

**Collection Manual
Liquidation of Companies and
other Company Law issues**

Updated November 2015

CONTENTS

1	Introduction	3
2	What is Liquidation?	3
3	When is it appropriate to seek liquidation of a company?	3
4	Procedure for Liquidation	4
5	Collecting Tax Debts of Group Remitting Companies	6
6	Other Creditors seeking Liquidation	6
7	Provisional Liquidator	6
8	Struck off Companies/Dissolved Companies	6
9	Revenue Preferential Status	8
10	Fraudulent/Negligent Directors	9
11	Members Voluntary Liquidation	10
12	Other Company Law provisions	10
12.1	Examinership	10
12.2	Receivership	12
12.3	Compromise with creditors under Section 450 or 453 of the Companies Act 2014	13
13	Further Information	14
	Appendix 1 – Proposal to Serve S.570 Letter	14
	Appendix 2 - Confirmation of Delivery Note	14
	Appendix 3 – Member Voluntary Liquidation Checklist Form	14
	Appendix 4 – Member Voluntary Liquidation Letter	14
	Appendix 5 – A Letter of Clearance	14
	Appendix 6 – No Clearance Letter	15
	Appendix 7 – District Contacts	15
	Appendix 8 – Letter to Struck Off/Dissolved Companies with outstanding Debt that continue to trade	15
	Appendix 9 – Process for Transferring a Return in ITP	15

1 Introduction

- 1.1 In the majority of cases one or a combination of the standard enforcement methods will usually be successful in securing payment of an outstanding tax debt. However, in certain instances, this will not be the case and caseworkers will need to consider alternative possibilities to secure payment. Apart from enforcement action other possibilities to help secure the tax debt might also exist – such as:
- (a) ensuring that a tax clearance certificate does not issue or
 - (b) **RCT**: where there is serious compliance issues in the case of a subcontractor, the RCT rate may be increased from either 0% or 20% to 35%.
- 1.2 Where the tax debt cannot be brought under control more direct action is needed - in the case of a company this will usually mean that liquidation of the company needs to be considered.

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2 What is Liquidation?

- 2.1 Liquidation (or winding-up) is a process under Company Law that results in the company ceasing to exist. Companies can decide to go into voluntary liquidation in which case the company arranges voluntarily to enter liquidation. Where a third party (an unpaid creditor) wishes to pursue liquidation of an insolvent company, as its debt is not being addressed, application must be made to the High court for a decision on whether a liquidator should be appointed to the company. The liquidator's job is to realise the assets of the company and pay the creditors (including Revenue) from the proceeds. Where there are insufficient assets to pay all the creditors, the funds available are distributed in a preset order ([see Paragraph 9](#)).
- 2.2 The liquidator also has certain obligations under Company Law to report to the Office of the Director of Corporate Enforcement on how the affairs of the company were conducted by the directors. In some cases, this can result in individuals being restricted or disqualified from acting as company directors in future.
- 2.3 The end result is that the company is removed from the Companies Register and ceases to have legal existence.

3 When is it appropriate to seek liquidation of a company?

- 3.1 Liquidation of a company should be pursued where other caseworking actions (including enforcement) have not been successful, or are unlikely to be successful given the circumstances of the case, in securing the debt and where:

- (a) The tax debt is increasing and not under control or
- (b) The company has ceased trading (and the tax debt is therefore no longer increasing) but there is information available that there are assets remaining in the company which cannot otherwise be secured and which, allowing for the liquidator's costs will result in some payment by the liquidator towards the tax debts.

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4 Procedure for Liquidation

- 4.1 The general procedure consists of the service of a demand for payment on the company followed by an application to the High Court for the appointment of a liquidator if the demand is not paid. Following the enactment of the Companies Act 2014 the minimum amount for a demand is €10,000 for one creditor or €20,000 for two or more creditors. This demand is known as a Section 570 letter (after the relevant provision in the Companies Act 2014) and must be signed by the Collector-General. The company has twenty one days to pay the liability set out in the Section 570 letter, failing which, the Revenue Solicitor's Office can apply to the High Court for appointment of a liquidator (but see also [Paragraph 7](#) below regarding provisional liquidator). The procedures to be followed by caseworkers are set out in more detail in the following paragraphs.

