An introduction to corporate insolvency options

FRP

frpadvisory.com

Insolvency Options

Corporate

- Creditors Voluntary Liquidation
- Administration
- Company Voluntary Arrangement
- Compulsory Liquidation
- Restructuring Plan
- Moratorium

The circumstances of each business are different and therefore directors should seek advice from an Insolvency Practitioner and/or Insolvency Solicitor if there is any doubt as to the solvency of the company, in order to discuss options.

Our team

For free of charge initial advice, please feel free to reach out to any of our Teesside advisory team

Martyn Pullin

Partner
Restructuring Advisory
Teesside

+44 (0)1642 917 562

martyn.pullin@frpadvisory.com

David Willis

Partner
Restructuring Advisory
Teesside

+44 (0)1642 917 557

david.willis@frpadvisory.com

Iain Townsend

Director
Restructuring Advisory
Teesside

+44 (0)1642 917 563

iain.townsend@frpadvisory.com

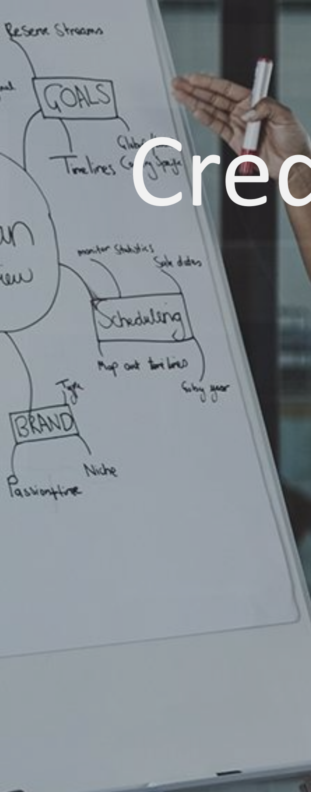
Bhuvnesh Majupuria

Director
Restructuring Advisory
Teesside

+44 (0)1642 917 558

bhuvnesh.majupuria@frpadvisory.com

Creditors Voluntary Liquidation (CVL)



Creditors Voluntary Liquidation

When should the process be considered?

- The company is insolvent and cannot continue to trade
- Rescuing the business is not feasible
- The position as regards creditors will worsen through continued trading

Creditors Voluntary Liquidation

What is CVL?

- CVL is a process used when a business ceases to trade, is insolvent and facilitates the appointment of an IP as liquidator
- The Liquidator realises the assets of the company, discharges the costs of the process, agrees creditor claims and distributes the liquidation surplus in accordance with the order of rank
- Employee claims paid by the Redundancy Payments Service (RPS)
- Leases/onerous assets and contracts can be disclaimed

Creditors Voluntary Liquidation

The voluntary winding up process

- Instigated by directors at a Board Meeting
- Licensed Insolvency Practitioner required
- The Board convenes a Members Meeting
- Creditors consent typically secured by way of deemed consent
- Quorum of members and 75% required to pass the winding up resolution

FRP

Creditors Voluntary Liquidation

Impact of Liquidation

- Trade and the director’s powers cease upon appointment of a Liquidator
- Liquidator is required to carry out an investigation into the conduct of director(s) and report to the Insolvency Service
- The Liquidator can pursue rights of action for the benefit of creditors
- Prohibited name restriction applies
- On completion of the Liquidation, the company is dissolved

Administration

Administration

When should the process be considered?

- The company is insolvent but the business is viable if restructured
- A greater return to creditors can be achieved through Administration
- One of the statutory purposes of Administration can be achieved

FRP

Administration

What is Administration?

Administration is a rescue process, and the IP must consider one of the following purposes can be achieved:

- Rescuing the company as a going concern; or if this is not possible;
- Achieving a better result for creditors as a whole than would be likely if the company were wound up; or if this is not possible;
- Realising property in order to make a distribution to one or more secured or preferential creditors.

Administration

The Administration process (1)

- Board meeting held to resolve to place the company into Administration
- Where qualifying floating charge ('QFC') present, Notice of Intention to Appoint an Administrator ('NOI') filed at Court creating a 10-business day moratorium
- NOI served on the QFC holder
- Notice of appointment ('NOA') filed within the 10 business days

Administration

The administration process (2)

- The Administrator acts as officer of the Court and agent of the affairs of the company without personal liability
- Confidential accelerated mergers and acquisitions process (‘AMA’) typically proceeds Administration
- Where a buyer is secured, the Administrator will complete a sale, on or shortly following Administration, known as a ‘pre-pack admin’ subject to the provisions of SIP16 (Statement of Insolvency Practice)

FRP

Administration

Benefits of Administration

- Lease obligations can be novated
- Realisations are typically enhanced and liabilities mitigated
- Seamless transfer of the business with customer service maintained
- Transfer of employees (under TUPE Regulations) preserves jobs
- Suppliers have the benefit of future trade

Administration

Impact of Administration

- Director’s powers cease upon Administration and moratorium remains during the process
- Director is required to provide a Statement of the Company’s Affairs for onward transmission to creditors
- Administrator can trade the business to enhance the outcome for creditors
- Employees can be paid by the Redundancy Payments Service subject to TUPE Regulations

Company Voluntary Arrangement (CVA)

Company Voluntary Arrangement

When should the process be considered?

