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ASM Guide to Insolvency

At ASM Chartered Accountants we have a vast array of experience dealing with businesses and/or individuals in difficulty and the one message that we try to get across from the outset is to seek help sooner rather than later. Seeking professional help from ASM and engaging with creditors from an early stage gives you the best chance of survival.

Do not bury your head in the sand, the problem will not go away on it's own.

What does Insolvency mean?

with the Trustee after the one year.

The term "insolvent" is laid down by statute and can broadly be described as being one or both of the following:

- Unable to meet obligations as they fall due, and/or
- Assets less than liabilities

Personal:

Bankruptcy – either by the person themselves or by a creditor. Once made bankrupt the case is referred to The Insolvency Service and if appropriate handed over to an Insolvency Practitioner to act as Trustee in Bankruptcy. The role of the Trustee is to realise assets for the benefit of creditors and investigate the actions of the bankrupt. Assets automatically vest in the Trustee at the date of bankruptcy, the debtor is no longer free to deal with them. Liabilities are dealt with by the Trustee. Bankruptcy normally lasts one year with some restrictions in place for the year. However bankruptcy assets will remain

Individual Voluntary Arrangement (IVA) – alternative to bankruptcy, a proposal by an individual to his creditors for settlement of debts. It may be a write-down of debt, a time to pay arrangement or both. What is proposed is up to the debtor under the advice of an Insolvency Practitioner. The support of 75% of unsecured is required to pass a proposal. Secured creditors cannot be prejudiced by an IVA. If agreed, progress of the arrangement is monitored by the Supervisor. If a debtor fails to comply with the terms of his proposal it will inevitably result in failure of the arrangement and bankruptcy of the debtor.

Debt Relief Order – a procedure for individuals with unsecured debts less than £15,000, available monthly surplus income of less than £50 and assets of no more than £300. A moratorium is put in place for one year. If after the one year there is no change in circumstances then the debts are written off.



Corporate:

Liquidation

Voluntary – Creditors Voluntary Liquidation, the company is wound up by directors/shareholders. A meeting of creditors is called to appoint a liquidator. Assets are realised for the benefit of the creditors. Directors' powers cease. The Liquidator is required to prepare a report on the conduct of the directors with the potential for action against directors for any wrongdoing. Company will be dissolved when liquidation complete.

Compulsory – the company is wound up by the Court normally on the petition of a creditor but can be by the directors and/or shareholders. The case is referred to the Insolvency Service and if appropriate handed over to an Insol-

cedure that can be started in most cases without Court involvement. An Administrator can be appointed by the directors, a lender or creditors. A proposal must be put to creditors within 8 weeks of appointment requiring the approval of 50% in value of creditors. Once an Administrator has been appointed various levels of protection are automatically invoked to prevent creditors taking action against the company. The Administrator takes over the running and control of the company. The Administrator has a duty to report on the directors conduct. In a lot of cases the initial aim will be to find a buyer of the business. An administration automatically runs for one year only but can be extended beyond that. Ultimately the company will finish up going into a CVA, being dissolved or put into liquidation.

For a free initial consultation please contact us.

Not tomorrow, TODAY

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Insolvency Practitioner to act as Liquidator. Assets automatically vest in the Liquidator at the date of liquidation, the directors are no longer free to deal with them. Liabilities are dealt with by the Liquidator. The actions of the directors will be investigated with the potential for action against the directors for any wrongdoing. The liquidator will realise assets for the benefit of creditors and ultimately the company will be dissolved.

Administration – A procedure where the first aim is the rescue of the company as a going concern, failing that a better outcome for creditors than liquidation. It may be appropriate where there are contracts to complete, stock to complete, etc. or to protect the underlying business. It is a quick and efficient pro-

Company Voluntary Arrangement (CVA)

– a procedure where a company puts a proposal to its creditors in settlement of its debts. It may be a write-down of debt or a time to pay arrangement or both. The proposal is prepared with the assistance of an Insolvency Practitioner, the Nominee. The proposal needs the agreement of 75% of the unsecured creditors in value to proceed. If the proposal is accepted by creditors the Nominee then becomes the Supervisor and as the name suggests supervises the arrangement to ensure the company does what it says it was going to do. On completion the company can continue or may be wound up. There is no requirement for a Directors report from the Supervisor.

