INSOLVENT CREDITORS' VOLUNTARY LIQUIDATION ["CVL"]

OUTLINE PROCEDURE

NB: The procedure is governed by the Insolvency Act 1986 ["the Act"] and Insolvency [England and Wales] Rules 2016 ["the Rules"].

Definition of insolvent liquidation

A CVL is an insolvent liquidation process in which a Special Resolution is passed by the shareholders to place the company into liquidation. From the outset it is envisaged that there will be insufficient assets to settle all creditors in full.

Liquidation is a formal process governed by the provisions of the Act and Rules together with case law that has been built up over several centuries.

As part of the process, a Liquidator is appointed to 'wind up' the affairs of the company. His role is to realise assets, investigate the circumstances leading up to liquidation and distribute the net realisations to the creditors in the order in which they are entitled to receive such distributions. If there is a surplus after settlement of the claims of creditors [who are also entitled to Statutory Interest at 8% per annum], the Liquidator will return any surplus monies to shareholders.

At the end of the process, the company will be dissolved and will cease to exist

Sometimes early recognition of the fact that an insolvent company has run its course means that directors and business owners can take decisive steps in bringing loss making enterprises to a close. Early adoption of the CVL process initially leaves directors and shareholders in charge of their own destiny and will clearly demonstrate to third parties that the proper steps have been taken at the appropriate time.

The process of placing a company into CVL/Deemed Consent

The first step is for the Board of Directors to resolve to summon a general meeting of shareholders to pass two Resolutions, namely placing the company into CVL [a Special Resolution] and the appointment of a Liquidator [an Ordinary Resolution].

The introduction of the Rules on 6 April 2017 has sought to remove the need for a physical meeting of creditors although one can be summoned if certain criteria are met. Creditors have to be given due notice of a Decision Procedure and given a Decision Date which means the date when a decision is to be made in a Decision Procedure. Effectively, the Rules aim to achieve "non-meeting" decision processes completed by correspondence which include email and electronic voting and resolutions by correspondence.

The new Rules have introduced a novel way for the appointment of a Liquidator. It is now the case that a Liquidator may only be appointed in a CVL by means of a virtual meeting or by Deemed Consent. The Deemed Consent procedure may be used instead of a Qualifying Decision Procedure. Creditors are given due notice of the Deemed Consent and if less than the appropriate number of relevant creditors object to the proposed decision [i.e. the appointment of a particular Liquidator], they are treated as having made the proposed decision. The appropriate number of relevant creditors who may object to the Deemed Consent procedure [thereby forcing a physical meeting of creditors] is any of the following:

a. 10% in value of the creditors
b. 10% in number of the creditors
c. 10 creditors

The meeting of Shareholders

If there are only 2 shareholders, then both must agree to the Special Resolution to place the company into liquidation. Where there are more than 2 shareholders, 75% [by way of voting shares] of shareholders who vote on the Special Resolution must agree to this process taking place.

The liquidation begins from the time the resolution to wind up is passed by the shareholders.

At any meeting of creditors, the creditors can nominate an alternative Liquidator and their nomination will override that of the shareholders. The duly appointed Liquidator must be a Licensed Insolvency Practitioner.

The attitude of HM Revenue & Customs ["HMRC"]

The notice of the Deemed Consent procedure or virtual meeting of creditors for all companies registered in England & Wales is sent to a centralised unit in London and by way of email.

HMRC very rarely votes. Nevertheless, quite often it is the largest creditor in the proceedings and therefore HMRC will take a keen interest in liquidation outcomes.

The process after the commencement of liquidation

The Liquidator takes control of the company's affairs and the powers of the directors cease.

Quite simply, the Liquidator will realise the assets and distribute the net sale proceeds to creditors.

In addition, the Liquidator will undertake investigations that are "proportionate to the circumstances of each case" [Statement of Insolvency Practice 2]. In addition, the Liquidator will file a report [often known as the D Report] to the Insolvency Service on the conduct of all

persons who had been directors in the three years leading up to the commencement of the liquidation.

If the CVL continues for over 12 months, the Liquidator must send a report to both shareholders and creditors of his dealings.

The duties of directors

Although the executive powers of the directors cease on liquidation, many of their duties to the company remain.

In voluntary liquidation proceedings, the company's directors must provide to the Liquidator:

- information concerning the company's affairs
- attend interviews when reasonably required to do so
- pass over company's assets
- pass over the company's books, records

The end of the liquidation

As soon as the affairs of the company are fully wound up, the Liquidator will prepare a final report for shareholders and creditors in which he will fully explain all his dealings since his appointment. The final report, including a final account, is then delivered to Companies House and the Liquidator is then released and the liquidation comes to an end.

Dissolution of the Company

Within 3 months of the submission of the final report, the company is struck off at Companies House. At this time the company will cease to be a legal entity, but could be restored to the register by way of application to the court.

Books and Records

The company's books and records must be held by the Liquidator and can only be destroyed 12 months after the company has been dissolved. The Liquidator will hold his papers for a period of 6 years after dissolution.

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