Complete Guide to Creditors Voluntary Liquidation

Written by Keith Steven and Wayne Harrison (Licensed Insolvency Practitioner)

The Expert's Complete Guide to Liquidating an Insolvent Company

GROUP

Table of Contents

Introduction to the Guide

This programme includes all you, as a director or advisor "need to know" to get an insolvent and non-viable company wound up, legally, effectively and efficiently.

Of course, the whole corporate insolvency field is hugely complicated and heavily regulated by the Insolvency legislation, so this short guide can only be a general guide for worried directors and accountants or advisors. To go into the level of detail that is required by the Insolvency Legislation would require hundreds of pages of technical guides.

So this publication does NOT purport to cover all of that technical stuff. Instead we follow our normal CompanyRescue approach – we try to explain in normal business language the important issues in your decision making process.

Really this guide is designed to help you decide if the company is insolvent. If it is not viable and if it should be liquidated. Then it sets out answers to many of the questions we are asked every day in our offices across the UK.

So it is not truly comprehensive, but it is the biggest guide to liquidation out there! We will endeavour to improve this by introduction of revised versions and if you want us to cover a subject that's not yet included in the guide, please contact the author Keith Steven (keiths@ksagroup.co.uk)

We have set out the programme to be as user-friendly as possible, but please remember whenever you have questions you can email them to us for a quick answer. We will answer all questions during our office hours of 8.30 to 5pm, 5 days a week. This email support service is FREE.

Please note that only a licensed insolvency practitioner can liquidate an insolvent company.

Key Abbreviations used in the guide

- **CVL – Creditors Voluntary Liquidation**
- **CVA – Company Voluntary Arrangement**
- **IA 86 - Insolvency Act 1986**
- **MVL – Members Voluntary liquidation**
- **S100 – A meeting of creditors under the IA86**

KSA GROUP

Key benefits and downsides to Creditors Voluntary Liquidation

Benefits For Directors

- Ends the ongoing uncertainty and the pressure from creditors and the bank
- Stops sleepless nights
- Allows you to refocus on your future
- You can do deals with creditors on personal guarantees
- Start the business again if required
- Learn a lot of hard won lessons and gain experience

Benefits For Creditors

- Debts don't get higher
- End to the uncertainty
- Formal investigation into the directors 'conduct
- VAT reclaimable

Downsides For Directors

- Investigation into your conduct by the liquidator
- Personal guarantees may be triggered
- Starting the business again will require capital

Downsides For Creditors

- Debts almost certainly irrecoverable, at best small recovery
- If directors acted properly there is no recovery from them
- Bad debts will have to be written off
- May impact on creditors company's cash-flow

Is my Company Insolvent? What are the tests for Company Insolvency?

The answer is that there are 3 insolvency tests.......

Use these tests to establish if your company IS insolvent..... You generally cannot liquidate the company without it being insolvent!

The Cashflow Test

Simple question- can the company pay its debts when they fall due for payment?

For example, if you are not paying the deductions from employees for NIC and Income Tax across to the Inland Revenue on the 19th of the month following the month they were deducted, then the company is probably insolvent.

If your trade creditors sell to you on say 30 days terms and you regularly pay on 90+ days, then the company could be insolvent.

A director has a legal requirement to understand this issue. If he or she believes that the company has insufficient cash to pay its liabilities on time then they must take advice/action.

So, if your company is not paying creditors on time, has lots of threats, County Court Summons or County Court Judgments, or it has lots of phone calls chasing money then it's probably insolvent.

Insolvency tests continued

The balance sheet test

Simply – does the company owe out more than is due in - or are the company's assets exceeded by its liabilities? If the answer is yes, then the company could be insolvent. It is important to point out that this test should include contingent or prospective liabilities.

Many directors tell us that on a balance sheet test the company is not insolvent therefore they do not need to act. However, under the cashflow test above, the company may still be insolvent. So you must act if it is.

In our experience an apparently solvent balance sheet may include items that are overstated, such as obsolete stock, intellectual property, and work in progress, or debtors that are not really collectable. After deducting these items many balance sheets become insolvent. So be prudent - you are legally required to present accounts to show a true and fair picture of the business.

So if your company has a negative balance sheet it IS INSOLVENT.

Legal Action Test

If a creditor has obtained a County Court Judgment this may demonstrate the company's insolvency and the creditor may petition to wind up the company.

If a creditor has obtained a Statutory Demand for greater than £750 and it remains unpaid for more than 21 days, then the creditor may petition to wind up the company.

So if your company has a CCJ or a winding up petition it IS PROBABLY INSOLVENT.

WHAT IF WE FAIL TWO OR MORE INSOLVENCY TESTS?

THE ANSWER IS ACT NOW! CALL KSA NOW ON 0800 970 0539

If you believe that any of the above tests are positive for your business, it is vital that you and the board of directors take action to address the insolvent position. However, don't panic, look carefully at all pertinent issues and consider the rest of this website

Remember, if the company is insolvent you must act to maximise creditors' interests.

If there is no reasonable prospect of the following happening:

New or additional capital or finance being introduced to the business to return the balance sheet to a solvent position or to remove the cash-flow pressures.

- A sale or acquisition of the company.
- A company voluntary arrangement or administration.

then the directors may be accused of wrongful trading. If you are worried about this or your accountant has said he/she is concerned then please read this guide carefully at directors disqualification.

You may have heard that the Government is proposing to suspend the wrongful trading provisions during the current coronavirus period. Whilst this may provide some welcome relief, it will only be for a short few months and will not provide any long term solution or respite.

What is liquidation? What does going into liquidation mean?

Liquidation usually means the company's trading stops and its remaining assets are turned into cash or "liquidated". All other possible liabilities, like employment or renting a property, are stopped. It really is the end of the company, but the "business" itself may survive.

There are three types of liquidation in the UK:

- Creditors Voluntary Liquidation
- Compulsory Liquidation
- Members Voluntary Liquidation

Now read guides below or click on Liquidation Flowchart for a quick guide.

Creditors Voluntary Liquidation

Creditors Voluntary Liquidation is started by the directors. They tell the shareholders the company is no longer viable, it is insolvent and they must stop trading. The shareholders then ask a licensed insolvency practitioner to call shareholders and creditors meetings as soon as possible (usually not less than 14-21 days notice is required, but the process can be shortened in certain circumstances). At this meeting, the shareholders and creditors formally place the company into liquidation and appoint a liquidator.

So, this is why it's called Creditors Voluntary Liquidation! It's very common, quick and a very powerful way to close a business and deal with things orderly and properly. You can get on with a new business or job, the company is closed, leases cancelled and all the staff made redundant.

What does a liquidator do?

A liquidator’s role is to take possession of the remaining assets, turn them into cash and distribute the funds to creditors where possible. The company is dissolved once this process is finished. He or she will also assist the directors in calling the necessary meetings and in preparing the required notices and forms.

KSA GROUP

KSA GROUP

Every one of our new clients says:

“We wish we had met KSA sooner and acted quicker!”

What do we do as directors?

Once the company is placed "in liquidation" the directors have an obligation to assist the liquidator. They MUST take all reasonable steps to protect the company's remaining assets and also hand over the company's books and records to the liquidator. The directors must also attend the creditors' meeting at which the company is placed into liquidation. After that, the liquidator takes charge of the company's affairs.

Can I start another company with the same name?

Be VERY careful on this one. You must not trade with a similar name as the previously liquidated company without careful legal advice. Breaching s216 Insolvency Act 1986 is a possible criminal offence. We can guide you through this possible minefield.

