# http://static.wixstatic.com/media/058298_8aeaeb1b7cba4c751cfc75219262d18e.png_srz_p_125_109_75_22_0.50_1.20_0.00_png_srzLiquidation Experts

Professional Business Service

**LIQUIDATION EXPERTS MAIN WEBSITE**

**HOME PAGE**

We specialize in Assisting Financially Distressed Companies or Close Corporations with the Process of Applying for Liquidation from Point A to Z.

Our Team of Insolvency Law Experts (Liquidator / Curator / Lawyer / Advocate / Business Rescue Practitioner & Debt Counsellor) will assist you to make the right decision.

In terms of the New Companies Act 71 of 2008 it is a CRIMINAL OFFENCE to trade an Insolvent / Bankrupt Company / Close corporation.

WHAT IS LIQUIDATION

Liquidation is a Legal Process in terms of the Insolvency Act 24 of 1936 whereby a Company or Close Corporation is closed due to the fact that it is Insolvent / Bankrupt.

The Liabilities exceeds the Assets.

Company- Pty

Close Corporation- CC

When a Company or Close Corporation is Liquidated all LEGAL ACTION STOPS IMMEDIATLY. No Creditor can attach any Assets.

A Provisional Liquidator will by Appointed by the Master of the High Court to deal with the Assets and Liabilities of the PTY/CC.

**WHAT WILL WE DO FOR YOU?**

Assist the Director or Member in the Liquidation of the Company or Close Corporation.

Help Secure the Assets till the Master of the High Court has appointed a Provisional Liquidator.

Deal with all the Creditors and Legal Issues.

Assist with the Administration of the Insolvent Company or Close Corporation

Assist the Directors and Members with any matters relating to the Liquidation

**LIQUIDATION PROCESS**

PROCESS AFTER THE COMPANY OR CLOSE CORPORATION HAS BEEN PLACED IN LIQUIDATION.

**STEP 1 – LIQUIDATION DOCUMENTS ARE LODGED**

Liquidations Documents & Requisitions from Creditors are lodged at the Master of the High Court.

A Provisional Liquidator will be appointed by the Master of the High Court.

The Master of the High Court will convene the First Meeting of Creditors at the Master High Court or Magistrates Office.

**STEP 2 - FIRST MEETING OF CREDITORS**

The Nominated Liquidator is Appoint as Final Liquidator.

Claims can be submitted by Creditors.

**STEP 3 - SECOND MEETING OF CREDITORS**

The Liquidator must convene a Second Meeting of Creditors. At this meeting the Following will take place:

The Liquidator must Lodge a Report in Terms of Sec 81 of the Insolvency Act 24 of 1936. This report is a detailed report of the Current Affairs (Assets & Liabilities) of the Liquidated Company or CC.

The Master of the High Court and the Creditors will Accept and adopt the Report and Adopt the Resolutions of the Report.

Creditors can also lodge and proof Claims against the Insolvent Company or CC.

**STEP 4 – LIQUIDATION AND DISTIBUTION ACCOUNT**.

The Liquidator must draft and Lodge a Liquidation and Distribution Account at the Master of the High Court.

Once all the Assets of the Company or Close Corporation has been Sold by way of Private or Public Auction, the Liquidator must draft and Lodge a Liquidation and Distribution Account at the Master of the High Court.

 The Master of the High Court will examine the Liquidation & Distribution Account, the Master of the High Court will approve in concept the Account and give permission to the Liquidator to Advertise the Account.

 (This process can take anything from one month to six months) and, if satisfied, gives consent to the Liquidators to advertise the Account to lie for inspection for a period of 14 days.

If no objections were lodged, the Master of the High Court will confirm the Liquidation and Distribution Account in terms of which the Liquidator is entitled to pay dividends to creditors.