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- 4.3 The Companies Registration Office (CRO) database should be checked to confirm the registered address of the company, names of directors, and any other useful information in relation to the company such as details of charges held by banks on company assets.

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- 4.6 All liquidation proposals from the Districts must be approved by the relevant Assistant Secretary before being sent to the Collector-General for signature. If any submission is received from the District without prior approval by the relevant Assistant Secretary the case should be sent back to the District and approval sought.

- 4.7 Once signed, the Section 570 letter will be returned by the Collector-General's Office to the caseworker for service on the company. It is essential that Revenue can prove to the court that service of the letter has taken place. Accordingly, arrangements must be made for the Section 570 letter to be hand delivered by a Revenue officer to the registered address of the company. Ideally a confirmation delivery receipt, see [Appendix 2](#), for delivery should be obtained from a responsible person at that address.
- 4.8 However, in practice this will not always be possible. In any event, even if a receipt cannot be obtained, the letter must be left at the registered address and the officer making the delivery should provide written confirmation of the circumstances of the delivery.
- 4.9 In many instances the registered address of the company (where the Section 570 letter has been served) will not be the actual trading address of the company. Accordingly, copies of the Section 570 letter should also be sent (by post will suffice) to any other responsible person (e.g. a director) known by the caseworker to be running the company.

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- 4.12 When the 21 days specified in the Section 570 letter have expired, and assuming that there have been no acceptable arrangements to pay the debt, the RSO and Insolvency Unit will arrange the necessary steps (including appropriate notice in the newspapers) to bring the case before the court to seek the appointment of a liquidator. As part of this process it will be necessary for an affidavit to be sworn detailing the outstanding liability. This is normally arranged via the Collector-General's office as the Collector-General usually swears the affidavit.

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- 4.13 Pending the appointment of a liquidator by the court, it is essential that:
- (1) the caseworker stays in close contact with the RSO and Insolvency Unit in relation to the case, advising them of any contacts or discussions with the taxpayer in relation to the liability,
 - (2) the payment record of the company is monitored by the caseworker to establish if any payments towards the liabilities on the Section 570 letter are received. Where any payments are received, the RSO and Insolvency Unit should be notified without delay. A final check should be carried out on the payment record on the morning of the court hearing, as notified by the RSO.

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- 4.16 In the event that payment is received or an acceptable arrangement for payment is agreed subsequent to approval by the Collector-General to liquidate, a brief note of the outcome should be forwarded for information to the Collector-General's office.

5 Collecting Tax Debts of Group Remitting Companies

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6 Other Creditors seeking Liquidation

- 6.1 In some instances another creditor may petition the High Court to appoint a liquidator to a company. Where this happens and there is an outstanding tax debt, Insolvency Unit will contact the caseworker to discuss whether or not the petition should be supported by Revenue. In some cases the original petitioner may subsequently withdraw his/her petition, in which case Revenue can decide whether or not it wishes to pursue the liquidation.

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Provisional Liquidator

- 7.1 For serious cases where urgent action is needed, it may be possible to get the High Court to agree to appoint a provisional liquidator (this avoids the need for the Section 570 letter and the 21 days response period). Appointment of a provisional liquidator needs to be considered where there are significant outstanding liabilities and information becomes available to suggest that assets are being removed from the company in advance of closing down or that creditors are being disadvantaged in some other way. If no other enforcement option is suitable, seeking the appointment of a provisional liquidator may be appropriate.

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8 Struck off Companies/Dissolved Companies

8.1 In certain circumstances, (usually for failing to lodge company returns), a company can be struck off the Company Register and dissolved. In general, the fact that the company is struck off should not be a factor in deciding whether or not to pursue liquidation. If the case meets the appropriate circumstances, (see [paragraph 3](#)), liquidation should be pursued.

