Deloitte.

Comparison between the Creditors Voluntary Liquidation & the Simplified Liquidation Process

Key Consideration	Creditors Voluntary Liquidation (CVL)	Simplified Liquidation Process (SLP)
Eligibility	Accessible to all companies	Available if CVL commenced on or after 1 Jan 2021 and eligibility criteria met, which primarily includes, but is not limited to: • Liability test: <$1 million • No prior Small Business Restructurings or SLPs by company or any directors (7yr threshold) • All tax lodgements up to date
Who can appoint?	a. Members can resolve to wind up and appoint a liquidator b. Creditors can resolve to wind up at the conclusion of Voluntary Administration or if Deed of Company Arrangement fails c. ASIC	The liquidator may adopt SLP within the first 20 business days only after CVL commences a. Creditors & members must be given 10 business days notice of intention to adopt b. As long as no more than 25% of creditors by $ value objected to the adoption
Control of Company	Liquidator assumes control and is an “officer” of the company	Liquidator continues control and is an “officer” of the company Creditors lose power to replace the appointee No reviewing of liquidators unless review enforced by the Court
Meetings of creditors	No requirement to have a meeting of creditors, but if a certain number/dollar value of creditors require it, the liquidator can be compelled to convene one Liquidator has discretion to convene a meeting at any time Committee of Inspection may be formed	No meetings permitted (therefore, creditors power to request a meeting now redundant) No Committee of Inspection permitted
Scope of debts covered	All unsecured debts, including priority employee entitlements Secured creditors only affected to the extent there is a shortfall in their security	All unsecured debts, including priority employee entitlements Secured creditors only affected to the extent there is a shortfall in their security
Extent of costs involved	Dependent on company and complexity, but generally higher due to non-streamlined process Typically calculated on a time cost basis which is subject to approval	Dependent on company and complexity, but generally lower due to streamlined process
Timeline	Dependent on company and complexity Complex litigation, for example pursuing recoveries for the benefit of creditors most likely contributor to delays	Dependent on company and complexity SLP may be required to cease in specified circumstances, in which case the winding up reverts back to a normal CVL (however this may not impact the timeline)
Investigating & Reporting	Obligation to investigate the affairs of the company – this may reveal legal recovery actions which benefit creditors (e.g. insolvent trading) Misconduct (if found) must be reported to ASIC (s533 of the Corporations Act) Only one statutory report to creditors required, but discretion to report further should circumstances warrant it ASIC lodgements of documents and forms	Same as CVL except: • Misconduct report (s533) not required unless serious, material misconduct, therefore reduced investigation obligations • Simplified statutory report to creditors ASIC lodgements of documents and forms
Enforcement & Claw back	Full range of recoveries include unfair preferences, unreasonable director-related transactions, creditor-defeating transactions and insolvent trading	Full range of recoveries are still available. However, the definition of unfair preferences has been narrowed to a 3-month relation back date (instead of 6 months) and total value of targeted transactions must be ≤$30 000 (no limit in a normal CVL)

March 2021

Key Contacts

Sal Algeri
National Leader - Restructuring
Tel: +61 3 9671 7362
Email: saalgeri@deloitte.com.au

Melbourne

Rob Woods
Partner
Tel: +61 3 9671 6432
Email: robwoods@deloitte.com.au

Tim Norman
Partner
Tel: +61 3 9671 8334
Email: tnorman@deloitte.com.au

Luci Palaghia
Partner
Tel: +61 3 9671 8377
Email: lpalaghia@deloitte.com.au

Sydney

Jason Tracy
Partner
Tel: +61 2 9322 3858
Email: jtracy@deloitte.com.au

Sam Marsden
Partner
Tel: +61 2 9322 7502
Email: smarsden@deloitte.com.au

Western Sydney

David Mansfield
Partner
Tel: +61 2 9840 6630
Email: dmansfield@deloitte.com.au

Brisbane

Richard Hughes
Partner
Tel: +61 7 3308 7279
Email: richughes@deloitte.com.au

David Orr
Partner
Tel: +61 7 3308 7399
Email: dorr@deloitte.com.au

Perth

Matthew Donnelly
Partner
Tel: +61 8 9365 7150
Email: mdonnelly@deloitte.com.au

Launceston

Travis Anderson
Partner
Tel: +61 3 6337 7051
Email: travisanderson@deloitte.com.au