**THE MAIN DUTIES OF A LIQUIDATOR ARE AS FOLLOWS:**

Identify and taking control of the Assets of the Company or Close Corporation and ensure that the assets are protected until they are sold;

Realise the cash value of those Assets by way of Private or Public Auction;

Recover monies wherever possible, from debtors;

Investigate the financial dealings of the Company or Close Corporation to uncover any suspicious transactions or possible fraudulent behaviour;

Issue a Detailed Report to Creditors and Master of the High Court;

Draft a Liquidation & Distribution Account;

Distribute dividend payments to Creditors;

Finalize the Administration of the Insolvent Company or Close Corporation in terms of the Insolvency Law 24 of 1936.

**WHAT IS THE MAIN FUNCTION OF A LIQUIDATOR?**

To take control of the assets of the estate, collect the assets wherever it may be found and to “liquidate” the assets to cash by selling the assets once authorised to do so. The proceeds are then distributed to creditors in terms of the provisions of the Insolvency Act, subsequent to the confirmation of a Liquidation and Distribution account by the Master of the High Court.

**QUESTIONS & ANSWERS**

What are the Different types of Creditors in terms of the Insolvency Act (Concrusem Creditorm)

Secured Creditor? (Banks) – First in line for payment!

A Secured Creditor is a Creditor which holds security for the Credit. Examples: Bond over Property, Vehicle & Machinery.

Preferent Creditor? SARS & Workers – Second in line for payment!

Preferent Creditors are SARS & Workers

Concurrent Creditors? All the other Creditors –

Concurrent Creditors are those Creditors who do not hold any security for the monies owed to them.

What is the meaning of (Contribution)?

In the winding-up of your company’s estate it might happen that, even though Preferent Creditors receive a dividend, there are not enough funds to cover the administrative costs of the insolvent estate. You must keep in mind that Preferent Creditors are only obliged to pay the cost of realisation of the asset of which they hold security. They are not obliged to pay the “general administrative cost”. Should there be a shortfall in the “general administrative cost” then each Creditor who has proven a claim in your insolvent estate becomes liable for the administrative cost, pro rata to the amount of their claim.

Will I be liable for the Debt of my Company / Close Corporation?

You will liable for the Debt of the Company / Close Corporation for which you have signed Surety. DID YOU SIGN SURETY ?

Am I allowed to set up a New Company after Liquidation of my Company / Close Corporation?

YES

You may register a New Company. We will gladly assist you with this. Please request the services from your Team of Experts.

Can a Director of a Company or Member of a Close Corporation buy the Assets of the Liquidated Company or Close Corporation.

YES

There are no Assets in the Company or Close Corporation, Can the Directors or Members still Apply for the Liquidation if there is only Debt left?

YES

Company or Close corporation can apply for Liquidation even if there are no assets.

Can the Director of a Company or Member of a Close Corporation be Locked up in Jail for Debt of the Company or Close Corporation?

NO

Only if the Company or Close Corporation owes SARS money and a Warrant of Arrest has been issued. A Creditor has to start with Legal Action.

Should my Company / CC’s Company keep on paying its Creditors after I have given my Attorneys Instruction to liquidate?

NO, Under South African Law this is not allowed.

What are my obligations after a Liquidation?

Attend a meeting with your Liquidator if possible (which we will set up). We will be present at this meeting to assist you.

Make full disclosure to the Liquidator.

Assist the Liquidator in so far as it is possible.

Attend the meeting of Creditors if possible, which will be held at either the Master of the High Court or at your local Magistrates Court (keep in mind that these Creditors meetings are simply meetings). It does not mean that you will be interrogated. Should an interrogation happen, you will be afforded the opportunity to get legal representation. This happens very rarely. One of the reasons why you must attend the meetings, is firsthand knowledge of the amounts that Creditors are owed, and you can assist the Liquidator to spot false claims against your insolvent estate.

How long does the winding up of my Company / CC’s estate take?

The process normally takes between six months to eighteen months and in involved estates, where for example the Liquidator must take legal action against debtors etc, it could take many years. The winding-up process does not really involve you personally.

What are the consequences of Liquidation?

All share transfers after commencement of the winding up process are void

Disposition of any property after commencement of the winding up position is void.

