myerson

Myerson **Business**

Understanding Creditors' Voluntary Liquidation (CVL)

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Welcome

We understand the complexities of modern life and the importance of taking care of your business interests. So it's a deep source of satisfaction that so many businesses choose Myerson as their trusted adviser to advise on company insolvency issues.

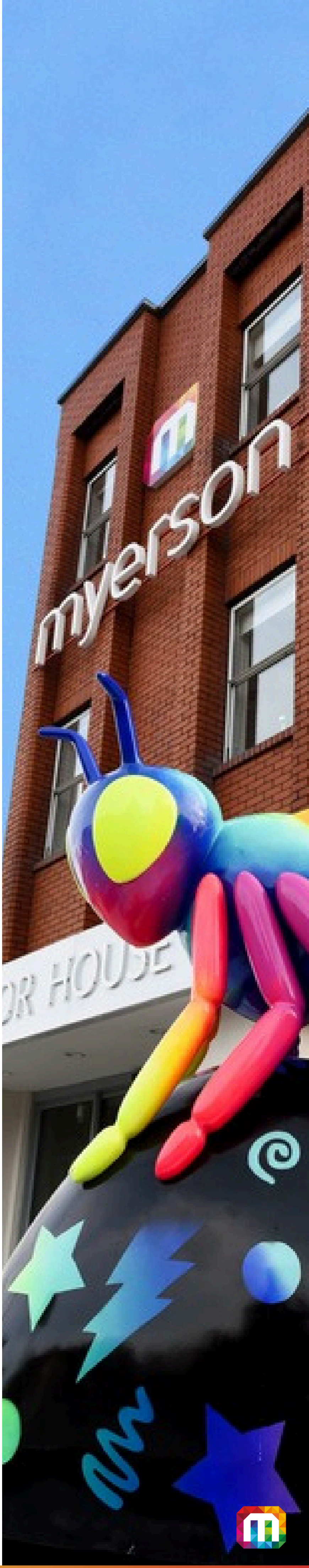
Why Myerson?

Our Insolvency and Restructuring Solicitors advise all types of businesses who find themselves in financially difficult situations. We work closely with reputable insolvency practitioners to ensure the best possible outcome can be obtained.

Myerson's Insolvency and Restructuring Team combines an exceptional knowledge of the market with a high level of technical expertise to advise insolvency practitioners (usually as insolvency office-holders), creditors, lenders, businesses and companies, directors, individuals and a range of other relevant stakeholders on all key aspects of pre and post-insolvency scenarios.

We adopt a collaborative approach to ensure a seamless integration of relevant practice areas such as Corporate, Real Estate, Litigation and Employment. This helps us to achieve the best solution for our clients in a timely manner and without unnecessary expense.

We are proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2019**'. Therefore you can be reassured you will receive a high quality and truly bespoke service.



Understanding Creditors' Voluntary Liquidation (CVL)

What is a CVL?

Usually, a company enters CVL after its directors realise that its business is no longer viable and that, having ceased to operate, it will not be able to pay its creditors in full. The procedure is governed by the Insolvency Act 1986 (IA 1986) and the Insolvency (England and Wales) Rules 2016 (IR 2016).

A CVL is a procedure, instigated by the shareholders of an insolvent company, by which the assets of the insolvent company are sold and the proceeds distributed to the company's creditors. At the end of the liquidation, the company is dissolved.The process is managed by a liquidator.The liquidation is often referred to as the winding up of the company.

Is a CVL Right for My Business?

A licensed insolvency practitioner (IP) will need to advise on this but a CVL is generally the right option when your company:

- Has debts it cannot repay;
- Is receiving pressure from HMRC, suppliers and other creditors;
- Risks being forced into compulsory liquidation; and
- Needs a legal process to close down its operations.

In many cases, placing a company into CVL is often the best solution for the company, its employees and creditors if the financial difficulties faced by the company are unlikely to improve in the near future.

Following a company entering into CVL, any debt which remains unpaid at the end of the liquidation will be written off unless it has been personally guaranteed. Once a company enters CVL, this also allows employees to receive statutory redundancy pay should they qualify.

The CVL process is managed by an appointed IP who ensures that everything is handled efficiently and in compliance with insolvency law and regulations.

As the CVL process will result in the full closure of the company, it is important to consider whether its business could be rescued. If that is the case, other insolvency processes are available such as administration, company voluntary arrangements, schemes of arrangement and restructuring plans.

The CVL Process

A company goes into CVL if its shareholders pass a special resolution for its winding up, with a majority of at least 75% of the shareholders voting in favour. The shareholders nominate an IP to act as liquidator and the liquidation is deemed to commence from the passing of the resolution. It is possible for the company's creditors to appoint a different person to be liquidator after the resolution to wind up the company has been passed.

When a liquidator is appointed, the liquidator effectively takes over the directors' powers and then controls how the company acts and winds up its affairs. The exception is where the liquidation committee (which can be created upon a company entering CVL) or, if there is no committee, the company's creditors allow the directors to retain certain powers.

Liquidators have wide powers to enable them to perform their functions and these are set out in the IA 1986.

