KSA Group Turnaround Programmes™

KSA's Complete Expert Guide to

Turning Around or Restructuring Your Struggling Pub, Hotel or Inn Business

Learn the trade secrets of the UK's leading SME turnaround advisor and company voluntary arrangement expert; Keith Steven.

Get thousands of pounds worth of Expert Advice for your company – free

© CompanyRescue Ltd, KSA Group Ltd. and Keith Steven June 2017. Keith Steven is hereby identified as the author of the material in this programme in accordance with section 77 of the Copyright, Design and Patents Act 1988. No part of this programme may be reproduced stored in any retrieval system without the express permission of the copyright owner.

Welcome to Keith Steven's Expert Guide to Turning Around, Rescuing or Restructuring Your Pub, inn or hotel business

Keith has been turning companies around since 1994. He has been involved with hundreds of companies and SME businesses in that time, all were facing insolvency, closure and bad debts. Plus the people involved faced possible loss of homes under personal guarantees and relationships / marriages as the longer term risks.

Keith is an expert in innovative turnaround and insolvency techniques. With a national team of 20 turnaround specialists KSA can quickly identify solutions and drive recovery for struggling pub companies.

This is only a general guide so:

We have set out this guide to be as user-friendly as possible, but please remember whenever you have questions you can email them to us for a quick answer. We will answer all questions during our office hours of 8.30 to 6pm, 5 days a week. This email support service is FREE.

help@ksagroup.co.uk

© Keith Steven, KSA Group Ltd. and CompanyRescue Ltd June 2014.

Links Note:

This PDF is rich in hypertext links. By holding down CTRL and clicking with your mouse you will open a web browser and link to our main website (100% safe). Of course if you read this in paper form the links are not live!

Contents

Introduction to this Guide 4
What are the Definitions of Insolvency? 7
KSA's Cost Cutting Guide for businesses and companies needing to survive a Downturn. 12
Is My Business Viable for a Turnaround? 14
Or just call KSA Group and we will start doing this for you. 0800 9700539 16
What if our Business is NOT insolvent? A Guide to Trading Out. 17
Trading Out - Frequently Asked Questions 23
Time to Pay – Informal Deals with HMRC 25
Refinancing the Company 27
What if Informal Trading Out and or Refinancing is not an option? 32
A Guide To The Insolvency Options 33
Pre-pack Administration 38
What About "Trading Administration? Is that Different"? 44
What does KSA think the Best Solution To Rescue A Pub Company is? 52
The CVA process a Detailed Guide 56
Company Voluntary Arrangements - Worries and Mistruths! 62
Dealing with Secured lenders – Banks, Leases, Factoring and CID. 65
HMRC, QIE and the CVA process. 68
Case Studies 70
Advantages v disadvantages of CVA and Liquidation for "ABC Pubco Ltd". 71
CVA v Administration Comparison Table for "ABC Pubco Ltd" 72
Wrongful trading, Preferences and the other rules to be aware of. 75
Directors Overdrawn Current Accounts? Why do they matter and what can we do with them? 79
Employees and CVA's the process of redundancy in CVA and Pre-Pack 83
Partnerships 85
Partnership Winding Up 89
Individuals or Sole Traders Running Pubs 92
Individual Voluntary Arrangements A Simple Guide 92
Trading In Scotland as a Sole Trader? 94
Scottish Trust Deeds 96
What are the impacts of the various insolvency tools on the Pub licence? 99

Introduction to this Guide

Are you a publican or hotelier and facing financial problems?

In the past, we have seen pubs closing at the rate of 29 per week around the UK so we know that the licensed trade and those that work within it are experiencing a torrid time.

We have a great deal of experience helping publicans, and others within the licensed trade, rescue their businesses.

Ask any publican why his business is struggling and we know we'll need plenty of time, and a stiff drink, to sit and listen to the long list of reasons.

Rising rent & business rates, fuel price increases, VAT rate increases, property prices, ever increasing duty on alcohol, the smoking ban, lower disposable income (as a result of higher household bills and wage freezes/reductions), the change in drinking trends and the relentless competition from off-licences, corner shops and supermarkets all combine to make the industry one of the biggest casualties in recent years.

Those pubs without the means to offer a comfortable outside area to their smokers and those that do not put sufficient emphasis on their food trade are finding things particularly difficult.

Consumer trends now seem to favour wine and spirit drinking and this has hit the more traditional 'ale' and 'beer' pub.

In addition, as you'll already know, a term known as 'pre-loading' appears to be increasing. This is where drinkers, mainly young adults, buy alcohol in shops and consume it at home before venturing out to a pub or bar later, and subsequently spending less in those establishments.

And even more startling for those businesses reliant on drinkers, is that research shows that we are, as a nation, actually drinking less alcohol. The BBPA in conjunction with the Office for National Statistics calculate that average alcohol consumption is down 15% over the last ten years.

Naturally, pubs have evolved over time and must continue to do so. They must adapt as society changes, continually look at new innovations and individually, they must strive to find that 'special something' that sets them apart from their competitors.

Pubs are distinctly British and mean many different things to many different people. They are historical and traditional – in fact, part of the very fabric of our society.

It is, therefore, vital that the great British pub survives. With fewer than 52,000 pubs still trading it is crucial those that remain viable are supported, by whatever means possible.

Heavy snow and bad weather in recent years has dealt a bitter blow to many pubs, bars and inns, hotels and restaurants. What is traditionally a busy time of year for the licensed trade, and indeed heavily relied on by many, was, in the main, a disaster.

Many publicans see increased revenue over the Christmas & New Year period as a means to try and claw back some of their earlier losses and give their businesses a boost before the quietest couple of months of the year.

For many, this has failed to happen and there are publicans all around the country literally hanging onto their businesses by their fingernails.

If your business is, one of the many, currently struggling to pay its debts on time then we may well be able to help.

CompanyRescue is your personal guide to solving your problems. KSA Group provides this free and easy to use online support service for struggling, insolvent or fast growing businesses. Business rescue is our prime target wherever possible, but we can help liquidate, close, or pre-pack, non viable companies too.

We'll stop you worrying, save your business money with our genuinely free initial advice, end sleepless nights and get you solving your business cashflow problems. Our friendly, expert advisors will start to fix your problems ***today***.

Call us free on 0800 9700539 and get some initial advice absolutely free!

If you'd prefer to explore our website first you'll find hundreds of pages of free advice and guides to some of the solutions we can provide.

KSA Group – Our aim is to Rescue Viable Businesses!

We help many thousands of people every year, they run different and diverse businesses. Most are fantastically hard working, many are innovative and creative, others are great with numbers or processes, and still more are great leaders. BUT all of the people we work with and help share ONE COMMON TRAIT: The Emotional Roller Coaster of insolvency.

It's still tough out there: in a recovering economy, we still face higher taxes, lower public spending, banks not lending.

So it makes a lot of sense to protect your hard work, your monetary and time investment and your future by cutting costs, getting rid of surplus people and planning to be in business when the REAL turnaround comes. That could be late 2011 now. Let's show you how your company or business WILL be here when that comes.

SO, let's start with a well used turnaround phrase, "You are where you are". There is no time for blame or recrimination, it's all about one thing now.........

FOCUS ON SAVING YOUR BUSINESS

"Running a pub business that's approaching insolvency, or that's actually insolvent is an emotional roller coaster; there are good days and bad, great successes and depressing failures.

Remember, although you have fought many battles before on your own, now you have the UK's leading CompanyRescue firm on your side and we know what you're going through"!

Keith Steven KSA Group; October 2012.

KSA GROUP

Company Rescue

What are the Definitions of Insolvency?

You may think that having a cashflow problem in your company, partnership or sole tradership is not the same thing as being insolvent, or the business is not at risk so why do I need to focus on saving it?

The UK insolvency law is built around the Insolvency Act 1986, Enterprise Act 2002, The Company Directors Disqualification Act 1986, and many examples of case law and practical application, through case law. So there is lots of law about! Plus all of this is regulated by the Government, regulatory bodies and committees.

It is vitally important to understand that, if a company is insolvent, this results in a shift in the director's duty of care from acting in the best interests of the shareholders, to ***acting in the best interests of the creditors' or ensuring that the creditors position is maximised.***

If you trade as a partnership, sole trader then becoming insolvent puts you at risk of personal bankruptcy!

If your pub company IS INSOLVENT whatever you do from now on you must act to maximise creditors' interest, that's the law. That usually does not HAVE to mean stopping trading. Clearly, if stopping trading was a serious option or your preferred route, then you may not have downloaded this programme!

So although maximising creditors' interests is paramount, it can have the added benefit of rescuing the company too.

Just to aid your understanding please now read the following definitions of insolvency:

There are three methods to determine insolvency:

The Cashflow Test

Simply - can the company or business pay its debts when they fall due for payment?

For example, if you are not paying the tax deductions from employees for PAYE and NIC across to the HMRC on the 19th of the month following the month they were deducted, then the company could be insolvent.