Can I become a director of another company if my company is liquidated?

Yes! Don't worry, you can be a director of another company (remember s216 above). But always act properly, don't take chances and think you are a smarter than the law. You aren't, lots of people think they are and end up in personal financial trouble. Call us now, ask all the questions you want for free. **Call now for advice on 0800 970 0539**.

Compulsory Liquidation

This is a different type of liquidation. It is a legal proceeding that is usually started by a creditor who has usually not been paid for supplies or services, such as HMRC. The creditor will apply to the High Court to hear a "Petition" to wind the company up. If the Court agrees and or the debt is not paid, then a "hearing" is held say 40-60 days later, typically in front of a High Court judge who then passes an order to wind the company up compulsorily.

This is a common tool for debt collecting; all the creditor has to do is have an overdue debt over £750 and then ask a solicitor to start the winding up process.

Facing this threat? **CALL NOW!** or see this guide to winding up petitions here (opens a new page on www.companyrescue.co.uk)

We can use our huge knowledge of the law to stop this process, if you have a viable company.

Most often it is HMRC, the tax man, that issues petitions. They simply want to get the taxes collected or stop you trading to stop the tax debt rising. Facing this threat? **CALL NOW!**

Creditors Voluntary Liquidation: A Guide

"What if there was a way we could quickly close the company and get rid of our worry and stress? We don't want to risk personal liability and we need to stop these creditors putting us under more pressure."

There is a solution, it is called liquidation or more technically, Creditors Voluntary Liquidation. KSA can quickly end the worry and get the company liquidated quickly and professionally. We can help you stop those creditor calls and worries, stop those sleepless nights and quickly help you, as directors, get on with your life.

5 Simple Steps to liquidate your company:

Step 1 – Find a Liquidator. We can help as we have a number of insolvency practitioners. Uniquely to KSA, YOU can speak to one of our IP's TODAY, if you call on 0800 970 0539. It is not possible to liquidate your own company, as the law just doesn't allow it.

Step 2 - Pass details of any company assets over to the proposed liquidator, and our valuers may get these valued. This will independently set the value of the assets for going to auction, or you may wish to buy them.

Step 3 – Let us know who the company owes money to (creditors). KSA will write to them all to let them know what's happening and tell them that a creditors meeting will be held. This will quickly remove creditor pressure from YOU and they will start talking to KSA instead!

Step 4 – Give us all company information and books and records. KSA will give you a list of all the information we need in order to liquidate your company. This information will allow us to prepare the necessary reports for the creditors.

Step 5 – A company director needs to "chair the meeting of creditors". In actual fact, KSA and the liquidator will guide you through the process and run the meeting. This is done primarily by video conference, unless 10% of creditors, 10 creditors or 10% by value wish for a physical meeting. But, by law you are required to attend the meetings. The meeting of creditors is usually a straightforward and short meeting that is in most occasions undertaken by telephone.

So how do you help me as a worried director?

Our normal process is as follows: a director, member (shareholder) an accountant, tax advisor or solicitor will approach KSA Group either though our websites or by phone. Typically the enquiry will be to assess whether the company is generally fit for CVL and what the process/costs may be.

In an ideal world we will be provided with sufficient information for one of our expert advisors to form an opinion as to whether KSA Group can assist with a CVL.

KSA Group access the market by the Internet and as such are heavily dependent upon email, telephone and online solutions like this guide. We can therefore keep costs down for high quality work. This cuts down the need for multiple meetings and attendant costs.

If our advisors believe it appropriate then the caller will be introduced as soon as possible to one of our fully licensed insolvency practitioners by telephone. He will discuss the process, most of which is covered in this guide, and agree to receive more detailed information by email and or fax.

Initial meetings will be arranged only after the provision of initial information and where deemed necessary.

Company bankruptcy! (Creditors Voluntary Liquidation)

Many people call this company bankruptcy, but this is not the correct description, only people can go bankrupt!

Insolvent companies go into liquidation, administration, receivership, they trade-out, refinance or they enter a company voluntary arrangement.

Most accountants, lawyers and many other advisors are aware of a section of the Insolvency Act 1986 that is called "wrongful trading".

When times are very difficult for the company and they do not know about the full range of options available to a distressed company, many advisors tell the directors to talk to an insolvency practitioner (IP) and/or consider liquidation to avoid being made personally liable for the company's debts.

It is interesting that most liquidators get their work this way! So we always recommend taking advice from third parties not just your accountants or their friendly insolvency practitioner. They may be giving "safe advice" but it's not always the RIGHT ADVICE!

We recommend that you consider ALL options before you decide! Do not let the fear of "wrongful trading" get in the way of making the right decision for the company. As directors you must maximise creditors' interests first.

Liquidation should only be used as the LAST OPTION, we believe it should not be a case of bury the company first, ask questions and worry about the results later! Using a simple medical analogy, would you go to the undertaker with a pain in the chest?!

When is (Creditors Voluntary) Liquidation appropriate and what happens?

It is appropriate when:

- The company is insolvent
- It does not appear to be viable - even if restructured
- The market has declined for the company's services or products
- The directors don't believe that they have the determination needed to rescue the company
- It is used as part of the restructuring of a group

What happens in the liquidation process?

The easy answer is a good liquidator will deal with all of the following for and with you. But if you want to know in detail what happens read on.

The directors of the company hold a directors meeting. They agree to call a meeting of the company's shareholders and a meeting of the company's creditors.

So the board of an insolvent company elects to call an extraordinary general meeting of the company. At this shareholders (members) meeting, the directors will have reported that the company is insolvent, there is no reasonable prospect of paying existing creditors, they believe it would be wrong to take further credit and they advise the shareholders that the company should voluntarily enter liquidation.

At this general meeting the members (shareholders) pass a resolution by a 75% majority to cease trading and wind up the company and by 50% or more to nominate a liquidator. This nominated liquidator is instructed to assist the directors to prepare a financial statement of affairs of the company and he or she will also assist in convening the meetings.

If necessary and if 95% of members agree a "short notice" meeting can be held. This allows a more rapid process where for example a winding up petition is threatened or there are matters that need urgent attention.

KSA GROUP

When is (Creditors Voluntary) Liquidation appropriate and what happens?

The nominated liquidator must place an advert in the London Gazette when calling the meeting and will also write to all known creditors inviting them to submit a claim for their debts. The company must also give any floating charge holders (for example, banks who hold security over the company) 5 working days notice of the intention to enter liquidation. Creditors must also be given at least 7 days' notice but the notice period is usually nearer 14 days

The liquidator is then appointed by the creditors at a creditors meeting under s100 Insolvency Act 1986. This meeting is usually held virtually unless the creditors (in certain circumstances) request an actual physical meeting.

If required, the creditors can elect to form a creditor's committee to monitor the activities of the liquidator during the course of the liquidation. This may be to monitor fees, sale of assets and any investigation into the director's conduct. A creditors committee must have between 3 and 5 members. This is usually reserved for the larger and more complex liquidations.

The liquidator has four main tasks:

- **To secure and convert the remaining assets of the business into cash (hence liquidation)**
- **To adjudicate the claims of the creditors (work out how much is owed by the company)**
- **To report upon the conduct of the officers of the company (directors and shadow directors)**
- **To make payments (where monies and dividends are available) to creditors in order of priority**

Of course, very often, the directors have tried many other avenues to save the company and the remaining unfettered assets are modest. (Unfettered means the assets have no outside owners like the bank or finance/HP companies).