- If it is not already known that the company has been dissolved, this will become apparent from examination of the Companies Office database where the status of the company will be described as “dissolved”.
- In the case of a struck off company the same procedures, i.e. service of Section 570 letter etc. as outlined at [Paragraph 4](#) above, should be applied subject to the following:
 - (1) Indicate in the proposal accompanying Section 570 letter that the company is dissolved.
 - (2) When referring the documentation to the RSO and Insolvency Unit advise that the company is dissolved.
- When applying to the court for appointment of a liquidator, the RSO will first ask the court to re-instate the company to the Companies Register.
- A liquidator can have a dissolved company re-instated on the CRO on the date of the Liquidation hearing.

8.2 **Struck Off and Dissolved Companies with Outstanding Debt (no longer trading)**

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8.3 **Struck off and Dissolved Companies with Outstanding Debt (that continue to trade).**

- Determining whether or not the Principals/Shareholders of a dissolved company continue to trade may involve contact with such Principals/Shareholders and/or their agent. In some instances, an outdoor visit may be appropriate.
- In the event that they are continuing to trade, a letter outlining the position of those trading without limited liability can be issued to the individuals involved – see [Appendix 8](#)
- One of the key issues is whether or not the Directors/Principals of the company intend to have it restored to the Register of Companies
- The most notable consequences of the company being struck off are that –

- (1) The principals are trading without the benefit of limited liability.
- (2) The assets of the company belong to the State while the company stands struck off and they are trading as Sole Traders or in Partnerships (if they are registered as such by the Districts as agreed by Local Management) with consequent tax implications

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9 Revenue Preferential Status

9.1 As previously indicated, if there are insufficient assets to pay all the creditors, the funds realised by the liquidator are distributed in a preset order as set out in Company Law. Revenue enjoys a preferential status (i.e. ranks ahead of other creditors) for certain tax debts. The general order of distribution in liquidation is as follows:

- (1) Fixed charge holders from the proceeds of the asset over which they have a charge and limited to the amount of the proceeds if the loan exceeds it (where there are fixed charges on an asset, e.g. a mortgage on a specific property)
- (2) Costs of petitioner (rank before liquidator fees if no fixed or **floating charge***)
- (3) Liquidator fees/costs
- (4) Total of all employees share of PRSI deducted and not paid for all periods prior to liquidation (this is generally known as Revenue's 'super preferential' status).
- (5) Preferential Creditors to include Department of Enterprise Trade & Innovation, 12 months rates and certain tax debts as follows (generally known as Revenue's 'preferential' status):
 - (a) **Assessed Taxes:** Corporation Tax, Income Tax, Capital Gains Tax. Any single year maximum of amounts assessed or assessable (plus interest) on the company up to the tax year-end prior to the date of liquidation. In practice Revenue will choose the year with the largest liability;
 - (b) all VAT for which the company is liable in relation to those taxable periods, which ended within twelve months of the date of liquidation including interest on same;
 - (c) all PAYE/PRSI amounts due in respect of the twelve months prior to liquidation plus interest on the PAYE element only;
 - (d) all RCT amounts due in respect of deductions made on payments to subcontractors during the twelve months prior to liquidation. (Also refer to Relevant Contracts Tax Manual [Part 18.02.07 paragraph 5](#))
- (6) Floating charge holder

- (7) Non-preferential debts (this includes tax debts that are not covered by any of the prior categories).

***A floating charge refers to a charge where the collateral provided is an asset that changes from time to time, e.g. stock or raw materials.**

- 9.2 When a financial institution loans money to a company, (e.g. by allowing an overdraft), it generally tries to secure the debt by way of fixed charge on the assets of the company. In this way, if the company runs into financial difficulties and has to be liquidated, the financial institution is more likely to be paid. When considering the possibility of liquidation, it is important to establish the amount of any fixed charges held against the company assets, as they would reduce the amount available for other creditors (including Revenue). However, it may be the case that liquidation is still considered necessary, e.g. due to the tax debt increasing out of control.