All civil proceedings against the company are suspended from date of the court order until Certificate of appointment of a Liquidator

Any attachment by Creditors put enforce against the company / close corporation after the commencement of winding up is void

The Directors cease to be in charge of the company. They are however (if it is a hostile Liquidation application against the Company), entitled to oppose the granting of the final order after the provisional order has been made

The property of the company falls under the custody of the Master who then hands it to the Liquidators once they are appointed

Sections 417 and 418 of the Companies Act comes into play. This empowers the Master, the Court or a Commissioner to summons all people who have knowledge of the company’s affairs to appear in a forum which is called an “insolvency Enquiry”, where they can be interrogated.

What are my obligations before, during and after Liquidation?

A: Before and during Liquidation you have an obligation to protect the assets of your company / close corporation. If you are unable to protect the assets we will assist you in placing guards at the premises etc. When applying for a Liquidation order we ask the court that the persons / institutions who have helped protect the assets be paid as an administrative cost from the company. After the Liquidation you have an obligation to assist the Liquidator by giving him all information, disclosure, documents and accounts kept to furthermore disclose which assets belong to the company and where they are located.

Who appoints the Liquidator and how does he get appointed?

The Liquidator is appointed by the Master of the High Court.

 The Master has an absolute discretion when appointing a Liquidator. The Liquidator who has been supported by Creditors gets appointed on the basis that he must have rallied the support of Creditors in number.

 If there are two different Liquidators who have rallied support and one Liquidator has the majority in number and the other has majority in amount, they will both be appointed.

COURT ACTIONS

What about court actions pending against my company / close corporation?

Creditors are not prohibited from proceeding with legal steps until the provisional Liquidation order has been granted.

My company / close corporation has instituted legal action against a third party – what happens after Liquidation?

After the Liquidation has been granted the Liquidators can decide whether they want to take the legal action further. Remember the legal action is only suspended once the Liquidation Order has been granted.

If the Liquidator does not want to proceed with legal action after the Liquidation Order has been granted, what is my Company / CC’s legal position?

You or anyone else can negotiate with the Liquidator to buy the right from the Insolvent Estate to proceed with the legal action in your private capacity. The price of the acquisition of this right will be determined by the probability of success as well as the quantum the action. The purchase price can range from R1 to millions of Rands.

EMPLOYEES AND CREDITORS

What do I tell the Creditors or Workers of the Company or Close Corporation?

Once you have given us instructions, you use the famous term “Speak to my lawyer”. Once you have given us instructions, you must not try to deal with your company’s Creditors yourself. That is why we get paid. There are a lot of Creditors who will tell you that they don’t speak to attorneys. If they do not wish to speak to your attorneys, they will speak to nobody. It is a basic principal under South African Law, that once you have an attorney on record, you opponent is obliged to speak to your attorney and not to you in person. The practical problem is that many of the Creditors have call centres a large number of untrained, unsympathetic, sometimes half brainless people sit in front of a computer screen and their only instruction are to call the name that appears on the screen. They will threaten you, or do any other legal or illegal thing to convince you to pay them. You might even hear that if you don’t pay by the end of the day they will have you arrested. If you can’t handle your company’s debt don’t be intimidated. Get professional help.

What is the position of people who work for me?

Your Company’s Liquidation does not terminate their employment contracts. If you have not terminated their employment contracts, the Liquidator must, after his appointment decide whether he wants to do so. The employees however rank second to Creditors who hold security (bondholders etc) and they even rank before SARS.

What claims do employees have after the Liquidation order has been granted?

Your employees stand second in line for payment after Creditors who hold security on bonds over immovable properties. They are preferrent claims and the preference of their claims is determined as follows:

Salaries or wages (for a maximum of three months) are prefferent up to an amount of R12,000.00.

Leave pay accrued in the year of insolvency or the previous year is prefferent up to an amount of R4,000.00.

Any payments due for any other form of paid absence for a maximum of three months prior to date of insolvency is preferent in the amount of R4,000.00.

