

CREDITORS' VOLUNTARY LIQUIDATION

AN ORDERLY WAY TO DEAL WITH
UNMANAGEABLE DEBT.



MANN JUDD
INSOLVENCY WA

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TOGETHER WE MAKE IT HAPPEN

Who are we?

We are a dedicated insolvency accounting practice with extensive corporate and personal insolvency experience. Our firm is an independent member of HLB International and the HLB Mann Judd National Association – a worldwide organisation of respected accounting firms and business advisors.

We appreciate that managing a struggling business and juggling debt is distracting and stressful. We derive satisfaction and motivation by helping people understand their options and by creating a clear plan to escape a cycle of uncertainty and worry.



Greg is a Partner at HLB Mann Judd Insolvency WA with over 13 years of corporate and personal insolvency experience. Greg is a Registered Liquidator and manages the corporate and personal insolvency appointments managed by the firm.



Kim is a Partner at HLB Mann Judd Insolvency WA. Kim is a Registered Liquidator and Trustee in Bankruptcy with over 35 years of experience specialising in insolvency and reconstruction involving all types of personal and corporate administrations.

WHAT IS A CREDITORS' VOLUNTARY LIQUIDATION?

A Creditors' Voluntary Liquidation (CVL) is a formal insolvency process which occurs when a creditors' voluntary Liquidator is appointed to an insolvent company.

If a director/s forms the opinion that their company is insolvent and no declaration of solvency can be made, they can convene a meeting of members and resolve to pass a special resolution to wind the company up and appoint a Liquidator.

Although the above method is the most common avenue for a creditors' voluntary Liquidator to be appointed, a creditors' voluntary Liquidator may also be appointed upon the transition of a voluntary administration into a CVL, or by way of appointment by the Australian Securities & Investments Commission.

INDICATORS THAT YOU MAY BE A CANDIDATE FOR A CREDITORS' VOLUNTARY LIQUIDATION

Should a company be experiencing solvency challenges, the presence of one or more of the following conditions may suggest that to appoint a creditors' voluntary liquidator would be appropriate:

- The company is small and the Voluntary Administration process is too expensive to save the business.
- The company has run out of cash reserves to service debts.
- The company has little to no assets of value to realise and pay its debts.
- The company is trading at a loss or it is unable to recover from past losses.
- The company has ceased to trade.



ADVANTAGES OF THE CREDITORS' VOLUNTARY LIQUIDATION PROCESS

1

Avoid Trading Whilst Insolvent

Under insolvent trading laws in section 588G of the *Corporations Act 2001* (Cth), a director of a company can be personally liable for debts incurred by the company if, at the time the debts were incurred, there were 'reasonable grounds' to suspect that the company would be unable to pay the debts when they fall due for payment.

2

Protection from a Director Penalty Notice (DPN)

A common feature of distressed companies is the existence of outstanding tax and Superannuation Guarantee Charge (SGC) amounts due and payable to the Australian Taxation Office (ATO). The Director Penalty Notice Regime enforced by the ATO means directors can potentially become personally liable for the company's outstanding PAYG withholding, SGC and GST. Should a director be issued with a 'non-lockdown' DPN, the director is given 21 days to either pay the debt or cause the company to be placed into external administration (which includes a CVL), which would extinguish the director's personal liability. Should the director fail to enact either of the above within 21 days, they will then become personally liable for the company's tax and/or super debts.

3

A Chance to Move On

Winding down a company that is no longer viable could end the stress and worry of trying to save it, while allowing you the chance to move on to new endeavours.

You can read more about the DPN regime by visiting our website [here](#).

KEY PLAYERS IN A CREDITORS' VOLUNTARY LIQUIDATION

LIQUIDATOR

Upon appointment, a Liquidator 'steps into the shoes' of the director/s, possessing all powers which directors of a company have, including the ability to sell a company's assets and dismiss employees.

The role of a Liquidator is to wind up the company in an orderly fashion, while maximising any potential return to creditors through the realisation of the company's remaining assets.

The Liquidator also prepares a detailed report for creditors, outlining the assets and liabilities of the company along with a summary of the Liquidator's investigations and details of any potential returns to creditors.

Another responsibility of the Liquidator is to report to the Australian Securities & Investments Commission (ASIC) on potential offences committed by officeholders of the company.

Upon completion of a Liquidation, the Liquidator must lodge a Form 5603 - End of Administration Return with ASIC. Three months following the lodgement of the Form 5603, ASIC will automatically deregister the company.

