

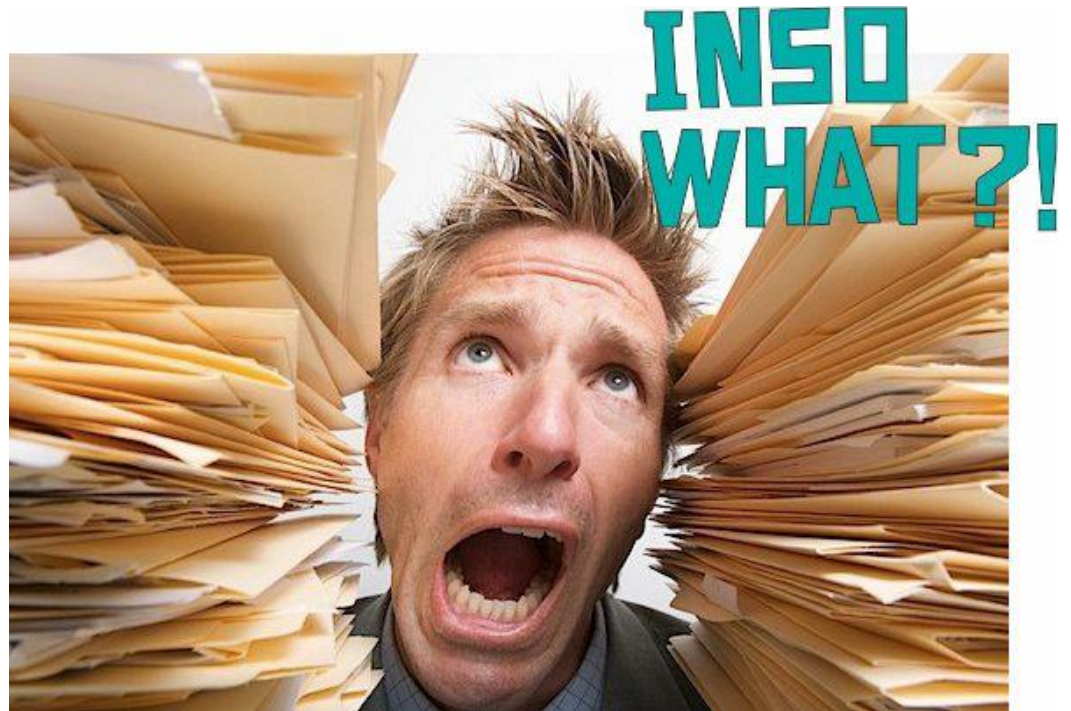
LIQUIDATIONS AND INSOLVENCIES EXPLAINED

February 2018



Liquidations and Insolvencies Explained

When a business or a person is unable to pay their debts when they become due, they are considered to be insolvent. The business model is quite simple; when the money going out is more than money coming in, debts are accrued and the liabilities exceed the assets.



Sequestration

A debtor may apply for their personal estate to be sequestrated by way of voluntary sequestration or it can be sequestrated by a creditor by way of compulsory sequestration. The two most important components of applying for sequestration is that a liquidated claim should exist and an act of insolvency should be proved to have been committed.

The applicant must prove that the sequestration will be to the advantage of the general body of creditors who will ultimately receive a dividend from the proceeds of the estate. This would all form part of the Notice of Motion brought before a judge of the High Court who holds jurisdiction.

Once the final sequestration order has been granted by the High Court, the case is referred to the Master of the High Court who holds jurisdiction. The Master will then appoint an Insolvency Practitioner listed on their National Panel either by way of nomination or make a discretionary appointment. Sufficient security needs to be provided to the Master of the High Court to defray all sequestration costs until such time that a Practitioner is appointed. All estates vest under the care of the Master of the High Court.

Insolvency Practitioners

The appointed practitioner will attend to all the administration to wind up the estate as quickly and efficiently as possible. A great deal of communication exists between the Practitioner and the creditors throughout the administration of the estate. The practitioner will collect claims, sell the assets and maintain the finances of the estate throughout the process. The Practitioner is then obligated to frame and lodge a Liquidation Account with the Master of the High Court setting out the financial situation of the estate. Should all creditors as well as the Master be satisfied with the contents of the Account, the Master will confirm the account and dividends, if any, will be paid out. In the event of a contribution being levied, the Practitioner will enforce the necessary steps to collect same. They will then proceed to finalise the winding up of the estate.

