



Guidance Note

A SHORT GUIDE TO LIQUIDATIONS OF COMPANIES IN THE CONSTRUCTION INDUSTRY

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I've heard a company is in liquidation. I am owed money. What do I need to do?

If you are owed money by the company, you will be what is known as a creditor of the company in liquidation. It is important to be engaged in the liquidation process. During the liquidation, you will receive information from the person who is dealing with the liquidation, who will be the Official Receiver or the liquidator (a licensed insolvency practitioner). You will also receive a report on the company's assets and liabilities and reasons for the company's failure. You will probably be asked to provide details of your claim.

If the liquidator does not contact you, you should get in touch with them to provide details of your claim. You should find details of the liquidator on the company's website.

It is important to note that the liquidator can upload all information provided to creditors (with some exceptions) to a secure website. The liquidator only needs to tell you formally once, by post or email, that he or she is going to upload all further information to a website and provide you with details on how to access it.

Where there has been a failure of a group of companies, it is important that you understand which company you have contracted with. You will be able to check this on your contract documentation.

What does it mean when a company goes into liquidation?

Where an individual or company cannot pay the debts they owe when they are due and/or the individual or company owes more than they own this is called being insolvent. People or companies in this situation can end up in a formal insolvency procedure. Formal insolvency procedures are legal procedures designed to get debts repaid and to return individuals and, where possible, businesses to financial health.

Insolvency can be a difficult and stressful situation for everyone involved – whether it's the insolvent company or individual (the debtor) or the individuals and companies who face the possibility of having their debts go unpaid (the creditors).

Liquidation

Liquidation is the formal winding up of the insolvent company's affairs which involves the liquidator realising the assets (for example, selling equipment), collecting any debts due to the company, and distributing the proceeds to creditors in accordance with a statutory order of priority. The secured creditors, usually the banks, will be paid first, followed by the preferential creditors (for example, employees) and then the unsecured creditors which will include trade creditors (for example, contractors). Unfortunately, the fewer assets a company has, the less chance you will have of having your debts repaid. It is important to remember the liquidator does have a duty to maximise returns to creditors.

A company in liquidation usually ceases to trade immediately. However, there may be circumstances where continuing to trade for a short period is preferable: for example, to complete some work in progress which might then increase the return for creditors. It may also assist with collecting debts or retentions.

Compulsory liquidation

A compulsory liquidation of a company is a liquidation ordered by the court. This is usually as a result of a petition presented to the court by a creditor but other people can also present a petition, including: the directors; the shareholders; an administrator or supervisor. The Official Receiver – a government office – becomes liquidator of the company at the time the winding-up order is made by the court unless the court orders otherwise. The Official Receiver assumes control; protects the insolvent estate; realises assets; pays dividends;

investigates the company's affairs; reports to creditors and considers the conduct of the directors. Creditors may be given the opportunity to appoint a liquidator – a licensed insolvency practitioner – of their choice in place of the Official Receiver.

Sometimes, perhaps due to the complexities of the company's business or the nature of the business, there is a need for the court to order the appointment of special managers to support the Official Receiver. This may be done to allow trade to continue for a short while. The special manager is there to help manage the affairs, business and the property of the company in liquidation. A special manager is an officer of the court. The order that the court makes for one or more special managers appointment will set out their powers and duties. The special managers act as agents of the Official Receiver and without personal liability.

Creditors' voluntary liquidation

A creditors' voluntary liquidation (CVL) usually happens because the director(s) decide that the company is unable to pay its debts. The directors must call a shareholders' meeting and if enough shareholders agree (75% by value of shares) a winding up resolution is passed and the company is put into liquidation. Following this meeting, creditors are given the chance to vote on who becomes the liquidator of the company.

This guide refers to a liquidator and special manager as the office holder. Whatever type of insolvent liquidation is commenced, the effects will be very similar on those involved.

It is important to note that there are other procedures which may be used to deal with a company's insolvency and the procedure followed will depend on the individual circumstances of each company. The alternative procedures are Company Voluntary Arrangement, administration and

administrative receivership.

Liquidation is usually a terminal process whereas the other procedures may be used as vehicles for business rescue.

Who is affected by liquidation?

The consequences of the liquidation will vary depending on the circumstances of the liquidation. However, it is likely that you will be affected if you:

- are owed money by a company in liquidation as a creditor and/or as a shareholder;
- have an on-going contract with the company in liquidation or are engaged by a company who does business with the company in liquidation;
- are an employee. Further information for employees can be found [here](#)

When am I going to get any money back?

When and if you get any money back that you are owed will depend on the circumstances of the liquidation, what assets are available to be realised and your contractual relationship with that company. Some contracts may not be automatically discharged on liquidation but often contractual clauses will allow for termination in the event of insolvency. If in doubt, take advice on the effect of the liquidation. The liquidator will be able to advise you on your chances of receiving any money back which you are owed.

Are you engaged on a joint venture contract?

If you're engaged on a project which is a joint venture, understanding who the ultimate Tier 1 contractor is key, as it may affect the continuance of the project and whether payment will be made to you for the work that you had done prior to the liquidation.

Are you involved in a project but your contract is not with the company in

It may be that you are not owed money by the company in liquidation, but by a

liquidation?

company which is engaged with the company in liquidation. This may also cause you concern with the possible knock-on effects including your business' financial stability. It is important that you take early professional advice if you are worried. It is important to get the right advice. R3 has further details on their website which may be accessed [here](#).

Is your contract novated?

If your contract is novated, (that is where there is a written legal agreement whereby a new contracting party takes place of the original contracting party usually on the same terms and conditions as they were from the outset), you may be paid but you will need to check the terms of that novation and seek advice if you are unsure of the implications.

