

Liquidation Administration or Voluntary Arrangement?

The information in this leaflet was prepared in May 2017. As with everything, information can get out of date.

We therefore recommend that you check your specific circumstances with a Licensed Insolvency Practitioner before you do anything based on this leaflet.

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PRACTITIONER (UK)



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Registered in England and Wales, Company number 4547436

Marc Landsman is licensed to act as an Insolvency Practitioner in the UK by the Institute of Chartered Accountants in England and Wales
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The first to know that a business is not working is usually the director or person running it.

The last to admit that it is not working is usually the director or person running it.

If a business is losing money, there are things that can be done to save money – perhaps making redundancies, or negotiating better credit terms with your suppliers. With everyone else doing this, it is not unheard of to be providing 90 days credit to customers but only receiving 30 – unless the business has large cash reserves this will almost certainly lead to disaster.

In preparing this leaflet, we have assumed that you have already done whatever you can to save the business, and cannot do it alone. We will cover saving the business, saving part of it for the future, and the final option of letting it come to a natural end.

What we do not cover in detail are all the options – if the Bank is going to take action, they will tell you what they are doing and it can vary. To cover everything they can do would leave no room for what you can do.

The most important thing you can do is take advice, but this is also the most difficult since you presumably know little about the procedures, and have heard scare stories. By reading this leaflet you will get a general picture of what can happen, and hopefully it will help you think about the questions you want to ask a Licensed Insolvency Practitioner.

We would hope that you would speak to us, but appreciate that the paragraphs above may have scared you off. If so, we suggest that you either look in a phone book or on the internet for a Licensed Insolvency Practitioner. Only Licensed Insolvency Practitioners have had to take the formal exams, gain the experience and are regulated to give you insolvency advice. There are other people who will also give good advice, but there are also some rogues out there!

Even if you don't want to talk to us, you have made the effort to get this leaflet so we feel a little bit responsible to you and want to make sure you get the best advice you can.

Of course, if you like our attitude or can at least see why we take it, please call us!

What types of options are available to a failing company?

Generally they depend on whether it is a short term problem or long term. A lot of problems, though, could fall into either category and will only be clear over time.

If it is obvious that it is short term (a contract is agreed, will start shortly, but you have postponed it and have a cash flow difficulty), a loan from the bank may be appropriate. You should be careful, however, to make sure that you can afford the repayments. If you have a large debtor book, factoring may be helpful, but these usually have set up costs and minimum fee levels which may work out very expensive. If it is a major short term issue, a Company Voluntary Arrangement may be appropriate.

If it is long term, liquidation may be the best way forward.

If it is a large problem, but it is not clear if it is long or short term, an administration may be the solution.

What is a Company Voluntary Arrangement?

A CVA is a formal proposal from the directors of the company to the creditors (those to which it owes money) offering repayment of part of the debt over a period (usually 5 years). If agreed by the creditors it is then overseen by a Supervisor (who is a Licensed Insolvency Practitioner).

What is Liquidation?

If a company cannot be saved, this is a way of dealing with the debts and tying up the loose ends. It can either be started by the company (in which case it is a Creditors' Voluntary Liquidation), or by a creditor by issuing a winding up petition. A Liquidator (who is a Licensed Insolvency Practitioner) will then realise the assets and after paying the costs pay creditors in an order set out in law.

What is administration?

This is a way of rescuing the company, achieving a better payout to creditors than liquidation, or selling assets to pay secured or preferential creditors. It is often used as a 'stop gap' or by banks which used to appoint Administrative Receivers.

An administration lasts for a maximum of a year, and has a specific way out because it does not tie up all the loose ends. It will usually lead either to liquidation, a CVA or the dissolution of the company.

What is the best option for me?

This depends on how you see the future.

Why shouldn't I just ignore the debts?

This could be seen as trading whilst insolvent, which can lead to the directors being responsible for the debts. It may also be taken into account in considering the Company Directors Disqualification Act 1986.

Even if Companies House has threatened to strike the company off, this will

not absolve the directors.

Who will control the company in an insolvency?

In a Company Voluntary Arrangement, the directors stay in control.

In administration, the Administrator will run it if appropriate.

In liquidation, it will cease trading.

Will a Company Voluntary Arrangement stop the unsecured creditors from taking further action against the company?

