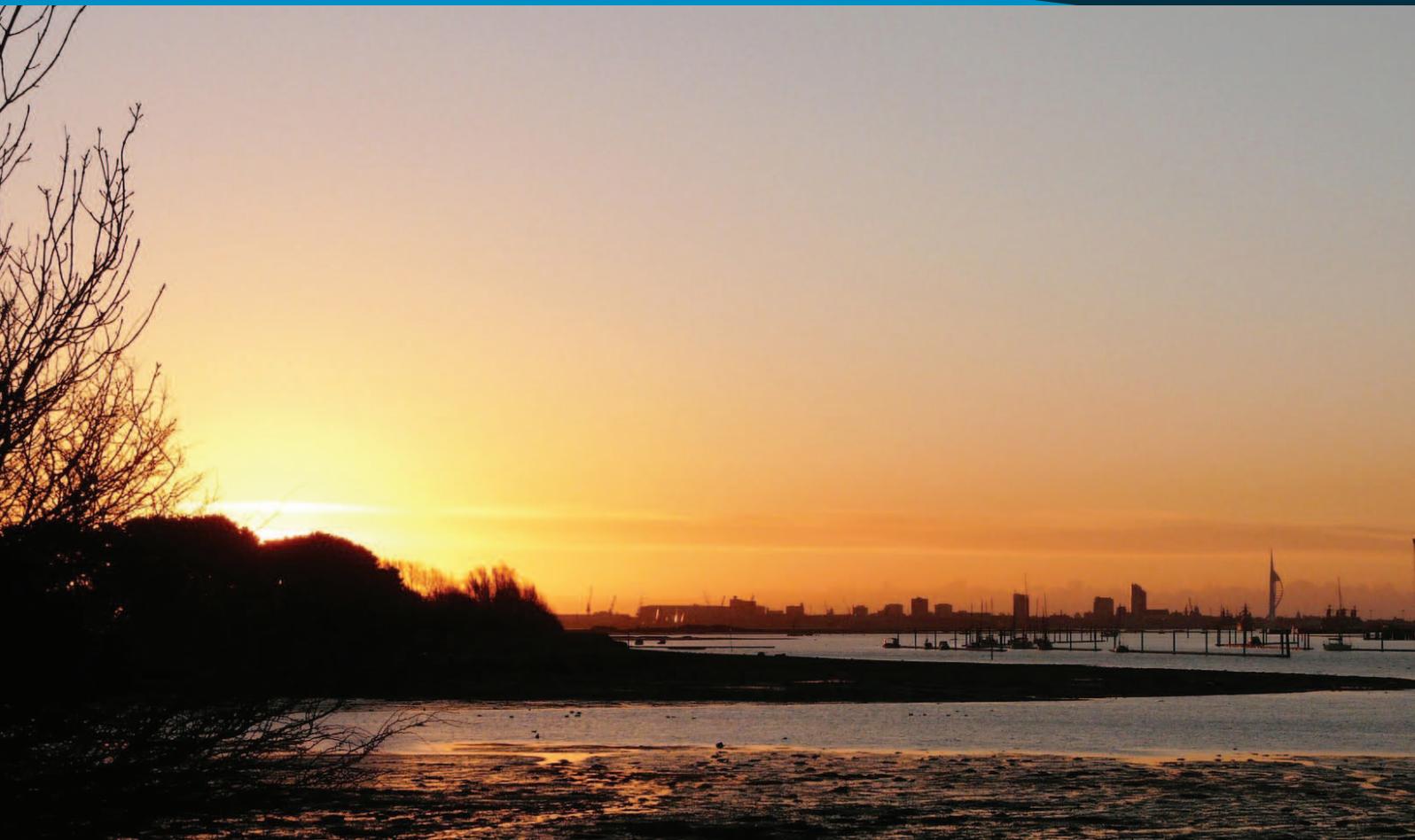




DebtcolTM
Intelligent Debt Collection

The process of Creditors Voluntary Liquidation for creditors



A Guidance Paper by  Debtcol
Intelligent and cost-effective debt collection

The process of Liquidation for creditors

An overview

Creditors' voluntary liquidation occurs where the shareholders, usually at the directors' request, decide to put a company into liquidation because it is insolvent.

The purpose of the liquidation is to appoint a responsible person who has a duty to collect the company's assets and distribute them to its creditors in accordance with the law. That person is the liquidator, who must be a licensed insolvency practitioner.

When is a company placed into CVL?

The most common circumstances are where the directors recognise that the company cannot continue to trade and there is no appropriate rescue procedure available; or, following another insolvency process (for example an administrative receivership or administration), there are funds available for distribution to unsecured creditors.

What involvement do creditors have in putting a company into CVL?

A meeting of creditors must be held within 14 days of the shareholders' meeting (it is normally held on the same day) at a venue convenient for the majority of creditors. Notice of the creditors' meeting will be sent to all known creditors at least 7 days before the meeting, which will also be advertised publicly.