Is your supply of services or work essential to the contract?

If you are providing services or work which the liquidator needs to continue with to ensure that ongoing projects are maintained, you may be able to negotiate payment, in full or in part, of the arrears although this would be in exceptional circumstances rather than the norm. You should contact the liquidator to discuss this.

Collateral warranties

If a party who has the benefit of a collateral warranty, exercises its contractual right to step into your contract, then that may be on terms that unpaid arrears for the time to the date the company went into liquidation are paid in full or part.

Claim in the liquidation

It may be that you will just have a claim in the liquidation. The office holder will let creditors know if or when money is available to be repaid to them. If there is money to distribute amongst creditors, secured creditors will be paid first and unsecured creditors last and only if there is enough money to go around. You should follow any guidance issued by the liquidator with regards to steps you should take to bring your claim to their attention.

I've had a letter from the liquidator who wants me to continue to work but as the company is in liquidation, will I be paid?

Unless you hold a charge or other form of security, any amounts owed to you at the date of the liquidation will be an unsecured claim in the liquidation. You will be told if there is any possibility of funds being available to make a payment to you in respect of the outstanding sums but it is unlikely that you will receive the entire amount due and may not receive any of the amount you are owed. In the event you are told there may a dividend to be paid to you, it is likely that this will take some time.

If the liquidator has advised you that you need to continue to work and provide goods and services as normal under the existing terms and conditions, you will be paid for goods and services you supply from the date of liquidation. You might consider contacting the liquidator about the possibility of changing the terms of your business, for example, being paid cash on delivery. At a bookkeeping level, it would be easier to manage the account if you set up a new account in your books for any work done or goods supplied, starting with the date the company went into liquidation. It will also enable you to readily provide details of outstanding sums due to you for the period before the liquidation.

What practical steps should I take to make sure that I'm ready to engage with the office holder?

- Open a file to collate and keep the documentation for the contract you're engaged on;
- Review the contractual documentation so that you are clear who your contract is with;
- If you are continuing to work on the instruction of the office holder, open a separate account for the period from the date of the liquidation;
- If you are thinking about terminating or suspending your engagement in the contract, ensure that you comply

with the terms of the contract and if in doubt, take professional advice. Details of our members which may be able to help you are accessible [here](#).

- If you have tools or equipment on site, contact the office holder with evidence of your ownership as soon as possible. This documentation will enable the office holder to verify ownership and if appropriate, arrange access for collection.
- If you have supplied goods to the company, check your contract for a retention of title clause which may enable you to claim back the goods that you have supplied but which have not been paid for. Again, you will have to provide documentation to support any retention of title claim you think you may have to the office holder who will review the position and, if appropriate, allow access for collection.
- Depending on your contractual terms, you may have been paid most of the amount due to you, but are owed a retention (being a sum of money that has been held from you for a specified period, usually to enable you to make good defects). This is a complex area and one which will also need to be considered carefully by the office holder. It may be that any further monies you may think will be due will not be paid.

I'm unhappy about the conduct of the directors. What can I do?

The office holder will contact all creditors and invite you to provide details of concerns you may have about how the directors ran their company. Further information about this can be accessed on the government's website [here](#).

I'm not happy with the office holder. What can I do?

You may on occasion, consider the office holder is not dealing with your questions as quickly as you would like. Some things can take time to resolve or answer when the company is in liquidation. It is appreciated that it can be a very difficult time for creditors and your support, particularly in the early stages of the liquidation, is welcomed. It is important to try to sort out your concern with the office holder in the first instance. If however you feel dissatisfied with the office holder, there is a complaint's process for complaining about an insolvency practitioner or the official receiver. Further detail may be found [here](#)

How is the office holder going to get paid?

The way fees charged by the office holder will depend on whether it is the Official Receiver or a licensed insolvency practitioner.

The fees charged by an insolvency practitioner will depend on the size of their firm, their location, their level of expertise, and the nature of the job at hand. The insolvency practitioner will make a proposal to the creditors that sets out how they are to be paid for their work. Creditors (or committee if one has been formed in the procedure) will be consulted about this by a decision procedure. The office holder may be paid in either one or a mix of the following:

- on the number of hours they spend working on a case (known as a 'time-cost' basis);
- a 'fixed-fee' for their work;
- as a percentage of the money recovered for creditors.

The insolvency practitioner's fees are usually negotiated with and agreed by the creditors (in some cases they can be determined in the courts).

Official Receiver fees are set in statute and are paid on a mix of bases. There is a general fee

of £6,000 in all cases. Where the Official Receiver acts as liquidator and realises assets, the fee will be charged at 15% of assets realised. If the Official Receiver acting as liquidator realises sufficient assets to pay funds to creditors, it will be charged on a time and rate basis.

Getting advice

If you are concerned about your financial or legal position it is important to seek professional advice as soon as possible. R3 has a Find a Practitioner or Legal Advisor option on their website which may be accessed [here](#).



This short guide has been produced by R3, the Association of Business Recovery Professionals. R3 is the leading professional organisation representing insolvency practitioners and professionals within the insolvency, restructuring and turnaround profession in the UK.

If you would like to find out more about the work of R3 or its members, please visit the R3 website at www.r3.org.uk

The Insolvency Service also produces a number of useful guides about personal and corporate insolvency procedures and directors' duties which can be accessed at www.gov.uk/guidance/guidance-on-personal-debt-relief-options-company-liquidation-investigation-and-enforcement

This leaflet is not intended to be a statement of law or a substitute for specific professional or legal advice. We have made every effort to ensure that the guide is accurate but R3 cannot accept any responsibility for the consequences of any action taken in reliance of its contents.