As mentioned above, creditors have the right to appoint a liquidator pursuant to the IA 1986 and the IR 2016. Creditors also have the right to request a virtual or physical meeting which, if held, provides an opportunity for the creditors to ask questions of the company's directors and the proposed liquidator.

Creditors will be invited to provide to the liquidator details of their claim against the company. Submitting a claim is known as proving in the liquidation and the claim is known as a proof of debt. The liquidator will then assess all the proofs of debt and may either accept a claim in whole or part or may reject it.

Creditors with the benefit of security are entitled to be paid from the proceeds of sale of the charged assets, subject to certain exceptions.

Claims by unsecured creditors are paid on a pari passu basis. Unsecured creditors may receive a dividend paid pro rata at the end of the liquidation (and possibly also an interim dividend). In some cases, the dividend to unsecured creditors will be just a few pence in the pound or there may be no funds at all for any dividend payment to be made to them.

There is no automatic stay on proceedings against a company which enters CVL. However, the court may order that any proceedings are stayed under its general, discretionary power contained in section 112(1) of IA 1986.
A creditor is entitled to receive annual reports on the progress of the liquidation from the liquidator, commencing on the first anniversary of the liquidator's appointment.

The creditors may also form a liquidation committee, comprising between three and five creditors, to help the liquidator fulfil their functions.

Director Duties and Risk

Directors of companies in financial difficulty face a number of issues, which often interlock.

These include:

- What can be done to keep the company in business without committing an insolvency or other statutory offence or incurring personal liability?
- At what stage must the company stop trading?
- If the company does cease trading, which insolvency procedure should the company use?

As soon as its directors are aware that a company is in financial difficulty, they must seek external professional advice which we recommend is sought from an IP.

Pursuant to the Companies Act 2006, company directors owe the following general duties to the company of which they are a director:

- A duty to act within their powers.
- A duty to promote the company's success for the benefit of its shareholders (NB. this duty shifts to the protection of the company's creditors if the company becomes insolvent).
- A duty to exercise independent judgment.
- A duty to exercise reasonable care, skill and diligence.
- A duty to avoid conflicts of interest.
- A duty not to accept benefits from third parties.
- A duty to declare an interest in any proposed transaction or arrangement with the company.

If directors breach these duties and the company enters CVL then this can give rise to the liquidator bringing claim(s) against the directors and the Secretary of State pursuing director disqualification proceedings against one or more directors to prevent them from acting as a company director for a certain period of time.

The directors of a company are not generally liable for the debts of a company unless they have personally guaranteed those debts.

Liquidator's Role and Remuneration

The liquidator must be a licensed insolvency practitioner.The liquidator has a duty to act in good faith, and to exercise his or her powers with reasonable care and skill and only for their proper purposes.

A liquidator's function is to collect in and realise the company's assets and to distribute the proceeds to the company's creditors and, if there is a surplus, to its members.

Pursuant to the IA 1986, a liquidator has wide-reaching powers with which to fulfil their statutory functions.

In a voluntary liquidation, the liquidator has the power to continue the company's business so far as they consider necessary for the beneficial winding up of the company.

It should be noted that in a voluntary liquidation, the liquidator is not an officer of the court.

The liquidator's fees are generally paid as an expense of the winding up. They are therefore typically paid out of the company's assets, after secured creditors holding fixed charge security have been paid but in priority to creditors who either have no security or have floating charge security over the company's assets.

The remuneration of a liquidator can be fixed in one or more of the following ways:
- On the basis of the time properly spent by the liquidator and their staff in conducting the liquidation (the time-cost basis);
- As a percentage of the value of the insolvent company's assets (the asset value basis);
- As a fixed fee.

Since 1 October 2015, if a liquidator proposes to be remunerated (in whole or in part) on a time-cost basis, the liquidator must provide a fee estimate to creditors for approval before carrying out the job. That fee estimate must not be exceeded without the prior approval of the liquidation committee, the creditors or the court (depending on who fixed the basis of the liquidator's remuneration and gave the original approval).

A liquidator's remuneration, in the main, will come from the realisation of assets of the company over which they are appointed.Creditors, therefore, have a direct interest in the level of costs of the liquidator. Insolvency legislation recognises this and allows for creditors to determine the basis of the liquidator's remuneration. If creditors fail to set the basis of the liquidator's remuneration then the liquidator can apply to the court. Any application to the court must be made within 18 months of the liquidator's appointment.

FAQs

What is creditors voluntary liquidation?

Creditors' voluntary liquidation is a procedure, instigated by the shareholders of an insolvent company, by which the assets of the insolvent company are sold and the proceeds distributed to the company's creditors. At the end of the liquidation, the company is dissolved. The process is managed by a liquidator. The liquidation is often referred to as the winding up of the company.

What does Creditors' Voluntary Liquidation mean for a creditor of the company?

Creditors have the right to appoint a liquidator pursuant to the Insolvency Act 1986 and the Insolvency (England and Wales) Rules 2016.Creditors also have the right to request a virtual or physical meeting which, if held, provides an opportunity for the creditors to ask questions of the company's directors and the proposed liquidator.

