Appendix A - The Company Insolvency Solutions Guide

This guide has been produced to briefly explain each option and give Directors a framework to support discussions prior to any decision to follow a particular insolvency solution.

Non-statutory solutions

Non-statutory solutions are those which have no formal basis in the legislation. This can make them a more flexible and less costly solution to the Company's problems, but because they are not defined in legislation they may not be binding on all parties and they tend to result in a higher level of risk for the Company and its Directors. Typical examples are:

Do nothing

Continuing to trade when the Company is insolvent may leave the Directors personally liable for any losses that the Company suffers when 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 the Directors may 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.

There are no third party costs associated with this, other than anything levied by individual creditors as penalties or unauthorised borrowing fees.

Informal agreement

When a Company is experiencing only short term difficulties and the Directors consider that it is only technically insolvent, they may be able to take steps to reach an informal agreement with creditors to postpone or re-structure debts and give the Company time to recover. As with the "do nothing" option above, this could lead to personal liability or disqualification if the Company subsequently enters a formal insolvency procedure, so it is only usually an option when a specific re-financing package or alternative solution has been identified and the outcome is fairly certain.

There are no third party costs associated with this, other than anything levied by individual creditors as penalties or unauthorised borrowing fees.

Re-financing

A wide range of re-financing options are available. Many, but not all, will require some form of personal guarantee from the Directors and/or the granting of specific security over one or more of the Company's assets.

The availability of a re-financing solution will depend on a variety of factors including the Company's past credit history, the willingness of the Directors to guarantee any borrowing, whether the Company has any free assets to offer as security and the amount of secured borrowing it already has.

There may be an arrangement fee for the new finance agreement and the interest rate set will be based on the lender's perception of the risk, the term of the loan, the amount borrowed, etc. Rates are currently very low but are likely to be over 4% per annum and could be much higher. The lender may require personal guarantees, some other form of security, or an equity interest in the Company.

Sale

It may be possible to sell the Company if there is a buyer who is willing to take responsibility for the outstanding liabilities. This is more likely to be an option where the Company has a strong brand identity or some intellectual property that has a value to the purchaser beyond the physical value of its assets. However, buyers may be difficult to find and they may only be willing to pay for parts of the Company (e.g. the brand or intellectual property) without assuming the liabilities).

There may be legal fees and agents' fees associated with the sale. The legal fees are likely to be based on the solicitors' time costs and will therefore depend on how quick and straightforward the sale is. Agent's costs are more likely to be on a fixed fee or percentage basis and so will depend on the sale price achieved.

Statutory solutions

There are a variety of solutions set out in the legislation, primarily the Insolvency Act 1986. These solutions are generally binding on the parties involved and there is a body of case law to assist with resolving any disputes. By entering into a statutory insolvency solution as soon as they become aware that a Company is insolvent, Directors are usually protected from personal liability for the Company's losses, although there are still circumstances where their prior conduct could leave them liable financially and/or subject to disqualification proceedings.

Moratorium

A Moratorium is designed to provide a short breathing space to protect the Company from creditor action while plans are formed to rescue the Company as a going concern. The plans put in place will depend on the particular circumstances of the Company, but it could involve the Company entering into a Company Voluntary Arrangement (CVA - see below). The Moratorium lasts for an initial period of 20 business days, but it can be extended up to a maximum of a year.

The Moratorium procedure differs from all other formal insolvency solutions in that it is what is known as a "debtor in possession" procedure. While under all other insolvency proceedings an Insolvency Practitioner takes control of the Company, in a Moratorium the Directors remain in control of the Company. The Directors remain responsible for the day to day running of the Company and for its continued trading, which includes paying suppliers and others for liabilities incurred during the Moratorium, and for putting together the rescue plan for the Company. An Insolvency Practitioner is still involved in the Moratorium procedure, acting as Monitor to look after the interests of the creditors. The Monitor cannot advise the Directors, although they could potentially act as nominee and then supervisor in respect of any CVA. The Monitor has certain statutory duties, including satisfying themselves that the Company is paying suppliers and others for liabilities incurred during the Moratorium, and that it remains possible to rescue the Company as a going concern, taking steps to bring the Moratorium procedure to an end if liabilities are not being paid or if a rescue is no longer possible.

The Insolvency Practitioner who the Directors propose will act as Monitor will charge pre-appointment fees for the work undertaken in determining that the Company meets the statutory criteria for a Moratorium and that it is appropriate for it to enter into such an insolvency procedure. The level of those fees will depend on the amount of work required to be undertaken and they could range from say £5,000 to £30,000 depending on the complexity of the business of the Company. It is for the Directors to agree those fees and they must be paid by the Company prior to it entering into a Moratorium. There may also be a need for the Company to instruct solicitors to make a Court application to place the Company into a Moratorium.

