



## ELIMINATING UK COMPANIES – MEMBERS' VOLUNTARY LIQUIDATION (MVL) VS. VOLUNTARY STRIKING OFF (VSO)

When considering whether to use MVL or VSO to eliminate a company, directors should consider past trading activity, remaining corporate memory and the prospect of actual or contingent third-party liabilities. If a company has dealt with third parties, there is a lack of corporate memory or a possibility of actual or contingent liabilities, then MVL could be the preferred option.

The ultimate decision rests with the directors. In our experience, most directors prefer MVL. It brings the highest level of finality to a company's life and the directors responsibilities, irrespective of net assets or trading history.

	MVL	VSO
Nature of process	<ul style="list-style-type: none"> <li>Formal solvent liquidation process governed by the Insolvency Act and rules</li> <li>Simple and quick to appoint liquidators</li> </ul>	<ul style="list-style-type: none"> <li>Administrative process governed by the Companies Act 2006</li> <li>Quick process, only if no objection received from creditors, including HM Revenue &amp; Customs (HMRC)</li> </ul>
Required conditions	<ul style="list-style-type: none"> <li>Must be solvent</li> <li>75% of shareholders voting must approve resolutions</li> <li>Generally easy to satisfy</li> </ul>	<ul style="list-style-type: none"> <li>Company must not have traded or changed its name in three months prior to VSO application</li> <li>Pre-VSO tax clearance from HMRC is recommended</li> <li>These factors can cause delay</li> </ul>
Due diligence (DD)	<ul style="list-style-type: none"> <li>DD should be carried out prior to MVL to identify and quantify any actual or contingent creditors</li> </ul>	<ul style="list-style-type: none"> <li>Similar level of DD recommended for VSO</li> <li>Directors are required to send the VSO application to interested parties such as creditors (actual and contingent) and shareholders</li> </ul>
Assets	<ul style="list-style-type: none"> <li>Liquidators distribute assets as capital, so treated as a capital receipt in the hands of the shareholders. This can be tax effective</li> <li>Assets can be distributed immediately upon appointment of the liquidators</li> </ul>	<ul style="list-style-type: none"> <li>Assets become property of the Crown</li> <li>Can't lawfully distribute capital</li> <li>Distributable reserves often need to be created through capital reduction</li> <li>Pre-VSO dividends accounted for as income (unless &lt;£25,000). This is not always tax effective</li> </ul>
Creditors and their claims	<ul style="list-style-type: none"> <li>Liquidators invite creditors to prove debts within a specified timeframe (usually four to six weeks following appointment) or risk not getting paid</li> <li>Liquidators have the power to:                             <ul style="list-style-type: none"> <li>Agree, settle and reject claims</li> <li>Place a value on claims of contingent creditors</li> <li>Disclaim onerous contracts</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Creditors' claims remain</li> <li>Creditors can obstruct process by objecting to the VSO application</li> <li>Post-dissolution creditors can apply for company restoration</li> <li>HMRC often object if tax affairs are not up to date or pre-VSO clearance has not been provided</li> </ul>

	MVL	VSO
<b>Timing</b>	<ul style="list-style-type: none"> <li>Can be started quickly</li> <li>Creditor claims or outstanding tax matters need not delay the MVL</li> <li>Will take approximately six months to complete. Obtaining tax clearance to conclude the liquidation from HMRC is often the reason for this timeframe</li> <li>Liquidators submit final return of the company to the Registrar of Companies (RoC) at the end of the liquidation</li> <li>Company dissolved by RoC three months thereafter</li> </ul>	<ul style="list-style-type: none"> <li>Company dissolved two months after VSO notice published by Registrar of Companies if there is no objection to dissolution</li> </ul>
<b>Restoration</b>	<ul style="list-style-type: none"> <li>Within six years of dissolution—by application to Court</li> <li>Limited benefit to restoration following liquidation as assets will have been distributed by the liquidators and they will have advertised for claims</li> <li>Restored with liquidators in office</li> </ul>	<ul style="list-style-type: none"> <li>Within six years of dissolution—by application to Court</li> <li>Assets which have become property of the Crown revert to the company and can be used to meet creditors' claims</li> <li>Restored with directors in office</li> </ul>
<b>Cost</b>	<ul style="list-style-type: none"> <li>Liquidators' fees and disbursements payable</li> <li>Reduced significantly (on a per company basis) where liquidations are commenced in batches</li> </ul>	<ul style="list-style-type: none"> <li>Direct cost of VSO is minimal</li> <li>Professional fees often incurred relating to the process can include dealing with objections from creditors, finalising the tax position and capital reduction to enable the distribution of assets</li> <li>These fees are often comparable to the cost of liquidation</li> </ul>
<b>Advantages</b>	<ul style="list-style-type: none"> <li>Quick appointment process</li> <li>Low risk—liquidators "step into the shoes" of directors to finalise company's affairs</li> <li>Creditor claims can be locked out, valued and rejected</li> <li>Tax effective, where shareholders prefer capital receipts</li> <li>No requirement for tax clearance prior to MVL</li> <li>Capital lawfully returned to shareholders</li> <li>Reduced probability of restoration</li> </ul>	<ul style="list-style-type: none"> <li>Quick process, only if no objection</li> <li>Can be cost effective</li> </ul>

**In summary, MVL brings more certainty than VSO, particularly in dealing with creditors, and enables capital to be returned lawfully to shareholders. However, striking off can be a cost efficient way of eliminating companies that have no known issues and modest share capital.**

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