

TYPES OF INSOLVENCY APPOINTMENTS

There are four common types of Appointments – Creditors Voluntary Liquidation, Court Liquidation or Members Voluntary Liquidation and Voluntary Administration.

What is a Liquidation or Winding up?

Liquidation is the orderly winding up of a company's affairs. It involves selling the company's assets and distributing the proceeds among creditors and distributing any surplus to shareholders. The three types of Liquidation are:

- ⦿ Creditors' Voluntary Liquidation
- ⦿ Court Liquidation
- ⦿ Members' Voluntary Liquidation

Creditors Voluntary Liquidation

Creditors Voluntary Liquidation (CVL) is the most commonly used type of Liquidation appointment. It is easy, low cost and initiated by the directors and shareholders. It starts with the directors resolving that the company is insolvent and the directors then, with the help of a Liquidator, call an Extraordinary General Meeting for the shareholders to pass a Special Resolution to wind up the company.

Court Liquidation

Court Liquidation (CL) is a Liquidation ordered by a Court, usually on the application of a creditor. They differ from a CVL in that they can be ordered whether the company's directors agree or not, so they are not voluntary.

Members Voluntary Liquidation

Members Voluntary Liquidation (MVL) is only available to solvent companies. The primary reason for a liquidator being appointed to a solvent company is to return capital to shareholders and finalise the company's affairs. In a practical sense, the affairs of the company must be wound up, including the disposal of all assets, and payment of all liabilities.

What is a Voluntary Administration?

Voluntary administration (VA) is where the directors of a financially troubled company or a secured creditor with a charge over most of the company's assets appoint an external administrator called a 'voluntary administrator'.

The role of the voluntary administrator is to investigate the company's affairs, to report to creditors and to recommend to creditors whether the company should enter into a deed of company arrangement, go into Liquidation or be returned to the directors. A voluntary administrator is usually appointed by a company's directors, after they decide that the company is insolvent or likely to become insolvent.

What is a Deed of Company Arrangement?

A Deed of Company Arrangement (DOCA) is a binding arrangement between a company and its creditors governing how the company's affairs will be dealt with, which may be agreed to as a result of the company entering voluntary administration. It aims to maximise the chances of the company continuing, or to provide a better return for creditors than an immediate winding up of the company.

How can Helm Advisory Help?

If you are a director and you think you might need to liquidate your company, then you need to establish if the company is solvent or insolvent. If it is insolvent, then you will need a Creditors Voluntary Liquidation and if it is solvent you will need a Members Voluntary Liquidation.

If you wish to continue trading the business or have a winding up application failed against your company, then you may need to appoint a Voluntary Administrator.

In our view, directors should be seeking external advice from a restructuring advisor well before they contemplate the need for the appointment of an external administrator. If handled properly, early intervention by a qualified restructuring advisor may completely avoid the need to appoint an external administrator in future.

If you need any guidance or assistance with a corporate restructuring, or insolvency matter, please contact one of the Helm Advisory Specialists on 02 9194 4000.