

FAQ - Business

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Liquidations

Â In the main there are three types of liquidation, the procedures for which are summarised below:

Creditors Voluntary Liquidation

This is probably the most familiar and common type of insolvency. In this situation the Directors of a company have established that their company is insolvent, either being unable to pay company debts as and when they fall due, or it is considered that the liabilities of the company are greater than its assets and that the situation will not improve in the foreseeable future.

A meeting of creditors is convened, usually under the provisions of Section 98 of the Insolvency Act 1986, for the purposes of the creditors having placed before them a financial statement of affairs and a report on the company's activities. The formal purpose of the meeting is to appoint a Liquidator of the creditors' choice and, if appropriate, a Liquidation Committee. In this situation, we are available to assist the Directors of the company in preparing all the necessary documentation required.

Members Voluntary Liquidation

In these cases it is considered by the company that there are sufficient assets to pay all creditors in full together with a distribution to shareholders. Generally a meeting of creditors is not convened and all creditors should be paid within 12 months.

Compulsory Liquidation

If a company is unable to pay its debts as and when they fall due, its creditors are entitled to take proceedings through the Court. If judgment has been obtained against a company or it has failed to pay the amounts due after 21 days have passed following the issue of a Statutory Demand, a creditor can take proceedings for a company to be wound up in Compulsory Liquidation.

If the creditor is successful and the petition is granted, the Official Receiver will take control of the company in the first instance and then, if appropriate, a Liquidator will be appointed by the creditors at a meeting of creditors. Alternatively, the appointment of a Liquidator will be made by the Secretary of State. The Liquidator appointed will realise the assets of the company and distribute the funds to creditors appropriately.

Â Administration

This procedure is designed to protect a company from its creditors on finding itself in an insolvent position. Prior to a change in legislation in 2003, an application was made to the Court, usually by the Directors for an Administration Order and for an Insolvency Practitioner to be appointed as Administrator to act in respect of the company's financial dealings. Pursuant to the provisions of The Enterprise Act 2002 the method of appointing an Administrator are more straightforward and less time consuming but in the main the principles are similar.

Following the changes, it is now possible to appoint an Administrator out of Court. The objective of an Administration is as follows:-

- To rescue the company as a going concern
- Achieve a better result for creditors as a whole than would be likely if the company were wound up; failing which
- Realising property in order to make a distribution to the company's secured or preferential creditors.

Receiverships

"Receivership" is a term used in respect of many types of insolvency, but can be summarised specifically as follows:

Administrative Receivership

With the introduction of The Enterprise Act 2002 it is only possible for an Administrative Receiver to be appointed under the terms of a debenture created prior to 15th September 2003.

A debenture holder, usually a bank under a charge (fixed and/or floating) will appoint a receiver to the company. The task of the Receiver is to realise the assets available, and to make payments to the debenture holder. Any surplus remaining is passed to a Liquidator for distribution to the company's creditors. Receivership offers a far better opportunity for a company to continue trading in the hope of attracting offers to purchase all or parts of the business as a going concern while preserving the employment of many of the company's personnel.

LPA Receivership

In this instance a Receiver is appointed by a mortgagee to a property under the provisions of The Law and Property Act. In general, the Receiver is appointed to the property and receives the income, usually rents, until such time as the property is sold. The Receiver does not deal with the other general assets of the company whose affairs remain the responsibilities of its Directors.

Fixed Charge Receivership

Appointment is usually made by a Bank, which holds a fixed charge over the assets of a company. In most cases the charge will be over the outstanding book debts. The Receiver collects and distributes the funds to the debenture holder. All other aspects of the company's affairs remain with the Directors. Corporate Rescue

In the main, The Insolvency Act 1986 was effected to establish various ways of assisting businesses which are experiencing financial difficulties, but where it would be worthwhile to try and save the business in whole or in part while allowing it to continue trading.

Therefore two new procedures were introduced in 1986 which are summarised below:

Administration Orders

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- Realising property in order to make a distribution to the company's secured or preferential creditors.

Company Voluntary Arrangements (CVA)

This is a scheme of arrangement whereby a company makes an application to the Court for an Order to protect itself from any action being taken by its creditors. This affords sufficient time for a proposal to be put before the creditors for their consideration. The proposal should contain details of how and when the company will be in a position to pay its debts, either in full or in part, and if accepted by the required value of creditors any creditor without leave of the Court can take no action against the company.