Rehabilitation -

The action of restoring someone to former privileges or reputation after a period of disfavour.

Any insolvent may not accrue any debt until rehabilitated.

Under special circumstances, an insolvent may apply to the Practitioner and or the Master of the High Court for consent to enter into a credit agreement.

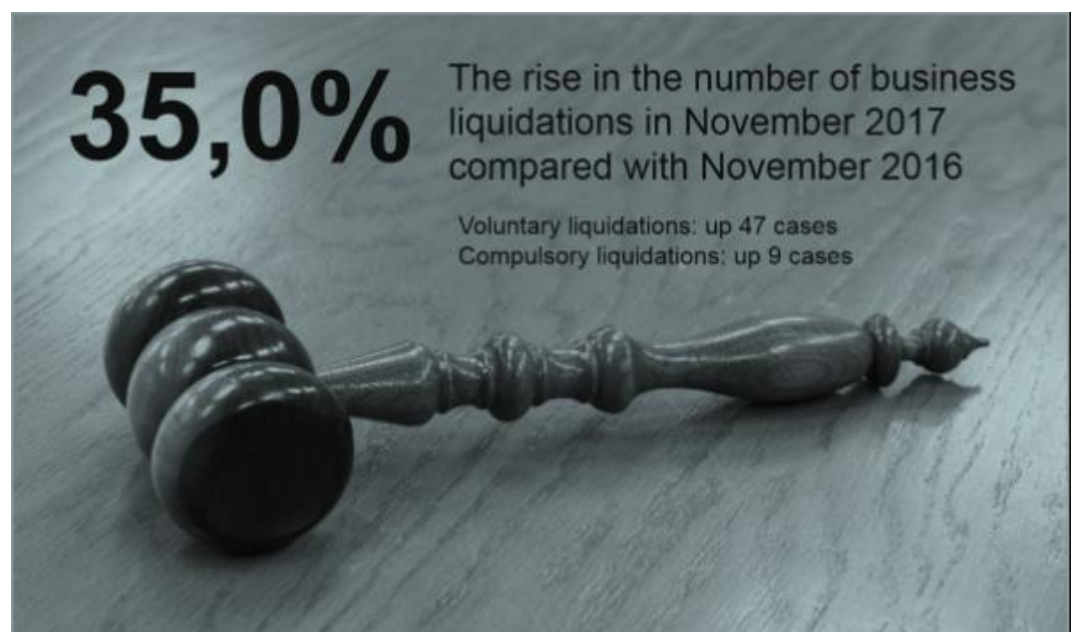
Application for Rehabilitation

The ordinary time when an application for rehabilitation by court can be made is four years after sequestration. The period in a particular case would depend on:

- When the first account was confirmed
- Whether the Insolvent Estate was previously sequestrated
- Whether the Insolvent has been convicted of certain offences
- Whether the Master recommends rehabilitation

In certain cases the insolvent may apply much earlier if:

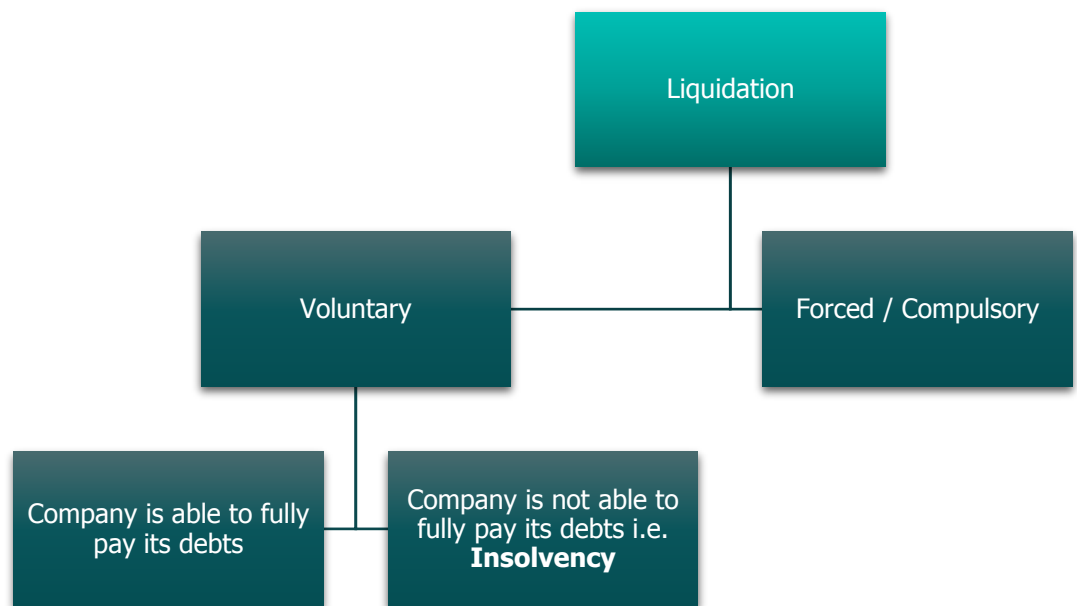
- After giving six weeks' notice no claims were proved against the estate within six months from the sequestration date, the insolvent has not committed certain offences, and the estate has not been sequestrated previously
- After the confirmation of the account providing for the payment in full of all claims of creditors with interest thereon.