If your trade creditors, for example suppliers, landlords or accountants, sell to you on say 30 days terms and you regularly pay on 90-120 days, then the company or business could be insolvent.

A director has a legal requirement to understand this issue. If he or she believes that the company has insufficient cash to pay its liabilities on time then they must take advice/action.

The Balance Sheet Test

Simply – does your company owe more than it owns as a company or are the company's assets exceeded by its liabilities? If yes, then the company could be insolvent.

As a partnership or sole trader do you have few assets but lots of debts? If so you could be insolvent.

Many directors tell us that on a balance sheet test the company is not insolvent therefore they do not need to act. However, under the cashflow test above the company may still be insolvent. So you must act if it is.

In our experience an apparently solvent balance sheet may include items that are overstated, such as fixtures and stock that are not really collectable. After deducting these items, many balance sheets become insolvent. So be prudent - you are legally required to present accounts to show a true and fair picture of the business.

Legal Action Test

If a creditor such as HMRC has obtained a County Court Judgment, this may demonstrate the company's insolvency and the creditor may petition to wind up the company. (See compulsory liquidation).

If a creditor has obtained a statutory demand for greater than £750 and it remains unpaid for more than 21 days, then the creditor may petition to wind up the company. (See compulsory liquidation).

A creditor can also issue a winding up petition WITHOUT issuing a Statutory Demand, so they can go straight for the "jugular". If a winding up threat has been made contact us without delay, we can defeat petitions if a viable rescue is put together quickly.

If you are a sole trader the creditor can petition for your personal bankruptcy, without much warning.

KSA GROUP

Company Rescue

Summary

If you believe that any of the above tests are positive for your business, it is vital that you and the board of directors take action to address the insolvent position. However, don't panic, look carefully at all pertinent issues and consider the rest of this guide.

Remember, if the company is insolvent you must act to maximise creditors' interests. **If there is no reasonable prospect of the following options happening:**

- New or additional capital or finance being introduced to the business to return the balance sheet to a solvent position or to remove the cashflow pressures.
- A sale or acquisition of the company or business.
- A company voluntary arrangement or individual voluntary arrangement

Then the directors may be accused of wrongful trading. If you are worried about this or your accountant has said he/she is concerned, then look carefully at directors' disqualification.

So if the company is insolvent you must act to MAXIMISE CREDITORS INTERESTS. Failure to do so could lead to personal liability!

If you are a business trading whilst insolvent could lead to personal bankruptcy.

Current problems for pub/hotel businesses:

1. Struggling to cut costs to match lower demand. You may have been a much bigger business in the boom period of 2006-2008 and employed many more people. How do you get rid of the overheads, how do you cut staff costs? Redundancy is expensive; landlords are often intractable, unless you are based in a flexible lease.

2. **Cashflow crisis brought on by falling revenues and falling sales. Having been a larger business with much higher costs, you can find yourself with "LEGACY DEBTS", from that period.**

3. Slower sales. Look everyone is trying to preserve cash, so are you. You should definitely be running a daily cashflow forecast to ensure that you are aware when cashflow holes are looming. Please email info@ksagroup.co.uk for a free easy to use daily cashflow.

4. HM Revenue & Customs debts and falling further behind with. The "de facto bank of choice" for pub companies, is what I call the HMRC! As directors we are supposed to pay VAT at the quarter ends. The day comes when the cash won't meet that payment profile and the company or partnership / sole tradership starts to borrow from the "Crown" creditors.

5. Retention of staff, chefs or bar people. Or you may be hanging on to them in the hope that the turnaround is just around the corner. I like optimism, but it could be misplaced loyalty or optimism based on naivety – if sales and decent cashflow are not happening costs MUST be cut.

6. Finally, OVERDRAWN DIRECTORS CURRENT ACCOUNTS! This is when you have taken money every month and it has not gone through the PAYE scheme. Its tax efficient says your accountant, and true, dividend tax is much lower than income tax for high earners. BUT, when something happens and profits fall or losses are made you end up unable to pay dividends to cover the drawings, result? An Overdrawn Directors Current Account.

   This means YOU and your other directors OWE the company money as DEBTORS. If the company enters insolvency you will be forced to pay some or all of that back to the liquidator or administrator.

See here for more details https://www.companyrescue.co.uk/guides-knowledge/guides/overdrawn-directors-loan-accounts-in-insolvency-3741/

KSA's Cost Cutting Guide for businesses and companies needing to survive a Downturn

Our TOP 20 Cost Saving Rules and Cashflow Tips for SME's

1. You should set up a daily cashflow to control all cash in and out. This may protect you from wrongful trading, as it helps manage cash and stops bounced cheques.

   charge.

   1.1. PS don't bounce cheques its bad form! Oh and its possibly a fraud if you meant to!

2. All purchases are approved by you as director/Owner. You should sign all cheques or approve all BACS/CHAPS payments in writing.
3. No purchases are approved unless signed by you, which will make "them" produce a purchase order. Then you can check if they are doing their job, is the price fair, are they and your supplier ripping you off, or are they just lazy and not getting the business best value?
4. No petty cash is drawn from the bank unless you personally go and get it… makes you question what every pound is spent on when people ask for cash won't it? By the way you get out of the grind and time to think.

   4.1. If not possible because your business is too big, why not make a trusted person do it. NOT a big issue if cash is king?

5. Review all expenses claims by the staff; reject all that are not really necessary. If you get complaints or murmurings (they may be too scared to act professionally and debate with you), then meet with them and explain the position. BLUNTLY, tell them survival is now the main aim.
6. Remember survival is KEY, if you lose people or profits that's' not vital, CASH IS KING for now. Profits may soon flow from very tight cashflow management. If people sue for unfair dismissal, call us we can help, we may be able to kill off their claims with straight talking. Or perhaps a CVA can kill these claims too.
7. Ask every supplier for a review of their prices, can they cut you a better deal? Ask them to for a few extra weeks payment grace. They may object but they will welcome smart business people staying in business. That's better from a creditor's point of view than people putting heads in the sand!
8. Ask the landlord for a breather on rent. Can you please pay monthly not quarterly for a while? This helps cashflow. It actually puts you in arrears but that's maybe ok at this stage. AGAIN they want a paying tenant not an Ostrich who won't talk!

9. Ask your accountants to accept monthly payments. If your accountancy fee is £3,000pa then ask to pay over say 10 months that's £300 per month. The same applies for anyone else that issues a big annual fee note.
10. **MANAGE cash £VERY DAY! Did you do that yet!?**
11. Get someone else's view; do you have a trusted friend? If so talk to them about your business, actions and get them to sanity check you. They may suggest cost savings, test your closeted vies and make you think.
12. Do you need that company car; can you use your own and give it back?
13. Can you sell any assets, will it raise cash? Make sure they're not owned by a leasing company first.
14. Ask your factors to cut their costs, only drawdown weekly. Using your daily Cashflow model will of course help in this. This can save hundreds of pounds a week.
15. Cut ALL overtime to the bone, why do you need it? Is your production planning so poor or weak? If you need more people hire them, at lower rates.
16. If you need to make redundancies and cannot afford them, use the DBIS (ex DTI) Hardship Scheme. Call us for help.
17. Did we say "**Manage cash £VERY DAY".**
18. Use the internet to buy or price everything; you can get fantastic value over the net.
19. Work all hours, to build the recovery plan and set out the Time To Pay Deals with TAX AND VAT.
20. KEEP MINUTES or notes OF ALL DECISIONS. If you're a partnership or sole trader KEEP NOTES. This will help protect YOU. We can help, talk to the experts now.
21. Finally (I know this is 21), be aware that people will be less organised than you, for goodness sake, if a customer is not paying find out why!

Is My Business Viable for a Turnaround?

GUIDE TO ESTABLISHING BUSINESS VIABILITY

1. **Work out cashflow**

   1.1. If you want a daily cashflow model to help you work out your business email us or visit http://www.companyrescue.co.uk/company-rescue/guides/cost-cutting-guide

   1.2. This will help you lay out the next 90 days of cashflow and see what the real cash position is. We use this for all of our clients. You should use it too!

   1.3. Using a spreadsheet like the free model available from www.companyrescue.co.uk plus VAT; enter all known receipts from your factor and all know payments out.

   1.4. Put them in where you think they will be received (cleared funds!!!) and when payments need to be paid.

   1.5. Enter bank position.

   1.6. Work out the cashflow for the next 90 days.

   1.7. So what does this say? You run out of cash? Or can you live within facilities if payments are pushed out a week or two? What if you move the PAYE and VAT out by a few months paying say a 6th each month? Can that work?

      1.7.1. If so click here for a Time to Pay Guide programme

   1.8. Does the cashflow say it just cannot work?

      1.8.1. Don't panic! Now you have established cashflow that's a good start to working out the solutions.

      1.8.2. You can stretch out the cashflow to 6 months if that would be useful to you.

      1.8.3. Move onto the next step.

2. **Work out your Sales**

   2.1. Now let's look at sales, are they falling rising or flat?

   2.2. If they're falling we know we need to work out if the company's costs are falling too. If not rising costs and falling sales are a real problem.