The legal answer is yes. Unfortunately, some creditors do not always tell every department that a Voluntary Arrangement is being offered or has been accepted, so mistakes can happen because of human error. We recommend that you tell anyone that phones you to call us, or forward their letters to us.

Does this mean I can stop paying my mortgage or hire purchase?

If you want them to repossess, stop paying them! A mortgage or hire purchase agreement (or similar), however, is secured on assets. If you do not keep up the payments they can take it back (sometimes they need to go to court to do this).

What about personal guarantees?

If you have given personal guarantees, the creditor can (and usually will) come after you for payment.

Can I stay in business in a Company Voluntary Arrangement?

Yes. This is a common reason for proposing a Company Voluntary Arrangement.

You will probably find that trade suppliers want to be paid either in advance or on delivery, and you may not be allowed an overdraft facility.

If you place the company into liquidation or administration, you may be able to buy the assets (including goodwill). This would be valued by agents experienced in this sort of field. Remember though, that someone else may put in a higher offer, so do not choose one of these options just to buy the business for a pound!

Does the Insolvency Practitioner represent the Creditors (who are owed money) or the Company which owes the money?

Legally, he starts out representing the company (or its directors), then switches to representing the creditors. In real life, this would lead to all sorts of problems, so the fairest way is to be independent throughout making sure that the directors know what will be expected from them, and that the creditors know that their interest are being looked after.

Who is a Company Voluntary Arrangement 'aimed at'?

Any company which is insolvent, owes more than about £30000 and can afford to make payments of £400 or so a month and wants to repay as much as it can to the creditors.

Certain companies are members of associations that automatically expel them if they go into liquidation, and therefore this is a particularly useful option if the

finances are available.

Who isn't a Company Voluntary Arrangement 'aimed at'?

Any company that does not have surplus cash flow to pay old debts, has most of its assets on finance (since the agreements will probably go into default), or where the directors have given personal guarantees on most of the debts.

Why are Personal Guarantees so important?

If the company does not pay its debts, anyone who has given personal guarantees may be called upon to make the payment instead. If the company enters liquidation, it is obvious that the director will not receive much more money, the difficulty is that if the company enters a Voluntary Arrangement the director may still have to pay but will be putting all their effort into saving the company so may be unable to afford the personal payments.

Why do you set a minimum level on debts and repayments in a Voluntary Arrangement?

Even though most of the costs are paid by the creditors, a Company Voluntary Arrangement is not a cheap solution. It typically costs £3,500 - £20,000 plus VAT to set up, and £2,000 - £5,000 plus VAT per year to run depending on what we have to do – if there are only a few creditors it will be lower than if there are hundreds of shareholders and creditors. If the debts and available income are below the levels mentioned the contributions will mainly be used to pay our costs, which we do not think is fair. The creditors are also likely to reject the offer for this reason.

Do these levels apply in liquidation or administration?

No, but it is not worth putting a company into either of these procedures if the debts are lower than the costs!

Why would a creditor agree a CVA and to write off money it is owed?

If the company cannot afford to repay its debts, the creditors will want to get as much as possible back from you. This is why some of them write to people or companies in serious arrears offering them 'one-off special' deals to get something back. If you have got to the stage of offering a Voluntary Arrangement the most likely alternative will be liquidation, where they will get less. They are therefore open to suggestions to maximise their recovery. We will only allow a Voluntary Arrangement to be offered if this is better for the creditors than liquidation.

Will interest on the unsecured debts stop?

Generally yes, but if you are able to pay in full creditors may expect you to pay interest.

Do I have to meet the Insolvency Practitioner?

We can do everything over the phone, but we still recommend that you meet with either him or a member of his staff. If we meet face to face we can normally tell if you understand everything we are saying and have told us

everything, which we can't do on the telephone. This is why we suggest a meeting. A lot of people are also more relaxed talking over a mug of coffee than on the phone.

What are the Disadvantages of a Company Voluntary Arrangement?

A Company Voluntary Arrangement is a second chance. If you do not keep to the agreement you make, the company could end up in liquidation.

But you would only offer it if you are sure you can keep it up!

If the profits go up, so will the amount you pay the creditors.

Creditors are agreeing to write off part of the debt because you cannot afford to repay it. If the company can afford higher repayments, it is only fair that you make them.

If the company owns property or large available assets, the creditors will probably want a share.

When you bought the property you probably saw it also as an investment, paying a mortgage. It is only fair that the creditors benefit from your investment when you could have been paying them and renting somewhere smaller or in a different area.

