



Insolvency Issues

Winding-up: an alternative

When a company has value that would be lost if it were wound up, preserving that value may be possible, even if a winding-up petition has been presented.

A Company Voluntary Arrangement (CVA) or administration may be required, but these can both be temporary procedures. They can allow a company to emerge with value remaining in its business and assets. Crucially, agreement will need to be reached with creditors for this approach to work. If there is really no prospect of creditors

supporting a proposal despite the loss of value that liquidation would entail, forced sale asset realisation and complete loss of shareholder value may be difficult to avoid.

A company that can be made profitable and cash generating when relieved of its debt burden may well benefit from a CVA. If creditor pressure is severe – but negotiable – the CVA may need to be preceded by administration. In such circumstances the purpose of the administration is to gain protection from individual creditor actions

with a view to having the company continue as a going concern. The exit route from administration would be through the CVA.

If a petition has already been presented, the administration may need to be opened by a secured creditor (if there is one with a qualifying floating charge) or by an application to court. Either way it may not be too late to save the company if the situation is addressed quickly.

Insolvent Company Rescue – a case study

In this example, we successfully arranged an administration and a CVA for a company that a creditor was petitioning the court to wind up. The result was that the company survived and is now trading normally.

The directors of the FSA registered company had been trying to defend a winding-up petition but saw they could not put off the petitioning creditor any longer. When they contacted Mercer & Hole we identified that they should seek to use the moratorium provided by putting the company into administration to protect the value of the company's business and assets.

The company had only very limited tangible assets, a few unlisted shares and some potential income under informal agreements. Its valuable asset was its FSA registration.

We established an administration strategy to rescue the company as a going concern through a CVA. One of the directors was interested in refinancing the company and anticipated being able to negotiate with sufficient creditors to persuade them to accept a CVA proposal. Given the apparent

depth of the company's insolvency, this appeared ambitious, but it was the only way to generate sensible realisations from the company's assets. The FSA registration could not be transferred and would only have value to the company itself. Any exit mechanism from administration other than a CVA would lose the value of the principal asset.

In order to preserve the registration, it was necessary for the company's registered activity to continue and, by using the directors' knowledge and experience and by subcontracting operations to a related company, we were able to undertake sufficient activity to satisfy the FSA. Naturally, a good deal of work went into ensuring compliance with FSA regulations, but it did eventually pay off as the business generated a modest income and we were successful in retaining the FSA registration.

It became necessary to raise further funds by selling the company's residual assets (again to the director's related companies) and this was done with the specific agreement of the creditors' committee. They recognised that any strategy other than seeking to maintain

and extract value from the company's FSA registration would lead to there being no return at all to creditors.

The negotiations to persuade creditors to accept the CVA proposals were protracted and the administration lasted almost two years. Finally we paid a lump sum to those creditors who were not prepared to exchange their claims for equity.

The key to this successful rescue was the director's ability to persuade a sufficient majority of creditors to accept a CVA proposal. This is the basis of any CVA, but in this case the negotiations were facilitated by the administration moratorium. It prevented certain initially aggrieved creditors from taking action against the company. Two years was a long breathing space during which the company was restructured financially, however the company has now concluded its CVA and is trading normally once again.

If you would like us to provide you with any help, guidance or assistance in dealing with a winding up petition, please contact us on **01727 869141**.

Meet our Restructuring & Insolvency Partners



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Steve Smith leads Mercer & Hole's Restructuring & Insolvency services across all three of Mercer & Hole's offices. Steve specialises in designing business reorganisation strategies for owner managed businesses, with a particular focus on business rescue and turnaround. Steve's experience of insolvency processes include administrations and voluntary arrangements, as well as administrative receiverships, MBOs from administration, section 110 reorganisations, bankruptcies and liquidations.

Steve has practised as both a General Practice and Restructuring & Insolvency partner at Mercer & Hole. His accounting and business advisory experience enables him to work effectively with stakeholders in pursuing viable commercial alternatives, avoiding an insolvency process if at all possible. In addition, Steve remains focused on maximising tax planning opportunities, as well as finding practical and commercial alternatives for businesses in financial distress. His broad range of general practice clients included those in the engineering, construction, retail, professional practices, services, IT and not-for-profit sectors.



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Based in our London office, Chris Laughton acts for management, creditors and other stakeholders, adding value to financially troubled businesses of all sizes. His approach is to work with the key stakeholders to solve business recovery problems with practical action and advice, seeking to avoid insolvency procedures where possible, but taking formal UK insolvency appointments when necessary. Having particular knowledge and experience of European recovery practices and insolvency regimes, including the European Insolvency Regulation, Chris is one of a very small number of UK insolvency practitioners who are well-positioned to bridge the gap in understanding and expectations between stakeholders from different jurisdictions in cross-border business recovery cases.

Chris is the editor of 'Recovery', the quarterly journal of the Association of Business Recovery Professionals (R3) and the immediate past president of INSOL Europe, the European association of restructuring and insolvency professionals. Chris is the chief contributor to insolvencyblog.com, Mercer & Hole's blog on recovery and insolvency issues and is a regular conference speaker and commentator on recovery issues.



PETER GODFREY-EVANS

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Peter Godfrey-Evans delivers all aspects of corporate and personal insolvency work. When working with an ailing company, his first consideration is always options for restructuring and business turnaround. Peter and his team aim to work closely with directors and bankrupts alike with a view to achieving co-operation and thereby minimising the pain caused by formal insolvency procedures, however, where necessary they will use the investigative powers afforded to them by the insolvency legislation.

Peter will advise directors on the most appropriate way to deal with their responsibilities by placing their company into administration or liquidation. Peter acts for directors facing either disqualification proceedings or claims against them by insolvency practitioners. He will advise on the defences available to them and assist in negotiating settlements where appropriate. Peter has been appointed to act as administrator to enable profitable elements of businesses to be sold on thereby saving jobs and maximising returns to creditors. He has also been involved with many solvent liquidations, either as part of tax efficient reconstructions or simply dealing with companies that have come to the end of their useful life.

About Mercer & Hole

Whether you are a business or charity, an individual or representing your family in seeking assistance, the Partners of Mercer & Hole can help you with much more than standard accountancy or tax compliance. We take the time to understand our clients' current situations and their future aspirations, and we aim to provide a very personal service tailored to their specific requirements. We achieve the highest standards of technical excellence, but what we believe singles us out is our passion and determination to exceed our clients' expectations.

Our personal, partner-led service extends far beyond the UK, as Mercer & Hole is a founding member of TIAG (The International Accounting Group), a

global alliance of high quality, independent accounting firms, which has more than 100 member firms based in over 60 countries. We use the Group, or its sister network, TAGLaw, whose members include over 150 law firms based in nearly 100 countries, at least once a week responding to both the business and personal issues of our clients.

This newsletter will give you an insight into the firm and you can find out much more by visiting our website at www.mercerhole.co.uk. The site includes full details of the services we offer, and also provides visitors the opportunity to subscribe to our blogs, which offer regularly updated comments and solutions to topical issues facing organisations and individuals.

This newsletter is a short selection of items extracted from complex legislation. Further specific advice on any matters referred to must be taken at all times. The information is given for general guidance only and publication is without responsibility for loss occasioned to any person acting or refraining from acting as a result of the information given. No part of this publication may be reproduced without the prior permission of Mercer & Hole.

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