



## Voluntary Administration -v- Creditors Voluntary Liquidation

It is often we get asked which is preferable, Voluntary Administration or Creditors Voluntary Liquidation. This is usually answered by asking a couple of questions.

- (1) What is the position? And then
- (2) What are you trying to achieve?

Whilst both procedures often tend to end up at the same place, Liquidation, each has their own peculiar characteristics which suit different situations.

In the first place as most of you will know, Voluntary Administration is a creditor driven process that provides the opportunity for the company, if not the company, the business, the opportunity to survive.

Generally, any deal put to creditors under Voluntary Administration needs to be commercially better than creditors could expect to receive under a Liquidation as creditors make the decision as to the fate of the company, ie to liquidate or not. Quite clearly the opportunity to rehabilitate the company or business depends on the underlying commercial circumstances.

A comparison between the two procedures becomes more problematic when the Directors intentions are to wind up the entity, which maybe due to the Directors inability to sustain the business any further or simply no longer want the entity. The differences can then be narrowed down to that of timing, cost and who has the final say on the fate of the company.

Under Voluntary Administration the procedure is implemented by a meeting of Directors who resolve to appoint a voluntary administrator which appointment is immediate on passing the resolution. Yes the winding up process is also commenced by a meeting of Directors but under a Voluntary Liquidation it needs 75% of the members present and voting at the extraordinary general meeting of members to pass the resolution putting the company into Liquidation.

It is the creditors that make that decision under Voluntary Administration, with the majority in number and value that pass the resolution to wind up the company if the question is put to a poll. Directors may want it in Liquidation where all shareholders may not. In this case I would recommend Voluntary Administration.

A special resolution needs 21 days notice for Liquidation. Even if they get consent to short notice for the members the fastest is 10 days. If quick independent control of assets is necessary or a Directors Penalty Notice from the Australian Taxation Office is about to expire Voluntary Administration is the way to go as the control of the independent party occurs immediately the directors make the resolution.

If there are none of these problems a Creditors Voluntary Liquidation is preferable as it is half the cost or even less than a Voluntary Administration.

Any situations you wish to discuss, we are always happy to take your calls.



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August 2005

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