      2.2.1. If you need to cut costs, read the section on costs above.

2.3. If sales are falling, is this a marketing problem? See our marketing section online. Or get external advice on marketing. Do you have a marketing plan?

2.4. Can you increase sales, if so how? Is there a new product or service that you can sell/ how long will it take to get it selling. Do you need to spend money to get it to market? How much? Put that in the cashflow.

2.5. What about sales people, are they performing? Do you have a web presence? If so is it working for you?

2.6. Work out the best sales you can expect for each month for 6 months, and then work out the lowest. This is called sensitivity analysis

3. **Look at your margins:**

3.1. Work them out carefully. Can you put prices up and improve margins. Can you buy better and get cheaper supplies?

3.2. If you cut the margin would you sell more? Remember 10% cut in price equals a much bigger cut in margins!

4. **What are the fixed costs of the business?**

4.1. These include rent, wages, rates, utility bills insurances and so forth. Add them up and see how much you spend on each and all fixed costs.

4.2. You need to have a enough gross margin each month to cover those costs

4.3. Can you cut fixed costs like rents?

4.3.1. If not is the property too big and would the business do better in smaller premises.

4.3.2. Think about using a CVA to exit the property or properties and terminating the lease.

4.3.3. If you cannot cut fixed costs then you may be able to save money on variable costs or overheads.

5. **What are your overhead (or variable costs)?**

5.1. These include people, travel, accounting, cars, electricity, consumables, stationery etc.

5.2. Are these too high? Save a pound or two on all of these and you could make a huge difference to the business' net margins.

6. People – good, bad, remove or recruit?

7. Customers, have you got enough are they satisfied with your service/product?

8. Marketing: have you got a plan, how do you get to market, what's about the brand/ product and market?

9. Business Plan – have you got one? Marketing plan? Why not?
10. Decide to ACT!
    10.1. I have a Viable Business???
    10.2. I have an Unviable Business???
    10.3. I have a Viable Business but it needs Restructured???
11. If it is not viable think about creditors voluntary liquidation. Call 0800 9700539 now for honest advice and to quickly get the liquidation under way.
12. If it is viable and you cannot decide whether CVA or Pre-Pack Administration is appropriate, we can offer a free face to face meeting to help you decide.

Or just call KSA Group and we will start doing this for you on 0800 9700539

What if our Business is NOT insolvent? A Guide to Trading Out

A common sense way to trade out of cashflow problems.

This is a very common approach. You hit a problem that is not life threatening but you have serious cashflow difficulties, possibly Tax and VAT arrears and creditors shouting loudly. Following this guide and applying common sense may help you get out of that position.

First bit of good free advice: Beware, note down ALL ACTIONS, DECISIONS and keep replies and correspondence with creditors.

If the company, partnership or sole tradership has suffered a downturn in circumstances because of a finite set of issues and the business is not fundamentally weakened or about to fail, then this is a great solution. Including the largest companies, every business faces a cyclic cashflow problem. Measurement of success cannot be short term, but events dictate that every company will suffer at times.

A key element of this policy is honesty.

Be honest with yourself, the employees and your creditors and your bank if you have any debts. Without this there is real risk that you will only make the current problems worse.

It is important that you carefully and honestly consider the problems facing the business. Ask yourself the following questions and gauge the answers:

1. Is this business viable? If you could remove the problems or the pressure does it have a real long term future?
2. Is money all it needs to sort the problems? Can you safely introduce new money, perhaps from your own sources?
3. Can you achieve sufficient sales, activity or momentum to cover your costs? We call this critical mass.
4. Have you cut all costs to the minimum efficient level?
5. If your activity does rise can you:

   a) Fund it - working capital problems are just as acute for too many sales as too few!

   b) Justify any further credit you may have to take - is there a reasonable prospect of repaying that credit? If not you may be risking wrongful trading.
6. Can you maintain the key people you need?
7. Are you able to provide your service at a price that the market can sustain?
8. Would it be better to close the business and look at other opportunities?
9. Have you got the fight in you to keep battling on without support?

10. Have you taken advice from professionals? If not talk to KSA Group's turnaround experts for guidance.

11. Have you involved the key partners in your business?

12. Are you fearful of taking decisions to close, restructure or sell the business and are seeking to trade out to defer that decision-making process?

If you now believe that the company HAS a future and that the problems are not insurmountable then read on.

Trading out can be a very effective tool if handled correctly. There are a number of ways to do this. The key is to achieve a breathing space for the company. This lifts cashflow pressure, right now CASH IS KING!

"Informal" deal:

Merely calling the key creditors, explaining the position: you want to pay them back in full as fast as possible but cashflow is tight and can you pay them over an affordable timeframe, can work wonders. BUT do not do this without a planned approach. You must

1. Work out your cashflow - be realistic. If a debtor is due to pay your company in 30 days check whether they are happy with the invoice and goods, check when they think they will pay. Then add on 10 days at least for a safe margin.

2. Build a daily cashflow, if you cannot write spreadsheets use a simple form on a sheet of paper, but update every figure as you go.

   Why not contact us for a free cashflow model designed by experts for just this purpose? info@ksagroupco.uk

3. Not over promise. If it looks like you can pay all key creditors in 30-60 days ask for 60-90 days. Creditors will usually be happy to work with you if you are honest.

4. Not break deals. But if it is unavoidable, write and call the creditors and explain carefully where the plan has not worked. Honesty is the key. It does not guarantee support but you must be straight.

"Formal" deal:

This is not a formal insolvency deal such as a CVA. But the use of a professional turnaround practitioner can ensure that the "honest broker" effect achieves a

workable deal. Once again the deal broker will want to see evidence that the directors have planned their recovery and looked long and hard at the business and its cashflow. Some creditors may even accept write-downs of debt if they think the company will survive and prosper long term.

A professional firm can often extract deals with creditors that the directors cannot. This is the trust element, creditors often lose faith with directors but will trust a professional firm. Try using your accountants, lawyers to broker deals.

Alternatively KSA can provide this service, in certain circumstances. If you require such a service please contact Iain Campbell at KSA Group iainc@ksagroup.co.uk

We would require detailed financial forecasts to be built to support the proposed deal. These can be produced by our expert forecasting team, clearly fees will be required for this work and of course, the deal brokerage.

Tips

Don't wait until legal actions have been taken against the company to ask for a deal. Try to plan the cashflow of the business well in advance - you have a legal obligation to do this! If the directors do not think the company has sufficient cash to trade they should consider the obligations and options like CVA and plan a way forward. Worried about legal actions? Go to that page for more details.

Keep a log of all calls and take copies of all letters to creditors - that way you can check back.

Have a review meeting each week - if you are falling behind take action. Inform the creditors.

If the plan is clearly not working consider the other options in this guide such as company voluntary arrangement (CVA), administration, trade sale and refinancing.

Don't wait too long to get professional turnaround help. Often a CVA, for example, can remove the stress and allow you to get back to running the company, not the deals with creditors.

Trading Out - Frequently Asked Questions

Q: The company is struggling, but not that insolvent, can I safely trade out by cutting staff and overheads?

A: It is important that you read and understand the Insolvency test section on page 8 before going further. Even if the company is insolvent that does not mean a formal insolvency action is the right way forward.

If you can produce a recovery plan that is achievable and that maximises creditors interests, then this can be a good way forward. Many thousands of businesses do this every year and recover well. Our advice is to produce your plan, discuss it with your senior people and then embrace it.

During the course of the recovery stage, constantly review the process, minute your meetings and compile information as to your actions. In the future if the plan does not work, this helps defend your actions.

In our experience making honest mistakes whilst trading out can be easily rationalised after the event if this information is to hand. But, merely verbally stating that it seemed a good idea at the time does not convey a sense of prudent and diligent actions having been taken. In other words cover yourself in case the plan fails.

Q: How can I go about cutting employees when we cannot afford the redundancy payments?

A: Consider contacting the Department of Employment. Under the hardship scheme the company may be able to (provided conditions are met of course) borrow the redundancy payments if it can demonstrate an inability to meet the payments.

Q: What happens if the trading out plan does not work?

A: Consider the facts regularly, if the plan is clearly not working then take advice from a turnaround practitioner or insolvency practitioner. KSA Group provides a free help line on 0800 9700539 to get you quick expert advice.

Q: It has got to be better to struggle on with an informal deal than to go into a CVA?

A: Actually often it is the opposite! The CVA mechanism is also a very powerful corporate finance tool, it draws a line in the sand with all unsecured creditors and allows all creditors time to consider and vote upon a restructure if necessary. Allied to the ability to remove from leases and reduce employee numbers, it is a very far-reaching tool. Of course, it also mitigates wrongful trading issues and allows director to focus on running the business.

AND HMRC will support a well structured CVA. They support 98% of our CVA proposals!

