Members Voluntary Liquidation changes could catch some unawares

The second tranche of the Insolvency Law Reform Act (ILRA 2016) is here and while there is a myriad of changes the insolvency industry is getting its head around, there's one amendment that may catch some – particularly some accounting practitioners – unawares.

"The roll out of the new Act has brought a lot of changes, one of which are the new requirements for Members Voluntary Liquidations (MVLs)," says Lloyd Kerr, Jirsch Sutherland Partner. "At first we thought the (then) mooted changes were an error, but unfortunately that's not the case – and the ramifications could be significant.

Lloyd Kerr

"MVLs have long been an option for a solvent company to liquidate the company's assets and wind up its affairs. Some can be straightforward and you don't necessarily need the expertise of an insolvency specialist to undertake them. Indeed, a number of accounting firms offer this service.

"However, following the September 1 changes the strict new reporting requirements are now quite onerous – and we're concerned there may be some who aren't aware of the new requirements for MVLs and may unwittingly not comply and be in breach."

Agreeing fees

One of the key changes concerns agreeing fees before an MVL is undertaken. "Prior to a determination being made regarding fees for an insolvency specialist or accountant to undertake an MVL, a report must now be prepared for shareholders to enable them to assess if the fees are reasonable," explains Lloyd. "That's never had to be done before. Even if there's just one creditor, you are still required to adhere to the regulations. And that could be a huge impost on smaller accountancy firms or sole practitioners."

For Jirsch Sutherland, the new MVL requirements are a by-product of what the firm already does, such as with Creditors Voluntary Liquidations.

“We already have the reporting systems and documents in place,” adds Lloyd. “We are happy to provide assistance to any accounting or legal firm should they need help with meeting the new requirements for MVLs.”

Key timings for MVLs:
– Pre-appointment in MVL remuneration report to be issued to shareholders
– Initial notice: to be issued within 10 business days
– Report to creditors: to be issued and lodged with ASIC within 3 months of appointment