In certain instances, the liquidator can sell the assets of the business to another business or third party. This can include the former directors or shareholders, who are not prohibited from making an offer to buy the business assets. This is more commonly known as a phoenix.

How do we go about all of that?

Don't worry the liquidator will handle almost all of the paperwork, the assets and the activity after liquidation. It is vital though that you have up to date information for the liquidator to use. You must make all books and records available to the liquidator and his staff.

Is phoenixism legal and if so what happens?

Yes, provided the rules are observed and the liquidator maximises the interests of creditors then the business assets can be sold to a "connected party". In this event the liquidator must satisfy himself that he/she has:

- Obtained the best possible value for the assets having typically had the assets valued by an external valuer. We always recommend using a RICS qualified chartered surveyor for this work.
- Having typically advertised the assets for sale in the media. on the internet or by way of public auction.
- The trading name of the new company, if the purchaser is a connected party, is not the same or similar to the liquidated company. (There are certain exemptions to the restriction on re-use of a trade name and it can also be lifted if the court agrees).

Often a phoenix will require new cash in the form of investment to get the company going. This can sometimes be a stumbling block too. As can the fact that the new company may have to take on the employees employment rights from the old company (TUPE or transfer of undertaking protection of employment rights). This is a very complex issue that must be considered before going down the liquidation path. Make sure you get good advice.

Typically, when the company is distressed and the board has already decided to cease trading, the normal liquidation process starts but the directors or shareholders or both buy some of the assets from the company and bank the receipts or pass the money to the proposed liquidator. The new company starts to trade. Often a similar name is used to the old company - this can be a legal minefield so make sure you get good advice if you wish to set up a phoenix company.

For more information on Phoenixism see this page

GROUP

What are the main advantages of creditors voluntary liquidation?

From a director's point of view: the directors may avoid the risk of "wrongful trading", they draw a line in the sand - and crystallise the situation (often this is a very important benefit because it can start to bring to an end the period of worry and terrible uncertainty). The creditors interests are hopefully maximised.

From a creditor's perspective, the benefits are that the company's affairs are under the control of a liquidator, a licensed insolvency practitioner. He/she will take control of the company's assets, oversee the orderly closure of the company and report to the creditors on his actions and findings.

What are the main disadvantages of creditors voluntary liquidation?

From a directors and shareholders point of view: any tax losses built up in the period prior to the liquidation are lost, goodwill is lost (even if there is a phoenix), the director's conduct may be investigated by The Department for Business, Innovation and Skills (DBIS). This is a costly exercise. In virtually all cases there is no return for the shareholders and the directors.

If wrongful trading can be proven then the directors can be made personally liable for the debts of the business. Whilst this is rare, it is possible for the directors to be made liable for the company's debts from the point at which it is deemed they should have known the company had no "reasonable prospect" of surviving.

Please see a guide to creditors for an explanation of "connected creditors".

From a creditors perspective a CVL can be a negative step because: assets tend to be sold for very much less than book value, creditors' claims can be much higher (for example claims from employees, landlords and secured creditors), there is often no prospect of continued trade. Coupled with the actual cost of doing the insolvency work, the return to creditors in liquidation is usually nil or very low.

Directors Health Warning!

If the company is insolvent and you are considering liquidation please follow this simple advice:

From here on make sure you take notes of any major decisions, write down important dates and the board's actions. Always write to creditors and banks, that way you will create a written record of the issues. Have regular meetings of the board, shareholders, management and if it's just you make sure you write everything down!

In months to come, when you are asked questions, this will help you remember why certain decisions were made.

Before deciding to liquidate, make sure that you go through the decision making process carefully.

Before deciding to liquidate, make sure that you go through the decision making process carefully.

If you have now decided to liquidate, we can get one of our quality insolvency practitioners to talk to you.

We will make sure a proper and thorough job is done, cost effectively. Please contact Wayne Harrison (IP) or Eric Walls (IP) to talk through the next steps on 0800 9700 539.

Just to remind you again - never decide to liquidate a distressed company unless you think it is not viable.

We can assist with far reaching restructuring of the company including terminating leases, contracts of employment for unwanted employees, HP agreements and other onerous contracts. Would such a restructure help your company survive? If there is a viable business but you are tired and distressed we can still help.

Distribution and period of Liquidation

Once the company has entered liquidation the liquidator will agree the creditors' claims. This process is known as adjudication and can take weeks months and sometimes even years. Every creditor's claim needs carefully scrutinised, indeed although every creditor in a formal insolvency has a duty to mitigate (or reduce) their claim, some may "try it on" and seek to inflate their claim. In other words they inflate their claim to the highest possible value in order to get a higher return.

The liquidator's staff will work out the claims based upon company records, copy invoices and statements from the creditor. His view of the debt is usually final, unless the creditor takes legal action to dispute his findings.

Liquidator's Fees.

Licensed insolvency practitioners (IP's) are heavily regulated by statute, their regulatory professional body and the Government. They have to follow a strict statutory process that includes certain reporting, advertising and insurance requirements. They are also required to report to creditors and DBIS on the progress of the liquidation.

So the process is not fee free!

Of course, every case may be different so it's impossible to state what a CVL will cost, without more detailed information. However as a general guide see the following..

At the initial meetings would generally be an initial fee of £4,500-£6,000 plus VAT for placing the company into liquidation. These fees are paid for by the company.

All disbursements and the liquidator's final remuneration will be agreed with the creditors during the course of the liquidation.

Some websites promise cheap liquidations from £1000. BEWARE. This type of service is generally NOT for voluntary liquidation but, it is usually for compulsory liquidation. This can lead to the situation getting worse for directors.

A word of warning on fees

Other websites claim to do proper creditors voluntary liquidations for £2,500. We have heard many times that this is not the full fee and the directors often have to find more money later.

The fee for liquidation depends upon the case complexity, how many secured and unsecured creditors there are and how much work needs to be done.

Paying Liquidators' Fees

Remember these key points when it comes to liquidation fees;

1. As directors you surely want to do this only once!? So you should get a quality job done for the most cost effective price.
2. The money in the company's bank account isn't yours! Many directors think they're paying for the liquidation because the company is "theirs". Wrong! The assets and money in effect belong to the creditors.
3. Don't leave it until there are no assets and nil cash to start the liquidation. A fee must be paid or there will generally be no voluntary liquidation and you may see a creditor winding the company up.
4. No money and no assets in the business can often signify that the company has been trading insolvently for a long time – you may face PERSONAL responsibility for the shortfall.
5. ACT NOW, the sooner the liquidator is appointed the sooner the risk is mitigated for you

KSA GROUP

Creditors Voluntary Liquidation - Frequently Asked Questions

These frequently asked questions and their answers will give more detailed background to the Creditors Voluntary Liquidation (CVL) option. If you have any further general or specific questions feel free to email us at info@ksagroup.co.uk

Q: How can you ease our worry, stress and stop the creditors' calls?

A: Well the process of a company dying is not a happy one for the directors or creditors. Directors cannot or will not give information on payments, so the creditors keep chasing because their systems say they have to.

This can lead to legal actions, bailiffs, petitions and threats.

Eventually the stress of this can cause you to be depressed and possibly even suffer illness. The best way to deal with a company that is simply not viable is to commence liquidation quickly. **Call now to start relieving the pressure!**

Q: If we propose a CVL what will the bank's reaction be?

A: Naturally the bank will be disappointed. It is likely that the bank will have some form of security - typically through a debenture. If the bank's lending to the company is significant and the company is insolvent they will probably have taken steps to learn more about the company's insolvent position and how its security looks already.

