Carter Clark
Financial Recovery

Briefing Sheet

Creditors' Voluntary Liquidation

What is a CVL?

A Creditors' Voluntary Liquidation is the most common way of bringing the operations of a troubled company to an end. It is used for those companies which have run out of cash, cannot pay their liabilities on time and are unable to trade out of their position or be successfully restructured. These companies are no longer viable and their directors see no positive way forward.

Who can propose a CVL?

The process starts with a board meeting during which directors decide that the company is insolvent, there is no reasonable prospect of paying existing creditors, and it would be wrong to take further credit. These facts must then be reported to shareholders and creditors.

The proposed liquidator convenes meetings of shareholders and creditors. Meetings can now be held either physically or virtually, for example using websites and telephone conferencing. The meeting of shareholders is normally held just prior to the meeting of creditors. If shareholders accept the view of the directors, they pass resolutions to cease trading and to appoint a liquidator. The liquidator then writes to all known creditors inviting them to submit a claim for their debts.

How is the CVL carried through?

The meeting of creditors receives a report from the directors on the history & viability of the company and creditors have the opportunity to ask questions of both the liquidator and directors.

A liquidation committee, of between three and five members, can be formed to assist the liquidator with his duties. The committee is often useful where creditors express concern over the directors conduct prior to liquidation. At the creditors meeting a number of resolutions are passed including confirmation of the liquidator's appointment, how the liquidator will be remunerated, and other essential administrative matters.

The appointed liquidator must realise the company's assets and distribute them in accordance with the Insolvency Act 1986. In calculating any dividend available, a liquidator must take into consideration the rights of secured creditors and preferential creditors prior to payment of a dividend to unsecured creditors. It is also the liquidator's duty to adjudicate on creditors' claims. The liquidator will investigate the affairs of the company, particularly concerning the director's conduct, and bring actions against directors or such other parties as appropriate.

Executive summary

Where there is no chance of restructuring or future viability, the thousands of voluntary liquidations in the UK each year are a reflection of the difficulties in running a business in a competitive global marketplace. If, however, future trading is a possibility – even by use of a Phoenix company – this outcome may ultimately be better for creditors, who at least have the opportunity to consider making future supplies.

While directors may feel that the business cannot be rescued, and that it is easier to walk away from the debt, the Insolvency Act and Companies Act sets out their obligations to all company stakeholders. Failing to minimise the loss to creditors may lead to action to make the directors personally liable for the company's debt, reflecting the price of limited liability.

Have a question?

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Advantages/disadvantages of a CVL

The appointment of a liquidator can minimise the directors' risk of a wrongful trading action and bring the company's business to a controlled conclusion. The stress of running a failing business is eliminated, freeing management to pursue other opportunities. Creditors can recover the VAT element of the outstanding debt as well raising any concerns about the actions of the company's directors.

These concerns may lead to subsequent investigation, which may not offer a positive outcome for the directors concerned, including any shadow directors. The liquidator must file a report with the Disqualification Unit of the Department for Business, Innovation & Skills (formerly the DTI) which may decide to seek a disqualification order against the directors preventing them from acting as a director of a company.

In practice, despite the efforts of the liquidator and his agents, assets tend to be sold for less than book value. Combined with the increase in claims that arise following cessation of trade, the procedure generally provides a poor dividend return to creditors.

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