GUIDE TO CREDITORS' VOLUNTARY LIQUIDATIONS

What is a Creditors' Voluntary Liquidation?

A Creditors' Voluntary Liquidation (CVL) is a procedure to wind up an insolvent company. Insolvency is defined as the inability to pay debts as they fall due or holding a negative balance sheet. The process often starts when an accountant or advisor identifies trading difficulties when undertaking work for a client, or when the client approaches them for advice. An Insolvency Practitioner may be brought in to assess whether an insolvency procedure can rescue the business, to advise the directors on the risks of trading on and to discuss the option of liquidating the company. Our licensed Insolvency Practitioner arranges insolvency procedures and provides advice for small and medium sized companies in Cardiff, Newport and across South Wales. Our initial work with new clients is free and fully confidential.

What type of Company would a Creditors' Voluntary Liquidation be appropriate for?

There are many reasons a company may face trading difficulties. The company may lose a major client or find themselves unable to collect on invoices. A change in legislation or increased competition may make a previously profitable company no longer viable. A company may continue to trade through a few difficult years, in the hope of returning to profitability, while accumulating debt across suppliers, the bank and HMRC. It is important for the company directors to take advice as soon as trading difficulties are identified. The sooner advice is sought, the more likely it is the company can be rescued. If the company cannot be rescued the liquidation of the company must be considered to limit the losses to all involved.

How will a Creditors' Voluntary Liquidation affect the Directors?

When the company enters liquidation it triggers a creditor's right to call on personal guarantees provided by directors. A director can make a claim in the liquidation for any company debts they have paid as a result of the personal guarantee. If the director holds an overdrawn loan account with the company this becomes repayable and will be claimed by the liquidator.

A report on the conduct of each director is sent to the Department for Business, Innovation & Skills concerning their role in the company and their fitness to act as a director going forward. A similar report is issued by an Official Receiver if the company enters Compulsory Liquidation. Any period of trading while the company was insolvent falls under particular scrutiny.

The directors should take professional advice on the types of conduct which could see them disqualified from acting as a director in future. If there is no reasonable prospect of saving the company the directors should not trade on and wait for a creditor to petition for the winding up of the company. If the directors continued trading knowing the company was unable to avoid insolvent liquidation, and the overall debts of the company increased during this period, they may be found personally liable to contribute a sum equal to those losses.

It is important the director acts in the interest of the creditors as a whole to minimise losses. If the director makes transactions which are not in the interest of the creditors as a whole, any value lost to the company can be claimed from the director personally or from the recipient of the transaction. The timescales during which the transactions can be reviewed are dependent on the relationship of the company and the recipient, the status of the company at that time and the intent of the director when making the transaction.

How much does the liquidation process cost?

It is a common misconception that directors or shareholders must fund the liquidation process personally. In most cases the assets of the company are sufficient to meet both the costs of putting the company into liquidation and also the liquidator's fees and expenses. Advice should be sought early before the assets of a company are depleted through unprofitable trading, to ensure sufficient assets are held to meet the costs of the liquidation process.

An Insolvency Practitioner charges two separate fees for the liquidation process. The first fee is agreed with the directors and pays for the Insolvency Practitioner's time spent advising the directors and overseeing the process required to place the company into liquidation. This fee is often paid after the company enters liquidation, from the assets of the company, rather than paid for personally by the directors or shareholders.

The second set of fees represent the work undertaken by the Insolvency Practitioner as the appointed liquidator. These fees are met from the assets of the company in the liquidation. The level of the liquidator's remuneration is determined by the company's creditors but is limited to the liquidated assets of the company.

How does a company enter Creditors' Voluntary Liquidation?

Whiteoak Morris oversee the process of placing the company into liquidation. We work with directors and shareholders to comply with the necessary formalities and ensure the process is straightforward. A Statement of Affairs is produced to report on the recent trading history of the company, its assets and liabilities and the likely return to creditors.

A meeting of the company directors is then called. The directors resolve to agree the Statement of Affairs that has been prepared and to call two further meetings, firstly of the shareholders and then of the creditors. The shareholders meeting resolves to place the company into liquidation and to appoint a liquidator until the date of the creditors meeting, although in most cases the meetings will all be held on the same day.

The meeting of the creditors is known as a 'section 98' meeting in reference to its place in the Insolvency Act. Notice of the creditors' meeting is issued to any floating-charge holder so that they may intervene to place the company into the alternate insolvency procedure of administration. The purpose of the meeting is to pass resolutions as follows: to confirm the appointment of the liquidator or nominate another; to agree the Insolvency Practitioner's fees for placing the company into liquidation and that of the liquidator going forward; to appoint a committee of creditors to oversee the liquidation should the creditors so wish.

What is the Liquidator's role?

The role of the liquidator is to collect in the company's assets and, after meeting the costs and expenses of the liquidation, to distribute the proceeds to creditors following a strict priority of claims. The liquidator will assist employees to make their claims against the Redundancy Payments Office. Creditors receive only a proportion of their claim against the company, while the shareholders will not receive any return on their shares. The liquidator is required to report on the fitness of the company directors to act as directors going forward. Reports on the progress of the liquidation are issued to creditors and shareholders on an annual basis to account for the activities, receipts and payments during that year. When the liquidation process is concluded the liquidator issues a final report and arranges for the dissolution of the company.

Whiteoak Morris provide free professional advice in full confidence and without any obligation.