If the bank debt is not material, they will often wait until the liquidator recovers the assets and receive payment in order of priority. **In liquidation the bank must give the liquidator permission to collect his fees.**

Q: We have not paid the PAYE for months, if we propose a creditors voluntary liquidation (CVL) what will HM Revenue & Customs do?

A: The debt which you have built up is important because the IR is an "involuntary" creditor - in other words it cannot stop you building up debt (unless it takes legal action to wind the company up – see a guide to COMPULSORY LIQUIDATION here) and because the funds you have failed to pay over are your employees' tax and NIC deductions.

This is an illegal nonpayment and can result in **the veil of incorporation being lifted (directors protection under limited liability) and the directors being made personally liable for the debt.**

Creditors Voluntary Liquidation - Frequently Asked Questions

Many directors are completely unaware of this. Failure to correctly operate a PAYE scheme is also a criminal offence. HMRC may ask the liquidator about the actions of the directors prior to the liquidation - did they know they were trading insolvently? Did they take reasonable steps to protect the other creditors? These questions can be complex and you should take legal advice if you are concerned.

Really though, if the debt is modest and the directors have tried their best, there will be little reaction to CVL from the tax man.

A quality KSA tip: make sure you file ALL PAYE and tax returns, P11D's and so on. The Revenue takes a dim view of not filing these even if you cannot pay the tax.

Q: We have not paid the VAT for 3 quarters now, if we propose a CVL what will the HM Revenue & Customs office do?

A: See the answer above re PAYE.

A quality KSA tip: once again make sure you have filed all VAT100 returns (the VAT returns) and do not tick the box that says "payment enclosed". Again this shows you are trying to act responsibly as directors – even if the company could not pay the VAT.

Q: What will my creditors think?

A: Most creditors will have to adopt a pragmatic approach. In a CVL it is VERY unlikely that they will get more than a few percent of their debts back. They may however be angry and want to know why the company failed.

They can attend the creditors meeting, become part of the creditor's committee and generally keep in contact with the liquidator. However (unless the actions of the directors can be shown to be wrongful, negligent or fraudulent) they cannot take any further action.

Of course they are going to be reticent to provide credit in future, especially if you start again with a phoenix company.

Q: Can't we just close the company and keep the business?

A: Not really. If the company has more debts than assets or is insolvent on the balance sheet test you should really liquidate the company. Keeping the business is not an option as this could be seen as a transaction defrauding creditors, if it has a value it must be paid for. So yes, you could keep the business but it is best to do it properly through the liquidation process.

It is also possible to dissolve the company under the Companies Act 2006 provided there has been no trading for 3 months and the company is dormant or defunct. And has no assets. See a guide to Dissolution

Creditors Voluntary Liquidation - Frequently Asked Questions

Q: Can we use the same name again?

A: There are certain very strict restrictions on re-use of trade names. It is possible, provided the liquidator or the court agrees, but the rules are tight and are aimed at "passing off". For detailed answers to this question take professional advice or email us.

S216 Insolvency Act sets out strict rules for this and you should always take great care to get professional advice. Did you know it is a **criminal offence** to "pass off" as the old company?

Q: Will I be personally liable for the company's debts?

A: The veil of incorporation theoretically protects the directors from being liable in the event of an insolvent liquidation. But, remember the liquidator must submit a report on the conduct of the officers of the company in the 3 year period up to the closure of the company.

If, during the course of the liquidation, he comes across information to show that the actions by the directors have contravened the insolvency or company legislation then he must report to DBIS (The Insolvency Service). Likewise, he may take action on behalf of the creditors to recover assets of the company.

It is possible that DBIS can start proceedings to strike off the officer if a case can be made. Finally, HMRC may take legal action to recover monies from directors if certain conditions apply. If in doubt take advice from an insolvency practitioner (IP) or email us.

Q: Can I avoid personal guarantees to the bank?

A: Not easily. If the directors have given personal guarantees (PG's) and the assets of the business are insufficient to repay the bank in full then it is possible that the bank will take action, to recover their money, against you.

If the assets are sufficient and the bank is repaid in full your PG's will be cleared - but always pursue the bank to have them nullified.

Talk to us about the debt situation your company has and any PG's – a sensible approach could allow the bank to recover much of their debt thus reducing your liability.

Q: I want to look after my employees what happens to them in a CVL?

A: There is safety net of measures to reduce the financial hardship of employees in the event of liquidation (and where the business is not sold as a going concern). They will receive redundancy from the Redundancy Fund. They will also receive (capped to £538 per week in 2020) payments in lieu of notice, holiday pay and arrears of pay.

These payments are funded by Government who levy a charge on all assets collected in liquidations to help pay for them. The Government can reclaim from the company if it is subsequently found to have adequate assets for example.

Q: Why not just pay them and then liquidate the company?

A: What appears to be a noble gesture by the employer can in fact be an illegal step. Under the rules of preference (s239 Insolvency Act 1986) such a payment may put the employees in a better position than they would have been and, if it can be proved that there was a desire to make them better off, this could be a "preference".

If this is proven they may have to pay this back to the liquidator! So no, the best method is to use the safety net described above.

Q: We have big tax losses - will we lose them in a CVL?

A: Yes.

Q: What is wrongful trading then?

A: This is where the officers of the company failed to act correctly when they knew that the company was insolvent, they failed to take the actions of a "reasonable person" to maximise the body of creditors position and they willfully continued to take credit that they understood they might not be able to repay.

Failure to submit annual returns and accounts is also just cause. If the liquidator can prove that these actions took place he can start an action or seek advice. It can be grounds for the liquidator and DBIS to start recovery or disqualification actions.

See a guide to wrongful trading or see page 31 for further information or take advice from KSA.

Q: What happens if a creditor already has a winding up petition?

A: The company cannot nominate a liquidator when a creditor has a winding up petition with a hearing granted. Of course, a creditor’s voluntary liquidation may still be appropriate in order to cut down the costs and possible complexities of the liquidation. In this event, the petitioning creditor must consent to withdraw his petition, but remember he is not compelled to withdraw the petition.

Alternatively, if there is a petition then obtaining an administration order will create an effective moratorium over the winding-up petition. See a guide to Administration here.

Creditors Voluntary Liquidation - Frequently Asked Questions

Q: I have heard that I just need to sell the assets to a third party cheap and then liquidate, afterwards I can buy them back and start trading again?

A: This is usually just "bar-room lawyer talk". Whilst it may be possible it is certainly not legal! If this is discovered then it can be reversed by the Court upon application by the liquidator.

Q: How do we pay the cost of a CVL if we have no cash or assets?

A: A common problem that faces directors where the assets have all been used to borrow against.

Essentially there are the following options to cover the cost which is approximately £4500-£5,500 plus VAT and Disbursements outside of London and the South East and usually £5,000-£6,000 plus VAT and Disbursements in London.

Dissolution: cease trading and wait three months, apply to the Companies Registrar to dissolve the company (almost impossible if lots of creditors chasing for payment) under the Companies Act. If there is any material tax debt HMRC will not usually allow dissolution. The directors can pay for the cost out of their own funds. I know you have probably not had a lot of money out of the business but this is a very good way of ensuring the burial is done properly.

Cease trading and wait for a creditor to wind the company up compulsorily. This leads to more pressure on the directors.

If the company has modest assets that can be sold for say £1-4k, on eBay for example, then you could top up the rest? If you are a retailer sell off the stock before closing the doors. Keep the cash takings for the fees. Or you could use your credit card to spread the cost.

