

uniquebusinessfinance



Limited Companies & Directors

Downloaded Information Pack

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Limited Companies and Directors

- Your company may be insolvent whilst you personally are completely solvent.
- You may be personally insolvent whilst your company is solvent.
- Both you personally and your company may be insolvent.

Your company finances and personal finances are treated independently in insolvency. We can deal with all aspects in house where necessary.

A directors responsibilities:

To act at all times in the interest of :

- i. the company
- ii. the shareholders
- iii. the directors
- iv. the stakeholders

Strategies to deal with insolvency

Liquidation

Liquidation of a company is not an easy decision to make, as deciding when the company is insolvent is not always obvious. Often there are reasonable grounds for the directors of the insolvent company to believe they can trade out of the cash flow problems, which have often been caused by an unexpected event such as a bad debt, or a sudden loss of business due to external market conditions such as general recession.

Sometimes the directors are forced to act by an unsecured creditor sending in the bailiffs to collect on a county court judgment, or a secured creditor e.g. a bank, withdrawing support once they start to get nervous. When a bank has a debenture granting a fixed and floating charge over the company's assets, it has the ultimate sanction of appointing an administrator for the purpose of selling the company's assets in order to repay the secured lending.

Any unsecured creditor can apply for a winding-up petition, then the company is faced with being placed into compulsory liquidation, at which point the Official receiver will be appointed Liquidator. He/she will take over control of the company for the purpose of winding up.

Compulsory Liquidation always spells the end for the company and the business, with the directors facing an investigation into their conduct.

Ironically the directors may best be advised to liquidate the company that they are tasked to preserve. Trading on whilst the company is technically insolvent, places the directors at risk of being disqualified for a period of years. The directors often consider it their duty to fight on in order to recover the situation. However, if they fail in the attempt and the liabilities end up greater than they may have been had they acted promptly to liquidate; they could in some circumstances become personally liable for the debts.

This is where we return to a directors responsibilities i.e. acting in the best interests of all stakeholders etc. It is worth



considering, at the point the company is judged technically insolvent, that it may be in all stakeholders best interests to continue the business in a new company, whilst avoiding the risk of the directors being disqualified for insolvent trading. The transfer of the business from the insolvent company to a new company, can be affected by either voluntary liquidation or by administration.

What types of liquidation are there?

Members' voluntary liquidation -- The shareholders of the company choose to put it into liquidation. The company owns assets that when sold are sufficient to pay off all the company debts, i.e. the company is solvent. This process may be used to restructure the company in the event of retiring shareholders etc.

How is a Members Voluntary Liquidation Undertaken?

With the assistance of the insolvency practitioner, the directors make a statutory declaration stating that the company will be able to pay its debts in full within 12 months of the start of the voluntary winding up.

The declaration will state that the directors have made a full inquiry into the company's affairs. It will include a statement of the company's assets and liabilities as at the latest practicable date before making the declaration.

The liquidation commences when the members, in general meeting, pass a resolution to wind up the company voluntarily. Notice of the special resolution for voluntary winding up of the company must be published in the Gazette within 14 days of the general meeting. The company must also send a copy of the declaration and the special resolution to the Registrar within 15 days of the general meeting.

Creditors' voluntary liquidation -- The shareholders put the company into liquidation, but there are not sufficient assets with which to pay all the creditors, i.e. the company is insolvent.

How is a Creditors Voluntary Liquidation Undertaken?

With the assistance of the insolvency practitioner, the directors must pass a special resolution to say that the company cannot continue in business because of its liabilities and that it is advisable to wind up.

The resolution must be advertised within 14 days in the Gazette, and must also be sent to the Registrar within 15 days. A meeting of creditors must be held within 14 days of passing the resolution. Notice of the meeting must be sent to the creditors a minimum of 7 days before the meeting. Also, the directors must prepare a statement of affairs for consideration at the meeting, and appoint one of themselves to attend and preside over the meeting.

Employees. As the liquidator's task is to wind up the company, it is probable he will terminate all employment contracts on or shortly after his appointment.

If employees are owed money i.e. wages, holiday pay and redundancy, certain amounts are recoverable from the National Insurance Fund and the Redundancy Payments Office, subject to relevant maximums. Any balance owed will be treated as a claim against the company and will rank along side other creditors in relation to distributions and the appropriate priorities.



Compulsory liquidation – typically, a creditor will petition the court to wind up the company because it has been unable to collect monies owed. The court issues a winding-up order effectively putting the company into liquidation. A company is regarded as unable to pay its debts if a creditor, owed £750 or more, presents a written demand for the repayment of the debt in the form of a Statutory demand. The company fails to pay, secure or agree settlement of the debt to the creditor's reasonable satisfaction

Employees. Will be treated in the same way as in creditor's voluntary liquidation.

I.e. As the liquidator's task is to wind up the company, he will terminate all employment contracts on or shortly after his appointment.

If employees are owed money i.e. wages, holiday pay and redundancy, certain amounts are recoverable from the National Insurance Fund and the Redundancy Payments Office, subject to relevant maximums. Any balance owed will be treated as a claim against the company and will rank along side other creditors in relation to distributions and the appropriate priorities.