If the business is a partnership we can propose Partnership Voluntary Arrangements with or without supporting Individual Voluntary Arrangements

Q: Why not just wait and see?

A: You have a duty of care to creditors if your company is insolvent. Failure to take action can be construed as badly as acting wrongfully. In any case procrastination and inaction are always in the list of causes of failure cited by liquidators.

Time to Pay – Informal Deals with HMRC

Most pub companies only have a few creditors and usually they include VAT, PAYE/NIC and Corporation Tax! Along with some bank or factoring debt and a few online job boards the debt is concentrated with the "de facto" bank called HMRC.

Call HMRC collector and or write with an offer: you can ring the Payment **Helpline** on 0845 366 1204 if you need a quick 2-3 month deal. You will find this very helpful and generally a fast response is received. (Note this line may be discontinued soon, therefore contact your local collectors' office.

If you have already had a TTP (Time to Pay) then you may still get more deals over time if you adhered to them. If you didn't then you may be passed upwards from the helpline to a tax collector. He or she will require much information, good evidence of viability, evidence that the bank cannot support and a plan. To help you we have prepared a UNIQUE Time to Pay Programme, Step by Step guides to the process.

However, it is worth noting that since May 2011 getting additional TTP deals, even if you have previously adhered to them, has become much tougher. Getting a TTP again when you have failed to keep up with payments is virtually impossible now. Indeed HMRC has become much tougher in all aspects of tax collection and a formal process such as IVA, PVA or CVA may be required.

Refinancing the Company

What about raising money, (possibly) along with trading out guides (above) will this prevent the company falling into insolvency?

Almost all businesses need to go through periodic refinancing exercises, whether replacing bank facilities, renewing overdrafts, obtaining bank term loans, enterprise finance guarantee loans, factoring or capital expenditure requirements. This is normal business practice.

Where a company has encountered a significant downturn event or is under pressure, then the directors must consider whether raising further finance against assets is the solution to their problems. As the market changes and evolves almost daily, we cannot provide an exhaustive list of the financial products available but we give our own view of the various methods below.

Refinancing:

Remember this section is not designed for ordinary business financing solutions, rather it is for companies under pressure to find adequate working capital.

Consider the products, weigh them up against the circumstances you find yourself in and decide. If you want help to decide and find the most appropriate suppliers of finance contact us. We know and have access to almost all providers of these products and can point out the pros and cons of each.

Bank Overdraft

Description

It may be possible to obtain temporary increases in facilities from the bank. If the problem can be demonstrated to be short-lived the bank will want to try and help. If the problem looks more deep-seated they may want more investment from third parties (you). Prepare good information, your team's arguments and talk to the bank - early enough.

Advantages

Decision making process is usually short - if you have good information to give the bank. The existing relationship is very valuable - banks don't like losing customers. It may ask for more detailed work to be done on the figures, (despite the cost) this can be a valuable exercise. It may help pave the way to other financial products from the bank in future.

Disadvantages

If the bank cannot see how its money can be repaid (serviceability) or cannot see how it can get the money back in the event of liquidation (security) they will not lend. Ill-prepared requests for funds will be looked upon less favourably. The bank may want a third view and ask for investigating accountants to examine the business.

It may be more costly than existing finance. They will probably want more security from the company and the directors - personal guarantees may be demanded or increased if in place.

Enterprise Finance Guarantee Scheme

Description

A government backed loan scheme to assist SME's with working capital requirements. Typically the DBIS will underwrite up to 75% of the loan. Banks vary in their approach to the scheme but the DBIS is actively encouraging its use.

Advantages

It can be good value and reasonably quick to raise this type of loan. The investment criteria are perhaps less stringent than non-guaranteed facilities. Capital and or interest holidays can usually be agreed. For distressed companies this can be a lifeline while they return to profitability.

Disadvantages

Not all applications are approved of course. If the company is clearly distressed the bank and /or the DBIS may reject applications. Can you raise enough to provide a solution and adequate working capital whilst you return to profit? Can you service the loan. Merely creating more debt is not a solution where radical surgery is needed.

Factoring

Description

Not suitable for pub companies.

Asset Refinance

Description

Most companies depreciate their assets faster than the value of those assets fall. Therefore, there are "unencumbered" assets to lend against. The assets of the business form collateral for the lender to secure themselves against. Assets include, property, office equipment. Used in conjunction with, say, factoring this method can provide a package of new finance to overcome distress.

Advantages

It is usually a very quick method, access can be through commercial finance brokers or other contacts. Contact us by email for help if required. Where a short term crisis (say a large bad debt) has occurred this method can help the company round the problem very quickly by efficiently using its assets to raise cash. Better quality assets such as land and buildings can attract good rates of interest.

Disadvantages

Raising finance this way is not cheap. Where the company has unencumbered assets it is tempting to raise cash against them but remember

NB: If the crisis is longer term can your company service the debt repayments? If not call us for a CVA now! 0800 9700539

Costs vary but rates of interest on refinancing assets (ie where previous debts are repaid and fresh advances made) can be as high as 35%. The value of assets is established by the lender - it is never as much as you expect.

Business Angel Investment

Description

The classic UK equity gap problem is getting worse. Too small for venture capital and too big a risk for the bank - where to turn? Angels can provide a mixture of loans and equity to distressed or struggling businesses. Most come from a business background and have lots of experience. They usually take a longer term view and can greatly assist the directors grow the company.

Advantages

With bags of experience an angel can be just what the growing or struggling company needs. Chose carefully and the relationship can be very fruitful. The funds can be flexible and inexpensive. Further rounds of funding can be available. The fact that an investor is putting money in can also help persuade the bank to increase funds available.

Disadvantages

Chemistry can be difficult - they are going to be involved long term therefore will take time choosing their investments. Equity: they will want a position in the company and the depth of the distress or pressure will determine how big a slice they require. Paucity: there are thousands of angels but finding an appropriate angel, convincing them to get involved and getting finance can be many months. Control: many angels will want control at board level.

Venture Capital

Description

Most small businesses in trouble are NOT suitable for Venture Capital. VC's invest in around 1 in 1,000 applications for finance and unless there is a huge growth potential and an almost unique nature to the business it will not get venture capital. If however the company is unusual in the above regard then contact us by email with a synopsis and we will look at the options with you.

Advantages

Most directors are aware that equity is "cheaper" than debt. Having a quality non executive director to help guide the board (a pre-requisite of most VC's) is also a big plus. The company's reputation and PR are enhanced. Where growth is achieved and prospects remain good the ability to raise further finance is enhanced.

Disadvantages

Classically, shareholder directors see the dilution of their equity as a no-go area. Would you rather have 70% of a company worth £10m or 100% of a company worth £100k? VC's only part with money after thorough due diligence, it is hard work and costly. In the end you may not get the money. Only the best management teams with the best ideas win through. It is very time consuming - in a distress situation do you have 3-9 months to wait?

Directors Loans

Description

It may be possible for the directors or senior people to raise funds privately. This can then be loaned to the firm. Tax efficient repayment may mitigate the PAYE due on directors pay. But if the company is insolvent, repaying your loans in advance of the creditors may contravene the law. In the event of liquidation the monies may have to be repaid to the company! Security may be taken for the loans - but this is a complex area.

Beware you could create a potential preference (s239 Insolvency Act 1986) if you put money into an insolvent company and then pay yourself back!! Call for smart, expert advice 0800 9700539.

Advantages

It is cheap, you remain in control of the financial process. It is usually a quick method to raise finance. But be warned, taking out second mortgages will require showing the lender the company's accounts. You can repay the loan as convenient to cashflow. It can carry zero interest (you can however charge interest). Personal loans are now NOT that freely available

Disadvantages

If you had lots of money it would probably already be invested in the business? Can you afford the repayments personally? If the company fails you still have to repay the loans. The bank may take some of their existing advance back after the funds are introduced. Finally, is the money you can raise really ENOUGH money to solve the company's problems?

KSA GROUP

Company Rescue

What if Informal Trading Out and or Refinancing is not an option?

The company directors, partners or sole traders should consider their personal objectives , but ABOVE ALL ELSE they must act in the best interests of the creditors.

Assuming the company is insolvent then it may be necessary to use more formal turnaround / insolvency options. These broadly fall into Stop and Go options.

Stop

Creditors Voluntary Liquidation
Administration
Pre-Pack Administration (also a go option!)
Bankruptcy for individuals

Go

Company Voluntary Arrangement
Pre-pack Administration
Trade Sale (not covered in this version)
Partnership Voluntary Arrangement
Individual Voluntary Arrangement

First we will consider the stop options. In the first - creditors voluntary liquidation – we assume that the directors have had enough and want to cease trading, the company isn't viable and there are few assets.

A Guide To The Insolvency Options

Creditors Voluntary liquidation

Is this company bankruptcy ?

Many people call this company bankruptcy, but this is not the correct description, only people can go bankrupt!

Insolvent companies go into liquidation, administration, receivership, they trade-out, refinance or they enter a company voluntary arrangement.