It is for the Directors to agree the Monitor's fees and for the Company to pay them during the course the Moratorium. They are usually agreed on a time cost basis, although a fixed fee could also allowed be agreed. The Monitor's fees and expenses will reflect the level of monitoring required, which will depend on the complexity of the business of the Company and the continued co-operation of the Directors in providing the Monitor with the information they need to carry out their statutory functions.

Administration

An Administration (ADM) is designed to hold a business together while plans are formed either to put in place a financial restructuring to rescue the Company, or to sell the business and assets to produce a better result for creditors than a liquidation. Administration can also be used where neither of these objectives can be achieved, simply as a mechanism to liquidate assets and distribute the proceeds to secured or preferential creditors, but this is not the primary purpose of the law.

Once an Administrator is appointed he takes over the running of the Company from the Directors and is responsible for any decision to continue or discontinue trading and he has control over how the Company and/or its assets are disposed of. The ability to continue trading depends on the availability of funds for working capital, the willingness of existing suppliers and customers to deal with the Company in administration and other factors specific to the Company's business, such as licensing rules.

The Administrator's fees are usually agreed on a time cost basis, although fixed fee and percentage based fees are also allowed. The Administrator's fees and expenses will reflect the complexity of the administration, and could easily exceed £50,000 where there are sufficient realisations to pay them. The Administrator may also charge pre-appointment fees for the work undertaken by both the Administrator and any solicitors or agents used. The level of those fees will depend on the amount of work required to be undertaken and they could range from say £5,000 to £30,000 depending on the complexity of the appointment.

Company Voluntary Arrangement

A Company Voluntary Arrangement (CVA) is a procedure which enables an insolvent Company to reach an agreement with its creditors to delay or compromise the payment of its debts.

A CVA is flexible and can be adapted to meet the needs of any business. In essence, a CVA will replace the terms of the Company's existing contracts with its creditors with new terms as set out in the CVA proposal. For example, the proposal might require the Company to pay a fixed monthly sum into the arrangement for a set number of years so that creditors receive a minimum dividend of Xp in the £. While the payments are maintained and no further action is necessary, the Directors retain control of the Company and once the arrangement is successfully concluded the Company remains in the control of its existing members and management.

Creditors will usually agree to support such 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. They may also want to see changes to the management and operations of the Company to ensure that similar difficulties will not arise again and the Company will successfully complete the CVA period. For smaller companies, a moratorium is also available which allows the Company a 'breathing space' in which to propose and implement a CVA without the threat of proceedings from creditors. Alternatively, particularly for larger companies, protection from creditors may be obtained by use of the administration procedure prior to proposing a CVA.

The Nominee's fees are normally agreed on a fixed basis in the range of £5,000 to £20,000 depending on the complexity of the appointment, plus disbursements that could amount to £1,000. The Supervisor's fees are usually agreed on a time costs basis and it is not unusual for Supervisor's time costs to be in excess of £5,000 per year, although they will depend on the extent to which the Supervisor is involved in supervising the affairs of the Company. There will also be disbursements of around £1,000 in total over the duration of the arrangement.

Creditors' Voluntary Liquidation

Creditors' Voluntary Liquidation (CVL) is the process where the Directors of an insolvent Company can voluntarily take steps to wind up the Company. The Directors convene a meeting of the Company's shareholders to consider resolutions to wind up the Company and appoint a Liquidator , and to seek a Decision from the creditors on the appointment of a Liquidator.

Once appointed, the Liquidator takes control of the Company from the Directors and although a short period of trading may take place to complete outstanding contracts, it is more common for the Company to cease trading and its assets are sold to repay the costs of the liquidation with any surplus being paid to creditors in the priority set out in the legislation.

The Liquidator's pre-appointment fees are usually agreed on a fixed fee basis of between £5,000 and £10,000 plus disbursements in the region of £100 for assisting in seeking a decision from the creditors to appoint a Liquidator and preparing a statement of affairs. The fees for acting as Liquidator are usually

approved on a time cost basis. The level of those fees and expenses will reflect the complexity of the liquidation and could easily exceed £20,000 where there are sufficient realisations to pay them.

Compulsory Liquidation

Compulsory Liquidation (CWU) is the process where the court orders that the Company is wound up. The Official Receiver is initially appointed Liquidator although he may subsequently be replaced by an insolvency practitioner.