DIRECTOR/S

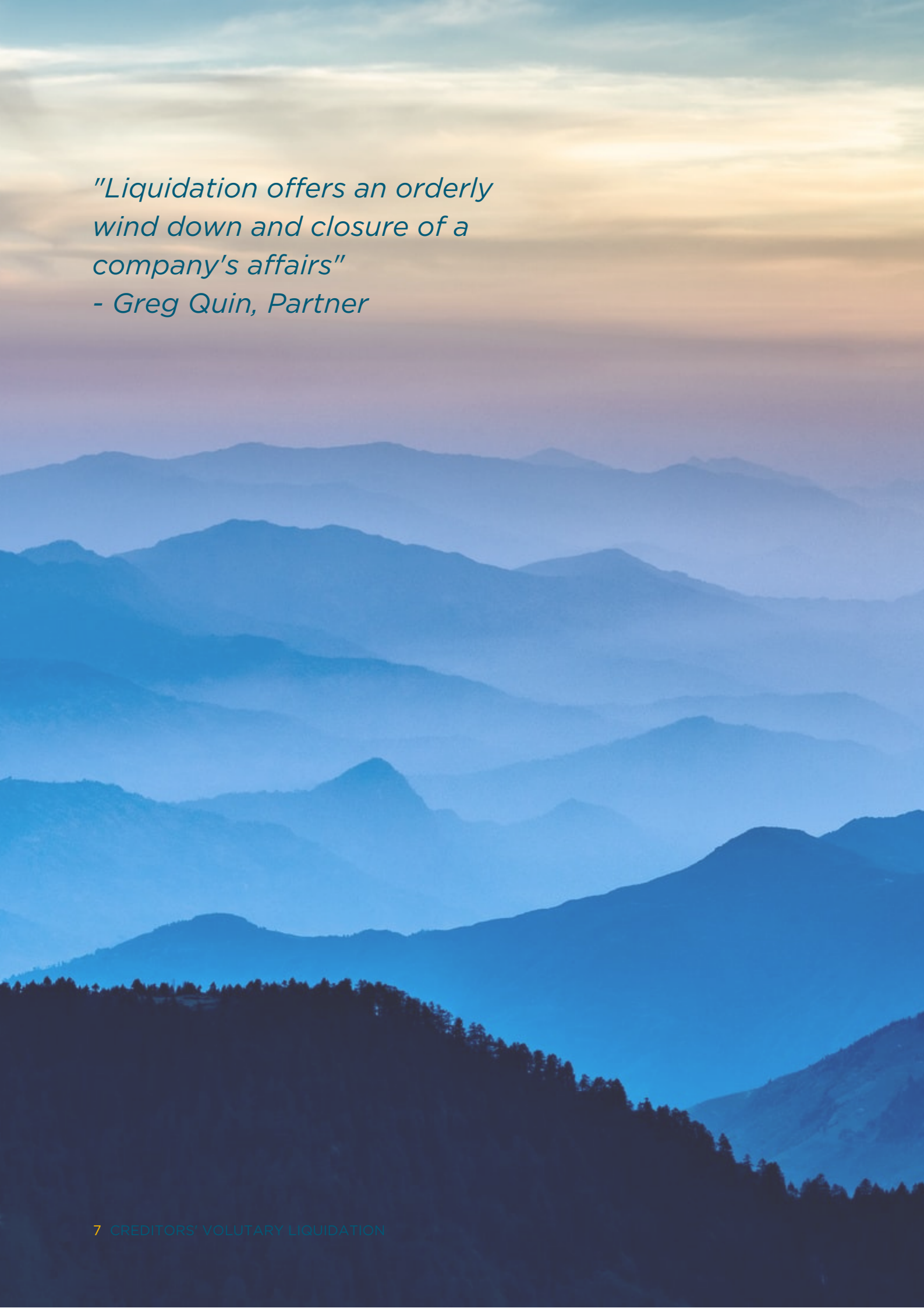
A director/s of a company in a creditors' voluntary liquidation relinquishes control of the company to the Liquidator upon appointment. In a creditors' voluntary liquidation, director/s also have an obligation to assist the Liquidator by:

- Advising the Liquidator of the location of company property and delivering any such property in their possession to the Liquidator;
- Providing the company's books and records to the Liquidator;
- Advising the Liquidator of the whereabouts of other company records;
- Providing a written report about the company's business, property and financial circumstances within five business days of the appointment of the Liquidator; and
- Meeting with, or reporting to, the Liquidator to help with their enquiries, as reasonably required.

CREDITORS

Creditors of a company can be classified into three broad categories:

1. **Secured Creditors:** A Secured Creditor is a creditor who holds a 'security interest' over some or all of the company's assets. Security interests can be a 'general security agreement' in favor of a third party (typically financial institutions), or a registration on the Personal Property Security Register (PPSR), which ensures that the creditor's security interest is enforceable and afforded the highest priority possible.
2. **Priority Creditors:** A Priority Creditor is in most cases an employee who is owed money for unpaid wages, superannuation, annual leave, sick leave, long service leave, retrenchment pay or other benefits. Priority Creditors are typically paid back before other Unsecured Creditors.
3. **Unsecured Creditors:** An Unsecured Creditor is a creditor who does not hold a 'security interest' over some or all of the company's assets. Unsecured Creditors are typically afforded the lowest priority of all creditor classes when it comes to a potential dividend to creditors should a voluntary administration either result in a DOCA or liquidation, often only receiving monies once both Secured Creditors and Priority Creditors are paid out in full.



