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Is Your Business Debt Eating All The Profit?

Company Voluntary Arrangements

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Is your business viable and able to make a profit but insolvent?

Even profitable businesses can be held back by cash flow concerns. If your business bank borrowings, credit terms, tax liabilities and directors' loans are eating away at your profits, you may need to take action.

Typical definitions of company insolvency

Cash Flow Test

Can the company pay its debts when they fall due?

Balance Sheet Test

Are the company's assets exceeded by its liabilities?

Directors' responsibilities if failing the insolvency tests

Directors should consult with their accountant, solicitor and/or insolvency practitioner immediately. Such prompt action will enable them to establish whether their company could benefit from using appropriate restructuring, rescue and turnaround techniques such as a **Company Voluntary Arrangement**, Administration, Trading Out or Refinance.

If the company is insolvent, directors must act to minimise the loss to creditors and have regard to the interests of creditors as a whole.

Typical warning signs (experienced by company directors)

- Overdraft is always at the limit or breached.
- Bank has returned cheques as unpaid.
- Bank refuses to provide a loan or requires facilities to be reduced.
- Cash flow difficulties.
- Restless creditors: demand letters | legal letters | judgments | statutory demand | threat of a winding up petition.
- Always firefighting and deferring creditors on a daily basis.
- HMRC liabilities not paid when due and penalties incurred.
- HMRC seeking a walking possession agreement ie on equipment and/or vehicles.
- Debtors not paying on time.
- Debtors concentrated in just a few major customers.
- Bad debt written off.
- Loss making contracts.
- Overdrawn directors' accounts.
- Directors not able to pay themselves a living wage.

Sometimes separate issues (despite an underlying good core business) can cause temporary setbacks

- A key director or employee is ill and out of action.
- Personal life affecting the business and vice versa.
- A fire on the premises.
- Broken or damaged equipment.
- The loss of a big customer.
- Historic property debt.
- Over expansion: property and/or people.
- Lack of financial reporting and control.

Beware of doing nothing

Continuing to trade when the company is insolvent may leave **directors personally liable** for any losses that the company suffers if they knew or ought to have known that the company was insolvent.

In addition to any personal liability, if the company subsequently enters a formal insolvency procedure then **directors can be disqualified** from acting as a director for up to 15 years if they traded when they knew or ought to have known that the company was insolvent.

A Company Voluntary Arrangement (also known as a CVA) can provide an effective solution

The earlier advice is sought during tough business times, the better the chance of maximising recovery potential. If your business has the potential to become viable again, a CVA may be your best option.

What is a CVA?

- A procedure which enables an insolvent company to reach an agreement with its creditors to **delay or compromise the payment of its debts**.
- For example, the CVA proposal might require the company to pay a fixed monthly sum into the CVA for a set number of years so that creditors receive a dividend of Xp in the £.

What are the benefits of a CVA…

…For the Directors and the Company?

- While the payments are maintained and no further action is necessary, the directors retain control of the company.
- Once the CVA is successfully concluded the company remains in the control of its existing members and management.
- Tax losses can be used in the future provided they are recognised.

…For the Creditors?

- Creditors will usually agree to support a CVA where it can be shown they will achieve a better outcome than if the company was liquidated and the business and assets sold.

What makes a successful CVA?

- A viable business capable of making a profit.
- A structured repayment plan.
- A willingness to make changes.

A Voluntary Arrangement is also an option for Individuals and Partnerships.

David McClean and Lisa Lappin of Baker Tilly Mooney Moore are licensed Insolvency Practitioners and offer a clear, practical and professional service to assist at a time you first realise that your company may be at risk of failing any of the insolvency tests.

David and Lisa are the first choice for referrals by a number of professional advisers in Northern Ireland and would welcome the opportunity to provide further information on the CVA process.

For a free consultation without obligation or commitment, please contact:

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