Most accountants, lawyers and many other advisors are aware of a section of the Insolvency Act 1986 that is called "wrongful trading". When times are very difficult for the company and they don't know about the full range of options available to a distressed company , many such advisors tell the directors to talk to an insolvency practitioner (IP) and or consider liquidation to avoid being made personally liable for the company's debts.

It is interesting that most liquidators get their work this way! So we always recommend taking advice from third parties not just your accountants or their friendly insolvency practitioner. They may be giving "safe advice" but it's not always the RIGHT ADVICE!

We recommend that you consider ALL options before you decide! Do not let fear of "wrongful trading" get in the way of making the right decision for the company. As directors you must maximize creditors' interests first.

Liquidation should only be used as the LAST OPTION, we believe it should not be a case of bury the company first, ask questions and worry about the results later! Using a simple medical analogy, would you go to the undertaker with a pain in the chest?!

When is (Creditors Voluntary) Liquidation appropriate and what happens?

It is appropriate when:

- The company is insolvent
- It does not appear to be viable - even if restructured
- The market has declined for the company's services or products

- The directors don't believe that they have the determination needed to rescue the company. Nor do the directors WANT to rescue it.
- It is used as part of the restructuring of a group

What happens in the liquidation process?

The easy answer is a good liquidator will deal with all of the following for and with you. But if you want to know in detail what happens read on.

The directors of an insolvent company elect to call an extraordinary general meeting of the company. At this shareholders (members) meeting, the directors will report that the company is insolvent, there is no reasonable prospect of paying existing creditors, they believe it would be wrong to take further credit and they advise the shareholders that the company should voluntarily enter liquidation.

At this general meeting the members (shareholders) pass a resolution to cease trading (normally) and to nominate a liquidator. This liquidator conducts a relatively quick investigation into the statement of affairs of the company and calls the creditors to a meeting.

He /she must place an advert in the London Gazette and in two local newspapers calling this meeting and then write to all known creditors inviting them to submit a claim for their debts. The liquidator is then appointed by the creditors at a creditors meeting (s98 Insolvency Act 1986).

If required the creditors can elect to form a creditor's committee to monitor the activities of the liquidator during the course of the liquidation. This may be to monitor fees, sale of assets and investigation into the director's conduct. A creditors committee must have between 3 and 5 members.

The liquidator has four main tasks:

- To convert the assets of the business into cash (hence liquidation)
- To adjudicate the claims of the creditors (work out how much is owed by the company)
- To investigate and report upon the conduct of the officers of the company (directors and shadow directors)
- To make payments (where dividends are available) to creditors in order of priority

Of course, very often, the directors have tried many other avenues to save the company and the remaining unfettered assets are modest. (Unfettered means the assets have no outside owners like the bank or HP companies).

In many other cases the liquidator is asked to sell the assets of the business to another party. This can include the former directors or shareholders. This is commonly known as a "Phoenix".

How do we go about all of that!

Don't worry, the liquidator will handle almost all of the paperwork, the assets and the activity after liquidation. It is vital though that you have up to date information for the liquidator to use.

Is phoenixism legal and if so what happens?

Yes, provided the rules are observed and the liquidator maximises the interests of creditors then the business assets can be sold to a "connected party". In this event the liquidator must satisfy himself that he/she has

- Obtained the best possible value for the assets
- Having typically advertised the assets for sale in the media and or on the internet.
- Ensured the creditors interests are not compromised by investigating the conduct of the directors prior to the liquidation.
- The trading name of the new company is not the same, or similar to the liquidated company, (s216 Insolvency Act 1986). This restriction on re-use of a trade name can be lifted if the court agrees.

Often a Phoenix will require new cash in the form of investment to get the company going. This can sometimes be a stumbling block too. As can the fact that the new company may have to take on the employees employment rights from the old company (TUPE). This is a very complex issue that must be considered before going down the liquidation path.

Typically the company is very distressed and the board has decided to cease trading, the normal liquidation process starts but the directors or shareholders or both buy some of the assets from the liquidator. The new company starts to trade. Often a similar name is used to the old company - this can be a legal minefield so make sure you get good advice if you wish to set up a phoenix company.

Main Advantages of Liquidation

From a director's point of view: the directors may avoid the risk of "wrongful trading", they draw a line in the sand - and crystallise the situation (often this is a very important benefit because it brings to an end the period of worry and terrible uncertainty) the creditors interests are hopefully maximised.

If wrongful trading can be proven then the director (s) can be made personally liable for the debts of the business. This is usually from the point where they should have known the company had no "reasonable prospect" of surviving.

From a creditor's perspective the benefits are that the directors' conduct will be investigated by a liquidator (or ultimately even the DBIS), their position is crystallised and not worsened. Because it is the creditors who appoint the liquidator, alongside a creditors committee they can be sure that the company issues are dealt with correctly.

Main Disadvantages of Liquidation

From a directors and shareholders point of view: any tax losses built up in the period prior to the liquidation are lost, goodwill is lost (even if there is a phoenix), the director's conduct will be investigated and it is a costly exercise. In virtually all cases there is no return for the shareholders and (because they are connected creditors) the directors.

Please see a guide to creditors for an explanation of "connected creditors".

From a creditors perspective a CVL can be a negative step because: assets tend to be sold for very much less than book value, creditors' claims can be much higher (for example claims from employees, landlords and secured creditors), there is often no prospect of continued trade. Coupled with the actual cost of doing the insolvency work, the return to creditors in liquidation is usually very low.

Directors Health Warning!

If the company is insolvent and you are considering liquidation please follow this simple advice:

From here on, make sure you take notes of any major decisions, write down important dates and the board's actions. Always write to creditors suppliers and banks, that way you will create a written record of the issues. Have regular meetings of the board, shareholders, management and if it's just you make sure you write everything down!

In months to come, when you are asked questions, this will help you remember why certain decisions were made.

Summary

There will be around 8-12,000 CVL's in the UK each year, many more in these current recessionary times – perhaps 20,000 pa. Many of these are necessary and correct. However if the company is viable the use of this mechanism to "restructure" the business is like using a sledgehammer to crack a nut.

We have heard some directors say they don't want to rescue the company if it means paying back the creditors, or "there is too much debt".

If tempted by this ethos remember you have a duty to maximise creditors' interests. After liquidation, if it can be proved that you set out to avoid this you may be personally liable for the debts of the company.

Before deciding to liquidate, make sure that you go through the decision making process carefully.

If you have now decided to liquidate, we can get one of our in house quality insolvency practitioners to talk to you. He will make sure a proper and thorough job is done, cost effectively. Please contact Sarah Massey or Iain Campbell to talk through the next steps on 0800 9700 539.

Just to remind you again - never decide to liquidate a distressed company unless you think it is not viable.

We can assist with far reaching restructuring of the company including terminating leases, contracts of employment for unwanted employees, HP agreements and other onerous contracts. Would such a restructure help your company survive? If there is a viable business but you are tired and distressed we can still help.

Our advice is always consider all other options like CVA first before deciding to liquidate!

Pre-pack Administration

For Larger Pub Companies that need RADICAL RESTRUCTURING

If your business is facing huge problems and legal threats, there is a powerful, legal way of selling the business on to a third party, a "newco" or to the existing directors.

This is called a pre-pack administration sale.

Examples of the steps for pre-pack are as follows.

Step 1:

"Your Pub Company Ltd" takes expert advice from insolvency practitioners or turnaround practitioners on its very poor financial position. It is likely the company has threats from landlords, HMRC for PAYE and VAT, the bank and many trade creditors. The directors are worried about wrongful trading and their personal risk. The business may have onerous contracts or too much property, too many employees and or lost market share/customers.

This advice should be thorough and a report prepared in writing for the board and possibly for the bank. All options such as company voluntary arrangement, trade sale, refinancing, administration, creditors voluntary liquidation and pre-pack administration, should be considered.

If good reasons for pre-pack, then this option should be very carefully considered by the board of directors. If a decision is taken to go down this path a board meeting should be held and a resolution passed stating the company's board will consider the option in greater detail.

It’s likely the resolution will include the appointment of formal advisors either insolvency practitioners (IP), turnaround practitioners or accountants to act as advisors to the board.

Step 2:

If the plan is to sell the business (not the company) to a "newco" then a business plan for the newco must be drawn up. We recommend that this includes detailed profit and loss forecasts, cashflow forecasts and balance sheet forecasts. This will give an indication of working capital requirements. The proposed administrator may require this as evidence that the new company can be viable.

If the plan is to sell to an existing trading company, the IP will require copies of management information and accounts from that buyer. Again this is necessary to ensure the acquiror is viable and can afford any payments for the assets being acquired.

A qualified accountant should be contracted to provide this forecast pack in our view. My trained accountants and specialist forecasters can provide such a service with excellent quality and delivery.

Step 3: - Compliance issues.

Under insolvency practitioners guidelines (known as Statements of Insolvency Practice or SIPS) the IP must market the business.

