SQUIRE PATTON BOGGS

Members Voluntary Liquidation (MVL)

Update

UK – September 2025

There have been a few changes regarding MVLs, which we have set out in this insight as a helpful reminder to practitioners.

Our insight considers the requirement to convert an MVL to creditors voluntary liquidation (CVL) before the expiry of 12 months, the changes to filing statements of solvency, it comments on the practice of remote swearing those statements and discusses the change in policy regarding clearance letters from HMRC and its expectations in respect of Notices of Intended Dividends (NOIDs).

The "12 Month" Rule

In the recent case of *NOAL SCSP & Ors v Novalpina Capital LLP & Ors [2025] EWHC 1392 (Ch)*, the court made it clear that a liquidator must convert an MVL to CVL if all debts (plus interest) have not been paid within 12 months of the directors swearing the solvency declaration. Therefore, if any debt remains unpaid then it is mandatory for the liquidator to convert to CVL, even if those debts can be paid (but just haven't). Many practitioners have previously taken the view that provided the company is balance sheet solvent, and therefore able to pay at some point the company can remain in MVL beyond 12 months. This is no longer the case.

12 months is an exceptionally short time if, for example, there are disputed debts, complicated tax liabilities to agree, assets that might take time to realise and/or contingent liabilities that require determination. Although these points will be considered before starting an MVL process, they may well need to be addressed much earlier than has previously been the case (or before starting the process) in light of this decision. If claims cannot be determined (and where appropriate paid) before the end of the 12 month period the MVL will have to be converted. This is likely to require more planning/pre-appointment work.

Unfortunately, the decision did not address the question: What should an MVL liquidator do if they are appointed on an MVL that is already over 12 months old, do they need to convert this to CVL? However, the ICAEW, ICAS and the IPA (together the RPBs) have issued a joint statement setting out guidance. In essence, IPs should review existing MVLs and do the following:

- Where possible, creditors should be paid within 12 months of the MVL commencing.
- For any MVLs that are over 12 months old, the IP should check that there are sufficient assets to settle debts plus statutory interest – if not, they should convert the MVL to CVL.
- If payment has not been made within 12 months and the liquidator is satisfied that there are – or will be within a reasonable time – sufficient realisations to pay outstanding debts plus interest, no regulatory or disciplinary action will be taken.

In respect of those MVLs that are over 12 months old where payments have not been made, but there are, or will be, sufficient assets to make payment, there needs to be good reason why payment has not been made. In such cases, it will therefore be important for IPs to consult with their legal advisers to decide whether it is appropriate for the MVL to remain open or for it to be converted. Doing that, and documenting reasons for decision(s) will help protect against regulatory/disciplinary action. As IPs will know, it is extremely rare for the court to interfere with an IP's decision if it is commercial, reasonable and pragmatic.

The joint statement also sets out thoughts on what an IP should consider in relation to new cases. Much of what the statement says is sensible, and, in straightforward cases where it is possible to preplan and "tidy up" the company prior to it entering MVL, this has always been and will continue to be the best approach – accepting that in some cases that is not always possible, and, in such cases, there will need to be more careful thought from both the IP's perspective and the directors (who will need to swear the declaration of solvency). Again, taking advice (particularly where there are difficult claims or assets) and documenting decisions will be important when deciding which route to take.

Statements of Solvency

Copies Only

S89 of the Insolvency Act 1986 sets out the requirements for a statutory declaration of solvency where it is proposed that a company is wound up on a solvent basis.

Previously, it was a requirement of s89 that the original statement had to be delivered to the registrar of companies. However, with changes introduced by the Economic Crime and Corporate Transparency Act 2023, the registrar now only requires a copy.

Companies House issued a new LIQ01 form, which provides that a *copy* should be sent.

Sending the original statement is likely to result in the statement being returned. Companies House also said that the new form must be used or it will reject the declaration of solvency.

Although not a significant change, it is still worth noting given the time limits in s89(3) require a copy of the statement to be sent to the registrar within 15 days.

Remote Swearing

We still see a number of statutory declarations of insolvency being signed remotely over video conference.

There is a practice direction that allows notices of intention to appoint administrators and notices of appointment of administrators to be sworn by video conference.

However, at no time has that practice direction permitted declarations of solvency to be conducted remotely.

During the pandemic, Companies House accepted statements sworn remotely, and we understand that it still does, but be wary of doing this given that there is no clear authority on whether this is permitted. If the statutory declaration has not been completed correctly, does this bring the statement of solvency into question?

Clearance

HMRC changed its policy on issuing tax clearance letters for MVLs last year, so that it no longer provides them or responds to outstanding requests for clearance. HMRC provided an update on what practitioners need to do following this change, which has now been replicated in its recently published "insolvency practitioner bulletin 10". The bulletin includes advice on how to best correspond with HMRC and follows the update previously published.

Essentially practitioners should ensure that suitable enquiries are made in relation to the company's tax position, before entering MVL. If there are any outstanding pre-appointment returns, HMRC will expect this to be corrected as soon as practically possible. HMRC will also not be able to submit an accurate proof of debt until all returns have been received.

Practitioners should also be satisfied that all outstanding tax returns are submitted, and all debts are paid in full before finalising the MVL, as HMRC will take action and report conduct issues if a dissolved company's tax affairs are not satisfactorily resolved.

Issuing NOIDs

HMRC has issued new guidance explaining its expectations for the proportionate and appropriate use of NOIDs in an MVL in light of what it says are challenges created by practitioners issuing a NOID at the start of an MVL where doing so might be inappropriate.

Much of the guidance echoes HMRC's expectations covered in insolvency practitioner bulletin 10 – namely that enquiries should be made before a company enters into MVL to establish the company's tax position, and that outstanding returns will need to be submitted before HMRC can submit a proof of debt.

The aim of the guidance is to encourage effective engagement with HMRC so that an MVL can be concluded within the 12-month statutory time limit – which is timely, given the findings in *NOAL* explained above.

In short, HMRC will notify practitioners about three months after their appointment if there are any outstanding returns. If practitioners have not been notified by month four, they should contact the MVL team (whose details can be found in the bulletin). If practitioners issue a NOID before all outstanding returns have been issued, HMRC will not respond.

HMRC will only know what the company's tax liabilities are once all returns have been filed, which explains why HMRC takes the position that it cannot submit a proof of debt until all returns have been filed.

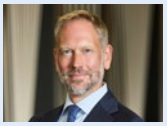
In practice, this may not leave much time to finalise the tax position before the expiry of the 12-month time limit, but sensibly, if enquiries are made before the company enters MVL, and (if needed) any outstanding tax returns are submitted before the appointment or shortly thereafter, the position taken by HMRC in this latest guidance is unlikely to cause any difficulties. In fact, it is helpful in setting expectations for all parties.

Contacts

John Alderton
Partner, Leeds
M +44 788 505 8896
E john.alderton@squirepb.com

Monika Lorenzo-Perez
Partner, London
M +44 778 572 0439
E monika.lorenzo-perez@squirepb.com

Charlotte Møller
Partner, London
M +44 788 180 4970
E charlotte.moller@squirepb.com



Chris Roberts
Partner, Manchester
T+44 773 647 9569
E chris.roberts@squirepb.com

Devinder Singh

Partner, Birmingham
M +44 772 139 9625
E devinder.singh@squirepb.com

Rachael Markham
Professional Support Lawyer, Leeds
M +44 754 511 0781
E rachael.markham@squirepb.com