



All Debt Solutions

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ALL DEBT SOLUTIONS - ABN 36 974 817 324

Voluntary Liquidation - Steps Involved

Introduction

There are three basic steps required to place a company into a Creditors Voluntary Winding Up. These are:

- Passing of resolutions by the directors and execution of a Summary of Affairs.
- Passing of resolutions by members.
- The calling and holding of a Meeting of Creditors of the company.

The directors' resolutions are passed first. The members' resolutions are passed sometime after the directors' resolution – usually on the same day. A resolution of members actually places the company into liquidation. The liquidator then calls the creditors' meeting to be held within 18 days after the members' meeting to determine whether the creditors wish to change liquidators.

Attachments

The following completed and signed documents should be provided to All Debt Solutions:

- Statement Of Resolutions By Directors
- Form 509 Summary of Affairs
- Form 507 Report as to Affairs
- Statement Of Resolutions By Members

Once we receive the above documents we will then complete all the preparatory work, lodge the necessary documents with the Australian Securities & Investments Commission, and issue the notices of the meeting to creditors and conduct the meeting.

A director will have to attend the meeting of creditors.

Fact Sheets

The Australian Securities & Investments Commission and the Insolvency Practitioners Association have jointly released several fact sheets that may be of assistance to directors, shareholders, creditors and employees of companies in liquidation. These fact sheets are:

- Liquidation: Guide to Creditors
- Liquidation: Guide to Employees
- Guide to Shareholders
- Guide to Directors
- Glossary of Terms



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Step 1 – Directors passing resolutions

Prepare the Summary of Affairs – Section 497 Corporations Act

A **Summary of Affairs (Form 509)** must be lodged with the Australian Securities & Investments Commission at least 7 days before the meeting of creditors. This declaration contains the estimated realisable values of the company's assets and its outstanding liabilities.

Directors should endeavour to have the Summary of Affairs prepared and executed at the date of the resolution being passed by them.

Prepare the Report as to Affairs – Section 497 Corporations Act

A **Report as to Affairs (Form 507)** must be prepared at least 7 days before the meeting of creditors and tabled at the meeting of creditors. This RATA contains a more detailed estimate of the realisable values of the company's assets and its outstanding liabilities.

The Statement by Directors

The directors can either hold a formal directors' meeting, or execute a statement of resolution under section 248A (more than 1 director) or 248B (1 director) of the Corporations Act. The Act states:

CORPORATIONS ACT 2001 - SECT 248A

Circulating resolutions of companies with more than 1 director (replaceable rule see section 135)

(1) The directors of a company may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

(2) Separate copies of a document may be used for signing by directors if the wording of the resolution and

statement is identical in each copy.

(3) The resolution is passed when the last director signs.

CORPORATIONS ACT 2001 - SECT 248B

Resolutions and declarations of 1 director proprietary companies

(1) The director of a proprietary company that has only 1 director may pass a resolution by recording it and signing the record.

(2) The director of a proprietary company that has only 1 director may make a declaration by recording it

and signing the record. Recording and signing the declaration satisfies any requirement in this Act that the declaration be made at a directors' meeting.

Once the Summary of Affairs is prepared, the directors need to resolve:

- That the Summary of Affairs and Report as to Affairs be approved and executed.
- That the members consider a resolution that the company be wound up.



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Step 2 – Members passing resolutions

The Statement by Members

The members can either hold a formal meeting of members, or execute a statement of resolution under section 249A (more than 1 member) or 249B (1 member) of the Corporations Act. The Act states:

CORPORATIONS ACT 2001 - SECT 249A

Circulating resolutions of proprietary companies with more than 1 member

(1) This section applies to resolutions of the members of proprietary companies that this Act or, if a company has a constitution, the company's constitution requires or permits to be passed at a general meeting. It does not apply to a resolution under section 329 to remove an auditor.

(2) A company may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Each member of a joint membership must sign.

CORPORATIONS ACT 2001 - SECT 249B

Resolutions of 1 member companies

(1) A company that has only 1 member may pass a resolution by the member recording it and signing the record.

(2) If this Act requires information or a document relating to the resolution to be lodged with ASIC, that requirement is satisfied by lodging the information or document with the resolution that is passed.

Once the directors have resolved to place the winding up of the company before the members, they can prepare to execute the Statement of Resolutions by Members formalising the appointment. The members need to resolve the following points:

- That the company be wound up.
- That «Potential.Appointee1Name» and «Potential.Appointee2Name» be appointed joint & several Liquidators of the company.
- That the company will accept the decision of creditors regarding the appointment of a committee of inspection and the appointment of any replacement liquidators.