If the pressure is too much and you have the funds to pay then paying the fee yourself is the smartest way of stopping the creditors pursuing you. So, if you really want an end to reporting, compliance, creditors chasing you and the directors then CVL is the BEST OPTION.

A: Well for a start only licensed insolvency practitioners can perform the role of liquidator. He or she must be licensed by DBIS and regulated by a professional body. This costs money to qualify and re–licence each year.

Secondly, the liquidation process has very strict rules of notices and advertising, for example in the London Gazette. This costs money.

Thirdly, they are required to take out specific insurance cover on each liquidation.

Fourthly, they must call and incur the costs of convening and holding a creditors meeting. Creditors must be formally notified of the proceedings and the liquidator will deal with all creditor enquiries and claims. All of this takes time which they need to recover and be paid for.

Liquidation and Directors Actions – slightly more technical guides

Here we cover some of the more technical issues in liquidations with particular regard to the company directors, their actions, how those actions may impact upon directors and how they may be attacked or investigated by liquidators.

Obviously this general guide is NO SUBSTITUTE for taking proper insolvency and legal advice. KSA Group will happily provide this advice free of charge.

What is an overdrawn director’s current account and what happens to it in liquidation?

In more than 75% of our enquiries from directors of struggling companies, we find that this is a major problem. So what is an "overdrawn directors’ current account?"

Well, usually the company is making some profits and your accountants advise you to save tax by paying the directors a small salary and then the directors take dividends from the reserves of profits made in the past and current years.

SO off you go taking money out of the business as instructed.

THEN something goes wrong!

Although the advice is generally sound from a tax reduction perspective, when a company is performing well; it’s when things go wrong that directors can end up with serious personal liability problems.

KSA GROUP

Overdrawn Directors Current Accounts

Technical Issues

Having an overdrawn director's current account (ODCA) is actually a breach of the Companies Act 2006. All accounts filed at Companies House should refer to any overdrawn current accounts as loans to the director concerned. You must try to get these paid back or reversed in subsequent periods as the Revenue will tax you if you do not.

If the company has no distributable reserves, it cannot pay dividends. So if your company's balance sheet starts a year with nil or negative reserves and if you make no profits you MUST STOP taking dividends as soon as you are aware of this.

Illegal dividends are a complex area at the best of times under the new Companies Act 2006! But when a company is insolvent they can lead to serious risk of personal liability for the monies taken.

It is much better to pay yourselves through PAYE and pay the tax/NIC. If the company cannot afford to pay you GROSS then it is pretty much insolvent.

What can we do? Well options include:

- Repay the debt you personally owe to the company.
- Offset any loans the directors have made to the company (this is called set off).
- Take your full salary but reduce the cash you take out of the business to gradually offset the account. So pay yourself £4,000 per month but take £1,000. Remember to pay tax on the £4,000!
- Make a lot of profits in future periods to offset it!
- Use a Company Voluntary Arrangement to restructure the company.

If the company is simply no longer viable then the board should start the liquidation process regardless of the ODCA.

What happens in liquidation if we have overdrawn current accounts?

In liquidation, the liquidator can demand that directors repay their overdrawn directors current account to the company for the benefit of the creditors. They can take legal action to make directors pay this or even make you bankrupt.

So, in theory, you could lose your house if your directors' current account is overdrawn and not recovered. Or, more likely you could do a deal with a insolvency practitioner (liquidator) to pay back all or part of that debt over a period of time once the liquidation is under way.

If you can prove that you have very little in the way of assets then the liquidator will consider accepting a part repayment as a reasonable recovery for the creditors. If you have plenty of assets and equity then be prepared for aggressive recovery action.

KSA GROUP

Wrongful Trading: "Am I Guilty of Wrongful Trading, if the Company is Insolvent?"

We are often asked what this means because directors have talked to their accountants, advisors, insolvency practitioners or a clever man in the pub. They may have said "be careful if your company is insolvent then **you will be guilty** of "wrongful trading"! This is nonsense!

The simple explanation is this: if you act unreasonably, recklessly or badly when you know the company is insolvent, then you may have some personal liability if the company is liquidated.

Worried? Well read this guide in a bit more detail to learn more.

First of all is the company insolvent? To establish the answer to this there are three tests:

1. Can the company pay its creditors as and when the debts fall due? This is called the cashflow test.
2. Is there more money owed to creditors than assets? This is called the insolvent balance sheet test.
3. Is there an outstanding County Court Judgment over £750?

If any of the three tests above are met, then your company is probably insolvent and you must act properly and act in the best interests of the creditors (all of them being treated in the same way).

If the directors do not act in the creditors' interests and they act "wrongfully", then they can be made personally liable for the company's debts from the time they knew the company was insolvent. So, if you are in a hole, stop digging and get help!

If the company is insolvent and the directors know it is, then other tests for wrongful trading actions include:

1. Not filing the company's Annual Returns at Companies House.
2. Not filing annual or audited accounts at Companies House.
3. Not operating the PAYE scheme correctly; in other words failing to pay PAYE and NIC when due.
4. Not operating the VAT scheme correctly, as above.
5. Taking excessive salaries when the company cannot afford them.
6. Taking credit from suppliers where there was no "reasonable prospect" of paying the creditor on time.
7. Willfully piling up debt and knowing there was no way out of the problems.

Formal insolvency procedures

Wrongful trading actions can only be commenced in a formal insolvency. What is a formal insolvency event?

For example: Creditors Voluntary Liquidation, Administration, Administrative Receivership or Compulsory Liquidation. It does not apply in Company Voluntary Arrangements, Trading Out, Refinancing.

So wrongful trading IS a risk if you act badly without taking care. Obviously, the best way is to act carefully, take advice from experts like us and make sure all decisions are carefully written down (minutes). If you **do** act properly there is minimal risk of you acting wrongfully.

No one can be accused of wrongful trading when they simply made mistakes. It's when you cannot provide evidence that you acted in good faith, when making the decisions that then turned out to be wrong, that problems arise

So always write notes or minutes when making big decisions, keep them handy and talk to us if you need guidance.

If you want to know more please contact us for further details. Alternatively visit www.companyrescue.co.uk for more detailed information on all things insolvency related.

Wrongful Trading is covered by Section 214 Insolvency Act 1986.

Guide to Transactions at Undervalue, s238 Insolvency Act 1986

"What if we sell the company's assets to another company and then knock the insolvent company over?''

This is possibly a "transaction at undervalue". This may seem an innocuous enough question but it is actually a very complex one that can lead to trouble for the average director.

If the company is no longer viable and the directors believe that the company has no future, it may be tempting to "move" or sell some of the assets across to another trading company or partnership. The first warning is **think carefully before doing that!**

If the company has assets that actually belong to say a bank or Hire Purchase company, then these assets must not be sold or transferred without their explicit written approval.

However, if the assets are unencumbered and are then sold below their proper value, or moved for no payment (consideration), then there is a possible breach of **s238 Insolvency Act 1986 - Transaction at Undervalue**.

This section applies in the case of a company where -

(a) The company enters administration or (b) the company goes into liquidation and "the office-holder" means the administrator or the liquidator, as the case may be.

Where the company has at a relevant time (typically 2 years if a connected party and 6 months if an unconnected party) entered into a transaction with any person at an undervalue, the office-holder may apply to the court for an order under this section, the court shall, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction. So the COURT can reverse that sales or movement of assets.

Secondly, this could lead to a negative report to DBIS and possible wrongful trading.

