Creditors Voluntary Liquidation: A Step by Step Guide

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A Guide to Creditors Voluntary Liquidation ("CVL") for Insolvent Companies

What is a Creditors Voluntary Liquidation?

A CVL is the process by which an insolvent company is formally wound up and dissolved. The company's assets, if any, are realised by the duly appointed Liquidator, and the proceeds after costs are distributed to the company's creditors by way of a dividend of the same percentage against agreed claims (e.g. each creditor gets X Pence in the £ being X% of their claim).

When is a Creditors Voluntary Liquidation appropriate?

Firstly, it should be stated that there are a number of options for insolvent companies, and determining the most appropriate course of action at the outset is paramount. With this in mind, we would recommend that you seek advice immediately from qualified insolvency practitioners such as Bridge Newland Limited if you believe that your company is insolvent.

However, in general, a CVL is appropriate where the company is insolvent and has no prospect of a viable future. The company is usually not in a position to raise further funding or trade out of its financial difficulties and there is a risk of further losses if trading continued. Common scenarios include where the business has lost a major customer/contract or suffered a bad debt from a significant client; where the business has failed to meet the required sales levels or has experienced increased costs; and where the company's lenders have reduced or withdrawn facilities or creditors (such as HMRC) have made demand on the company for repayment of their unpaid sums which cannot be met.

If the company's business or assets have value, either to a third party or to the directors who wish to continue to trade in a new company, the Liquidator is able to sell these assets for their fair price, making a CVL a viable option for directors wishing to start afresh.

How does the Creditors Voluntary Liquidation process work?

Once it is established that a CVL is appropriate, the directors instruct a licensed insolvency practitioner who acts as the proposed liquidator and he/she then gives notice to the Company's creditors that the Company is to be placed into Liquidation.

The proposed liquidator will then ensure that the Company is placed into liquidation by undertaking the deemed consent process (where automatic agreement is received if not opposed) or the virtual meetings process (remote meetings virtually by skype or telephone).

From the date of instruction the Company will typically give 2-4 weeks notice of the decision date/virtual meeting date, and all creditors receive a full pack of information on the Company's financial circumstances and liquidation proposals.

Should the liquidation decisions be approved by the creditors, and the necessary shareholder consents have also been received then the Company is considered in liquidation on either the decision date (if deemed consent) or following the virtual meeting.

The Liquidator will then take steps to deal with any outstanding matters, including realisation of the company's assets and resolution of the company's tax affairs. There is also a statutory requirement for the Liquidator to conduct an investigation into the company's affairs and the conduct of the directors. If realisations are sufficient to enable a dividend to be paid to creditors, the Liquidator will advertise his intention to declare a dividend and give creditors a final opportunity to prove their claims. Once creditor claims are quantified and admitted, the Liquidator will pay the dividend and, if appropriate, take steps to conclude the liquidation.

Once the company's affairs are finalised, the Liquidator will call a final meeting of members and lay before it an account of the winding up. The meeting will be advertised in the Gazette one month beforehand then within one week of the final meeting, a return of the meeting and final account will be filed with the Registrar of Companies. Then after three months, the company will be struck from the register and dissolved.

What are the advantages of a Creditors Voluntary Liquidation & what are the alternatives?

There are a number of options available to the directors of insolvent companies, and a brief description of these is shown below:-

- Company Voluntary Arrangement (CVA): A set arrangement with creditors whereby a company, under the supervision of an insolvency practitioner, reaches a binding agreement with creditors to repay all or a proportion of its debts over a period of time, usually five years, whilst the business is turned around. It is appropriate where the core business is viable and the company is in a position to continue trading and meet its ongoing obligations as well as to make additional contributions to the CVA.

- Administration: A powerful rescue procedure, which is appropriate where a company requires protection from creditor enforcement action whilst the business is restructured, sold or turned around under the control of an insolvency practitioner. The company may continue to trade under the control of the Administrator until the business can be sold as a going concern, preserving jobs and minimising claims against the company by redundant employees.

- Prepack Administration: As above but where negotiations for the sale of the business are conducted prior to the date of the Administrator's appointment, and the sale is effected by the Administrator immediately after his appointment. The procedure is mainly appropriate where the risk of enforcement action against the company would

severely impact the outcome for creditors as a whole, and where there is a risk of significant damage to the goodwill of the business due to adverse publicity.

- Compulsory Liquidation: A process by which the company is wound up by the court and dissolved, generally on the petition of a creditor.

What are the advantages of a Creditors Voluntary Liquidation?

The advantages of a CVL include:-

1. The process is straightforward and inexpensive
2. The directors are able to instruct an insolvency practitioner to deal with the company's affairs, rather than await the appointment of the Official Receiver (a government official) via a compulsory liquidation
3. The public perception of voluntary liquidation, where directors take proactive steps to deal with the company's financial situation, is far more favorable than compulsory liquidation, where creditors must force the company into insolvency
4. The Liquidator has extensive powers to act on behalf of the company, and can institute or continue legal proceedings on behalf of the company which may result in further realisations for creditors (e.g. against non-paying debtors)
5. Although all liquidations must be advertised in the relevant Gazette, there is no longer a requirement to advertise in the local press
6. The directors are seen to comply with their fiduciary duties under the Companies Act 2006

Are there any disadvantages to a Creditors Voluntary Liquidation?

1. Where there is a viable business which can be sold, or where the main asset is work in progress or contracts, the main disadvantage of a CVL in comparison with an administration is the delay incurred by the need to notify shareholders and creditors of the meetings to place the company into liquidation. In cases where time is of the essence, an administration may be necessary as the appointment can in certain cases be effected immediately, allowing for a seamless transfer of the business and/or assets with minimal disruption to customers.
2. Similarly, there may be logistical issues where directors wish to set up and trade a new company due to the time which passes between the instruction of the insolvency practitioner and the appointment of the Liquidator.
3. Where creditors are threatening enforcement action, and particularly where landlords or bailiffs are threatening distraint and execution, an administration may be necessary as it triggers an immediate moratorium on legal proceedings against the company. There is no protection from creditor action in a CVL until the Liquidator is in office, leaving the company open to enforcement action in the period leading up to the meetings of shareholders and creditors.
4. Directors should note that although there is no prohibition on company officers forming a new company from the remains of a liquidated entity, there are nevertheless restrictions on the re-use of company names where the new name is either the same or so similar as to imply association with the old company. The rule is in place to help

ensure that the interests of creditors and investors are not prejudiced by a lack of transparency relating to a director's involvement with an insolvent company. Directors wishing to trade again under a similar name must advertise notice of their intention to do so in the relevant Gazette prior to carrying on business.

Should I liquidate my company?

If you believe a CVL is appropriate for your company, please call Bridge Newland Limited for detailed advice tailored to your situation. A licensed insolvency practitioner will then advise you on all aspects of voluntary liquidation, including practical tips on how to manage your creditors in the period leading up to the Liquidator's appointment.

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BRIEF SUMMARY

Creditors Voluntary Liquidation ("CVL") is an process used to close down an insolvent company, and is the most common form of liquidation in England and Wales.

For directors who have become aware that their company is no longer in a position to continue trading and cannot repay all of its creditors, the CVL process allows them to voluntarily take positive steps to deal with the situation and move forward both cheaply.

If you believe a Creditors Voluntary Liquidation is appropriate for your company, and would like to obtain advice from a licensed Insolvency Practitioner in this regard, please do not hesitate to contact Bridge Newland on (free phone) 0800 612 6197. All initial advice is free of charge, and rates for CVLs start from as little as £3,000 plus VAT, inclusive of all disbursements.