If the assets are needed for the business, the creditors will not want you to sell them. If, for instance, an engineering firm used to make ice cream but doesn't any more they would be expected to sell the ice cream making machine.

What debts can be included in a Company Voluntary Arrangement?

Almost all unsecured debts. If you owe rent and do not pay it, it is unlikely that you could stay in the premises, for example.

You cannot include Hire Purchase or any secured debts such as mortgages.

Will my landlord find out about the Company Voluntary Arrangement?

Not from us unless you owe them money.

The insolvency will be listed at Companies House, so if they regularly check they will find out.

If you want to move, your new landlord may ask the question.

Do I have to pay fees in a Company Voluntary Arrangement?

If you are able to afford to, yes you will!

In most cases, the only amount you will have to pay is either 1 or 2 months' contributions (ie the amount we think you can afford to repay every month). These will count towards your total payments if the Voluntary Arrangement is accepted, and are the only amount you will have to pay if it is rejected. You will only pay this when we have told you to stop paying your creditors.

The main reason we ask for this is because people have promised us that they can afford repayments, and then did not make them when the Company Voluntary Arrangement was accepted. Not only did we spend a long time working to prepare the proposal, but when we sent the next proposals to the

same creditors they were suspicious that the same would happen again.

We also have to make payments before a Company Voluntary Arrangement is considered (for instance an insurance premium and the costs of sending the proposal to creditors), and this goes towards these costs.

Do I have to pay fees in a Creditors' Voluntary Liquidation?

If there are sufficient assets to pay the costs, maybe not. For the same reason as in a Company Voluntary Arrangement we ask for at least some of the fee in advance. The total fee for preparing the reports and other documents is normally between £4,000 and £7,500 plus VAT and disbursements.

The Liquidator's fees will automatically be paid from the assets.

Do I have to pay fees in a Compulsory Liquidation?

No, unless you issue the petition.

A creditor will have taken the company to court and incurred the costs, including a deposit for the Official Receiver's fees.

The Liquidator's fees will automatically be paid from the assets.

Do I have to pay fees in an Administration?

Yes. The pre appointment fees may not be paid from the assets of the company after an administrator is appointed. The Administrator's fees will automatically be paid from the assets.

Can a Company Voluntary Arrangement be successfully finished early?

The Voluntary Arrangements we write have a way to do this. If you know that you may be able to do this, though, tell us as soon as possible.

If you know this is possible before proposing the Company Voluntary Arrangement, you should definitely tell us as this may change the advice we give you or how we write the proposal.

How much will the company have to pay into the Voluntary Arrangement?

As much as it can afford.

What about in liquidation or administration?

Neither of these are trying to save the company as the primary concern, so the assets are sold rather than regular contributions being made.

Can the company keep its credit cards or take out a new loan during a Voluntary Arrangement?

No!

Part of the agreement in a Company Voluntary Arrangement is that it doesn't take any more credit and trades within its means.

What if the company's circumstances change and it can afford to make increased payments during the Voluntary Arrangement?

The creditors will expect you to increase the payments.

The increase will normally be half of the extra profit, but will be for the Supervisor and you to discuss.

What if the company's circumstances change and it can't afford agreed payments?

A Company Voluntary Arrangement can be varied to allow lower payments, but the obvious question is whether a Voluntary Arrangement is still appropriate or whether it would be better off in liquidation. This is a matter that we would discuss with you.

What if the company fails to keep up the agreement?

Normally we would have to fail the Voluntary Arrangement, usually leading to its liquidation. This is why we want to be sure that a Voluntary Arrangement is really correct for the company before you offer one or it starts.

Can I cancel the Voluntary Arrangement once it is set up?

Once the company's Voluntary Arrangement is accepted it is a legally binding contract. If you want to cancel it, you will either have to successfully finish it early, or cause it to fail. This latter option will normally lead to liquidation.

Who pays the fees for setting up the Voluntary Arrangement if it is rejected?

You will have paid something towards the fees, but this firm will not charge the rest, and will make a loss.

Who pays the fees for setting up the Voluntary Arrangement if it is withdrawn?

You can withdraw a proposal at any time, and we may recommend that you do so in certain rare instances. If you decide to withdraw the offer and we have not recommended you to, we may ask you to pay the costs to date.

What meetings are held in a Voluntary Arrangement?

