

Liquidation is a process whereby an insolvent company's or close corporation's estate (the 'insolvent') is handed over to a liquidator who collects the Insolvent's assets and after paying the costs of administration pays dividends to the insolvent's creditors in accordance with their ranking as creditors (secured / preferent / concurrent). There are two forms of liquidations:



COMPULSORY LIQUIDATIONS

- Compulsory liquidations are brought by way of an Application to the Court - to the Magistrate's Court for Close Corporations and to the High Court for Companies.



CREDITOR WINDING UP

A creditor needs to prove:

- It has a claim in excess of the prescribed amount against the Debtor.
- The Debtor is factually or commercially insolvent.

'FRIENDLY' WINDING UP

- A Creditor will launch the liquidation proceedings to "assist" the insolvent – although it must still comply with the rules for winding-up applications, it is usually brought with the assistance and co-operation of the Insolvent.



VOLUNTARY LIQUIDATIONS

- The Members / Shareholders may prepare a Special Resolution resolving that the entity is wound up.
- There are administrative steps which need to be taken to give effect to this Special Resolution but there is no application to Court.

CONCLUSION



Insolvency is a complex field and the ramifications are dire for any Creditor or Debtor. The matter does not simply end once an Insolvent has been liquidated as a Creditor may, in certain circumstances, hold a Director, Member, Accounting Official or any other person involved in the trade and affairs of the entity personally liable for the debts of the Insolvent entity.



WE URGE CREDITORS AND DEBTORS TO CONTACT OUR OFFICES FOR ADVICE REGARDING THEIR OPTIONS – THERE COULD BE A DEFENCE TO A CLAIM BY A CREDITOR OR A CLAIM AGAINST A DEBTOR WITH WHICH WE ARE ABLE TO PROVIDE OUR EXPERT GUIDANCE.