Severance or retrenchment pay is Preferent up to an amount of R12,000.00

Contributions payable by the insolvent company / close corporation as employer in respect of any employees to any pension, provident fund, medical aid, sick pay, holiday, unemployment, training or any other similar scheme is Preferent to the amount of R12,000.00.

Any amounts due to the employee over and above the monies for which the employee has a Preferent claim, becomes a concurrent claim. This means that he stands in line with the Creditors which do not hold security.

I lost my job - what can I claim?

Summary of Section 98A of the Insolvency Act 24 of 1936:
This section applies to all companies and close corporations liquidated on/ after 1 September 2000. This section replaces section 100 of the Insolvency Act.
Description Preference:
(i) Salary for a period of no longer than 3 months limited to R12 000.00
(ii) Leave pay limited to R 4 000.00
(iii) Any form of paid absence limited to R 4 000.00
(iv) " Severance of retrenchment" owing to the employee limited to Calculation - 1 week salary for every completed year service limited to R12 000.00
Section 98A(1)(a):
To any employee of the insolvent company:
Salary (i) has preference. (ii), (iii), and (iv) rank together.
Section 98A(1)(b):
Any contribution that had to be made by the employer on behalf of his employees. It has been subtracted from their salaries but have not been paid over
1(b) "This is in respect of pension, provident, medical, vacation, unemployment or educational funds. Limited to R12 000.00
Further:
§ If a employee was retrenched just before liquidation and there was an agreement regarding his/her remuneration in this regard, then that agreement is the quantum of his/her retrenchment package for calculation purposes.
If the employee had a contract determining his/her retrenchment package, the contract applies. If the employee's contract did not have a retrenchment agreement, then section 197(or 198) of the Labour Relations Act applies, ie the employer is entitled to one week's pay for every year of service.
Directors of companies and members of close corporation are exempt from preference. They only have a concurrent claim for the above against the company or close corporation in liquidation.

SARS

My Company / CC’s owes VAT (value added tax) – will I be held liable?

Section 30 of the VAT act places you in a position of a trustee of the government’s money. You are supposed to receive it, keep it safe and pay it over to SARS. Previously SARS had a problem, whenever they wanted to enforce payment from yourself for you company / close corporation’s VAT that was not paid over, they had to rely on Section 48(8) of the VAT Act. This means that they had to bring an application to lift the company vale proving that you have acted fraudulently or grossly negligent where after they could hold you liable. SARS has not ever succeeded in such an application. During middle 2007 a new Section was inserted in the VAT act, namely Section 48 (9). Section 48(9) simply states that any member / director / person who have regularly partaken in the management of the company are liable for the company / close corporation’s VAT in person. They issue a criminal summons. In practise you cannot afford to let the criminal summons run its full course.

 Should you appear in Court and you will definitely be found guilty if you have not paid VAT. We have handled about 800 of these cases for our clients and we have been able to avert criminal judgement. You would normally have to pay a rather stiff fine to get out of this situation. The bottom line is that you will need proper legal representation if your company goes into Liquidation and it owes VAT to SARS.

My Company / CC has failed to pay Company tax, LBS, skills development levy and other forms of taxes. What can “they” do to me?

Keep in mind however that SARS can also in the instance of these other taxes not having been paid issue criminal summons against you.

At the time of my Company / CC’s Liquidation I owed SARS VAT (value added tax)?

SARS has a Preferent claim in your insolvent estate. When presenting your company’s Liquidation application to Court, your Company/CC must prove to Court that your Preferent claims will be paid in full. A Court will not give a Liquidation Order if this is not proven in the Court papers. Should, during the winding up of the estate, the yield from the realisation of your assets not yield full amount owed to SARS, in practise the shortfall on your VAT gets written off. There are however very strict stipulations in the VAT act which allows SARS to institute criminal actions against you, should your VAT not be paid in full, irrespective whether you are Liquidated or not. The technical aspects regarding VAT are rather involved and we advise that you consult a competent lawyer who can assist you, should SARS issue criminal summons. We have dealt with hundreds of criminal summons issued by SARS in this regard, and our success rate is extremely high.

