FAQs: Simplified liquidation

The information in these FAQs is a summary only, providing basic information about the simplified liquidation process. It does not cover all the relevant law regarding this topic, and is not a substitute for professional advice.

You should also note that because these FAQs avoid using legal language wherever possible, they may include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases, your circumstances should be taken into account when determining how the law applies to you.

If you need help to understand the simplified liquidation process, you should consider engaging a suitably qualified adviser, such as a financial counsellor, accountant, lawyer or registered liquidator.

Overview of simplified liquidation

What is simplified liquidation?

A simplified liquidation process is a streamlined creditors' voluntary winding up for companies that have liabilities less than $1 million.

It applies only to a creditors' voluntary winding up of a company where the event that triggers the start of the winding up occurs on or after 1 January 2021.

What are the eligibility criteria for the simplified liquidation process?

To be eligible for the simplified liquidation process:

- the company must be in a creditors' voluntary winding up where the event that triggers the start of the winding up occurs on or after 1 January 2021
- liabilities of the company on the day a liquidator is first appointed in the creditors' voluntary winding up must not exceed $1 million
- the company will not be able to pay its debts in full within 12 months
- the directors must within five business days (after the day of the meeting of the company at which the resolution for voluntary winding up was passed) give to the liquidator:

    - a report on the company's business affairs
    - a declaration that they believe, on reasonable grounds, the company meets the eligibility criteria for the simplified liquidation process will be met
- no person who is a director of the company, or who has been a director of the company within the 12 months before the date a liquidator was first appointed, has been a director of another company that has been under restructuring or subject to the simplified liquidation process within the period of the preceding seven years
- the company has not undergone restructuring or been the subject of a simplified liquidation process in the preceding seven years
- the company has given returns, notices, statements, applications and other documents required under the *Income Tax Assessment Act 1997*.

Simplified liquidation process for creditors' voluntary winding up

Can a liquidator adopt the simplified liquidation process for a creditors voluntary winding up?

The liquidator in the creditors' voluntary winding up may adopt the simplified liquidation process if:

- they believe on reasonable grounds the eligibility criteria are met
- not more than 20 business days have passed since a liquidator was first appointed in the creditors' voluntary winding up
- the liquidator has given each member and creditor, at least 10 business days before adopting the simplified liquidation process, written notice of:
    - a statement that they believe on reasonable grounds the eligibility criteria for the simplified liquidation process will be met
    - an outline of the simplified liquidation process
    - a statement they will not adopt the simplified liquidation process if at least 25% in value of creditors direct the creditor in writing not to adopt the simplified liquidation process
    - prescribed information, if any, on how the creditor may give the direction in writing not to adopt the simplified liquidation process.

The liquidator must not adopt the simplified liquidation process if, before the liquidator adopts the simplified liquidation process, more than 25% in value

of creditors provide a written statement to the liquidator requesting the liquidator not to follow the simplified liquidation process.

When must a liquidator cease to follow the simplified liquidation process?

The liquidator must cease to follow the simplified liquidation process if:

- the eligibility criteria for the simplified liquidation process are no longer met
- the liquidator believes on reasonable grounds that the company, or a director of the company, has engaged in conduct involving fraud or dishonesty and that conduct has had, or is likely to have, a material adverse effect on the interests of creditors as a whole or a class of creditors as a whole.

How is the simplified liquidation process different to a full creditors' voluntary winding up?

Meetings of creditors are not held in a simplified liquidation process. Matters determined by creditors are decided without a meeting via the 'proposal without a meeting process'.

Also, creditors cannot form a committee of inspection.

A liquidator in a simplified liquidation must report to creditors within three months of the liquidator's appointment, about:

- any work performed to date by the liquidator
- the liquidator's opinion on when the liquidation may be finalised
- the likelihood of a dividend being paid to creditors.

There are no other mandatory reports to creditors.

Creditors in a simplified liquidation process can make reasonable requests for information from the liquidator.

If funds will be available to pay a dividend to creditors, the liquidator is only able to make one dividend payment. This is likely to be near the end of the administration and there is no ability to make an interim dividend distribution.

The liquidator in a simplified liquidation process is required to report alleged misconduct to ASIC if:

- in the opinion of the liquidator, there are reasonable grounds to believe conduct constituting an offence under a law of the Commonwealth or a State or Territory in relation to the company may have occurred
- that conduct has, or is likely to have, a material adverse effect on the interests of creditors as a whole or a class of creditors as a whole.

More information

- Flowchart 2A: Liquidator in a creditors' voluntary winding up (simplified liquidation process)