Once appointed, the Liquidator takes control of the Company from the Directors and although a short period of trading may take place to complete outstanding contracts, it is more common for the Company to cease trading and its assets are sold to repay the costs of the liquidation with any surplus being paid to creditors in the priority set out in the legislation.

There is a Court fee of £280 and a £1,600 deposit towards the costs of administering the estate, together with legal costs, usually in the region of £2,000 to petition and obtain a Winding up Order against the Company. There are further costs payable out of any asset realisations made. An administration fee of £5,000 is charged in all cases by the Official Receiver, together with a fee of 15% of realisations where the Official Receiver acts as Liquidator. There is also a general fee of £6,000 charged in all cases by the Secretary of State. If an IP is appointed Liquidator in place of the Official Receiver, there will also be Liquidator's fees. The Liquidator's fees are normally based on time costs, although fixed fee and percentage based fees are also allowed. The level of those fees and expenses will reflect the complexity of the liquidation and could easily exceed £20,000 where there are sufficient realisations to pay them.

Disclaimer

This guide is produced to provide Directors with a simple guide to the various options available to a Company considering entering into formal insolvency proceedings. This guide is only intended to form the basis for discussions when considering a Company's most appropriate insolvency solution and is not intended to be and is not to be treated as a statement of law or of all the various options available. We cannot accept any liability for any direct or indirect loss howsoever suffered by any Company, Directors, shareholder, or any of their employees or associates that relies, either directly or indirectly, on this guide, or gives or receives inappropriate advice as a result of using this guide, or deliberately or inadvertently misinterprets any of the information contained in the guide.

Appendix B - Summary of options

The following table sets out a comparison of some of the key concerns that Directors appear to have when considering their options for the future of the company:

Solution	Statutory	Personal Guarantees usually require	Higher than average cost	Directors retain control	Business usually survives	Employees usually retain jobs	Personal liability for continued trading	Report on conduct of directors	Potential liability for tax of company
Do nothing	No	No	No	Yes	Yes	Yes	Yes	No	No
Informal agreement	No	Yes	No	Yes	Yes	Yes	Yes	No	No
Re-financing	No	Yes	No	Yes	Yes	Yes	Yes	No	No
Sale	No	No	No	No	Yes	Yes	No	No	No
Moratorium	Yes	No	Yes	Yes	Yes	Yes	No	No	No
Administration	Yes	No	Yes	No	No	Yes*	No	Yes	Yes
Company Voluntary Arrangement	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes
Members' Voluntary Liquidation	Yes	Yes	No	No	No	No	No	No	No
Creditors' Voluntary Liquidation	Yes	No	Yes	No	No	No	No	Yes	Yes
Compulsory Liquidation	Yes	No	No	No	No	No	No	Yes	Yes

* assuming that a sale of some of the business is achieved and employees transfer to the purchaser.

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Appendix C – Comparison of some of the key concerns when considering their options for the future of the company:

The following table sets out a comparison of some of the key concerns that Directors appear to have when considering their options for the future of the company:

Solution	Statutory	Personal Guarantees usually required	Higher than average cost	Directors retain control	Business usually survives	Employees usually retain jobs	Personal liability for continued trading	Report on conduct of Directors
Do nothing	No	No	No	Yes	Yes	Yes	Yes	No
Informal agreement	No	Yes	No	Yes	Yes	Yes	Yes	No
Re-financing	No	Yes	No	Yes	Yes	Yes	Yes	No
Sale	No	No	No	No	Yes	Yes	No	No
Moratorium	Yes	No	Yes	Yes	Yes	Yes	No	No
Administration	Yes	No	Yes	No	No	Yes*	No	Yes
Company Voluntary Arrangement	Yes	No	Yes	Yes	Yes	Yes	No	No
Members' Voluntary Liquidation	Yes	Yes	No	No	No	No	No	No
Creditors' Voluntary Liquidation	Yes	No	Yes	No	No	No	No	Yes
Compulsory Liquidation	Yes	No	No	No	No	No	No	Yes

* assuming that a sale of some of the business is achieved and employees transfer to the purchaser.

*As with the accompanying "**Company Insolvency Solutions Guide**", this table is only intended to form the basis for discussions when considering a company's most appropriate insolvency solution and is not intended to be and is not to be treated as a statement of law or of all the various options available.* Hawkins Insolvency Limited *cannot accept any liability for any direct or indirect loss howsoever suffered by any company, Directors, shareholder, or insolvency practitioner, or any of their employees or associates that relies, either directly or indirectly, on this table, or gives or receives inappropriate advice as a result of using this table, or deliberately or inadvertently misinterprets any of the information contained in the table.*