Creditors are entitled to attend the meeting and will have the opportunity to vote to appoint a liquidator, amongst other resolutions including the fee basis for the liquidator. The votes are based on the values of creditors' claims. To be entitled to vote, creditors (other than those present in a personal capacity) must have lodged a form of proxy by the time and at the place stated in the notice of the meeting. You may send your proxy by fax and statements of claim may be lodged at any time before voting.

What happens at the creditors meeting?

One or more of the directors have sworn a Statement of Affairs of the company, which summarises the assets and liabilities (including details of creditors' claims). Copies or a summary of this Statement of Affairs will be made available to creditors at the meeting.

The insolvency practitioner whom the shareholders nominated as liquidator will assist the chairman of the meeting, who must be present and a director of the company in liquidation. A report of the company's history up to liquidation will be presented, giving an explanation of the reasons for the insolvency, and creditors will be invited to question the directors.

Should the creditors' choice of liquidator be different from that of the shareholders, the creditors' choice prevails.

A report of the meeting will be sent to all known creditors within 28 days.

Can the unsecured creditors form a liquidation committee?

Yes. A liquidation committee may be appointed at a creditors' meeting and must consist of at least three creditors. The liquidation committee receives reports from the liquidator and may meet periodically. It assists the liquidator, approves his remuneration and sanctions the exercise of some of his powers. Liquidation committee members are not paid, but will receive their reasonable travelling expenses as a cost of the liquidation.

What are the powers of a liquidator?

A liquidator's powers are wide and include powers to sell the company's assets, to bring and defend legal proceedings and to pay dividends to the company's creditors. Some of the liquidator's powers can only be exercised with the agreement of the liquidation committee, the creditors or the court.

How is the liquidator's fee determined?

The liquidation committee (if there is one) or the creditors agree the liquidator's fee, failing which it will be determined in accordance with a statutory scale or fixed by the court. Although the fee can be fixed as a percentage of the assets realised or distributed (or both), it is normally based on the following factors:

- the time properly spent by the liquidator and his staff;
- the complexity of the case;
- any exceptional responsibility borne by the liquidator;
- the effectiveness with which the liquidator carries out his duties;
- the value and nature of the company's assets.

Does the liquidator pay unsecured creditors the money owed to them?

Secured and preferential creditors are paid before unsecured creditors.

Secured creditors are those that have some form of security over a company's property (for instance a bank with a fixed and floating charge debenture). Secured creditors are entitled to be repaid their debt out of the proceeds of sale of the secured assets in priority to ordinary unsecured creditors.

Preferential creditors consist mainly of certain debts due to employees and the Redundancy Payments Service and are paid in priority to all other unsecured creditors.

The liquidator will pay a dividend to unsecured creditors if enough funds have been realised from the company's assets after paying costs, secured creditors and preferential creditors. When all the claims have been adjudicated or provided for, the liquidator will declare a dividend. The dividend will be a percentage (pence in the pound) of each creditor's total admitted claim, based on the cash available for distribution to the creditors and the total of all creditors' claims. All unsecured creditors, which includes HMRC for VAT and PAYE arrears, are treated equally.

What if the company holds something which I own?

If you believe that you own something in the company's possession, you should contact the liquidator as soon as possible with full proof of ownership and be prepared to identify what you are claiming. The liquidator will examine your claim carefully before deciding whether to release the goods in question, pay you for them, or otherwise.

How do I make a claim in the liquidation?

If you have not submitted a claim at the outset to accompany your proxy form for the meeting, then the liquidator will write to all known creditors asking them to submit claims. You must submit your claim to the liquidator in writing, providing sufficient supporting evidence of your claim, e.g. copy statements, invoices, correspondence etc. to allow the liquidator to decide whether or not your claim is valid.

Can I claim interest and penalties for non payment?

You may claim interest on your outstanding debt up to the date of liquidation if it bore interest, if it was payable at a previous date under a written instrument, or if you had previously demanded it in writing with notice that you would claim interest. You will not get interest on your claim accruing after liquidation, unless all creditors are paid in full.

How will the liquidator adjudicate my claim?

The liquidator will compare your claim to the company's records and any other available information, and he may discuss the claim with the directors. The liquidator may ask you for additional information or evidence if he thinks you have not sufficiently proved your claim. For example, if you have supplied goods to the company, the liquidator may ask you to provide copies of signed delivery notes. The liquidator may agree your claim in full or in part, or he may reject your claim if he does not think it is valid.

What can I do if I believe the liquidator has unfairly rejected my claim?

It is best to contact the liquidator in the first instance to discuss any amounts under dispute. If you cannot reach agreement you can, within 21 days of rejection, appeal to court. After 21 days, if you do not apply to court, the adjudication is final.

If there is no return to the unsecured creditors can I get any money back from my debt?

