

Compulsory Liquidations in England and Wales – a creditor's guide

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1. Introduction

Insolvency is a complex process whose boundaries are defined by legal requirements and case law. It can be difficult for those unfamiliar with insolvency to understand the reasons why decisions are taken by insolvency practitioners, and what impact a company's insolvency might have on them. The purpose of this document is to provide creditors with some context to help them understand the liquidation process better, what they may expect in terms of information provision, and their rights as creditors of an insolvent company.

2. Why is the company in liquidation?

The court has made an order to place the company in liquidation. The court order will follow a petition made to the court by (in most cases) a creditor, director or the company itself, or by an insolvency practitioner where the liquidation follows another insolvency process (for example an administration), and there are funds available for distribution to unsecured creditors or another reason why a liquidation of the company is required.

Where the liquidation is not preceded by another insolvency process, the application is usually made because the company has become insolvent. This means that either the value of the debts it owes is more than the value of the assets it owns, or that there are insufficient available funds to pay the debts it owes as they become due for payment.

A provisional liquidator may be appointed after the petition is presented, if a petitioning creditor believes that the company's assets are in at risk in the period between the petition being made and being heard in court, and the court shares their concern. Once the court makes an order to wind up the company, in most cases, the official receiver will be appointed. The official receiver is an officer of the court and an official belonging to The Insolvency Service. Where there are significant assets an insolvency practitioner will usually be appointed to act as liquidator in place of the official receiver, either at a meeting of creditors convened for the purpose or directly by The Insolvency Service on behalf of the Secretary of State

Where the liquidation follows on from an administration, in most cases the court will appoint the Joint Administrators as the Joint Liquidators.

3. What do the Joint Liquidators do?

The Joint Liquidators' core purpose is to realise the assets of the company, and to distribute the funds to its creditors. Their powers are wide and besides the sale of assets and distribution of funds to creditors, include powers to investigate and take action on the company's behalf where appropriate to attack transactions that have diminished the company's assets. Some of the Joint Liquidators' powers can only be exercised with the agreement of the liquidation committee, the creditors or the court.

The Joint Liquidators are agents of the company, and are not personally liable for contracts they enter into as liquidator. However, goods and services supplied to a company in liquidation, at the request of the Joint Liquidators will be paid for as an expense of the liquidation.

4. What will happen to my debt?

Debts due to creditors are frozen at the date of the Joint Liquidators' appointment. Secured and preferential creditors are paid before unsecured creditors. Secured creditors are those that have some form of security over a 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.

Unsecured creditors are those owed money by the company whose debts are not given priority by having registered security – most trade suppliers will be in this category.

Preferential creditors are a special category of unsecured creditor. They consist mainly of certain debts due to employees and the Redundancy Payments Service and are paid in priority to all other unsecured creditors.

Funds will become available for distribution to unsecured creditors either because the secured creditors who rank ahead of them have been paid in full, or from the Unsecured Creditors' Fund, which is also referred to as the 'prescribed part'. The Unsecured Creditors' Fund is generated as a proportion (effectively 20%) of net realisations from the floating charge assets of the Company (typically stock, plant and machinery and in some cases book debts) up to a maximum of £600,000, which will be shared by the unsecured creditors unless one or more of the following criteria applies:

- the floating charge was created prior to 15 September 2003;
- the net realisations from floating charge assets are less than £10,000, and the Joint Liquidators think the cost of making a distribution to unsecured creditors would be disproportionate to the benefits; and
- the court makes an order following an application by the Joint Liquidators that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.

Funds that are distributed to unsecured creditors are paid as a proportion of each creditor's debt. The process of realising the assets and verifying what each creditor is owed will take time. As the Company may owe far more than value of their assets, the amount received by unsecured creditors may only receive a fraction of what they are owed, in some cases they will receive nothing. The Joint Liquidators will provide information on the amount they estimate is likely to become available to creditors in their reports (see section five).

The Joint Liquidators will write to all known creditors asking them to submit claims. You must submit your claim to the Joint Liquidators in writing, providing sufficient supporting evidence of your claim, eg copy statements, invoices, correspondence etc. to allow the Joint Liquidators to decide whether or not your claim is valid. Any costs incurred in submitting your claim will not be reimbursed. Your claim does not need to be on a specific form.

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 be paid interest on your claim accruing after liquidation, unless all creditors are paid in full.