Guide to Transactions at Undervalue, s238 Insolvency Act 1986

So how do we sell or move assets?

Properly! If there is a plan to sell any asset, then the safest policy is to get the asset(s) independently valued, make sure that the valuation has going concern and forced sale values. Typically you should use a RICS qualified valuer or surveyor to perform this task. Then we suggest that the assets is sold at or about forced sale values and the consideration banked to maximise the interests of the company's creditors.

Keep careful records of such transactions and it's probably best if a board meeting minutes the transactions as being formally approved by the board.

What if we cannot afford to buy the assets?

We suggest that you liquidate the company and then offer to buy the assets over time (deferred consideration) from the liquidator. DO NOT remove the assets thinking that there is no harm. Remember the directors may be made personally liable for the company debts if they have been wrongfully trading!

What if we **hive across the assets or the business to another company?**

This is a complex area of law that requires more details than a simple "what if" question, however the basic principles above apply. Hive across assets ONLY after proper legal advice and values have been established and a consideration paid by the other company.

KSA GROUP

What does preference mean when a company is insolvent under s239 (Insolvency Act 1986)?

Otherwise known as …. **"Before we go insolvent, can I pay off a few of my friendly creditors?''**

A straightforward directors guide to s239 Insolvency Act 1986 - or s243 Unfair Preferences in Scotland

A potential PREFERENCE occurs when a company pays a creditor(s) and by doing so makes that creditor "better off" than the majority of other creditors, before going into a formal insolvency like Administration or liquidation. However, the second important test is that there must be a "desire" to make that creditor better off.

This is an area of insolvency law that is commonly misunderstood, but can cause many problems for those who create the preference. If proven it can lead to action against the beneficiary, action against the directors, lifting of the veil of incorporation, personal liability and if wrongful trading proven, disqualification under other provisions of the insolvency legislation.

So how does preference happen: Case Study for a preference under s239 Insolvency Act 1986 (fictional!)

Acme Nuts and Bolts Company Ltd, has been trading for many years and has seen a steady decline in sales and profits over recent times. Mr Bolt the managing director sits down with Mr Washer the FD and they read the accounts, look at the cash-flow and decide that the company is insolvent. It is likely that the company will breach the bank overdraft if all creditors demands for payment are met, the PAYE is already 2 months behind and the most recent VAT quarter has not yet been paid.

Mr Bolt thinks that a smaller leaner workforce, operating in a much smaller property would be a viable business but the company's long term employees would be too expensive to pay off. Redundancy costs alone would be £100,000.They cannot see how to pay this and decided to slowly wind the company down before starting again.

One of the suppliers to Acme is a company owned by Mr Bolt's brother, it is owed £12,000 for supplies and has always been paid on time by Acme, the £12,000 is for supplies in the last 30 days. Another supplier is owed £16,000 and it has a smaller factory property available, that Mr Bolt would very much like to use to start a new company.

Mr Bolt tells Mr Washer to pay both these amounts as soon as possible and then he decides that they will talk to an insolvency practitioner about the options for "dumping the company". Some 8 weeks later the company enters liquidation and the liquidator begins to examine the conduct of the company in the period leading up to the liquidation.

What does preference mean when a company is insolvent under s239 (Insolvency Act 1986)?

He discovers that Mr Bolt's brother was paid £12,000 and the other supplier was paid £16,000, just before the company decided to cease trading and go down the liquidation path. VAT, PAYE and over £500,000 worth of other creditors' debts were not paid.

Under s239 insolvency Act the payment to Mr Bolt's brother is a clear breach of the Act, both tests were positive, the company paid the debt when not paying PAYE/VAT and other creditors. Now the more difficult test - was there a desire to create a preference"?

Because the brother was a "connected creditor" or associate through blood, the law automatically assumes that Mr Bolt wanted to make his brother better off. The liquidator demanded the money back from Mr Bolt's brother and the court agreed.

On first inspection by the liquidator, the other payment to the company with the spare property was less clear cut. Was a payment made? Yes. Was it paid when other creditors were not paid? Yes. Was a desire to create a preference in place? Possibly, but not conclusively. However, after a few weeks the liquidator noted that Mr Bolt had started a new company and the address was the same as the paid customer of Acme, so he took action to recover that money too. Interestingly, some of the company's assets appeared to have mysteriously found their way to that property too!

The "**desire to create a preference"** test is much more difficult to prove in other cases, often the threat of the liquidator taking action sees a deal being done where some of the debt is repaid, to the liquidator, for the benefit of other creditors.

This is a difficult subject matter but a vitally important one for every director to consider when reviewing the company's insolvency and how they have acted.

The safest route is to ensure that all creditors are treated "equally", ensure that if one creditor is being paid faster than others that there is a very strong commercial reason - it maximises the interest of creditors to pay XYZ Ltd as they're our only supplier of widgets, by paying them we keep the factory going and generate debtors, while we consider rescue and insolvency advice.

This is a path that requires professional advice, common sense and full discussion by the board and proper documentation of decisions to pay suppliers taken at board and management levels.

Clearly, paying friends and family is risky. Paying back directors' loans is a definite preference if the company subsequently enters liquidation.

Finally, remember though that preferences are only crystallised by a formal insolvency like administration and liquidation.

How do we avoid creating a preference?

Common sense dictates that if the decision to pay someone seems "off" it usually is!

The safest route is to ensure that all creditors are treated "equally". If that is not possible then ensure that if one creditor is being paid faster than others that there is a very strong commercial reason. For example you may wish to pass a board resolution to" pay XYZ Ltd as it maximises the interest of creditors to pay XYZ Ltd as they're our only supplier of widgets, by paying them we keep the factory going and generate debtors".

Ensure that you regularly consider of the company's solvency, you may ask for a time to pay PAYE or VAT along with asking the bank for support, introduction of new capital. If all of this is not sufficient to prevent the company running out of cash, then more radical solutions must be considered, such as administration and liquidation, company voluntary arrangement or receivership.

This is a path that requires professional advice, common sense and full discussion by the board and proper documentation of decisions to continue trading and to pay suppliers taken at board and management levels.

Remember - The assets of the company do not belong to you even if you own all the shares. They belong to the company.

"If we liquidate the company called My Car Cleaning Company Ltd, can we start another company called My Car Cleaning Co Ltd?''

Otherwise known as a potential breach of s216 IA1986

Can we use the same name again if we liquidate?

A: There are certain very strict restrictions on re-use of trade names. It is possible, provided the liquidator or the court agrees, but the rules are tight and are aimed at "passing off". For detailed answers to this question take professional advice or email us.

S216 Insolvency Act sets out strict rules for this and you should always take great care to get professional advice. Did you know it is a **criminal offence** to "pass off" as the old company?

This means the "veil of incorporation" that protects you as a director, even if the company fails and enters liquidation, can be lifted. Then the liquidator or creditors can attack you personally and try to get you to pay back some of the money that they blame you for losing.

It is easy to breach this rule and cause yourself many problems. But it is also not that difficult to avoid. Firstly is the company name really that important?

If it is say "Keith Steven Ltd" then you could argue that preserving the name is important, the Court MAY agree and allow the new company you are forming to re-use that name but it needs to be agreed by the court or the liquidator. For example if the liquidator sells the "oldco" assets to you make sure the company NAME is included in the transaction and that he has given written authorisation to use it.

If it is a "Brand Name Ltd", then the court will struggle to give an order to re-use this name unless many creditors or debtors would suffer by the name being lost. But it is always worth having a plan "B" for the name issue in liquidation.