Creditors have to vote on the proposal, and have the chance to ask any questions they want to help them make up their mind.

If they accept the Voluntary Arrangement, the members (or shareholders) also consider it, and unless they agree it (by a simple majority of shares) the Voluntary Arrangement does not happen. Realistically, unless the members want the Voluntary Arrangement, it is not worth offering to creditors.

Do all the creditors have to accept the Voluntary Arrangement?

No. a Company Voluntary Arrangement is accepted on behalf of all the creditors if more than 75% by value who bother to vote agree it. This means that 1 creditor owed £7,500.01 can outvote 100 creditors owed £2,499.99 between them, or that 1 creditor voting for £1 can bind £100,000 of other creditors who didn't bother to vote.

How can the voting in a Company Voluntary Arrangement go?

Creditors can vote in 3 different ways

Accept

If a creditor likes the offer, they can accept it as it stands

Reject

If a creditor is not willing to accept the offer, they can reject it. This is usually if the offer is below the minimum they will accept, if you have a bad history with them (for instance HM Revenue & Customs will usually reject if you haven't submitted a lot of tax or VAT returns), or in the case of individual creditors if they just don't like you (an example, was when someone was very awkward at a meeting of creditors for a company liquidation, we found out later that the director had had an affair with the creditor's wife!). If you know of any of these last group, you should tell us as soon as possible.

Request modifications

Creditors will often say that they will accept a Voluntary Arrangement if certain changes are made. Usually they will be to increase the dividend, though sometimes they are technical ones requiring us to do something, and sometimes just odd! On one occasion, a restaurateur had to open bookings for seasonal dinners early for his creditors since it was a respected restaurant which filled up early. If you accept the modifications, they will accept the Voluntary Arrangement, otherwise they will reject it.

How many creditors need to attend a Company Voluntary Arrangement creditors meeting? Do I have to attend?

Only 1 creditor or their representative needs to attend for the meeting to take place. In the vast majority of cases creditors ask the Chairman of the meeting to vote on their behalf (though they tell them how to vote). Since this is someone from Carmichael & Co, in reality the meeting is therefore usually held at that person's desk by just counting the votes. Any questions are usually asked and answered in advance.

If no-one else is attending, you will not need to. If there are proposed modifications, you will have to consider them in advance. You should be near a phone anyway in case there are new modifications. The meeting can be adjourned for up to 2 weeks if needed.

Do I have to accept any modifications?

No, but if you reject them they will be taken as votes against the Voluntary Arrangement.

We will look at all the modifications in terms of whether they are 'fair' and whether you need their vote for the Voluntary Arrangement to be accepted. If a creditor is owed 1% of the voting debt and asks for major changes, you need not accept them as it will not cause the Voluntary Arrangement to be rejected, if they are owed 26% you will have to think carefully about them. If the modifications are too strong we would advise you to reject them anyway as you could not keep to the Voluntary Arrangement. For example, one creditor usually asks for a 50p/£ minimum dividend. If the original offer is 49.99p/£, there is probably not much harm in accepting it, but if it is 30p/£ it could mean that the Voluntary Arrangement cannot possibly succeed.

Can one individual creditor refuse to accept a Voluntary Arrangement?

They can vote to reject it, and they may be able to block it. If, however, enough other creditors accept it, they are bound by it.

How many need to attend the Creditors' Voluntary Liquidation meetings?

Do I have to attend?

Only 1 creditor (or their representative) needs to attend for the meeting to take place. Normally at least 2 shareholders (or representatives) need to be at the shareholders meeting.

A director needs to be present to sign the documents.

What initial meetings are held in a Creditors' Voluntary Liquidation?

Once the Board of Directors has decided to place the company into liquidation, meetings of shareholders and creditors (usually over the internet or telephone) are held about 3-4 weeks later.

What do they consider?

The shareholders will vote on whether to place the company into liquidation. The creditors vote on who will be the liquidator, whether they want a committee, and how much the liquidator will be paid.

What initial meetings are held in administration?

Once the Board of Directors has decided to place the company into administration, and the court has agreed, meetings of shareholders and creditors are held about 2-3 months later.

Is there much difference between a Creditors' Voluntary Liquidation and Compulsory Liquidation?

In a Creditors' Voluntary Liquidation the directors decide the timings, rather than waiting for someone else to take the company to court.