Liquidation of Companies, Close Corporations and Incorporations

This is the process which precedes the dissolution of an entity. The affairs of the company are administered by tracing and taking control of assets for the payment of creditors according to their ranking of preference and the distribution of the residue amongst the shareholders according to their rights.

Types of Liquidation



Voluntary winding up may be of a solvent company or an insolvent company. Both types of voluntary winding up require the signed resolutions by members / directors which needs to comply with the following; It must be clear from the resolution that:

- It was a special resolution,
- Adopted by the members or directors,
- Which provides for a creditors' winding up of an insolvent company, or
- Which provides for the voluntary winding up on a solvent company.

The Company, a creditor, a shareholder or a certain official may apply for the compulsory winding up of a company. The circumstances under which the company may be wound up includes:

- Inability to pay debts, or
- It appears to the courts that it is just and equitable that the company should be wound up.

Realisation of Assets

The appointed liquidator will proceed to realise all assets vesting in the Company and liquidate same in order to generate sufficient funds for the payment of the administration costs as well as payment of dividends to proven creditors. All creditors need to prove their claims at the official Creditors' Meetings convened by the Master of the High Court and the appointed Liquidator.

All funds arising from the liquidation of a company need to be paid to an estate bank account which will be managed by the appointed Liquidator under the care of the Master of the High Court.

Nexia SAB&T's Insolvency Services

Nexia SAB&T offers administration of deceased estates, both testate and intestate as well as the administration of Insolvent Estates and Liquidated Companies and Close Corporations.

Nexia SAB&T received various appointments within the Liquidation and Insolvency Industry over the years including complex and high profile estates. Our Liquidation and Insolvency department currently has eleven liquidators on the Master of the High Court's National Panel of which five are Senior Practising Liquidators.

Nexia SAB&T received its very first appointment in early 2003 and has developed a fully equipped Insolvency division since then.

We have a qualified and experienced Insolvency and Deceased Estate Practitioners and Insolvency Administrators, acting as assistants and consultants to all our liquidators.

Nexia SAB&T has offices in all nine South African Provinces and take appointments nationally.

Contact Us

www.nexia-sabt.co.za

Contact: +27 21 596 5400

Did you know?

In terms of Section 131(7) an application to convert liquidation to business rescue is possible at any time after liquidation.

Disclaimer

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in future, and, to the extent permitted by law. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

Nexia SAB&T does not accept liability for any loss arising from any action taken, or omission, on the basis of the content in this article or any documentation and external links provided.

Nexia SAB&T is a member firm of the "Nexia International" network. Nexia International Limited does not deliver services in its own name or otherwise. Nexia International Limited and the member firms of the Nexia International network (including those members which trade under a name which includes the word NEXIA) are not part of a worldwide partnership. Member firms of the Nexia International network are independently owned and operated.

Nexia International Limited does not accept liability for any loss arising from any action taken, or omission, on the basis of the content in this publication or article or any documentation and external links provided.

The trade marks NEXIA INTERNATIONAL, NEXIA and the NEXIA logo are owned by Nexia International Limited and used under licence.

References to Nexia or Nexia International are to Nexia International Limited or to the "Nexia International" network of firms, as the context may dictate.

For more information, visit www.nexia.com.