This often requires sending sales memos to a database of potential buyers, or the IP may place an advert on his website and/or a local or national newspaper. If he gets no interest or no indication of interest he can then sell to the newco or third party. If there is a lot of interest and several offers, beware your business could fall into a competitors hands! You may still be able to buy the business back, but the outcome is not under your control

For an example of this risk see this link to the Daily Telegraph How the door almost closed on a pre-pack (click link)

The IP will also have to get formal valuations of the assets, intellectual property and or goodwill of the insolvent company, generally by RICS qualified surveyors. Generally any offer needs to be commensurate with such valuations.

At this stage, if you and your colleagues are planning to buy the business you must be careful with regards to your personal position. As directors of the dying company you have a fiduciary duty of care to the company's creditors.

Starting "newco" can put you at risk of conflict of interest. It's likely that you will need separate legal advice on both companies. Best to talk to lawyers with insolvency and pre-pack experience. Contact Keith Steven for a list of good lawyers.

The IP will take advice from his lawyers as to compliance and risk. He may require this advice to be paid for along with his disbursements. Strictly speaking he cannot charge time costs in advance for the pre-pack work but he will charge for consultancy and fees.

WARNINGS?

Beware, will your client's contracts or BANK allow you to pre-pack? (The current stand point of several clearing banks, is no, the bank will not pre-packing to the incumbent directors/shareholders).

Will your landlord(s) allow a new company to occupy their property? Are your suppliers prepared to supply a newco? Will your creditors be angry about this approach? Some readers may have seen negative media coverage of pre-packs is rising sharply, almost in line with the economy shrinking. In future we see many more people attacking pre-packs, especially creditors and the media.

Step 4: - Raising finance

You will need finance to fund the acquisition of the assets and business. There are many specialist lenders who can provide: factoring, asset based lending, loans and bank facilities. Some venture capital companies or angels may help fund the pre-pack as part of a "buy and build" strategy. We have a number of contacts that can help with this.

Financing a pre-pack in 2014 is likely to be very difficult politically and will probably require personal guarantees from the directors for SME's. Larger companies may find that the private equity and venture capital buyer removes the directors as part of the pre-pack conditions.

Contact Keith Steven now on 07974 086779 or by email on keiths@ksagroup.co.uk if you need finance.

Once again, the funders will require a detailed plan supported by forecasts, they will want to test the valuations, the possibility of making and funding a loss and how their security needs will be met. So it's vital to get these built. Call us if you need that done.

Step 5

Assuming that you have raised the finance, the proposed administrator has satisfied his compliance requirements and the board of "newco" believe they can fund the acquisition, then it's all systems go.

A contract is likely to be drawn up that appoints the proposed administrator formally. He will then initiate the pre-pack administration by contacting any floating charge holders like banks or lenders with security. If they have no objections (and often they are involved in funding newco) then he can proceed.

Beware some banks will NOT allow a pre-pack to a related party. RBS, HBOS and HSBC for example will not generally countenance a phoenix with/to directors

/members of the failed company. So it may be necessary to take out the bank first or use a nominee company, (ask us for details on this).

Assuming all is approved then the administrator makes an application to Court stating his proposals. Almost immediately after that, the business is sold to a newco or third party.

This can be done on a Friday night and by Monday the business is trading virtually uninterrupted. Having bought the company name, the "oldco" see its name changed to something else, like "Your Company (Realisations) Ltd".

Summary to the pre-pack administration guide.

Clearly, this is a short guide and there are many pitfalls - with good advisors, quality practitioners and lots of determination this can be a very powerful and actually pretty quick solution. But remember the warnings above, if you are with RBS, HBOS and HSBC as a bank it is my experience that they will, generally, not support a pre-pack to the existing directors and may indeed appoint their own administrator or receiver.

If you are interested in a pre-packaged administration you should seek proper advice, whilst considering company voluntary arrangement, administration plus CVA and refinancing options.

Statement of Insolvency Practice (SIP) 16

The Insolvency Service has issued a statement saying it will use the new SIP requirements for administrators using this tool. This is called the Statement of Insolvency Practice 16. The SIP requires the administrator to report to creditors on their actions as follows.

Insolvency Practitioners should be clear about the nature and extent of their role and their relationship with the directors and officers of the insolvent company in the pre-appointment discovery period. Where they are instructed to advise the company, they should make it clear that their role is to advise the company and not to advise the directors on their personal position.

The directors should generally be advised to take independent legal advice, particularly if there is a possibility of the directors acquiring an interest in the assets in the pre-packaged new business or newco.

Practitioners must bear in mind the duties and obligations which are owed to the body of creditors in the pre-appointment period. They should be mindful of the potential liability which may attach to any person who is party to a decision that

causes a company to incur credit and who knows that there is no good reason to believe it will be repaid, this could lead to wrongful trading issues.

When considering the restructuring or sale of the business or assets, the administrators should bear in mind the requirements of the Insolvency Act 1986. In administration these provide that:

• The administrator must perform his functions in the interests of the company's creditors as a whole, and

• Where the objective is to realise property in order to make a distribution to secured or preferential creditors, the administrator has a duty to avoid unnecessarily harming the interests of the creditors as a whole.

Administrators engaged in a pre-packaged sale should therefore be able to demonstrate that they have considered the above. If creditors believe that their interests have not been considered they may complain to the Insolvency Service or the IP's regulatory body.

Where a pre-pack is used the following information should be disclosed to creditors in all cases, as far as the administrator is aware after making his or her enquiries:

• The source of the administrator's initial introduction, in other words how did the case arrive on his desk.

• The extent of the administrator's involvement prior to appointment and any marketing activities conducted by the company and/or the administrator.

• Any valuations obtained of the business or the underlying assets. We would always advise obtaining independent valuations.

• The alternative courses of action that were considered by the administrator, with an explanation of possible financial outcomes in each scenario.

• Why it was not appropriate to trade the business, and offer it for sale as a going concern, during the administration.

• Details of requests made to potential funders to fund working capital requirements and whether efforts were made to consult with major creditors

• Details of the assets involved and the nature of the transaction to newco

• The consideration for the transaction, terms of payment, and any condition of the contract that could materially affect the consideration.

• If the sale is part of a wider transaction, a description of the other aspects of the transaction.

• The identity of the purchaser, directors and any connection between the purchaser and the directors, shareholders or secured creditors of the company.

• The names of any directors, or former directors, of the company who are involved in the management or ownership of the purchaser, or of any other company into which any of the assets are transferred.

• Whether any directors had given guarantees for amounts due from the company to a prior financier, and whether that financier is financing the new business.

• Any options, buy-back arrangements or similar conditions attached to the contract of sale.

In my belief the pre-pack to a connected party will be a difficult "sell" now to creditors, unless all of these issues are carefully considered and noted. Where a business is pre-packed to a third party, independent of the directors and possibly even secured creditors, then it will still be a powerful tool.

The Enterprise Act 2002 and case law supports the use of the pre-pack sale, but I also believe that in some cases this will be open to challenge, unless ALL of the issues above are considered and answered as part of the scheme. Otherwise further pre packs could face challenge in court.

KSA GROUP

Company Rescue

What About "Trading Administration? Is that Different"?

Administration a Detailed Guide:

This mechanism is designed to protect a company from its creditors while a restructuring plan is completed. This technique can be very powerful where the company has a very aggressive creditor or creditors and needs to protect itself from them whilst a rescue plan can be worked out. It is not the same as an Administrative Receivership.

What are the key components?

The company must be a reasonable size, have reasonably predictable cashflows and must be able to predict profitability. There must be an insolvent position or contingently insolvent position and the directors think that a hostile creditor will seriously affect the future trading possibilities. This is often a landlord or the Crown creditors.

The administration process requires a licensed insolvency practitioner (IP) to act as the Administrator appointed by the court. The court appointed Administrator takes over the management of the company and takes responsibility for restructuring the company or business.

If the company has little in the way of assets, poor cashflow and no future then creditors voluntary liquidation is probably more appropriate than administration.

There are two types of application to the High Court. There is the "without court order" appointment route for holders of qualifying floating charges and companies/directors – this is quick and does not need a court application or hearing. But sometimes it is better to still make the second type of detailed application which asks for a Court Hearing.

Who can appoint an Administrator?

Companies and Directors can appoint an administrator quickly with the IP's guidance. This does not require a Court Order it requires a fax to be sent to the court with the appropriate forms. Clearly the IP must have done some work to establish if the company is insolvent, should it go into administration, what the process will involve and the planned outcome.

Where a company is in liquidation or in a CVA then the proposed administrator must obtain a Court Order.

No administration order will be granted unless the holders of all qualifying floating charges have been given 5 days clear notice of the company's or directors' intention to appoint an administrator.

The floating charge holder (usually a bank) will still retain the ability to step in and appoint their own choice of administrator should they so wish.

So it's possible that the board decides to appoint an Administrator and the bank refuses and appoints its own. Quality IP's will not experience much difficulty if they are recognised by the bank and there is a quality plan to protect the business.