CREDITORS

What can a Creditor do if your Company does not pay its debt?

 It is advisable to liquidate the company as the Creditor cannot summons you to appear in court after Liquidation.

What is an insolvency inquiry?

Section 415 & 417 of the Companies Act stipulates that your Liquidator (under instruction of one or more Creditors) can hold an insolvency inquiry. The aim of an insolvency inquiry is to obtain information about your company’s insolvent estate should you not have made full disclosure or should you have hidden assets and the Liquidator finds out about it. The act allows the Liquidator to subpoena yourself, your family members, your employees as well as any person who has information about your insolvent estate. If you are subpoenaed to appear in an insolvency inquiry and you refuse or fail to attend the inquiry, you can be charged criminally. If you or anyone else who is subpoenaed to appear at the inquiry fail or refuse to make full disclosure about the affairs in your company’s estate you can also be charged criminally.

How do we as Creditors of a Company ensure that hidden assets are recovered and dubious transactions be set aside?

Creditors should provide all relevant information relating to irregularities and/or hidden assets to the provisional Liquidator at the outset of any matter. The Insolvency Act (24 of 1936) and Companies Act (61 of 1973) provide useful mechanisms to gather information about dubious transactions and “hidden assets”. These mechanisms are known as enquiries. Enquiries are normally expensive to conduct and where there are no assets and consequently no funds in the insolvent estate or liquidated company, Creditors who wish for such an enquiry to take place will have to fund it initially. However should assets or money be recovered as a result of such enquiry, those Creditors who funded the enquiry will recover the incurred legal costs. In certain instances they may also be the only Creditors entitled to share in the proceeds recovered as a result of the enquiry and subsequent actions instituted and funded by them.

Who can ask for an enquiry to be conducted into the affairs of a Company and who is responsible for the costs thereof?

Any Creditor (actual or prospective) of the Company (in Liquidation) or the Liquidator may convene an enquiry in terms of section 417 and 418 of the Companies Act. Normally the Creditor/s will have to provide the initial funding of such an enquiry.

CLAIMS

How do I go about proving a claim and what should influence my decision to submit a claim?

You should contact the Liquidator of the company or the trustee of an insolvent estate with a request to be placed on the mailing list of Creditors. He should then, if as yet available, supply you with a copy of his report on the assets and liabilities of the matter and advise whether there is a danger that Creditors who prove claims may have to pay a contribution towards the costs of administration. If you have been advised by the Liquidator/trustee that there is no risk of a contribution, you may submit a claim which must be submitted on a prescribed form and which can normally be requested from the Liquidator/trustee. The claim form is in the form of an affidavit and must be completed and signed before a Commissioner of Oaths and returned to the Liquidator/trustee, together with supporting documentation.

Can a member of a Close Corporation be held liable for the debts of the Close Corporation?

Yes, section 64 of the Close Corporations Act 69 of 1984 specifically states that “If it at any time appears that any business of a corporation was or is being carried on recklessly, with gross negligence or with intent to defraud any person or for any fraudulent purpose, a Court may…declare that any person, who was knowingly a party to the carrying on of the business in any such manner, shall be personally liable for all or any of such debts or other liabilities of the corporation as the Court may direct…..”. Section 71 of the aforementioned Act affords the Master of the High Court discretion to direct that such member repay any unreasonable direct or indirect payment of a salary or other remuneration to a member within a period of 2 years prior to liquidation, to the Close Corporation.

Who can ask for an enquiry to be conducted into the affairs of a Company and who is responsible for the costs thereof?

Any creditor (actual or prospective) of the Company (in liquidation) or the liquidator may convene an enquiry in terms of section 417 and 418 of the Companies Act. Normally the creditor/s will have to provide the initial funding of such an enquiry.

which can normally be requested from the liquidator/trustee. The claim form is in the form of an affidavit and must be completed and signed before a Commissioner of Oaths and returned to the liquidator/trustee, together with supporting documentation.

distributed to creditors in terms of the provisions of the Insolvency Act, subsequent to the confirmation of a Liquidation and Distribution account by the Master of the High Court.

