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Creditors' voluntary liquidation (CVL)

Overview

Creditors' voluntary liquidation is generally appropriate if there are insufficient assets to pay all the creditors in full, where there is no obvious need to preserve a business by continuing to trade or because the other options are not available. An insolvency practitioner is appointed to dispose of the assets, which in suitable cases could involve completing negotiations already started for the sale of the business or seeking a purchaser from scratch, but timescales would be short. This is the most obvious procedure if the company is insolvent, there is no prospect of obtaining a premium value for the assets from a going concern sale and a cost effective winding up is required to distribute money to unsecured creditors. In this case, it is not immediately clear that unsecured creditors will receive any dividend but to establish this point would be one of the objectives of an options review.

How does the procedure work?

A board meeting is held to agree that the company cannot continue to trade because of its liabilities and a resolution is passed to call meetings of shareholders and creditors. The directors must also swear a statement of affairs and appoint one of their number to chair the creditors' meeting.

The shareholders' meeting takes place to pass an extraordinary resolution to place the company into liquidation because of insolvency. Fourteen days notice is required for the meeting unless 95% by value of shareholders consent to short notice (possibly 90% shareholder consent in the case of some private companies). This is known as the Centrebind procedure. Furthermore, five days notice now needs to be given to any holder of a floating charge created after 15 September 2003. A majority of 75% is required for an extraordinary resolution.

Even where a Centrebind procedure is adopted, whereby the shareholders appoint a liquidator at short notice, the liquidator is unable to dispose of assets without prior approval by the court unless their value is deteriorating.

A creditors' meeting must take place within fourteen days of the shareholder's meeting and seven days' notice must be given. The purpose of the meeting is to ratify the shareholders' choice of liquidator or appoint another practitioner in his or her place, and to consider appointing a committee of creditors to assist the liquidator.

In practice, the board's proposed liquidator normally undertakes the procedural work required to call the meeting. The shareholders' and creditors' meetings take place on the same day and around three weeks notice is given.

It is unusual to dispose of assets until the liquidator is appointed, unless the value of assets will significantly diminish. The company is in a hiatus period when trading may have ceased and only steps to preserve the assets, complete work in progress and collect in debts are undertaken.

The liquidator's duties are to realise the assets, agree creditors' claims and pay a dividend to them should there be sufficient funds.

This document explains the relevant position only in general terms and omits details less commonly experienced for the sake of brevity. It is not intended to be used as formal advice about your actual situation, for which you should consult us specifically and not rely upon this document. Portland would be pleased to advise you formally and you should contact one of the directors listed on the website at www.portfbs.co.uk to arrange this or telephone our main switchboard on 01489 550440. Portland regrets it is unable to accept any responsibility to anybody who seeks to rely on this document.

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The liquidator also has a duty and powers to investigate the events leading up to the insolvency as detailed earlier. This includes reporting to the DTI on the directors' conduct, on which any disqualification proceedings are based.

Advantages	Disadvantages
▪ Takes responsibility for an insolvent company and its creditors away from the directors. It avoids further risk of wrongful trading. ▪ Allows for creditors' claims to be agreed and paid, including those that are disputed. ▪ A liquidator has wide powers to adopt or abandon contracts, which often helps to bring disputes to a head. Suitable for winding up companies cost effectively once a disposal has taken place and for verifying the benefits of a pre-appointment sale. ▪ A liquidator has wide powers to investigate pre-appointment events if required to enhance creditors' recoveries.	▪ Unless a Centrebind is used, it is slow to initiate and therefore not ideal for a disposal of a business where asset value quickly dissipates. ▪ Does not afford protection from repossession by finance creditors or distraint by landlords. ▪ It is more difficult to continue trading in liquidation than in other procedures. ▪ The process can result in considerable discounts on asset values, particularly intellectual property and goodwill.

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