

## **ALTERNATIVES AVAILABLE FOR INSOLVENT COMPANIES**

If a company is unable to pay its debts as and when they fall due, or if its liabilities exceed its assets it is insolvent.

Directors may be held personally liable for debts incurred by a company when there are reasonable grounds to suspect that the company is insolvent.

It is therefore critical that directors of insolvent or potentially insolvent companies take decisive steps to deal with the company's insolvency. There are various alternatives available to directors of insolvent companies, these include the following:

### **Cessation Trading**

The directors can make the decision to cease trading and "close the doors". This may then result in one of the company's creditors applying to the Court to have a liquidator appointed.

This course of action does not absolve the directors from their responsibilities and can leave them exposed legally.

### **Creditors Voluntary Liquidation**

If the directors believe that the company is unable to continue to trade profitably, meetings of shareholders and creditors can be called to resolve that the company be placed into liquidation.

The liquidator would then realise all of the company's assets, investigate the company's affairs to determine if any other assets can be realised, and distribute the monies on a pro rata basis to creditors. To place the company into voluntary liquidation takes approximately one week as a minimum.

## **Appoint a Voluntary Administrator**

If the company is insolvent and the directors believe that the business can be restructured so that it could return to profitability, or that some form of arrangement could be reached that results in a greater return to creditor's than if the company is placed into liquidation immediately, the directors can appoint a voluntary administrator. The appointment of a voluntary administrator can take place immediately. The voluntary administrator takes control of the company and trades it on (if possible) for a minimum period of approximately four weeks.

During this period the Administrator investigates whether the business is able to be restructured, or whether any proposed arrangement is in creditor's best interests. At a meeting held approximately four weeks after the appointment of the Voluntary Administrator, creditors determine whether:

1. To accept the restructure proposal/repayment arrangement; or
2. To end the administration; or
3. To place the company into liquidation.

All unsecured creditors are bound by the decision of the meeting. If the creditors accept the proposed arrangement, it will be formalised in a Deed of Company Arrangement.

## **Informal Arrangement**

An insolvent company is able to enter into an informal arrangement with its creditors. The informal arrangement would normally specify how the company will repay or compromise its debts. The major disadvantage with this alternative is that it only takes one creditor to reject the informal arrangement and to place the company into liquidation.

### **Apply to Court to Appoint a Liquidator**

The company, a director or shareholder may apply to the Court to place the insolvent company into liquidation. The liquidator would then perform the actions as detailed under the Creditors Voluntary section of this fact sheet. The application to the Court would have to meet the legal costs of the application.

### **Request the Appointment of a Receiver and Manager**

Should the insolvent company have a creditor holding a charge over its assets, then in certain circumstances it maybe prudent for the directors to request the secured creditor to appoint a Receiver and Manager to the company?