*"Liquidation offers an orderly
wind down and closure of a
company's affairs"*
- Greg Quin, Partner

THE CREDITORS' VOLUNTARY LIQUIDATION PROCESS

APPOINTMENT

A company may be placed into a creditors' voluntary liquidation by:

- The shareholders of the company; or
- The creditors of the company (in the case of a company in voluntary administration or a terminated DOCA).

1

Within five business days of the appointment of a Liquidator, the company director/s are required to provide the liquidator with a Report on Company Activities and Property (ROCAP), which sets out, amongst other things, the assets, liabilities and likely causes of failure for the company.

INITIAL INFORMATION FOR CREDITORS

Within 10 business days of appointment, a Liquidator must issue a circular to creditors of the company, known as the 'Initial Information for Creditors'. This circular will in most instances contain:

- A summary of the ROCAP (including a list of creditors - including details of related parties);
- Information of creditors rights (including their ability to call for a meeting of creditors);
- A 'Declaration of Independence, Relevant Relationships and Indemnities' (DIRRI) by the Liquidator;
- Initial Remuneration Notice and Remuneration Approval Report; and
- Various voting proposals regarding the Liquidator's remuneration, disbursements, and the destruction of company books and records upon its deregistration.

2

INVESTIGATIONS & LIQUIDATOR'S STATUTORY REPORT TO CREDITORS

From the date of their appointment, the Liquidator has control over the company's assets and affairs, the right to terminate or dispose of assets of the company, and the right to perform any duty which an officer of the company may perform.

Also during this period, the Liquidator is to investigate the company's business, property, affairs, financial circumstances, and any potential offences committed by company officeholders, with the director/s obligated to provide assistance when required.

3

Within 3 months of the liquidator's appointment, the Liquidator must issue to creditors (and also lodge with ASIC) a 'Statutory Report to Creditors'. This report will detail the Liquidator's investigations and also seek approval for any further proposals the Liquidator deems necessary (i.e. remuneration, disbursements, debt compromises, etc.).

...continued on page 9.

INSOLVENCY INITIAL STATUTORY REPORT

Once the Liquidator has completed his/her investigations into the company, they are required to lodge a confidential Insolvency Initial Statutory Report with ASIC, which details any identified offences committed by the company and its officers.

Upon receipt, ASIC will either request a confidential Supplementary Insolvency Statutory Report detailing specific offences in further detail or advise that ASIC do not intend on taking any further action against the company and its officers.

4

DIVIDEND

A dividend to creditors is entirely dependent on the realisations made during the liquidation.

Should the liquidation realise sufficient assets to allow for a dividend distribution to creditors, a dividend will be issued to creditors pursuant to a specific order of priority set out in the *Corporations Act 2001*.

Alternatively, a Liquidator may not recover sufficient assets to allow for any dividend to creditors.

In either circumstance, creditors will be advised of the outcome by way of a written notification.

5

FINALISATION

Once all matters in the liquidation are concluded to the satisfaction of the Liquidator, the Liquidator will issue a final circular to creditors advising that the liquidation is to be finalised.

The Liquidator will also notify all relevant bodies, so as to allow for the deregistration of the Company, which will take place three months after the finalisation of the liquidation.

6

CONCLUSION

A CVL provides directors with an avenue in which to facilitate the orderly winding up of their company when it becomes insolvent.

This process allows for the appointed Liquidator to ensure that all necessary investigations into the company are completed in compliance with both the *Corporations Act 2001* and all ASIC requirements, while also providing the opportunity to maximise any potential return to creditors of the company.

For directors, the CVL process provides a form of finality in relation to the company and the associated financial pressures which accompany insolvency.



SOME USEFUL LINKS

[A guide for directors](#)

[A guide for creditors](#)

[A guide for employees](#)

[A guide for personal bankruptcy and liquidation](#)

"A voluntary liquidation appointment may seem daunting to a director, however, it offers a pathway out of corporate financial distress"

- Greg Quin, Partner



CONTACT US

Level 3, 35 Outram Street, West Perth 6005

T: (08) 9215 7900

E: info@hlbinsol.com.au

W: hlbinsolvencywa.com.au



GREG QUIN

PARTNER

M: 0402 943 091

E: gquin@hlbinsol.com.au



KIM WALLMAN

PARTNER

M: 0411 619 256

E: kwallman@hlbinsol.com.au

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