



## Creditors' Voluntary Liquidation

Creditors' Voluntary Liquidation (CVL) is a cost effective and timely process to place a company into liquidation. When it is insolvent, the process is initiated simply by convening a members meeting at which a resolution for winding up is passed.

A CVL allows for the appointment of an independent liquidator to wind up the affairs of a company, distribute its assets to creditors and investigate the trading history.

### Power and control of the Liquidator

Once in liquidation, the directors of a company no longer have control. The law provides a liquidator with extensive powers to wind up the affairs of the company and distribute its property to its creditors.

This can include, if appropriate, trading on a company's business in so far as it is necessary for the beneficial disposal or winding up of that business. The liquidator has a duty to all of the company's creditors.

### 1. Director Duties & Insolvent Trading

Directors are subject to duties imposed by the Corporations Act including a positive duty to ensure that a company does not trade while it is insolvent (i.e. it is unable to pay its debts as and when they fall due). A court may hold a director personally liable for breaching this duty. This may include an order compelling a director to make a payment to compensate for the amount of damages caused to creditors by the company trading whilst insolvent.

Placing a company into CVL may ensure that a director is complying with his/her director's duties and mitigate/extinguish any personal liability.

### 2. Director Penalty Notice (DPN) from the ATO

When a company does not meet its PAYG withholding or Superannuation Guarantee Charge (SGC) liability by the due date, then the directors of the company are personally liable for a penalty equal to the unpaid amount.

The ATO may commence legal proceedings to recover the penalty by issuing a DPN.

The penalty will be remitted at any time if the company pays the outstanding liability. However, the penalty can also be remitted if on or before the 21st day after a DPN is issued:

- the company is placed into Voluntary Administration or Liquidation; and
- the Company's PAYG withholding and SGC liabilities have been reported to the ATO within 3 months of their due dates.

There are statutory defences that may be available to directors and special provisions for newly appointed directors.

### 3. Payment of employee entitlements

The Federal Government's Fair Entitlement Guarantee (FEG) Scheme covers unpaid entitlements owed to employees by a company in liquidation (subject to certain criteria and caps).

By placing the company into liquidation, employees are able to immediately access the FEG Scheme to facilitate payment of their unpaid entitlements (excluding Superannuation).

### Supporting you and your business

With expertise in turnaround management, divestment, corporate finance, restructuring and insolvency, we deliver solutions that help our clients get where they want to be.

### Why Bentleys?

- Our professional and qualified team have a background working with all business types across a range of industries.
- We offer solutions built on expertise – both in Australia and across the globe. We know the questions to ask and what to look for to tailor solutions to your business.
- We are agile and have a robust approach. We focus on getting the job done, on time and on budget.
- You will benefit from a “one stop-shop” solution. Our national team means that you have ready access to the broad spectrum of business and financial expertise.

### Ranked 12 in Australia's Top 100 Accounting Firms by the AFR, Bentleys offers:

- a highly commercial approach, with a focus on delivering timely outcomes within budget;
- end-to-end business solutions, providing compliance, strategic and practical support for your business;
- immediate access to a broad range of specialist advisors to support modern business needs;
- learning opportunities, including options to receive regular articles, event invitations, and subscribe to our magazine **Thinking Ahead** and our business program **Aspire**;
- personal, friendly service, with partners who are easily accessible and who take responsibility for successful working relationships;
- local expertise, national presence and international capability.

### The Bentleys Network

Bentleys is an international network of advisory and accounting firms, with more than 700 talented staff delivering solutions from 18 locations across Australia, New Zealand and China.

We work with aspirational businesses and entrepreneurial people to help them get where they want to be.

As essential advisors, we provide the future thinking, strategic direction and practical support to help strengthen businesses.

Our multi-disciplinary team work with SMEs, family businesses, listed entities, professionals, individuals and government.

We are industry-aligned with expanding specialist skills in our core industries which include agribusiness, health and ageing, family business and SMEs, government and education.

Contact us. We can help you prepare for tomorrow.

### Where you want to be.

As essential advisors - we provide future thinking, strategic direction and practical support.



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