



A simple guide to liquidation

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Paving the way for a fresh start.

Facing up to the fact that your business is insolvent is likely be the toughest moment of your professional life.

After all, you've worked hard at making a success of it.

But winding up one business can also pave the way for a fresh start with another.

This is how a **licensed Insolvency Practitioner** (IP) can help you deal with the liquidation of your company, along with a guide to your personal responsibilities as a company owner or director.



How do I know my company is insolvent?

There will be tell-tale signs that your business is failing. It's always a difficult process to judge the extent of the damage, especially because of the emotional investment you've made in it.

If in doubt, you should apply the cash flow test and the balance-sheet test.

The cash flow test

As business guru **Peter Drucker** once said: "Entrepreneurs believe that profit is what matters most in a new enterprise. But profit is secondary. Cash flow matters most."

Carry out an in-depth audit of your cash flow. If you can't pay staff, suppliers, HMRC, creditors, etc. on time and in full then you need to protect your business through a **Company Voluntary Arrangement (CVA)** or a **Pre Pack Administration**, or consider liquidation.

The balance sheet test

Put simply, the balance-sheet test weighs your assets against your liabilities. Calculate all your assets (stock, premises, equipment, monies owed, cash in the bank) against your liabilities (debts to suppliers, your bank or other creditors).

It's important that you don't underestimate or overestimate your assets and liabilities. You need a true picture of your company's position to decide on the best course of action.

Appointing an IP might be a good idea at this stage, so they can help you decide on the best solution. If you're ready to start this process, call us on **0800 054 6580** or request a call back.

BE AWARE: *It's crucial to remember that it's unlawful to trade while knowingly insolvent. If you do, it could lead to you being held personally responsible for your company's debts.*



What are the next steps?

At this point you need to appoint a licensed Insolvency Practitioner (if you haven't already). They'll become the Liquidator.

The most common type of liquidation, if you want to re-start your business, is the **Creditors' Voluntary Liquidation** (CVL), which your IP will 'hold your hand' through:

Step 1: Getting shareholders' approval.

Call a meeting, inviting all shareholders to attend. At least 75% of shareholders (by value of the shares held) must agree to the liquidation, or 'winding up'. If this happens then a 'winding up resolution' is officially approved.

Step 2: The winding up resolution.

This must be sent to Companies House within 15 days of it being passed. Your firm will be removed from the **Companies House** register and will cease to exist.

Step 3: A notice of the liquidation sent to The Gazette.

Established in 1665, this is the official public record containing, among other things, details of businesses going through the insolvency process.



What the Liquidator does

Put simply, the Liquidator takes control of the company throughout the process, disposing of its assets in order to settle its liabilities. Any monies left over are returned to the business owner or shareholders.

A full list of the Liquidator's duties is listed [here](#), but they include interviewing you and the other company directors to report what went wrong with the business.

Unfortunately, any personal guarantees made while running your business will not be wiped away and you will have to honour them.

REMEMBER: *The Liquidator is charged with acting in the creditors' best interests, not those of you or other company directors.*



Directors' responsibilities

You, and the company's other directors, must act with honest and integrity throughout the liquidation. Not doing so could lead to being disbarred as a director and, in extreme cases, criminal prosecution.

The technical term for this is 'misfeasance' - the breach of duty of a director's **fiduciary duties**. And Liquidators are legally bound to report it to the court.

So what should you do – or not do?

- Do not give preferential treatment to one set of creditors.
- Do not sell company assets for below their market value (it's not unknown for a director to sell an asset cut-price to a relative or friend to avoid it being part of the liquidation process).
- Do not pay yourself, other directors or staff members a salary that the business cannot realistically sustain.
- Do not hide company assets with a view to selling them at a later date for personal gain.

Starting afresh

It's a common misconception that liquidating a company automatically disbars its directors from setting up other businesses. This is not the case. It could actually prove to be the new beginning you need to create a successful business.

We offer a unique way to do this, called '**Start Afresh Liquidation**', which you can find out more about [here](#).

Phoenix companies

A **phoenix company** is one that 'rises from the ashes' of an insolvent one. The Gazette describes them as "a business that is formed when the assets of an insolvent company are purchased out of a formal insolvency process, often by the existing company directors."

Your IP will be able to advise you on the dos and don'ts of setting up such a venture.

Passing off

Giving your new company the same or similar name to the defunct one is something to avoid. This is known as '**passing off**' and could lead to criminal prosecution.

It could also damage your reputation, leading former creditors and suppliers to believe the reason for the previous liquidation was simply to avoid paying them.

Details of exceptions to this rule can be found [here](#).

For advice and help with your business challenges, call **0800 054 6580** or request a call back to speak to one of our Licensed Insolvency Practitioners, or email us at enquiries@fasimms.com.