If there is no blameworthy cause on the part of the directors, then a dispensation MAY be given by the Court to also the name to be re-used by the same directors. A case in point is *Re Bonus Breaks (1991)*

The Insolvency Act and the Penalties: (Technical stuff)

"This section applies to a person where a company ("the liquidating company") has gone into insolvent liquidation on or after the appointed day and he was a director or shadow director of the company at any time in the period of 12 months ending with the day before it went into liquidation.

216(2) [Prohibited name] for the purposes of this section, a name is a prohibited name in relation to such a person if -

(a) it is a name by which the liquidating company was known at any time in that period of 12 months, or

(b) it is a name which is so similar to a name falling within paragraph (a) as to suggest an association with that company.

216(3) [Restriction] **Except with leave of the court or in such circumstances as may be** prescribed, a person to whom this section applies shall not at any time in the period of 5 years beginning with the day on which the liquidating company went into liquidation -

(a) be a director of any other company that is known by a prohibited name, or

(b) in any way, whether directly or indirectly, be concerned or take part in the promotion formation or management of any such company, or

(c) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on (otherwise than by a company) under a prohibited name.

216(4) [Penalty] If a person acts in contravention of this section, he is liable to imprisonment or a fine, or both.

It is therefore VITAL that you get good advice on these matters to avoid future

KSA GROUP

“I am a Director. How will Creditors Voluntary Liquidation Affect Me Personally?”

"A man in the pub said I cannot be a director of any other company if I liquidate my company. Is this true?"

No, it is not true! This just shows there is a lot of nonsense spoken about liquidations and acting properly. Many people are very worried about liquidating their company as they think it might affect them personally.

So how will it affect you? Having a limited liability company means that the directors have little risk (or limited liability) if the company fails, as long as they have acted properly. If you have acted properly and reasonably then the company's failure should have limited effects on you personally.

If it can be proven there was wrongful trading then, you are at much increased personal risk. You may face personal liability for company debts.

Voluntary liquidation is the quickest most efficient way to deal with an insolvent company that has no future. As a director of an insolvent company, you are at risk if you do not **act.**

This risk RISES the longer you don’t act to put the company into liquidation.

If you fail to act and if eventually the company is wound up by the creditors (compulsory liquidation) then the Official Receiver (OR) will be appointed to liquidate the business and he or she will investigate the activity of the directors and the business over the last 2 years. This is known as a conduct report on each director.

Did you know that if the official receiver finds that the directors have knowingly traded whilst insolvent and they failed to act, took credit without reasonable prospect of repaying the debts, failed to submit accounts or a number of other offences then it is possible you will face PERSONAL action? Did you know that the directors can be made personally liable for the debts of the company?

This is known as the lifting of the veil of incorporation that protects directors under limited liability. If this happens then you could made liable for PAYE, VAT and creditors monies from the time that you should have known the company had “no reasonable prospect of surviving” the problems it faced.

Additionally, the directors may face disqualification proceedings under the Company Directors Disqualification Act 1986 for up to 15 years, they can be fined and may face the loss of assets or even personal bankruptcy. In truth if the directors have acted naively they may not know they have broken these laws, but now you do know, it is vital to ensure that you protect yourself as a director by acting quickly to cease trading and put the company into voluntary liquidation.

“I am a Director. How will Creditors Voluntary Liquidation Affect Me Personally?”

It is the directors who initiate the process by nominating one of our insolvency practitioners. The directors may pay for the liquidation out of company funds, company assets or sometimes personal funds to ensure that voluntary liquidation goes ahead.

It can be cheaper in the long run to pay for liquidation than face personal liability for the debts! Of course, the directors, if they have acted wrongfully may still face negative conduct reports in voluntary liquidation. The rule is generally, the longer you leave it, the more risk of personal liability you may have.

If you have signed personal guarantees or indemnities to lenders, then the liquidation could lead to them being called in if the bank cannot get its money back from the company.

One **great piece of FREE advice** - always make sure that ALL tax returns, VAT returns and annual returns have been completed and sent in and that other "compliance" issues are dealt with wherever possible. These are important processes and will help protect you as individual directors. It shows that you have been acting properly.

This is clearly a general guide so, if you have any worries at all please just call us and we will talk you through the situation free and with expert guidance. Call one of our IP's (or insolvency practitioners) now.

Finally, please remember this: NO BUSINESS is worth losing your health, relationships, marriages or your children. Act properly, take advice, get the problem sorted and then get on with your life. In a little while, the stress will diminish and you can focus on other things that are more important.

So we would strongly recommend that the company is quickly placed into voluntary liquidation to protect the creditors and to help protect you as directors. If you have any questions please contact Sarah Massey or call our insolvency practitioners, Wayne Harrison or Eric Walls on 0800 970 0439 for a free discussion.

Case Studies

KSA Group Liquidation case Studies

Liquidation Case Study North East Recruitment Company (CVA and CVL's)

Did you know recruitment sector has the highest percentage of business failures of any business sector in the UK?

Again a recruitment group approached us via this website and asked for immediate assistance, always good when people act quickly in our view!

A group of three companies had lost a major contract with a multinational accounting firm. Sales fell from £4.5m to £2.5m overnight. The board hung on to staff and fixed costs thinking they would either win the work back or replace it. Neither happened of course but the directors simply did not know what powerful company restructure mechanisms were available.

The group is now reduced to one much smaller company using a CVA to control the deal. Two companies were liquidated one rescued with CVA.

Key case achievements by KSA

- Prevented winding up by HMRC for unpaid PAYE of around £230,000 in a viable company
- Reduced headcount by 10 full time staff and over 40 temps.
- Carefully modelled business over 5 year period
- Drove two failed companies into liquidation
- Helped negotiate exit from two unwanted office properties.
- Replaced factoring deal to provide higher initial payments

So the moral of the case study is get help from experts now, we'll come up with solutions that you didn't know were possible!

Think liquidation will solve your problems or do you think the company needs a CVA? Well in order to find out call **01289 309 431** or **0800 9700 530** NOW, we'll help you solve the problems.

GROUP

Case Studies

KSA Group Liquidation case Studies

Liquidation Case Study Small Hampshire IT Consultancy Company - IR35

The issues here are commonplace amongst small "service companies". Typically a consultant working for a large company is classed as having direct employment by HMRC (this is called IR35). A commonly used solution is to set up a small service company which then offers their services to the client.

Unless this is done carefully and with tax planning the IR35 issue does not simply "go away". HMRC may still see the service company as a device and the director as an employee of the client company. The usual answer is to be employed directly by the client or to prove that it, the client, is not the only customer of the service company.

There is another issue here, often the consultant takes drawings from the company each month and then has no cash left at the end of the financial year to cover corporation tax. She or he is also then hit with personal tax bills as the earnings from the company have not been taxed through the PAYE scheme.

Alternatively, the director takes too much cash out and although the earnings are taxed through PAYE, the company cannot find the cash to pay the monthly PAYE and NIC deductions.

We advised a director of a company based in Hampshire that had built up liabilities for Corporation Tax, VAT and PAYE. The solution used was a creditors voluntary liquidation for the company - killing off the tax debts and then he as an individual was employed by the client company directly.

Luckily the client valued his services so much that they elected to take him on to their payroll. However, there is still the risk in this solution that the "veil of incorporation" may be lifted and he could be personally pursued for an element of the tax owed by the company. This would occur if the Crown creditors could prove wrongful trading.

In this case that was not too much of a threat, as he also had serious personal credit card debts.