What is a requisition and what should I, as a creditor do when I receive a phone call from a liquidator with a request to sign a requisition?

A requisition is a form, which liquidators send to creditors requesting them to “support” his application to the Master of the High Court for his appointment as provisional liquidator of the Company (in liquidation).

How do I as a creditor in a matter ensure that I receive information from the liquidator about the winding up process?

You send a fax or e-mail to the liquidator’s office requesting that your name be put on the mailing list of creditors.

What is the purpose of a statutory creditor’s meeting?

The meetings which are held before the Master of the High Court or a Magistrate, are normally convened for the purpose of proving creditors’ claims and to vote on important issues such as the appointment of the final liquidator;
to provide the liquidator with directions (i.e. whether to institute legal action) and to interrogate witnesses.

What is the difference between a secured, preferent and concurrent creditor?

Simply put, a secured creditor holds some or other identifiable asset of the Company as security for his claim. A preferent creditor (as defined in the Insolvency Act) is entitled to receive a dividend from the proceeds of any unencumbered assets, which were realised by the liquidator, and they rank before the concurrent creditors. A concurrent creditor will only receive a dividend from the proceeds of the unencumbered assets after all preferent creditors have been paid in full.

Are there any costs involved in signing a requisition?

No.

Do I have to submit a claim after signing a requisition?

No.

What is a contribution and how will I know if I have to pay this?

In certain instances the proceeds of the sale of unencumbered assets of an estate are not sufficient to cover the costs incurred by the liquidator in administering the estate. In terms of the provisions of the Insolvency Act, the liquidator may collect this shortfall from creditors who proved concurrent claims against the estate, pro rata to the extent of their claims. Such a shortfall is referred to as a contribution.

**About Us**

Liquidation Experts is a modern firm. We work with clients on many varied aspects of their financial and legal affairs

Offering, Insolvency, Business Development, Restructuring and Recovery services. The principal office is located in Pretoria. Since our inception we have regularly had the support of all major financial institutions, together with most of the leading companies in South Africa. The firm’s work in the insolvency industry is acknowledged as amongst the best and our Insolvency Practitioners have received numerous unsolicited nominations. Similarly, the Master of the High Court has, from time to time, appointed a number of us on a discretionary basis as trustees, where they believed we could bring special expertise to the advantage of creditors in an estate.

Liquidation Experts directors and administrators are either practising lawyers or have a legal or accountancy background and are thus able to use that experience where necessary in the liquidation of large companies and insolvent estates. We are one of the major firms of insolvency practitioners in Southern Africa.

During the past 10 years our practitioners have taken major appointments as liquidators and Judicial Managers in all industries in Southern Africa. Since 1998 they have been appointed inter alia in 35 estates with values exceeding R50 million each, the largest matter being R750 million.

**Christopher Roos (11 Years Experience)**

Licensed Insolvency Practitioner, Insolvency / Rescue / Restructuring & Recovery
Practising Debt Counsellor

Christopher Roos started working for Sebenza Trust during April 2003 in the Insolvency Department.

He obtained his Diploma in Insolvency Law and Practice through AIPSA in 2003 and his Certificate in Deceased Estate Practice through UNISA in 2007.

Christopher Roos is on the Panel for Trustees and Liquidators at the following Master Offices, Master of the South Gauteng High Court (Johannesburg), Master of the North Gauteng High Court (Pretoria) and Master of the High Court Mmabatho (North West Province) and Master of High Court Bisho to take Joint Appointments.

Since 2003 Christopher Roos has been involved in the administration of Insolvent Estates and Liquidations as from the provisional appointment, convening of meetings, drafting of reports and/or Liquidation & Distribution Accounts and finally the Discharge Certificate.
Christopher is in the employ of Sebenza Trust with offices in Centurion where he exclusively attends to the administration of Insolvent Estates and Companies in Liquidation from Provisional Appointments to the finalization of these Estates.