

## Providing Solutions

Working closely with businesses of all sizes we tend to get asked a number of similar questions from Directors relating to company insolvency.

Here we list ten of the most commonly asked questions together with replies.

### 1. What is the difference between a Creditors' Voluntary Liquidation and Compulsory Liquidation?

A Voluntary Liquidation is initiated by the Directors. The Directors call a meeting of shareholders and creditors to place the Company into liquidation.

In a Compulsory Liquidation the process is taken out of the hands of the Director. This type of liquidation will result from a creditor issuing a winding-up petition on the Company. Rather than an Insolvency Practitioner (IP) being appointed, the process will be dealt with by the Official Receiver, a government department.

A Director who wishes to use the same or similar company name or brand again will not as easily be able to do so in a Compulsory Liquidation, a Voluntary Liquidation is advisable.

### 2. Can I reuse my Company name if I liquidate the Company?

If you are a former Director of a liquidated Company, there are legal restrictions that apply regarding the reuse of that Company's name or its trading name.

A name which cannot be used is known as a 'prohibited name' and its use is restricted in certain circumstances. A prohibited name is a name by which the liquidated Company was known at any time in the 12 months immediately before its liquidation or a name so similar as to suggest an association.

There are exceptions to these restrictions; the most commonly used being through the purchase of the right to use the name, together with all, or substantially all, of the Company's assets from the appointed Liquidator. Formal notice to creditors of the liquidated company must be given of such a purchase to get the benefit of this exemption.

### 3. My Company is insolvent, what should I do and what are my options?

If a Director believes his Company to be insolvent, he should seek professional advice from us as Licensed Insolvency Practitioners as soon as possible.

The earlier the advice is sought the more options may be available to him in respect of not just the closure but also potentially the rescue of the Company as a going concern.

### 4. Can I be a Director of another Limited Company in the future?

Once Liquidators or Company Administrators are appointed, part of their responsibilities is to investigate the Company's affairs and the conduct of the Directors.

This involves submitting a report to the Department for Business, Innovation and Skills (BIS), formerly the DTI, on the conduct of all the Directors who were in office in the last three years of the Company's trading. This will not necessarily be a negative report. In truth, if the Directors have acted in good faith in the way that they have run the business then they should have little to worry about. If however, it is a negative report, then it will be the decision of BIS as to whether they take disqualification proceedings against any of the Directors.

### 5. What happens to the employees if my Company goes into Liquidation?

There is a Government scheme which ensures that certain payments, based on statutory maximum figures, can be paid out to employees from the Redundancy Payments Office. We will assist employees to submit these claims and they are entitled to make claims for unpaid wages, redundancy, holiday and notice pay. It may also be possible for the Directors to make claims in this way.



# Company Insolvency FAQ's - continued

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## 6. Will I have to face the creditors if I liquidate the Company?

As part of the Creditors' Voluntary Liquidation process a meeting of creditors is called. This will need to be chaired by a Director of the Company. At this meeting an information pack will be presented to the creditors. This pack is designed to answer many if not all of the questions which creditors may ask.

However, in the majority of cases there is no attendance from creditors at these meetings and the nominated IP will conduct the meeting.

The IP will take all calls from creditors once instructed and deal with all creditors' claims.

## 7. How long will it take to liquidate my Company?

The process of placing the Company into Liquidation will typically take around one month. Usually the Company will cease to trade at the beginning of the process and communication with the creditors will be taken over by us. The Company's registered office is also moved to our Head Office to receive service of any legal documents.

## 8. I think I may have given a personal guarantee, will this affect the liquidation?

If you have provided a personal guarantee to a lender in relation to Company finance which cannot be repaid, you will personally have to honour it. However, the lender in question is likely to be willing to negotiate at this point in terms of the timing and possibly the quantum of repayment. We will discuss any security that the creditors may hold against you and the company when you first contact us.

## 9. Will the insolvency of a Limited Company affect my personal credit rating?

No, as the Limited Company is a separate entity this will not affect your personal credit rating. The only time you may be affected personally is if you have provided personal guarantees or are the subject to an adverse investigation (see FAQ 4).

## 10. Can I carry on trading the same business even if I liquidate my Company?

There is a culture of enterprise, geared to encourage the launch of new businesses and the growth of existing operations.

The anti-phoenixing legislation is principally carried on company names and trading styles (see Q2).

What should be remembered is that if assets belong to a company then they will need to be bought from that company, not just simply removed. These assets may be essential in your ability to trade forward.

So, the answer is yes, but there are hoops to jump through!