Our answer here was to propose an individual voluntary arrangement.

Case Studies

KSA Group Liquidation case Studies

Liquidation Case Study Multiple Group Companies Case

We were approached by a group of recruitment companies with 8 companies in a loosely related group. One had been liquidated by a creditor, they thought that 6 were insolvent and one was solvent.

The owners wanted help in sorting it all out and were frantic with worry. They visited our website and then plucked up courage to call KSA. We quickly identified that 5 of the companies needed to be closed and liquidated. One was in Scotland the rest in England. We arranged the liquidations of the 5 insolvent companies. The other two were rescued by company voluntary arrangements.

Overall the cost of the 4 English liquidations was around £10,000, the Scottish case, which was a lot more complex, was £5,000 overall. Our liquidators took their fees from the cash, debtor book and asset sales. The remaining companies have had difficulties but are still trading. The directors who had had a tough few months are now focused on running their viable companies.

They have had their conduct reviewed by the liquidators and no further action was taken against them. This is normal result of liquidation investigation as wrongful trading actions against directors are very rare.

KSA GROUP

Case Studies

KSA Group Liquidation case Studies

Liquidation Case Study Franchise Company - Signs

A director called us after reading the www.companyrescue.co.uk website. Having invested much of his savings to buy an expensive franchise in the sign-making sector he was worried that it was not performing and he was ploughing more and more capital in.

We took him through the options, then mutually we decided that it was never going to work in that location. He would risk losing his house by borrowing more against his home to plug the cashflow hole (never a good idea)!

We advised him that the HP company would take back the equipment that it had financed (and sell it off probably) and then the debtors due to be collected would easily cover the cost of voluntary liquidation which was around £4,000.

The property (a shop) lease was immediately disclaimed by the liquidator and the director, who had a personal guarantee on the lease, helped find a new tenant within around 3 months. He has avoided personal bankruptcy, kept his home and his marriage/family. David now works in the same sector but as a manufacturing director for a sign making company in Kent.

Liquidation Case Study Training Company, London

A training company had grown fast mainly on the back of one key contract. A fast growth but not yet profitable business with good prospects, turned into sharply loss-making business when the contract came to a messy end.

The directors struggled on and tried to reduce employee numbers, but they were faced with tribunals and redundancy costs that the company could not meet. Even a company voluntary arrangement (CVA) could not help the company and it was time to liquidate it.

Within 24 hours the company ceased trading and the liquidator took control of all of the big issues. The directors soon bought out the name of the old business and the remaining contracts and set up again as a small (phoenix) company.

They learned the very OLD business lesson, ‘’ **turnover** (from a big contract) is **vanity, profit is sanity**".

KSA GROUP

Case Studies

KSA Group Liquidation case Studies

Liquidation Case Study Electronic Components Distributor (CVL)

In this case the parent company was wound up in the High Court after a long running legal dispute by a creditor. KSA helped put the trading company into creditors voluntary liquidation and is helped negotiate the purchase of the group shares from the Official Receiver.

- Key case achievements by KSA
- Helped protect the company, built the phoenix deal
- Helped exit unwanted offices and warehouse property
- Carefully modelled business over 5 year period including what if scenario planning

Liquidation Case Study London Café and Sandwich Bar

The company has never been profitable because of high passing rent on the property it occupied in the City of London. There was a good sandwich round to local offices and the director felt if he could remove to a lower rental property then there could be a viable business.

Wayne Harrison of KSA Group arranged for the liquidation, appointed valuers to assess the asset values. The liquidators (Eric Walls and Wayne Harrison) disclaimed the shop lease immediately upon their appointment

KSA obtained circa £14,000 for the creditors by selling the assets, collecting debtors and selling the sandwich round. Creditors saw a dividend of 12p in the £1.

KSA GROUP

Case Studies

KSA Group Liquidation case Studies

Liquidation Case Study Garage and Vehicle Repair Shop, East Anglia

The company had been quite profitable until it was sold to a non-specialist as a “buy to invest” type business. The new owners tried to build sales up and spent money on the latest paint shop equipment.

The business had never been known for its paint shop business and this failed to get off the ground. As a result, the owner pumped in over £50,000 of his own money before releasing the business was not going to succeed. After cost cutting and redundancies the business did stabilise but the recession of 2009 was the final straw and he instructed KSA’s insolvency practitioners to liquidate the company.

Most of the equipment has been sold off and the business property disclaimed there will be a small dividend for the creditors.

GROUP

Summary of The Experts Complete Guide to Creditors Voluntary Liquidation

As we set out at the start, this is not a fully comprehensive guide but it DOES cover all of the points that a director of a non-viable company needs to know before taking the tough decisions needed.

We will add more content to this guide in the autumn which will cover wider subjects (see below).

The real message that has to come out of reading this is:

The law covering liquidations is complex but the process is just that a straightforward process. But....

Do not for one minute think you are smarter than the law, you aren't and many "ruses" or avoidance techniques are legislated for by the Insolvency Act.

Don't take chances – you risk personal liability!

Don't listen to the man in the pub or marketing websites who know enough to be dangerous, get advice from qualified experts.

If the company you are a director of (or are advising a company that) is insolvent, cannot pay creditors, has no order book of future work, has depleting cash and assets then creditors voluntary liquidation could be the powerful and relatively fast tool you need to use.

About the Authors

Keith Steven is the main author of the content in this guide. He is the managing director of KSA Group Ltd - a specialist firm of turnaround and licensed insolvency practitioners. Keith was nominated for Turnaround Practitioner of the Year 2014 at the National Insolvency and Rescue Awards in 2014.

Keith is a former director of the UK Turnaround Management Association. Founder and managing director of Cheswick Capital Limited, Company Funding Options Limited and other turnaround businesses.

See his **Linkedin Profile** for recommendations and further information.

KSA Group

KSA Group is a national turnaround and restructuring firm.

Corporate Advice

KSA Group explores all options and provides advice on how a distressed business and its stakeholders can improve their financial position.

Finance & Refinance

Whether you need to refinance, replace bank facilities or secure invoice finance, we can help. Our team can arrange a replacement funder in 2-3 days if required.

Turnaround & Insolvency

Our professional team liaises with stakeholders on all insolvency procedures and ensures the best possible outcome under the circumstances.

Lender & Investor Services

We can help lenders by assessing the viability of businesses, using advanced financial forecasting techniques and advising on complex restructuring issues.

Offices in London, Birmingham, Edinburgh. Gateshead, Berwick Upon Tweed.
Tel: 0800 970 0539
Site: www.ksagroup.co.uk

KSA GROUP

Disclaimer

The Guide is intended solely to provide general guidance on matters of interest for the personal use of the reader, who accepts full responsibility for its use. The application and impact of laws can vary widely based on the specific facts involved. Given the continually changing nature of laws, rules and regulations, there may be Guide errors, omissions or inaccuracies. The Guide is provided with the understanding that the authors and publishers are not engaged in rendering professional advice or services.

The Guide cannot be a substitute for consultation with professional and competent advisers. Before making any decision or taking any action, readers should consult a professional adviser.

KSA Group is not responsible for any Guide errors, omissions, or inaccuracies. The Guide information is provided with no guarantee of, or warranty as to its completeness, accuracy, or timeliness.

Nothing herein shall to any extent substitute for the reader's independent investigations and business judgment. In no event will KSA Group Ltd, or its directors, employees or agents, be liable for any decision made or action taken consequent to the Guide or for any consequential, special or similar damages, even if advised of the possibility of such damages.

KSA GROUP