How can the bank appoint an Administrator

Banks can appoint an administrator if they hold a qualifying floating charge under new debentures granted after 15th September 2003. If the bank holds an older debenture it can appoint an Administrative Receiver the banks have the right to appoint an administrator.

Note as a dying approach, administrative receivership is not covered in this programme

But it should be pointed out that the administrator has a duty to act in the interests of all creditors not just on behalf of the bank/floating charge holders.

There must be one (or two) of three "Objectives" for the Administration:

In the application to the Court the proposed administrator must state which is his or her main objective of the following three:

1. Company Rescue, as a going concern, should be the primary objective. This usually means that the company proposes a Company Voluntary Arrangement or a scheme of arrangement.

   1.1. See Admin followed by CVA below also see flowchart Admin followed by CVA

2. If that is not possible (or if the second objective would clearly be better for the creditors as a whole), then the administrator can achieve a **better result** for the creditors than would be obtained through an immediate winding-up of the company, possibly by trading on for a while and selling the business as a going concern.

   2.1. In English this means trying to sell the business for more than a liquidation would raise (see Creditors Voluntary Liquidation).

3. Only if neither of the first two objectives is possible, can the administrator realise any property to make a distribution to secured and/or preferential

creditors.

3.1. This means collecting and selling the assets for the best price to pay the bank.

In cases where speed is essential in making the appointment, the rules include a provision that will allow for filing a notice of appointment during times when the court is not open for business, typically this is by FAX.

The filing of such a notice will bring into effect an interim moratorium on insolvency proceedings and other legal processes being taken against the company.

In a moratorium no one can "knock the company over" without the leave of the Court. When the Court has effectively ratified the administrator's appointment this is unlikely! The Court will want to have as much information as possible to ensure that the application for Administration is correct and appropriate.

Administration sale

The company can enter administration to be sold. A typical scenario would be

1. Company is under severe pressure, creditors circling, possibility of legal action.

2. Directors decided to take advice from KSA or a similar firm. A decision is taken to protect the business and to stop legal actions. The company is insolvent but there is a viable business.

3. The company meets with KSA advisors; they draw up a report on the options available looking at CVA, Administrative Receivership, Administration, trade sale etc. The board believes that a sale could be achieved but the company needs to be protected.

4. An administrator is appointed and he / she will then run the business for a period of say 1-2 weeks.

5. In that time he markets the business under insolvency guidelines called Statement of Insolvency Practice 13, he must be seen to market the business for sale.

6. He will obtain valuations from a professional valuer for all of the assets, goodwill and so on.

7. In an agreed period the directors of "oldco" can buy the business provided the valuations are met and the administrator gets the best deal for the creditors.

8. "Newco" has no debt, no creditor pressure and it can take on leases for example.

9. General guideline is that TUPE applies and therefore all employees' rights move across to Newco.

10. The oldco is then liquidated or dissolved.

How long does the Administration process last?

The process can generally only last for up to 1 year, although this can be extended by the consent of the creditors and/or by the court. The administrator is also required to do everything as soon as reasonably practicable. There is a time-limit of eight weeks for getting his proposals (in other words what he proposes to do with the company) out to creditors, and holding the initial creditors meeting. This can be extended by the creditors' consent and/or by the court.

These proposals will include full details relating to his appointment, and the circumstances leading up to it, as well as exactly how the administrator proposes to achieve the purpose of administration, including details of how he anticipates the administration will end.

Statement of Affairs:

Upon appointment the Administrator will require one or more of the current or former directors or company officers to provide him with a statement of the company's affairs.

This is a prescribed form which details the company's assets and liabilities, including those assets that are subject to any fixed or floating charges. This can be difficult to produce.

A copy of the statement of the company's affairs, or a summary of it, must be attached to the administrator's proposals. See above for the 3 different types of proposals.

A copy of the proposals will also be filed with the registrar of companies for placing on the companies' public file. Interestingly though, where the information included in the statement of affairs is commercially sensitive, the administrator can apply to court to have the statement, or the relevant part of it, withheld.

Included with each creditor's copy of the administrator's proposals will be an invitation to the initial creditors' meeting, at which the creditors vote on those proposals and whether to accept them.

Creditor's Meetings

The initial creditor's meeting must be held within 10 weeks of the date that the company entered administration, and the creditors must be given at least 2 week's notice of the meeting, although these time-limits can be extended by the creditors and/or the court.

- The business of this meeting could be carried out by correspondence, although if 10% or more of the creditors (in value of their claims) demand a meeting, then the administrator is still required to call one.
- The proposals can be accepted (by a majority vote, measure in value of claims), modified and then accepted, or rejected. If the latter, then the administrator is required to report that fact to the court and seek further directions from the court.
- Following the initial creditors' meeting, and any subsequent meeting of creditors, the Administrator is required to send a report of the outcome of the meeting to the court and to the registrar of companies for filing on the company's public file.
- A creditors committee can be formed if the creditors require it. This must be between 3 and 5 people.
- The Administrator then manages the company's affairs, business and property in accordance with the proposals that have been agreed by the creditors.
- He must send regular progress reports to the creditors, the court and the registrar of companies covering each six-month period from the date that the company entered administration until the administration ends, or until he ceases to act.
- These reports will provide full details of the progress of the administration to date, including a receipts and payments account (or what cash has been received and paid out) and any other relevant information for the creditors.

Just by reading this you will see that the law surrounding Administration is complex and very powerful for companies in distress.

BUT!! Do not appoint an Administrator before calling us to discuss any questions you have. Once appointed it's too late to change your mind! 0800 9700539

What are the disadvantages of Administration?

- The directors are not in control of the business and an offer from a third party may lead to their removal as directors.
- Tax losses can be lost if no CVA is proposed.
- Another buyer may buy the assets.
- It is a public event, all creditors and all correspondence (invoices, advice notes, orders, emails, websites, letters) must say XYZ Co Ltd (In Administration). Most customers and suppliers therefore become very aware of the insolvency.
- All orders must be ratified by the Administrator or his staff.
- The directors have no powers to run the company.
- As soon as reasonably practicable after his appointment, the administrator must obtain details of the company's creditors and must notify the company and all of its creditors of his appointment. This is also an advantage as it stops legal actions.
- The appointment must also be advertised in the London Gazette and in a relevant local or national newspaper - one that the administrator thinks is appropriate for ensuring that the appointment comes to the notice of the company's creditors.
- Clearly the bank can be forced into appointing their own administrator if it decides its position is going to be compromised by the proposed Administration of the company.
- Costs are often very high for this procedure, therefore in our opinion it is only really suitable for larger companies where aggressive creditors threaten future viability.
- TUPE applies to Newco - in other words the new company cannot remove employees and must adopt their contracts. This can be a problem when planning how to cut costs in the new company.
- Financing trade and other supplies can be difficult unless adequate resources are available and or new funds can be introduced in the administration period.

What are the advantages of Administration?

Administration can be a very useful and powerful tool for insolvency practitioners to control the company, banks, and creditors to ensure survival of the business.

- All legal actions are stayed by the process.
- It stops the financial position getting worse and putting directors at further risk.
- It can be very quick and cost effective if an "Administration pre-pack" is used properly. (See below).
- All unsecured debt is removed.
- From the creditor's perspective, because a licensed insolvency practitioner is appointed to administrate the company, it also ensures that the administrator considers all creditors positions correctly.
- Protection from creditors can allow the administrator a reasonable time frame (the 8 week period) to negotiate a deal to achieve the objectives which may include selling the company thus protecting jobs and economic activity.
- It is possible for the administrator to appoint directors or managers to run the company. With our vast turnaround experience this is often preferable to the administrator's staff. We are well versed in ensuring that the administrator works with turnaround advisors such as KSA. This can ensure that we are involved in the management of the company to ensure professional and pragmatic management at a time when the company is under severe distress.

So if a winding up petition is live and a real threat to a viable business, the company can be protected by the administration process – possibly followed by a company voluntary arrangement after a period of assessment.

Administration followed by CVA

Basically the company enters admin to get protection from creditors. The administrator works with the company's directors to produce his/her administration proposals. Once these are accepted the administrator hands control back to the company's board. This is powerful tool though expensive and directors are not in control during the administration period. We have a more detailed page on the

administration process

The company is protected by Court while the company and the administrator put together a plan for the Company Voluntary Arrangement. See Administration followed by CVA Flowchart

If there is a risk of a creditor winding the company up or a landlord taking aggressive action, then this is a powerful (but expensive) way of controlling them.

KSA does not believe that Administration is necessary most of the time, going straight to a CVA cuts out costs (fees) and reduces market awareness of the troubles.

However there are a number occasions where this moratorium (Court protection) is required. We can talk you through this option if required.

What does KSA think the Best Solution To Rescue A Pub Company is?

Generally, if there's a viable business and it is facing serious threats, it's a Company Voluntary Arrangement!

A CVA is a deal between the company and its creditors; unsecured, trade and tax, to repay them from future profits or a deal may be written to sell assets and pay back creditors from the proceeds.

