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## **SERVICES WE CAN PROVIDE**

- **Administration:**

Usually instigated by either the Directors or the bank, and used to provide protection whilst a solution is found.

- **Company Voluntary Arrangement:**

Useful where a company has accrued aged debt which it is unable to service, but is profitable moving forward. An offer is then made to creditors for settlement based on affordability (requires 75% of creditors voting to vote in favour).

- **Liquidation of solvent or insolvent companies:**

Results in the formal closure of the business entity.

- **Re-finance:**

Seek new funding via bankers and private investors.

- **Individual or Partnership Voluntary Arrangements:**

An alternative to bankruptcy, which allows individuals to offer to repay what they can afford to creditors and freeze the aged debt (requires 75% of creditors voting to vote in favour).

- **Bankruptcy advice:**

The options available and implications of bankruptcy on the individual.

SECURE THE FUTURE

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## **CORPORATE SERVICES**



NEWSLETTER—Issue no 4

### **Insolvency petition reform**

Jo Swinson MP, minister for employment relations, consumer and postal affairs at the Department for Business, Innovation and Skills placed the following response statement in both Houses of Parliament on 9 October.

*'At the end of last year the Government consulted on proposals to reform court processes for entry into bankruptcy and compulsory winding up. These built upon earlier proposals consulted on by the previous administration to reform the debtor bankruptcy petition process; that is where the indebted individual is petitioning for their own bankruptcy. The consultation also proposed to replace the courts in the order-making process in creditor-petition bankruptcy and certain company winding-up petitions with a new administrative process.'*

*Responses to the consultation showed that there is still general support for reform of the debtor petition bankruptcy process. Many concerns were expressed, however, about the proposals for introducing an administrative regime to remove courts from the order-making process in creditor petition bankruptcy and company winding-up proceedings.*

*Having considered the consultation responses, the Government has decided to take forward changes just to the process for dealing with debtor bankruptcy applications and has today included the measure as a proposed new clause in the Enterprise and Regulatory Reform Bill. Instead of applying to the court*

*for a bankruptcy order, individuals will instead make a bankruptcy application to an Adjudicator, which would be a new office based within The Insolvency Service. Taking courts out of the process of considering bankruptcy petitions presented by debtors will free up court resources to deal with matters which require judicial input and provide scope for the introduction of a modern, electronic application process.'*

### **Employment prospects decline**

A study from advisory firm, CEB, has found that 35 per cent of executives expect headcount to shrink in the next 12 months. Meanwhile, the percentage anticipating revenue growth fell from 69 per cent to 59 per cent, faced with Eurozone pressures and slowing emerging markets.

Executive sentiment about consumer confidence fell to the second lowest reading in Q3 – only 20 per cent of executives expect consumer confidence to improve in the next year (down from 38 per cent in Q2)

On a global level, confidence among US executives remains significantly higher than that of their counterparts in Asia and Europe. Business sentiment in the US was over 10 per cent higher than in Europe.

However, executive concern about commodity and labour costs has significantly declined.

## What is liquidation?

Liquidation is a legal process in which a liquidator is appointed to 'wind up' the affairs of a limited company. At the end of the process, the company ceases to exist. Liquidation does not mean that the creditors of the company will get paid. The purpose of liquidation is to ensure that all the company's affairs have been dealt with properly.

## What types of liquidation are there?

- Members' voluntary liquidation (or members' voluntary winding up) - this is when the shareholders of a company decide to put it into liquidation, and there are enough assets to pay all the debts of the company, i.e. the company is solvent.
- Creditors' voluntary liquidation (or creditors' voluntary winding up) - this is when the shareholders of a company decide to put the company into liquidation, but there are insufficient assets to pay all the creditors, i.e. the company is insolvent
- Compulsory liquidation (or compulsory winding up) - this is when the court makes an order for the company to be wound up (a 'winding-up order') on the petition of an appropriate person.

## Voluntary liquidation

A company can only be put into voluntary liquidation by its shareholders. The liquidator appointed must be an authorised insolvency practitioner. The liquidation begins from the time the resolution to wind up is passed.

## Members' voluntary liquidation

A members' voluntary liquidation can only take place if the company is solvent. The directors must make a formal declaration of solvency. It is a criminal offence to make a declaration of solvency without reasonable grounds.

The shareholders must hold a general meeting of the company that passes a resolution for voluntary winding up and appointing one or more liquidators of the company. Once all liabilities and costs have been paid, the liquidator will then distribute the surplus funds to the shareholders. However, if it transpires that the company is not solvent, the liquidator will call a meeting of creditors and the liquidation becomes a creditors' voluntary liquidation (see below).

## Creditors' voluntary liquidation

If the company is insolvent, the shareholders can still vote for a voluntary liquidation.

This type of liquidation is called a creditors' voluntary liquidation. To vote for a voluntary liquidation, the shareholders must hold a general meeting of the company and pass a resolution for voluntary winding up (as for members' voluntary liquidation).

The company usually nominates an authorised insolvency practitioner as liquidator. It must also call a meeting of creditors (usually on the same day as the shareholders' meeting) at which details of the company's financial affairs are presented. The creditors can nominate a liquidator, and their nomination will usually override that of the shareholders, if different.

The liquidator takes control of the company's affairs and almost all powers of the directors cease. The liquidator disposes of all the company's assets and, after paying the costs and expenses of the liquidation, distributes any remaining money to the creditors.

As soon as the affairs of the company are fully wound up, the liquidator will hold final meetings of the company and its creditors.

## Compulsory liquidation

A court can make a winding-up order on the application of a relevant person.

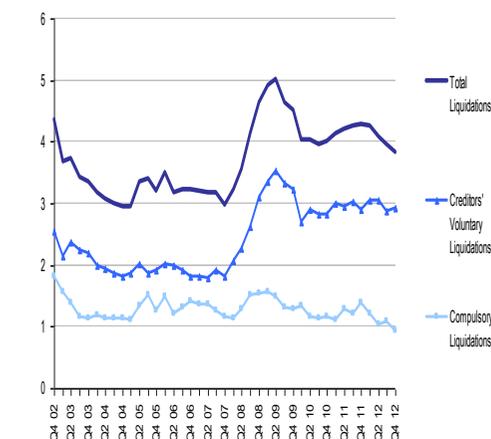
## What is the procedure for presenting a winding-up petition?

To ensure that all legal requirements are met, it is usual to instruct a solicitor to deal with issuing a winding-up petition. To present a winding-up petition, you cannot just complete the petition and present it to the court.

Insolvency law requires that before the court can hear the petition, statements of truth must be lodged at court verifying the winding-up petition. The petition must usually be served on the company at its registered office. A certificate of service of the petition must be filed at court at least 5 business days before the hearing. The petition must be advertised in the London Gazette at least 7 business days after the petition is served on the company and at least 7 business days before the hearing.

## Insolvency Service and Companies House Statistics for Qtr 4 / Dec 12

### Company Liquidations in England & Wales (in thousands)



### Individual insolvencies in England & Wales (in thousands)