A Liquidator will do the same job in each type, but is always reliant on information from creditors. Human nature is such that if the creditors have bothered to take action they are likely to be more annoyed and therefore shout more. If the directors have taken the decision, there is a possibility that the creditors (and therefore the Liquidator) will be more likely to give the directors the benefit of the doubt.

What if I have forgotten a creditor?

We ask you to check that you have included all your creditors. If you have missed a small one and it does not affect the dividend much we can normally include them automatically. If it would change the dividend by a lot, it may cause that Voluntary Arrangement to fail. Either way, that creditor has 28 days in which to apply to the Court to overturn the Voluntary Arrangement. It is a lot easier if you include all your creditors at the beginning.

What happens at the end of the agreement?

When you successfully finish your Voluntary Arrangement all the outstanding debts covered will be written off. We will provide you with a certificate to show

that it is finished, and you can show this if you have a problem getting credit. For the first year or so after the Voluntary Arrangement finishes, though, you will still have problems whilst everything works through the system.

What must I do before proposing a Company Voluntary Arrangement?

You must prepare the proposal to be considered, though in reality Carmichael & Co will do this for you if instructed.

What must I do before putting the company into liquidation?

You must prepare the report to be considered, though in reality Carmichael & Co will do this for you if instructed.

What must I do before putting the company into administration?

Nothing – the report is prepared by the Administrator, though they will need help from you.

What are the potential pitfalls in any process?

The common pitfalls are if the company has paid one creditor rather than creditors generally (if they want to put that creditor into a better position), or if it sells assets for less than they are worth. There are time limits on both, and the ‘penalty’ is that the transaction can be reversed (or whatever else a Judge decides). In a Company Voluntary Arrangement, the director needs to say that there have been none (or declare them).

One that is often missed is if the directors give security over the company’s assets shortly before liquidation or administration.

What should I do before considering insolvency?

Everything you can think of to avoid it without spending too much money.

Prepare details of all the company’s assets and liabilities, and if possible predict what will happen in the next year or so. Be realistic about it, because if you carry on trading whilst the company is insolvent you may become liable for the debts.

The more information you have available, the better the advice can be.

Can I be a director after a Company Voluntary Arrangement?

Yes (assuming it is successfully implemented).

Can I be a director after a liquidation or administration?

Maybe. The Liquidator or Administrator needs to report to the Insolvency Service whether the directors have made any mistakes or done anything on purpose which means that they should not be allowed to run a company. This would involve an application to court, with the banned period potentially being between 2 and 15 years.

Why does your questionnaire have so many questions?

Some of the questions are to help creditors by providing information they usually ask for.

Some is to help us make sure we are giving you the best advice.

Some is just to make sure that the information we already have is accurate.

What if I have other questions?

The questions above are just the common ones we are asked. If you have any others, please call us. Remember that we don't just work office hours – you will often catch one of us on 0330 223 0965 when we are not in the office.

Our web site at carmichaelsinsolvency.co.uk also has a lot of information, or try the Insolvency Service (part of the Department for Business, Energy & Industrial Strategy) one at gov.uk/government/collections/insolvency-service-guidance-publications.

Why choose Carmichael & Co rather than another firm?

Marc Landsman, the Licensed Insolvency Practitioner at Carmichael & Co is licensed by the Institute of Chartered Accountants in England and Wales. He and his team are therefore required to provide the best advice they can. So is every other insolvency firm which is run by an Insolvency practitioner, though not all firms offering debt advice are run by one. Carmichael & Co also provides a local rate phone number which connects to either Marc or a senior member of the team outside of usual office hours, rather than a call centre.

Are you nice people?

If people are nice to us, of course we are! We will not, however, raise your hopes or pretend that your affairs are better than they are. If we think liquidation (usually the 'last resort') is best for your company, we will tell you. If you have got this far, you can see that we tell it as it is rather than putting a sugar coating on everything.


Who can I speak to if I wish to complain?

We would hope that you would not need to! If you have a complaint against any of us, the first suggestion would be to call Marc. If he cannot sort out the problem, you can write to the centralised 'Complaints Gateway' at The Insolvency Service, IP Complaints, 3rd Floor, 1 City Walk, Leeds LS11 9DA.

What do you do apart from Company insolvencies?

We deal with all types of insolvency, but only insolvency. This includes Individual Voluntary Arrangements and bankruptcies.

We believe that you can only offer a good service if you keep up to date with everything that is happening in that field.

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