10 Fraudulent/Negligent Directors

- 10.1 A liquidator has certain obligations under Company Law to report to the Office of the Director of Corporate Enforcement (ODCE) on how the affairs of the company were conducted by the Directors. In some instances this can result in individuals being restricted or disqualified from acting as company directors in future. In extreme cases a Director may be made personally liable for some of the debts of the company.

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- 10.3 Section 567 of the Companies Act 2014 provides that the Directors of a company can be examined by the High Court to see if restriction or other action against the Directors is warranted, even where a company is not in liquidation. Section 567 also stipulates two pre-conditions that must be met in order for such an examination to take place:
- (1) Revenue must show that the company is unable to pay its debts - the following examples would all help establish an inability to pay debts:
 - ‘Nulla Bona’ - where Revenue obtained a judgment against the company and the sheriff does not succeed in seizure of goods on foot of a “fifa” order, which is then returned marked Nulla Bona
 - Evidence of cheques being dishonoured or direct debits being cancelled and
 - Statements or admissions made by or on behalf of the officers of the company
 - (2) The court must also be satisfied that ‘insufficiency of assets’ is the reason for company not being wound up (liquidated). A statement to this effect in the Affidavit grounding the Section 567 application would suffice to meet this precondition.

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11 **Members Voluntary Liquidation**

- 11.1 A Members Voluntary Liquidation (MVL) is where the company has made a full inquiry into its affairs and having done so, has formed the opinion that the company will be able to pay its debts in full within 12 months from the commencement of the winding up date as may be specified in the declaration (Section 580 (2) Companies Act, 2014.) Accordingly, all outstanding returns & taxes, (including interest), are submitted to Revenue by the liquidator prior to the calling of a final meeting.
- 11.2 A Declaration of Solvency is filed with the Companies Registration Office (CRO). This lists the company's assets/liabilities and states the overall surplus in the company.
- 11.3 As per Section 578 of the Companies Act 2014, Sections 579 to 584 of Companies Act 2014 apply to Members Voluntary Liquidation.

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12 **Other Company Law provisions**

There are certain other situations provided for in Company Law that caseworkers might encounter when dealing with tax debts due from companies. These are not enforcement options as such, but it is important that caseworkers are aware of them and the possible implications for collection of the tax debt. The three situations are Examinership, Receivership and a compromise with creditors under Section 450 or 453 of the Companies Act 2014.

12.1 **Examinership**

Examinership allows companies which are experiencing financial difficulties to seek the protection of the High Court from creditors for a limited period of time (up to a maximum of 100 days). This allows the company breathing space from its creditors and time to put forward proposals to deal with the debts. Insolvency Unit deals with such cases once there is a formal application to the court to appoint an Examiner.

The implications of the appointment of an Examiner are:

- debts may not be executed against the company (therefore all Revenue enforcement activity has to be suspended while an Examiner is in place)
- a Receiver may not be appointed
- no security may be enforced against the company
- the company may not be liquidated (wound up).

A decision on whether or not to seek the appointment of an Examiner is a matter for the company itself.

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The court may agree to appoint an Examiner if it considers that this would be likely to facilitate the survival of the company (either in whole or in part) as a going concern. Where an Examiner is appointed, in order to stop the tax debt continuing to increase, Revenue usually requests the court to direct the Examiner to pay current tax debts while the company is in Examinership.

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Once appointed, the Examiner is allowed up to a maximum of 100 days to examine the financial affairs of the company and report to the court on whether in his/her opinion:

- the company is capable of survival as a going concern
- an attempt to continue the whole or any part of the undertaking of the company would be likely to be more advantageous to the members as a whole and the creditors as a whole than a wind up of the company.

Following receipt of the Examiner's report, the court may make any order it deems applicable. Where the court considers that the company can be saved, the Examiner is directed to formulate a rescue plan (scheme of arrangement). The Examiner must then put the plan to meetings of members and creditors and report back to the court.