Creditors will be invited to provide to the liquidator details of their claim against the company. Submitting a claim is known as proving in the liquidation and the claim is known as a proof of debt. The liquidator will then assess all the proofs of debt and may either accept a claim in whole or part or may reject it.

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There is no automatic stay on proceedings against a company which enters Creditors' Voluntary Liquidation. However, the court may order that any proceedings are stayed under its general, discretionary power contained in section 112(1) of the Insolvency Act 1986.

A creditor is entitled to receive annual reports on the progress of the liquidation from the liquidator, commencing on the first anniversary of the liquidator's appointment.

The creditors may also form a liquidation committee, comprising between three and five creditors, to help the liquidator fulfil their functions.

What does Creditors' Voluntary Liquidation mean for an employee of the company?

The business of the company ceases when the company goes into Creditors' Voluntary Liquidation and may only be continued after that date so far as is necessary for the winding up of the company.

Whilst contracts of employment are not automatically terminated when the resolution for the company to enter Creditors' Voluntary Liquidation is passed, its employees are usually made redundant when the business ceased to trade.

If the liquidator temporarily carries on the business in some manner (for example to dispose of accrued stock), the liquidator may retain some employees during the remaining period of trading.

Former employees may be entitled to a statutory redundancy payment and may have a claim for damages on the grounds of wrongful or unfair dismissal.

What does Creditors’ Voluntary Liquidation mean for a director of the company?

The directors must prepare, and send to the creditors, a statement of affairs in relation to the company. The deadline for the statement of affairs to be sent to the creditors is within 7 days beginning the day after the company’s shareholders resolve to place the company into Creditors’ Voluntary Liquidation.
When a company goes into Creditors’ Voluntary Liquidation, the directors' powers automatically cease, except where a liquidation committee or the company’s creditors sanction the continuance of certain of those powers.
The liquidator will send a report on the directors (and any shadow directors) to the Secretary of State, noting any conduct which may be relevant to the Secretary of State's decision as to whether to apply for the disqualification of any of the directors.

Can I liquidate one company which is part of a group?

It is generally possible to liquidate one company within a group. Each company within a group is a separate legal entity which means that the liquidation of one company does not automatically trigger the liquidation of other companies within the group. However, there can be indirect consequences, including the following:

- If the liquidating company owes money to other group companies, those debts need to be addressed during the liquidation process.
- Transactions between companies within the group, such as loans or asset transfers, need to be handled carefully during the liquidation process to ensure they are properly accounted for and do not negatively impact creditors.
- A parent company or a director may have guaranteed a debt owed by the liquidating company to a creditor which could mean direct enforcement action is taken against the parent company or the director for repayment of the debt.

What happens if I cannot afford to liquidate my insolvent company?

If you cannot afford to liquidate your company, you have a few options, but it is crucial to seek professional advice. Ignoring the situation is unlikely to help and can lead to severe consequences. Some possibilities include:

- Paying all of the company's debts and liabilities and then voluntarily dissolving the company by making a strike-off application to Companies House.
- Exploring ways to pay their fees with an insolvency practitioner, such as via a payment plan.
- Directors who meet specific criteria (in relation to their employment contract, hours worked, salary and role within the company) may be eligible for director statutory redundancy pay which could provide the funds needed to cover the liquidation costs.
- Allowing creditors to force the company into compulsory liquidation on the basis that the company cannot pay its debts. This is the least desirable option because it means that all control is taken out of your hands and in certain circumstances can result in directors becoming personally liable for the company's debts (such as where personal guarantees have been given for the company's debts and as a result of action taken against the director for misconduct (including claims under the Insolvency Act 1986).

Can a company continue to trade when it is in liquidation?

The simple answer is no, a company cannot continue to trade normally whilst it is in liquidation.

Once a company enters liquidation, it will cease trading, and the insolvency practitioner appointed as liquidator will manage the process of winding up the company's affairs and distributing assets, although this could include a limited period of trade under the control of the liquidator in order, for example, to realise remaining stock or continue the performance of certain contracts to maximise returns to creditors.

Were the directors of a company to attempt to continue to trade during a liquidation (which should not be possible as their powers generally cease on the appointment of a liquidator) this this could give rise to claims such as wrongful trading which could result in directors being held personally liable for debts incurred during the liquidation process and could also lead to disqualification from acting as a company director for a period of between 2 and 15 years.

Testimonials

"The team are fantastically knowledgeable. They keep themselves abreast of legal developments. They are out there in the field and have diverse contacts, which results in diverse and interesting instructions. They are also down to earth and very easy going – a pleasure to work with."
Legal 500, 2025

"Richard Wolff is a pleasure to work with. He really knows his field and it is enjoyable to work on a high level with him when discussing instructions. He is engaging and knowledgeable."
Legal 500, 2025

"Vicky Biggs is diligent and very hard working, with good legal knowledge."
Legal 500, 2025

"Jack Ramsden is smart and thorough. He has a wisdom well beyond his qualification date."
Legal 500, 2025

You're in safe hands!

If you would like further information about how we can help you with **Creditors' Voluntary Liquidation**, or if you have any questions, please don't hesitate to contact a member of our **Insolvency and Restructuring Team** today.

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