

**CREDITORS' VOLUNTARY LIQUIDATION IN AUSTRALIA**  
**CHECKLIST FOR LIQUIDATOR**  
**FINAL MEETING AND FINALISATION OF LIQUIDATION**  
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Prepared by \_\_\_\_\_ Date \_\_\_\_\_ Reviewed by \_\_\_\_\_ Date \_\_\_\_\_

**Name of Client:** .....  
..... (In Liquidation)

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**NOTES**

- 1** This checklist is a summary and the user should not rely on it as a full description of the issues and procedures mentioned in the checklist.
- 2** Statutory references, inside [ ], are references to the Australian Corporations Act 2001, except those preceded by "Reg", which means the Australian Corporations Regulations 2001.
- 3** **ASIC** is an acronym for the Australian Securities and Investments Commission.
- 4** If the company is **trustee of a trust**, there may be additional action required to bring about the dissolution of the trust or to end its relationship with the company.

**The legal essence of the Final Meeting**

As soon as the affairs of the company are fully wound up, the liquidator must:

- (i) make up a "final account" (as described/prescribed in the Act);
- (ii) convene a joint meeting of the creditors and members for the purpose of formally presenting the final account and giving any explanation of the account; and
- (iii) lodge a copy of the report with ASIC. [509]

The liquidator "ceases to act" once the report of the final meeting is lodged. However, the liquidator continues to have certain duties, such as lodging a final account of receipts and payments and retaining the books and records. [539 & 542]

The corporate state and corporate powers of the company, notwithstanding anything to the contrary in its constitution, continue until it is deregistered. [593]

**The legal essence of Deregistration and Finalisation**

Three months after the Final Meeting, the company will be deregistered, meaning it will cease to exist. **But note:**

- Officers of the company (including the liquidator) may still be liable for things done before deregistration.
- An insurer of a deregistered company may still be held liable.
- The Commonwealth and ASIC have power to act on behalf of a deregistered company or its liquidator.
- Any remaining company property vests in ASIC.
- In special circumstances the company may be reinstated.

Sections [9], [509(4)], [601AD], [601AH], [601AG], [601AF]

From the time the company is deregistered, the period for which the books and records must be retained begins. By default that period is 5 years. But with (a) a direction by the committee of inspection or the creditors, and (b) the consent of ASIC, this period may be shortened. [542]

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**LEGISLATIVE OR OTHER STEPS REQUIRED**

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**Some Important Preliminary Checks and Processes**

- Have all assets been realized? *Examples: fixed assets, stock, accounts receivable, loans and advances.*
- Have amounts unpaid on the company's shares been collected?
- Have any claims for voidable transactions [588FA to 588FJ], insolvent trading [588G to 588U], evading employee entitlements [Part 5.8A], breach of duty, and the like been identified? If so, has the liquidator determined whether it is in the interest of creditors to pursue them? If action has been taken, has it been concluded?
- Has all onerous property been disclaimed?
- Has all litigation brought by or against the liquidator been concluded?
- Has the liquidator reported to creditors on the reasons for the insolvent's financial failure and on the results of his or her investigations? *[IPAA Code of Professional Conduct.]*
- Have all post-appointment Business Activity Statements (BAS) been lodged with the ATO, and refunds collected and/or payments made?
- If the company traded during the liquidation:
  - Have all associated returns and statements been lodged – e.g., BAS, Income Tax, WorkCover, PAYG Withholding, Payroll Tax, FBT, superannuation fund.
  - Have all associated accounts for services been closed – e.g., telephone, gas, electricity, insurance.
  - Have all associated costs, expenses, employee entitlements, charges, taxes and liabilities been paid?
- Is the amount drawn in remuneration in agreement with the approval obtained?
- Is there a need for an increase in approved remuneration?
- Has a "clearance notice" been obtained from the ATO? *[Section 260 in Schedule 1 to the Taxation Administration Act 1953.]*

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**Some Important Preliminary Checks and Processes (cont'd)**

- Have all “surplus” funds been distributed to creditors?
- Has the liquidator met the statutory reporting obligations as enunciated by ASIC? [533]  
*[ASIC Regulatory Guide 81.] [IPAA Code of Professional Conduct.]*
- Has ASIC advised that it will not be conducting an investigation?
- Has ASIC advised that it will be conducting an investigation? If so, has that investigation been completed? If not, has ASIC granted the liquidator written permission to call a final meeting?
- If a shortened period for retention of the books and records has been approved by creditors or the committee of inspection, has ASIC’s consent been obtained? [542(4)]  
*[ASIC accepts applications for the early destruction of books from two months before the company’s final meeting. For ASIC’s policy, see ASIC Regulatory Guide 81.]*
- Have all unclaimed “dividends or other money” been paid to ASIC? [544(1)(a)]. *Note: These amounts cannot be paid to ASIC until they have remained unclaimed for 6 months.*
- Have all “unclaimed or undistributed amounts of money arising from the property of the company” been paid to ASIC? [544(1)(b)]
- Have all the company’s liquidation bank accounts been closed?

*Note: If necessary or convenient this task could be delayed until nearer to the final meeting date, as it is not until that meeting is concluded that the liquidator “ceases to act”. Note that once the liquidator has ceased to act he or she may, technically, no longer have the power or authority to close the company’s account.*

**CHECKLIST**

- ☐ Determine whether the affairs of the company are fully wound up. *[See the preceding notes.]*
- ☐ Set a date for a joint meeting of creditors and members. [509] Notice must appear in the *Gazette* at least one month before the meeting. [509(2)]
  - Proposed date of meeting: .....
  - Time of meeting: .....
  - Place of meeting: .....
  - .....
  - .....