- The company’s business is viable if restructured
- Enhanced return to creditors achieved through the CVA
- With historic debt and the costs of restructuring ringfenced, the business can generate cash and trade profitably during a CVA
- More challenging for a contracting business reliant upon successful tendering
- Works well for B2C operations

Company Voluntary Arrangement

What is a CVA ? (1)

- A contract between a company and its unsecured creditors for satisfaction of its debts either in part or in full
- Administered by an Insolvency Practitioner (IP)
- Approval of the CVA ringfences all historic unsecured debt
- CVA creditors must rely on CVA for repayment of their debt
- CVA is a rescue procedure with ownership and control typically maintained by existing management team

Company Voluntary Arrangement

What is a CVA ? (2)

- Creditors can still pursue retention of title claims and liens
- Typically, a company pays contributions for up to 5 years into a scheme fund for the benefit of creditors
- Many prospective CVAs are no longer viable due to HMRC regaining their preferential creditor status in December 2021 and consequently having priority over all CVA assets

Company Voluntary Arrangement

The CVA process

- Step 1 – Review the viability of the business if restructured
- Step 2 – CVA proposal is drafted
- Step 3 – Proposal signed along with notice to the Nominee (IP)
- Step 4 – Nominee prepares their report and comments
- Step 5 – Proposal issued with notice of decision procedure
- Step 6 – 75% of the value of unsecured creditors that vote needed to approve CVA - potentially with modifications

Company Voluntary Arrangement

The benefits of a CVA (1)

- Enhanced return to creditors with no loss of director's ownership or control
- Certain employee claims can be paid by the RPS
- Onerous contracts can be abandoned
- Restructuring costs ringfenced
- Can be varied subject to creditor approval

Company Voluntary Arrangement

The benefits of a CVA (2)

- Secured liabilities still serviced avoiding crystallisation of PG obligations
- Protection of certification, licenses and registrations
- Company is rescued

Company Voluntary Arrangement

Impact of a CVA (1)

- Upon approval, employee claims (if any) can be discharged by the Redundancy Payments Service
- Secured creditors unaffected
- Shareholders’ decision on the CVA proposal still sought
- Onerous contracts can be abandoned and any resulting liabilities form claims in the CVA
- Ensuring the Company’s working capital cycle is viable post CVA is vital

Company Voluntary Arrangement

Impact of a CVA (2)

- No investigation into director conduct
- Compliance with the CVA monitored by the Supervisor (IP)
- Non-compliance can lead to failure
- Where a CVA fails, the Supervisor is typically under a requirement to wind up the company
- Company credit rating suspended with availability of credit limited
- Creditors benefit from improved financial performance

Compulsory Liquidation

- Petition presented (typically by creditors) for winding up which is approved by the Court
- Official Receiver ('OR') becomes the Liquidator
- Directors interviewed by OR's Examiner
- OR investigates the conduct of directors
- An independent Liquidator can be appointed

FRP

Restructuring Plan

Restructuring Plan

When should the process be considered?

- As early as possible in any financial decline as restructuring plans can be costly and time consuming to formulate due to involvement of numerous stakeholders and professionals
- Company must have experienced or be likely to experience financial difficulties which may result in the business no longer being able to continue as a going concern
- The purpose of the plan must seek to deal with the financial difficulties

Restructuring Plan

What is a restructuring plan?

- A deal that is put to creditors, via a Court process available to companies liable to be wound up under the Insolvency Act 1986
- Provides for the restructuring of a company’s debt obligations or restructure of its shares
- A restructuring plan is not deemed to be a formal insolvency process but can be used to rescue insolvent companies
- Due to the high costs of putting together a restructuring plan, it would typically not be commercially viable for many SME’s

Restructuring Plan

How are they approved?

- The process involves grouping creditors and shareholders into classifications in accordance with the characteristics of their debt or share. For example – secured, hire purchase, unsecured etc.
- Approval is then sought from each class to the restructuring plan with 75% of those creditors that stand to receive a return on their debt (those 'in the money') required
- The Court can approve a restructuring plan with 'cross-class cram-down' possible to settle the plan despite creditors not 'in the money' rejecting it

FRP

Restructuring Plan

Are restructuring plans relevant to me and my business?

- Typically, only utilised by large companies due to the costs associated with this Court process, it is more likely SME's will experience restructuring plans as a creditor
- Where a customer proposes a restructuring plan and details are received by the supplier, advice should be sought

FRP

Moratorium

Moratorium

What is a moratorium?

- Provides legal protection from creditors to allow sufficient time for a company to be rescued. During the period a moratorium is in place, creditors cannot take debt recovery action
- A licensed Insolvency Practitioner must agree to act as monitor of the moratorium
- Initial period of protection is 20 days but this can be extended
- The company must be capable of being rescued as a going concern but can exit the moratorium via a restructuring plan or CVA

FRP

Moratorium

When should the process be considered?

- The business can be saved as a going concern if provided with legal protection pending an event which will result in the business being saved.
- Engage with advisors early as financial information and supporting evidence will be required to convince an Insolvency Practitioner that a company can be rescued as a going concern.

Moratorium

What is the role of a Monitor?

- An Insolvency Practitioner as Monitor must be of the opinion that the solvent rescue of the company is achievable
- The Monitor must terminate the moratorium in the event that they consider the solvent rescue of the business is no longer possible

Our team

For free of charge initial advice, please feel free to reach out to any of our Teesside advisory team

Martyn Pullin

Partner
Restructuring Advisory
Teesside

→ +44 (0)1642 917 562

→ martyn.pullin@frpadvisory.com

David Willis

Partner
Restructuring Advisory
Teesside

→ +44 (0)1642 917 557

→ david.willis@frpadvisory.com

Iain Townsend

Director
Restructuring Advisory
Teesside

→ +44 (0)1642 917 563

→ iain.townsend@frpadvisory.com

Bhuvnesh Majupuria

Director
Restructuring Advisory
Teesside

→ +44 (0)1642 917 558

→ bhuvnesh.majupuria@frpadvisory.com

FRP Advisory Trading Limited

34 Falcon Court
Preston Farm Business Park
Stockton on Tees TS18 3TX

FRP Advisory Trading Limited is a company incorporated
in England and Wales registered number 12315855

FRP

frpadvisory.com