What are the alternatives to liquidation?

Informal arrangement - the company could persuade its creditors to accept payments over an agreed period of time. Due to the informal nature of the agreement, the creditors could change their minds at any point and demand immediate payment, or petition the court to wind up the company.

Company voluntary arrangement (CVA) – The directors, with the help of a licensed insolvency practitioner, propose the CVA. The agreement will be supervised by the insolvency practitioner, be legally binding on all parties, and will protect the company against actions by its creditors.

In order to make an arrangement, first we will look at your company's situation in respect of its debts and assets. We also need to know how much income it has and how much it costs each month in order to meet all of its liabilities. From there we can see how much the company could reasonably be expected to pay each month to support the debt. This amount is determined entirely by applying the insolvency rules to your specific situation, which means that the contribution would be the same regardless of who drafts the proposal. We will then talk you through the proposal to make sure you are happy with it, and that you are able to commit to it.

We will then go to the creditors and offer them a payment over a period of time. We would also ensure that all charges are stopped and interest frozen.

Once we have agreed all points with them, the agreement becomes legally binding. This prevents creditors from pursuing the company for payment. They must leave you in peace and deal directly with us. It also protects from any legal actions such as county court judgments and even winding up procedures.

From that point on, you make one affordable payment to us each month. We then, at the appropriate time, make distributions to the creditors, minus an amount which we keep back from them, in order to pay us for the work that we do for you. Effectively we don't charge you, as your creditors will meet our fees. If we don't succeed, then we don't get paid.

You will never receive a bill from us.

This arrangement can run for a maximum period of five years. At the end of five years the agreement will state that, if the money you have paid is not sufficient to pay off the whole debt, then any remaining debt will be written off.



The company's assets and goods are protected under the terms of the CVA, and you remain fully in control of your financial situation.

In simple terms, that's how the CVA works. If we take on your case and put a proposal into your hands, then we fully expect to succeed and generally do so.

This results in the constant stress and pressure created by out of control debt, being removed. In turn this allows you to get back to running your business and your personal life in a normal manner. We can also, where appropriate, apply the above same process with regard to the director's personal finances.

Administration – Is a court procedure that allows a company to continue trading, whilst protecting it from actions by its creditors and allowing it time to implement the relevant solutions to secure its future. The management of the company is taken over by the appointed insolvency practitioner who will also take the necessary actions to resolve the financial problems. e.g.

- The company may be sold in whole or in part as an ongoing business.
- A voluntary arrangement may be put in place with the company continuing to trade.
- The company's assets may be sold realising more funds than would have been possible via liquidation.

What is the 'pre-pack administration process'?

A 'pre-pack' refers to an administration, as above, where the sale of all or part of a company's business or assets is negotiated with a purchaser prior to the appointment of an Insolvency Practitioner as administrator. In some circumstances a pre-pack will improve the returns to creditors. It can also help to preserve the business and save jobs.

Our process

Your first contact will be with one of our telephone advisors who will welcome you when you call. He/she will answer any questions that you have and will ask you the relevant questions in order to understand your particular situation. We will not need precise information from you at this point, we just need enough to establish the possible solutions to help you. If we are unable to help directly, we will introduce you to the appropriate specialist. If we can help you directly, then we will have one of our field consultants contact you at your convenience or, if possible, transfer your call at our expense directly to the consultant.

The consultant will discuss your situation further and if you and he agree that it is appropriate, he will arrange to visit you for more detailed exploration of your situation. He will advise you and assist you to collate sufficient information for us to make a full assessment prior to advising you of the correct actions to take. There will be no charge for this visit nor the advice and assistance provided.

If the decision is to liquidate the company, then please see the preceding paragraphs detailing the different types of liquidation and the steps involved.

If the decision is to proceed with a CVA, we will prepare a proposal on your behalf. This document will detail your company's financial position and will propose an affordable offer of payment to your creditors. The document will then be presented to you for your approval prior to us making any contact with your creditors. We will answer all questions which



you may have, and make any necessary alterations. If you are unable to agree and approve the proposal, we will advise you of your options and withdraw if you wish.

When you approve and sign your proposal, we will then contact your creditors, providing each of them with a copy, and will call a creditors meeting. You will not usually be required to attend the meeting.

Each of the creditors is invited to study the proposal and to vote for or against its implementation. They are required to vote before the appointed time and date of the meeting in order for their vote to be counted. The creditors effectively have one vote per pound of the monies owed to them i.e. the largest creditor has the biggest vote. In order for the proposal to be accepted, of those creditors that vote, 75% must be in favour. In this instance, creditors who do not vote as well as creditors who vote against the proposal, will be carried by the majority and bound to accept the content of the proposal.

If we are also dealing with your personal finances through an Individual Voluntary Arrangement, the process will be identical to the above but separate from it and related specifically to your individual situation.

You may if you wish, contact our office directly after the appointed time on the day of the meeting in order to ask the outcome. Otherwise one of our team will advise you shortly afterwards.

We can not guarantee success, but if we put a proposal into your hands we expect to succeed and generally do so.