Members' Voluntary Liquidation

A Members' Voluntary Liquidation (MVL) is a formal process to appoint a liquidator and wholly wind up a solvent entity before it is deregistered.

An MVL is often used when rationalising one entity or multiple entities. To qualify, the entity must be solvent and able to pay its debts in full within 12 months of the commencement of the winding up. Directors must make a declaration of solvency confirming this position, which is lodged with the Australian Securities & Investments Commission (ASIC).

The process generally commences once operations have ceased, assets have been realised and liabilities have been resolved. At conclusion, any surplus assets are distributed to members, made up of share capital, reserves and/or retained earnings as relevant.

Solvent Liquidation Framework



Initial Assessment

An MVL can become relevant once a company has ceased trading or is otherwise no longer required, but remains solvent. Directors should confirm the entity can pay its debts in full within 12 months and identify any residual assets, liabilities or contingent claims.



Preparing the Entity for Liquidation

Before appointment, the company should develop and execute a balance sheet clean-up plan, confirm there are no contingent liabilities, ongoing legal actions, workers compensation claims or contractual obligations, lodge all known outstanding tax returns as final, and search the PPS Register for any unresolved registrations.

If required, Teneo can advise clients on the preparation of the entity for liquidation or be appointed at an earlier point in time and resolve the issues during the liquidation.



MVL vs. Voluntary Deregistration

The MVL process can provide more certainty for directors and members than voluntary deregistration because it:

- Reduces personal risk for directors signing and lodging the voluntary deregistration application with ASIC;
- Gives creditors an opportunity to claim in the liquidation and then creates a statutory bar for claims made outside the claim period;
- Involves seeking clearance from the ATO and relevant state revenue offices, reducing the risk that statutory requirements have been missed; and
- Can allow tax-free distributions of pre-CGT reserves for companies that have those reserves;

It is also more difficult to reinstate any entity after an MVL has been concluded, as this requires a court application in which the claimant needs to prove their claim was not addressed during the liquidation.

When to Consider Members' Voluntary Liquidation

An MVL should be considered where an entity is no longer required, or where a group is rationalising entities as part of a corporate simplification, transaction preparation, risk management or capital management process.

It may be appropriate where the objective is to:

Simplify the corporate structure to remove dividend traps, increase transparency, improve corporate governance and capital management;

Eliminate unwanted entities, including in preparation for a merger or acquisition, or to reduce risk from acquired dormant entities;

Deal with liabilities in an historical special purpose vehicle, project or employment entity;

Realise assets through distributions under the entity's constitution and any shareholder agreements; and

Achieve tax-related outcomes, including distributing capital gains, obtaining stamp duty restructuring relief, dealing with Div7A loans and making pre-CGT distributions where available.

An MVL may also be preferable to voluntary deregistration where the entity has a trading history, employment history, contractual relationships, potential contingent liabilities, or incomplete financial and tax compliance history.

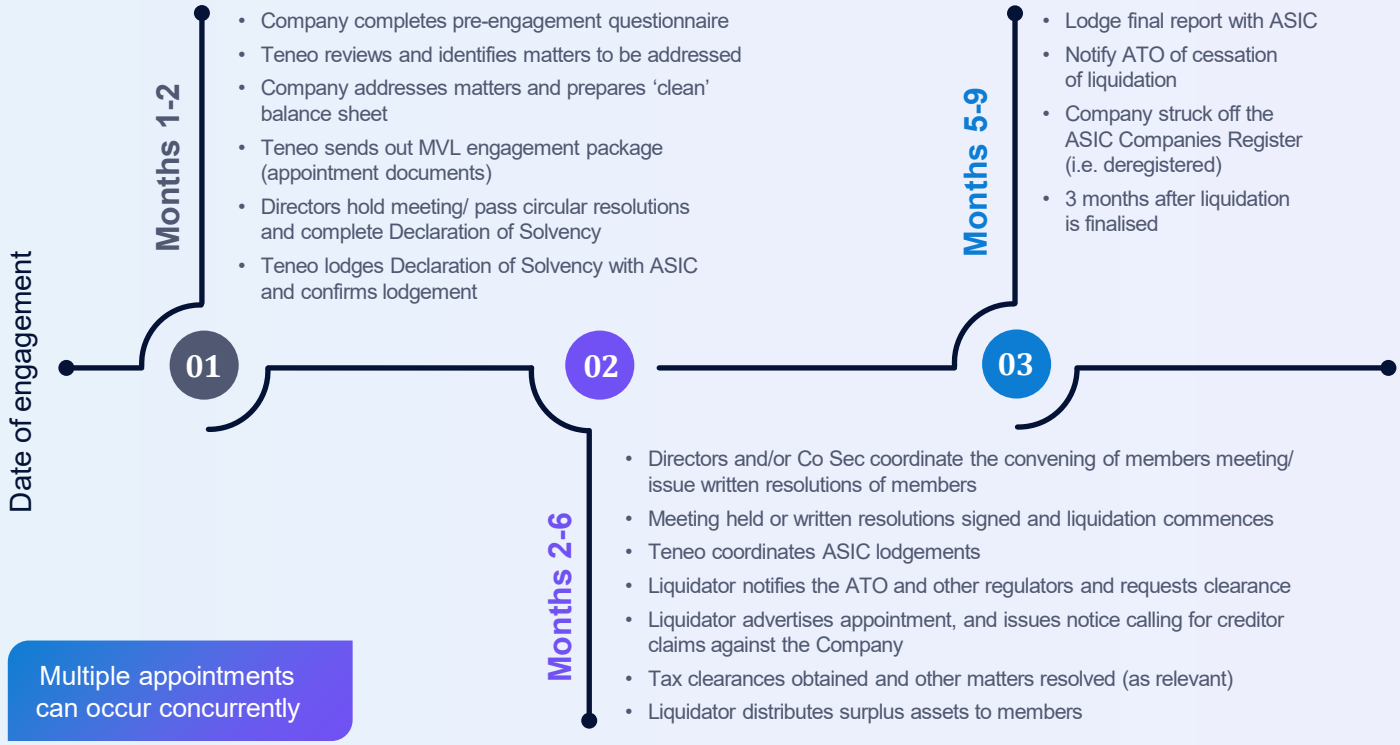
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Appointment, Clearances and Finalisation

Following engagement, Teneo will provide an MVL engagement package, including all requisite documents to initiate appointment. Directors hold a meeting or pass circular resolutions and complete a declaration of solvency which is lodged with ASIC by our office. Members must also approve the winding up by meeting or written resolution.

After appointment, the liquidator notifies the ATO and other regulators, advertises the appointment, calls for creditor claims, obtains tax clearances and resolves other matters as relevant. Once surplus assets are distributed, the liquidator lodges the final report and the company is deregistered typically within three months after the liquidation is finalised.

Example process and timeline



How We Support You

Teneo has a national team of MVL and corporate simplification experts dedicated to advising on legal entity rationalisations. We support directors, boards, shareholders, company secretaries and advisors with clear, commercial and solutions focused advice when a solvent entity needs to be wound up or a corporate group needs to simplify its entity structure.

We help clients assess whether an MVL is appropriate, prepare entities for appointment, coordinate documents and ASIC lodgements, manage regulatory notifications and clearances, address creditor claims, complete surplus asset distributions and progress deregistration to a timely conclusion.

Please contact us for a free initial consultation to discuss your needs, the potential project scope, and estimated costs.

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