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- |  |                          |   |
|--|--------------------------|---|
| To appear a month before the meeting     | <input type="checkbox"/> | Place advertisement in the <i>Gazette</i> . [509(2)] <ul style="list-style-type: none"><li>• Date placed: .....</li><li>• Date advertisement to appear: .....</li></ul>   |
|  | <input type="checkbox"/> | Prepare liquidator's final account/report. [509(1)].  |
|  | <input type="checkbox"/> | <b>{CONDITIONAL}</b> If GEERS advances have been made, supply GEERS with a copy of the account/report. <i>GEERS Operational Arrangements 15/12/2008, Part 4, 17(h)</i> .<br>Report sent: .....  |
|  | <input type="checkbox"/> | <b>{OPTIONAL}</b> Give written notice of the meeting and a copy of the liquidator's final account/report to the ATO.<br>Notice sent on: .....   |
|  | <input type="checkbox"/> | <b>{OPTIONAL}</b> Give written notice of the meeting to creditors and directors. Include a copy of the liquidator's final account. Include a proxy form. 14 days notice is customary. Notice sent on: .....   |
|  | <input type="checkbox"/> | Hold the meeting at the appointed time. <ul style="list-style-type: none"><li>• For quorum requirements see 509(4);</li><li>• If a quorum is not present, close the meeting.</li></ul> Meeting date: .....  |
| Within 7 days after the meeting          | <input type="checkbox"/> | If a quorum <b>was</b> present:<br>(a) lodge with ASIC a return of the holding of the meeting together with a copy of the account/report presented. [509(3)] <i>Note: ASIC Form 523 may be lodged via the liquidator's portal.</i><br>Return lodged on: .....                                   |
| Lodge within one month after the meeting | <input type="checkbox"/> | (b) prepare minutes of the meeting and lodge them with ASIC. [Reg 5.6.27] <i>Note: Copy minutes may be lodged via the liquidator's portal with ASIC Form 5011.</i><br>Minutes lodged on: .....  |
| Within 7 days after the meeting          | <input type="checkbox"/> | If a quorum <b>was not</b> present, lodge with ASIC a return stating that the meeting was not held because of a lack of a quorum, together with a copy of the account/report prepared. [509(4)] <i>Note: Form 523 may be lodged via the liquidator's portal.</i><br><br>Return lodged on: ..... |

**NOTE: ASIC must deregister the company at the end of the 3 month period after this return is lodged. No application by the liquidator is required. [509(5)]**

- ☐ **{OPTIONAL}** Give written notice of the outcome of the meeting to creditors and directors. Include a copy of the liquidator's final account/report. Notice sent on: .....

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**LEGISLATIVE OR OTHER STEPS REQUIRED**

- ☐ Apply to Tax Office and Australian Business Register for cancellation of GST, PAYG, etc., registration and the company's ABN. See form NAT2955, available from the ATO. The phone contact is 13 28 66.
- Within one month after "ceasing to act" (which occurs at the end of the final meeting) ☐ Make up a final account of receipts and payments in the prescribed form and lodge it with ASIC. [539] [Form 524]. *Note: Form 524 may be lodged via the liquidator's portal.*
- Return lodged on : .....
- ☐ If a shortened period for retention of books and records has been approved by creditors or the committee of inspection, apply for ASIC's consent to early destruction. [542(4)] *(The application must address several issues, which are specified in ASIC Regulatory Guide 81.)* **See my sample form CVL\_ApplPermDestBook.** A fee is payable (currently \$34.00 – Oct 2010).
- Application made: .....  
Final consent letter obtained: .....
- ☐ Apply for cancellation of company's **GST** registration.  
Application made: .....  
Cancellation granted: .....
- ☐ Apply for cancellation of company's **ABN**.  
Application made: .....  
Cancellation granted: .....

Use ABR & ATO  
form NAT 2955:  
Application to  
cancel  
registration.

☐ **{OPTIONAL} {HIGHLY RECOMMENDED}**

If a shortened period for retention of the books and records is authorised – and that period is less than, say, 3 years - consider nevertheless collecting and retaining for a longer period the **"core" books and records** of the liquidation.

In deciding what are the **"core"** books and records, the liquidator should exercise prudence, take into account particular events and problems occurring during the liquidation, and bear in mind the normal professional responsibility to possess evidence supporting transactions and justifying decisions.

Such **core** books and records may include:

- Liquidator's accounting records, e.g., bank statements, EFT transaction statements, cheque books/stubs, payment and receipt vouchers, employee and pay records, journals and ledgers.
- Liquidator's checklists, diaries, project management tools, working papers and timesheets.
- Liquidator's lists of books and records received, showing also where they are stored.
- Liquidator's notes of significant telephone conversations and

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- events at meetings.*
- *Important written contracts.*
  - *Accident and worker's compensation records.*
  - *Minutes of meetings, attendance registers and proxies.*
  - *Proofs of debt.*
- Store and keep these selected books and records for an appropriate period beyond the sanctioned period.

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- ☐ After the “early destruction” date set by creditors and sanctioned by ASIC, arrange for destruction of the “**non-core**” books and records.

Date destroyed: .....

END .....