

Corporate Insolvency – Types of Action

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Informal Arrangements

It may be possible to negotiate an informal settlement with creditors, which will restore a company to solvency. This clearly depends on individual circumstances and creditors will need to be offered more than they could reasonably expect to receive from a formal procedure.

Fixed Charge or Law of Property Act Receivership

This appointment is made by a mortgagee who holds a fixed charge over an asset of the company. The Receiver is appointed to realise a specific asset for the benefit of the charge holder to repay its debt.

Administrative Receivership

The holder of a floating charge over some or all of a company's assets created prior to 15 September 2003 may be able to appoint an Administrative Receiver should the company default under the terms of the debenture.

Since the enactment of the Enterprise Act 2002, an Administrative Receiver may only be appointed in certain prescribed circumstances.

Administrative Receivership is likely to be utilised to enable the company to continue trading in order to facilitate a going concern sale of its business and assets. The Administrative Receiver will attempt to realise the assets covered by the floating charge for the benefit of the creditor holding the charge.

Administration

A company may be placed into Administration out of court by a qualifying floating charge holder or director. Other parties such as creditors or shareholders may seek to appoint an Administrator via the court.

This is designed to be a constructive procedure with the aim of achieving 1 of 3 objectives:

1. Rescuing the company as a going concern (not simply its business). If this is impossible;
2. Achieving a better result for the company's creditors than would be likely if the company were wound up. If this is not possible;
3. Realising property in order to make a distribution to one or more secured or preferential creditors.

Company Voluntary Arrangement (“CVA”)

This is a formal process that can only be obtained through an Insolvency Practitioner who will organise a payment schedule to pay creditors over a fixed period.

Under a CVA, a company can be re-organised to enable it to pay as much as it can to its creditors and continue to trade. The CVA must be approved by 75% or more of those creditors voting at the meeting of creditors.

CVA's are a flexible, legally-binding tool that can provide protection from creditors as well as offering reassurance to creditors that some of the debt will be repaid.

Members' Voluntary Liquidation

A solvent liquidation that facilitates the closure or restructure of a company's business. Shareholders of a solvent company who choose this route will approve a resolution to voluntarily wind up the company and appoint a Liquidator to realise the assets of the business.

It provides for all creditors to be paid in full (together with interest) within twelve months and for the distribution of surplus assets to its shareholders.

Creditors' Voluntary Liquidation

This is appropriate when a company is insolvent and has no prospect of continuing to trade profitably in the future.

The company's directors can choose to voluntarily bring the business to an end by approaching an Insolvency Practitioner to liquidate its assets.

Compulsory Liquidation

This is invariably a creditor driven process, which follows a winding-up order made by the court, usually on the petition of a creditor. It is a creditor's action of last resort in attempting to collect an outstanding debt.

The Liquidator has wide ranging powers in order to review the company's affairs and its officers' conduct which in turn may result in recovery of funds for the benefit of creditors.

Disclaimer:

This note does not contain a full statement of the law and it does not constitute legal advice. Please contact us if you have any questions about the information set out above.

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