be exercised with the purpose of realising the company's assets and distributing the proceeds to creditors according to a strictly regulated order of priority.

If the creditors establish a liquidation committee to protect and promote their interests, the liquidator must report and be accountable to it. The liquidator must also inform the committee if the company's property or that of a company member's relative is disposed of; the committee must also be informed if a solicitor is hired to assist the liquidator in carrying out his functions.

In most cases, where the realisation and distribution of assets may be more complex, a private-sector insolvency practitioner is appointed as liquidator by the company's creditors or by an official receiver (OR) from the UK's Insolvency Service.

## What are the liquidator's powers?

According to the Insolvency Act, the liquidator's powers include exercising the court's power of settling a list of contributories; exercising the court's power of making calls; and summoning general meetings of the company to obtain permission where deemed necessary by the liquidator.

To explain further, it is the liquidator's duty to get the highest possible price for the company's assets in order to maximise the proceeds available for distribution to creditors. To this end, the liquidator has

control of the company's affairs, including the power to:

- increase the company's assets by avoiding certain disadvantageous transactions;
- sell company-owned property;
- bind the company to contracts without taking on any personal liability; and
- apply to court for the restoration of property that the company may have disposed of in a way that is unfair to creditors.

It is also within the liquidator's powers to investigate and take action against current or former directors personally, for the creditors' benefit.

Where the liquidator does not have the power to act (for example, when seeking to compromise claims), an application for a court sanction or approval from the liquidation committee can be sought, if there is one.

#### Where can I get more information on insolvency processes?

Insolvency procedures can be complicated, with various options available to companies in financial difficulty. An experienced solicitor should therefore always be consulted before embarking upon any insolvency process.

For more information, or for expert advice on business or personal legal issues, call us on 020 3475 6751 or via email at [info@carterbond.co.uk](mailto:info@carterbond.co.uk)

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