The Joint Liquidators will compare your claim to the company's records and any other available information. The Joint Liquidators may ask you for additional information or evidence if they think you have not sufficiently proved your claim. The Joint Liquidators may agree your claim in full or in part, or may reject your claim if they do not think it is valid.

If you believe the Joint Liquidators have unfairly rejected your claim, it is best to contact them in the first instance to discuss any amounts under dispute. If you cannot reach agreement you can, within 21 days of rejection, appeal to court. After 21 days, if you do not apply to court, the adjudication is final.

If you believe that you own something in the company's possession, you should contact the Joint Liquidators without delay with full proof of ownership and be prepared to identify what you are claiming. The Joint Liquidators will examine your claim carefully before deciding whether to release goods in question, pay you for them or otherwise.

5. What information will I receive?

The Joint Liquidators will notify all known creditors of their appointment as soon as reasonably practicable.

A report on the progress of the liquidation will be sent to all creditors after each anniversary of the Joint Liquidators' appointment. A final meeting will be held at the conclusion of the liquidation, a final progress report will be sent in draft to all creditors at least eight weeks before this final meeting, providing an account of what has happened in the liquidation, and in particular how the assets have been realised and distributed.

It is AlixPartners' policy to upload the reports to creditors onto the firm's creditor information portal, at <https://www.alixpartnersinfoportal.com>, in accordance with the insolvency legislation and in order to save costs to the insolvent estate. Notification of reports and other information posted to the portal will be sent to creditors, with a password required to access them. Reports posted to the portal will be provided in hard copy if requested by a creditor.

6. What will happen after the liquidation is finished?

As the purpose of the liquidation is to wind up the affairs of the company, and to realise its assets and distribute the proceeds to its creditors, once the liquidation has been completed by the holding of a final meeting, the company has no further purpose, and will usually be dissolved three months after the final meeting.

7. What rights do I have as a creditor?

If the Joint Liquidators were appointed at a meeting of creditors, a creditors' committee may be appointed at that meeting which must consist of at least three and not more than five creditors. The creditors' committee receives reports from the Joint Liquidator and may meet periodically. The committee's function is to approve the Joint Liquidators' remuneration and sanction the exercise of their powers if required. If the liquidation follows on from an administration in which there was a creditors' committee, that committee can continue in the liquidation.

If a creditor wishes to receive further information to that provided in the progress reports provided by the Joint Liquidators, they may request it, further details of what information they may request is provided in the appendix to this report, and in each progress report sent to creditors by the Joint Liquidators.

If you are unhappy with the Joint Liquidator's handling of the case, either in respect of your claim or otherwise, you should first contact the Joint Liquidators to try to resolve the problem. A creditor who believes they have been prejudiced by the Joint Liquidators' conduct and is not satisfied by the explanations he receives may be able to make an application to court.

The Joint Liquidators are insolvency practitioners licensed in the UK, should your complaint be unresolved after you have raised it with them and you think that the Joint Liquidators are guilty of professional misconduct, you have the right to refer the matter to the Insolvency Service via their online Complaints Gateway. AlixPartners is regulated by The Insolvency Practitioners Association (IPA), and The Institute of Chartered Accountants in England and Wales (ICAEW).

8. A guide to the remuneration of the Joint Liquidators

The Joint Liquidators' remuneration will be paid out of the funds which are realised from the sale of company business and assets. The basis on which they may be charged can be on the basis of their time costs, as a percentage of the value of funds realised, or as a fixed fee. A combination of these bases may also be used.

If a creditors' committee is formed, it will be responsible for agreeing the Joint Liquidators' remuneration. If no committee is formed, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed by a resolution of a meeting of creditors. A resolution specifying the terms on which the liquidator is to be remunerated may be taken at the meeting which appoints the liquidator.

If the remuneration is not fixed by the committee or creditors, it may be fixed by the court on application by the Joint Liquidators, but the Joint Liquidators may not make such an application unless they have first tried to get his remuneration fixed by the committee or creditors as described above, and they must make the application no later than 18 months after their appointment.

Alternatively, the Joint Liquidators' remuneration may be based on a realisation and distribution scales set out in the insolvency legislation, which apply reducing percentages to each successive band of funds realised or distributed.

If either the Joint Liquidators or the creditors are dissatisfied with the basis or level of remuneration approved or charged, or cannot agree on an appropriate basis, they may apply to the court to set the remuneration.

Further guidance for creditors on the Joint Liquidators' remuneration may be found at <https://www.r3.org.uk/what-we-do/publications/professional/fees>.