

Liquidation is a process whereby an insolvent's estate is handed over to a liquidator who sells the Insolvent's assets and uses the proceeds thereof to settle the debts of the Insolvent.

Liquidations are brought either by means of a Compulsory or a Voluntary Liquidation:

HOW

Compulsory liquidations are brought by way of an Application whereby the entire cause of action and proof, as well as any defence thereto, is presented to court by way of affidavits.

Voluntary Liquidations are brought by preparing a Special Resolution resolving that the entity is wound up.



WHO

A creditor who has a claim in excess of R2000 against the entity can bring a Compulsory Liquidation or;

the Members / Directors can resolve to wind up the entity in a voluntary liquidation.



PROVISIONAL ORDER - COMPULSORY LIQUIDATION

Upon the first hearing of the application, the Court may place the entity into provisional liquidation, this order will need to be circulated as directed by the Court and a Return Date will be allocated for confirmation of the provisional order.

The applicant will have to work with the Master of the High Court to appoint provisional liquidators who will provisionally assess the assets and liabilities of the entity. The Liquidators appointment is only made final at the First Meeting of Creditors convened by the Master.



RULE NISI / RETURN DATE

The Applicant will need to go back to Court on the Return Date to prove that they have complied with the procedural requirements directed by the Court. The Court will then consider any objections and grant/deny the relief as claimed and if appropriate make the Liquidation Order final.

If the Court grants the final order, the entity will now be liquidated. The liquidators, once appointed by the Creditors, will begin to sell the assets and settle the proven creditors in order of ranking –

1. Secured (e.g Bond Holders);
2. Preferent (e.g SARS);
3. Concurrent (e.g suppliers).



CREDITORS CLAIMS

Creditors to complete requisition forms to support the appointment of a provisional liquidator. 24 hours prior to the First Creditor's Meeting a commissioned claim form needs to be filed at the Magistrate's Court or Master's Office where the meeting is to be held. A presiding officer will then accept or reject the claim.

If there is not enough money / assets in the insolvent estate to pay the proven creditors they will either receive a reduced amount in proportion to their claim or the liquidators can request the creditors to pay in and contribute to the funding of the administration of the process in order to get a portion of their claim repaid.