Six months after writing off a debt in your accounts, you can claim VAT Bad Debt Relief from HM Customs and Excise for the VAT that you have paid.

As an unsecured creditor, what information am I entitled to?

Within two months after the end of the first year and of each succeeding year and on conclusion of the liquidation, the liquidator will send to creditors a progress report. This will include a receipts and payments account for the period and a report setting out his conduct of the liquidation.

What should I do if I am dissatisfied with the liquidator's handling of the case?

You should first contact the liquidator to try to resolve the problem. If you are still not satisfied, you may be able to make an application to the court.

If you believe that the liquidator is guilty of professional misconduct, you should contact his regulatory body.



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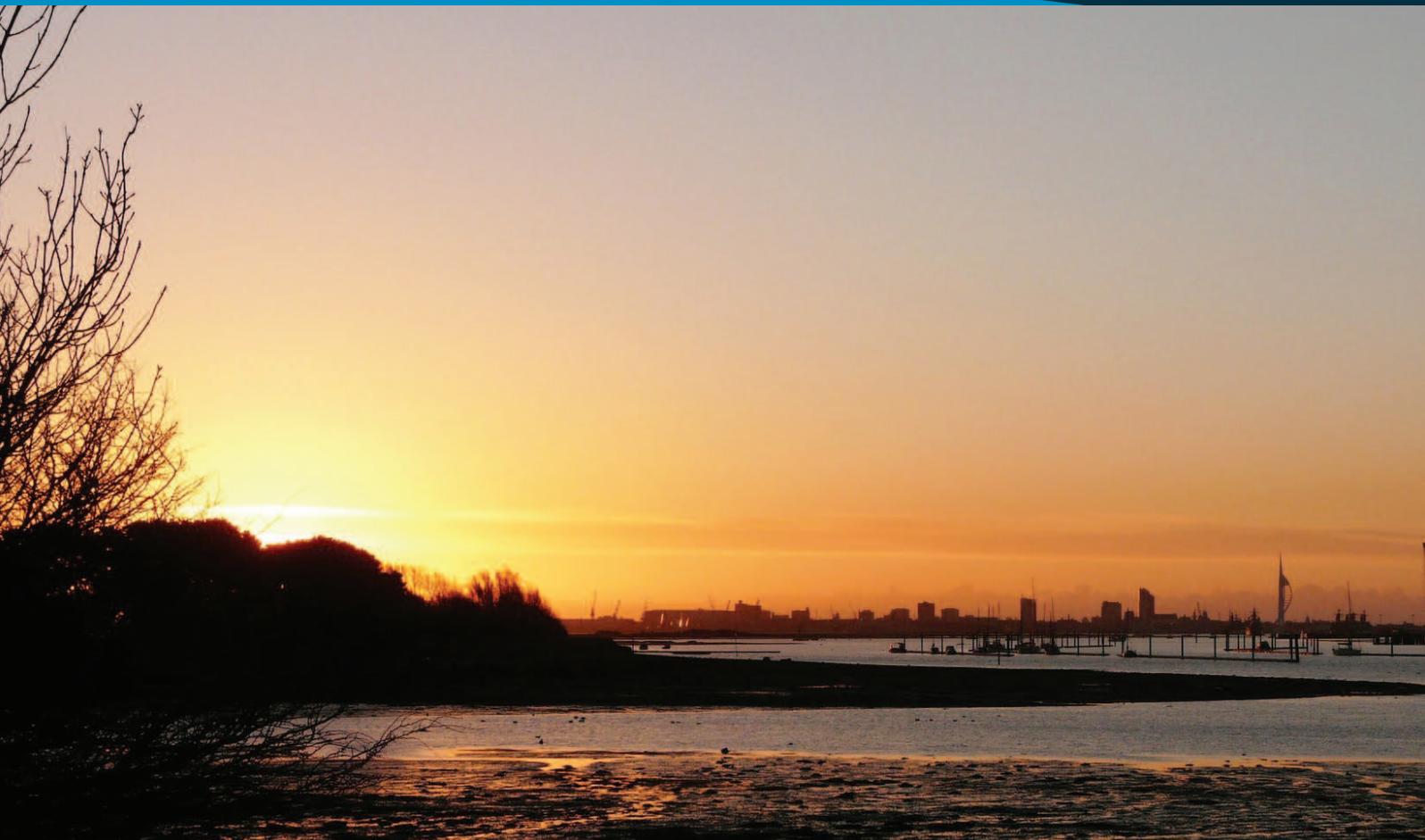
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This document explains the relevant position only in general terms and omits details less commonly experienced for the sake of brevity. It is not intended to be used as formal advice about your actual situation, for which you should consult us specifically and not rely upon this document.

Debtcol would be pleased to advise you formally and you should contact Paul Davies (Director) to arrange this by calling 01489 550 496.

Debtcol regrets it is unable to accept any responsibility to anybody who seeks to rely on this document.

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