

## What is company liquidation?

### ✓ What you need to know

Company liquidation can occur voluntarily or by court order where it has been established the company is unable to pay its debts as they fall due.

A liquidator is appointed to investigate the company's financial affairs, establish causes of failure, investigate possible offences, and identify and sell assets for the benefit of creditors. Usually a private sector liquidator (such as a chartered accountant) will be appointed as liquidator. However, where the company is put into liquidation by court order the Official Assignee may be appointed liquidator.

Officers of the company are required to assist the liquidator by providing information and answering questions. Failure to cooperate may lead to prosecution by the National Enforcement Unit (NEU).

Accountants or solicitors can provide further information about options for insolvent companies.

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## When will a company be put into liquidation?

A company will usually be put into liquidation by one of the following:

- Court order
- Special resolution of the shareholders
- Decision of the board of the company following an event specified in the constitution
- Resolution of creditors passed at a watershed meeting.

## Who can be appointed as liquidator?

Usually a private sector liquidator will be appointed. However, where the company is put into liquidation by court order the Official Assignee may be appointed liquidator.

## What happens when a company is put into liquidation and the Official Assignee appointed?

The liquidation is advertised in the Government Gazette and on the Insolvency and Trustee Service's website.

Where the Official Assignee has been appointed liquidator, creditors can request a meeting of creditors to appoint a replacement liquidator. Appointments for replacement liquidators must be approved by the Court.

## What is the effect of liquidation on the company?

Liquidation is immediate and serious. Trading companies are usually closed down. From the date of liquidation the Official Assignee takes custody and control of all the company's unsecured assets and assists secured creditor where necessary. The assets are collected and sold for the benefit of the company's creditors. When the liquidation is complete the company is struck off the Register of Companies.

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## What is the effect of liquidation on the directors?

'Director' includes anyone holding the position of director and any person not officially appointed but who acts in that capacity. Directors remain in office after the commencement of the liquidation but their powers are limited.

Directors must cooperate with the Official Assignee to enable the affairs of the company to be fairly and equitably resolved. Directors are required to complete a Statement of Affairs form which includes:

- A brief description of the company's history
- Trading details
- Details of the cause of the company's failure
- All company assets
- All company liabilities
- All shareholder information
- Any legal claims pending by or against the company.

Information provided must be supported by relevant documentation (for example, financial reports, accounting records and bank statements).

[Download a Liquidation Statement of Affairs form \[100 kB PDF\]](#)

The Official Assignee's investigation will include consideration of whether directors have any personal liability to the company and identification of any payments made by the company that may be reversed (for example, if company assets were disposed of for less than proper value). The Official Assignee has significant powers in regard to directors who must comply with requests to deliver company property held.

## What is the effect of liquidation on other people associated with the company?

The Official Assignee also has significant powers in regard to other people associated with the company, including:

- Shareholders
- Promoters and people involved in the formation of the company
- Employees, past and present
- Receivers, accountants, auditors, bank officers or other people having knowledge of the affairs of the company
- Solicitors
- Other people holding company property.

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## What is the effect of liquidation on company creditors?

Once a company is in liquidation unsecured creditors cannot, without the permission of the Court or the Official Assignee, start or continue any legal proceedings against the company or its property, or start or continue to enforce rights against any property of the company.

Secured creditors retain the ability to enforce securities where the company is in default. Liquidation is usually treated as default allowing secured creditor to uplift and sell company assets over which they have security.

When a secured creditor sells the security, they become an unsecured creditor for any shortfall. If there is a surplus it is payable to the Official Assignee for the benefit of all creditors.

## What information do creditors have to provide?

Where it is possible a payment may be made to creditors. The Official Assignee will ask creditors to provide details of all debts owed by the company. A Creditor's Claim form must be completed by a date specified by the Official Assignee.

Creditors need to provide a copy of documentation showing a debt existed at date of liquidation (for example, copies of loan agreements, bank statements, court orders, invoices, receipts and acknowledgments of debt).

## What happens if you fail to assist the Official Assignee?

Failure to assist is a serious offence and may result in prosecution. It is an offence for a director to conceal or remove property with the intention of preventing or delaying the Official Assignee from taking custody of it, or to destroy, conceal or remove records or other documents. Penalties can include fines and imprisonment.

## Does the Official Assignee provide progress reports?

The Official Assignee will send a report to all creditors outlining the company's financial position at date of liquidation. The report is usually sent 25 working days after date of liquidation. The report details how the Official Assignee intends to manage the liquidation, and estimates how long it will take to complete.

If the Official Assignee is dealing with a bankrupt shareholder, the company might sometimes be put in to Voluntary Liquidation. In that case, the first report to creditors will be sent within five working days of appointment.

After the first report, regular updates on the progress of the liquidation are available to creditors on this website. Creditors need to log on to access the information. Alternatively they can phone our Contact Centre 0508 467 658, to have a copy sent to them. The Official Assignee sends creditors updates at the six month stage and then every six months until the administration has been completed. A final report is then sent to all creditors.

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## What does the Official Assignee do with the money?

Any money recovered by the Official Assignee during the course of the liquidation is paid out to creditors in the priority specified by the Companies Act 1993 being:

- Official Assignee's fees, expenses and remuneration
- Costs awarded by the Court to the applicant creditor
- Creditor's costs and claim where that creditor has assisted the Official Assignee in the recovery of assets for the benefit of creditors
- Actual 'out-of-pocket' expenses of any liquidation committee
- Wages owed to employees for the four month period prior to the liquidation and all holiday pay and redundancy payments (Note: to a maximum \$NZ16,420 per employee)
- Preferential taxes collected for Inland Revenue (that is, GST, PAYE, and employee deductions for Child Support, etc)
- All other unsecured creditors.

## Where can I learn more about voluntary liquidations and general liquidation information?

Visit the Companies Office website for general information on company liquidation. Included is a flow chart illustrating the liquidation life cycle.

[Visit the Companies Office website now.](#)