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The rescue plan (which must have been approved by at least one class of shareholders at the creditors meeting organised by the examiner) is then presented to the court, and, if approved, is binding on all creditors, including Revenue.

The court invariably seeks Revenue's views on the proposals being formulated by the Examiner. In addition Revenue, along with other creditors, is entitled to vote on whether or not to accept the proposals being put forward. Revenue's position will depend on the circumstances of the case (e.g. previous tax collection history, whether there will be a change of directors etc.).

When the scheme of arrangement is formally agreed by the courts, concluding the period of the Examinership, Insolvency Unit will, by the next working day, notify the relevant Debt Management Unit by e-mail or phone.

In many instances there will usually be a time period post Examinership during which the arrears (or more usually, some of the arrears) have to be paid. Insolvency Unit will attend to this immediately on conclusion of the period of Examinership.

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12.2 Receivership

- (a) Before a financial institution lends money to a company, it will usually look for security to protect its interests. This will often take the form of a debenture, but, particularly in the case of non-corporates, is incorporated in the loan agreement. A debenture is a company bond guaranteeing certain company assets as collateral against the amount owed. The debenture can contain a 'fixed' charge (where the collateral provided is a specifically named asset, usually property) and/or a 'floating' charge (where the collateral provided is an asset that changes from time to time, usually stock or raw materials). If a debenture holder becomes concerned about the solvency of the company it can invoke the terms of the debenture and appoint a person, known as a Receiver, to take control of the assets covered in the debenture and to sell those assets to recover the outstanding debt.
- (b) A Receiver can only liquidate the assets covered in the agreement. The primary duty of the Receiver is to the lender that appointed him/her (note that this is different from a liquidator who must act in the interest of all creditors). The precise action of the Receiver will depend on the nature of the agreement but the situation will often arise that the entity will continue trading while the Receiver is involved in the operation of the entity to realise and dispose of the assets covered by the agreement.
- (c) There are certain obligations on Receivers in relation to payment of the company's outstanding tax debts (and Revenue enjoys a preferential position in certain instances) but this will depend on whether the debenture is based on a fixed charge or a floating charge. The Receiver is also responsible for payment of current tax liabilities if s/he decides to run the business for a period. In some instances the entity may be able to continue trading even after the Receiver has realised the debenture assets and left the entity. In any event, however, the appointment of a Receiver will usually have a significant impact on the operation of an entity and where it has outstanding tax liabilities, concerns arise that these tax debts may not be recovered.

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12.3 **Compromise with creditors under Section 450 or 453 of the Companies Act 2014**

- (a) Where a company is in financial difficulties it may seek to get agreement with creditors on a compromise or arrangement whereby only part of the outstanding debts of the company would be paid (e.g. 50c per € of debt). This is usually referred to as a compromise with creditors under Section 450 or 453 of the Companies Act 2014.
- (b) Caseworkers should not delay pursuit of outstanding tax debts while a company is formulating any such Section 450 or 453 proposals. The company can be advised that if it wishes to put forward proposals Revenue would be prepared to consider them but that they are unlikely to be accepted if they do not provide for full payment of the tax debt.

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- (d) Section 450 provides that a company can apply to the court in order to get a court direction for a meeting of creditors to discuss and vote on the proposal. This will usually arise for example if the company believes that a majority of the creditors will support the proposal.

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- (e) Under Section 453 of the Companies Act 2014 any arrangement agreed between a company and the majority (i.e. three-fourths or more by value) of the creditors would be binding if passed by a special resolution. However a creditor or member may, within three weeks from the completion of the arrangement, appeal to the court against it and the court may then decide to amend, vary or confirm the arrangement.

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13 Further Information

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Appendix 1 – Proposal to Serve S.570 Letter

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[...]

Appendix 2 - Confirmation of Delivery Note

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Member Voluntary Liquidation Documents

Appendix 3 – Member Voluntary Liquidation Checklist Form

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Appendix 4 – Member Voluntary Liquidation Letter

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Appendix 5 – A Letter of Clearance

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