The deal is based on preserving the company, rebuilding sales and profits and paying something back over a period of time to be agreed. Directors remain in control, personal guarantees don't get called in (usually) and it gives your business a fighting chance to survive.

Here at KSA, we are the biggest single producers of CVA proposals in the UK. Back in 2008 we were responsible for writing 8% of the CVA's in England and Wales and 80% of the Scottish CVA's! Every year, we restructure over 100 companies using CVAs.

We start every CVA deal with a blank sheet of paper and a clear mind. Every case is different, but there are some crucial points to consider before embarking down this path.

Based on our experience, vital components of a successful CVA for a pub company are

- A viable business that can return to profitability. It will have traded and been profitable in the past.
- A commercially structured deal - do not pay too much too soon.
- Introduction of appropriate levels of working capital in addition to the restructuring of debt if required (such as new factoring facilities).
- The management accepts that there has to be change in the management and company.
- Directors and management need to be determined and hard work is essential, plus a bit of luck helps.
- Directors need to use expert CVA advisors to build the deal. Always ask advisors claiming to do turnaround how many CVA's they've done!!
- Cautious forecasts - don't expect life in CVA to be easy!

So if your pub company can be viable in future but pressure is mounting this could be a superb solution. Remember the directors should aim to maximise creditors' interests - by continuing to trade, you will do that in a CVA.

After the directors have considered the long-term viability of the company it is essential to take appropriate advice from experienced turnaround advisors. We believe that it is vital to have commercially pragmatic and creative specialists involved from as early a stage as possible.

If a company has a viable future, the directors and management accept the need for change, are prepared to fight for its survival and the appropriate funding can be found, then a CVA is a very powerful tool. BUT be prepared - it is a tough fight and it is harder than liquidating the business. By proposing a CVA you are demonstrating that you are trying to maximise creditors' interests so it can often be viewed positively.

If after that the CVA does work, then the company will be profitable and valuable for the shareholders. That's a good long term objective too.

Who can propose a CVA?

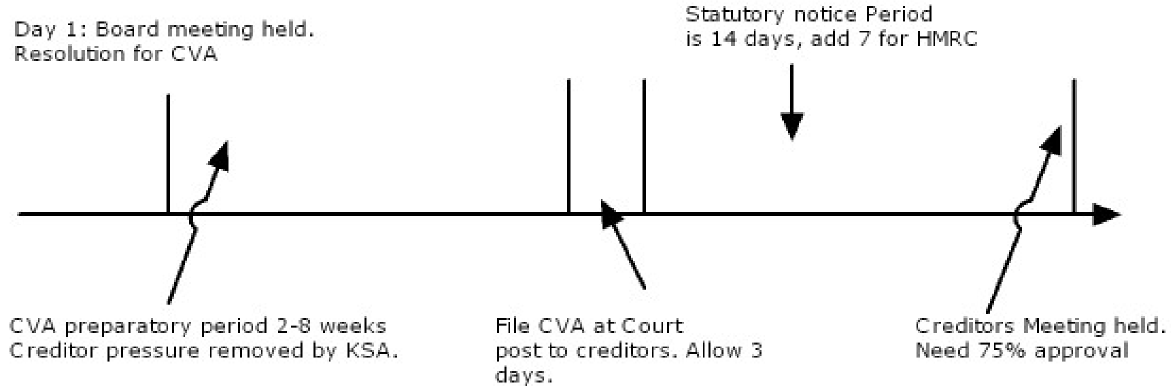
A CVA may be proposed by the directors of the company. When the company is either in liquidation or administration, the liquidator or administrator can propose a CVA.

Yes get this, the legislators have provided tools for liquidators and administrators to rescue a company from liquidation through CVA.

A CVA can only be proposed if a company is insolvent or contingently insolvent.

How long does it take?

Here is a time-bar summary of the CVA process:



Our STEP by STEP CVA Enquiry Assessment Process.

When we receive an enquiry for a CVA we always act in the same way. Our trained advisors listen to the problems, ask educated questions, obtain financial information from the caller and then consider the legal issues.

We normally have a chat through the issues facing people when they contact us. That way we can quickly ask questions that can help us form a view. If we feel we can help directly with a rescue approach, we often visit to have a face to face chat through the issues, followed by the issue of a detailed report. We do not charge for this process.

If we found a way forward then fees would be discussed in advance of any work being undertaken. Generally our work is paid over a number of weeks from the savings we make in cashflow.

If we feel that the company needs to be closed or liquidated we will introduce you to one of our insolvency practitioners. If you believe the business is viable, we can help rescue and restructure the business with our in-house expertise.

It helps us if you or your client can supply the following basic information to start the process.

1. Where is your business based?
2. What is the turnover?
3. What legal status – limited company, partnership or sole trader?
4. Assets - approximate value:
   4.1. Office equipment, motors, fixtures and fittings etc.

4.2. Debtors, Work in progress and cash.

5. Liabilities:

5.1. Bank – overdrafts, loans and etc.

5.2. Inland Revenue and VAT Arrears and current.

5.3. Trade creditors.

5.4. Other such as hire /lease purchase, directors, EFG, SFLGS.

6. Viability:

6.1. Marketplace - brief description

6.2. Enquiries future prospects – brief description.

7. Management:

7.1. Type of management.

7.2. Any gaps in the team.

7.3. Ability.

Summary:

Please note we don't need lots and lots of paper to make a decision to help. Just provide the basic information above or as much as you can to start with!

We can provide free telephone, fax or email support even if only some of the above information is received. After receipt, if we believe that we can assist the company we will attend a meeting free to the client at a mutually convenient time and place (usually at their business address). This is then followed up by a detailed solutions report that guides the directors as to the rescue options.

The CVA process a Detailed Guide

1. The directors appoint advisors, such as turnaround practitioners or an insolvency practitioner (IP) to assist in the construction of the proposal.

2. During this "hiatus" period the company should not materially increase or decrease debts to any creditor, suppliers should be paid for supplies made (not always easy!) and activity of the company continues. This does not apply to taxes. No payments should be made to VAT or PAYE while the CVA is being prepared.

3. A review of the company, its people, markets and systems should be undertaken. This is an important part of the process. Typically the CVA will include detailed 1-5 year financial forecasts to assist the creditors to make their decision to support the deal or not.

    3.1. We ensure that a highly detailed bespoke (we wrote it) forecasting package is used. After our expert forecasters have produced this based upon the directors' guidance, the directors can then be shown various versions and what if planning can be used to build scenarios.

    3.2. What if we cut costs, what if we closed that office and removed 5 consultants? These and other questions should be carefully considered as part of the CVA process.

4. It is vital to remember that the company has the opportunity to sharply reduce costs of employment and overheads that would not be available to it ordinarily.

5. So, make sure that the lowest level of costs is targeted. Use the CVA to terminate employment contracts, leases of property and assets and any other onerous costs. If the company is struggling to drive placement sales up then try and "fit" the costs to lower levels of sales. Making sales in a recession or downturn phase is tough, so assume that in a CVA it will be even tougher!

6. KSA has a team of 95 financial forecasting experts across the country. Their role is to help the director build realistic and achievable forecasts by questioning all of the financial information being produced. This process is never easy as sales have to be guessed at, but I would always advise people to aim much lower in their expectations! Being a pessimist is actually being more realistic for the company's future prospects

7. Once the draft proposal is ready the directors will typically review and refine it with the forecasting expert or accountant and agree that the proposal is appropriate, achievable and maximises creditors' interests. If

the directors do not believe that it is sensibly structured, or that the process has highlighted weakness in the business then it is advisable to close the business.

8. When the CVA drafting has been completed the directors should then discuss the position with the company's' secured creditors. Experience tells us that the ability to deliver a quality draft proposal at this stage is preferable to verbal assurances that a CVA will be written and the bank told what the contents are when it's ready!

9. We find that the banks are very keen to get involved and assist where they see a viable company. Often they will want to see how the company will repay the bank's debts. This should be included in outline in the document - of course the bank may not agree with the suggested secured debt structure but will usually negotiate with the directors and their advisors.

    9.1. Now that many of the banks are in trouble, we find that the banks want to see credible plans for recovery of the debt that was loaned in perhaps more profligate times. A good plan will I find, always be received well.

10. During the CVA production or hiatus period, current assets such as WIP and debtors are collected, turned into cash and liquidity should improve. This should be used to fund the difficult period between appointment of CVA advisors and filing the document at court.

11. **In addition the company does not need to pay PAYE, NIC or VAT in the hiatus period. This too, can be used to improve cashflow.**

12. The CVA proposal is then filed at court only to ensure that the proposal is ratified and carries a legal originating number. Then it is printed and the proposal is distributed to all creditors. The court does not have an active part to play in this process but the CVA proposal, that is sent to creditors, must be a true signed copy of the document filed at court.

After the Proposal is completed:

1. The proposal must then be sent to all creditors, who then consider it for the minimum notice period as above before the creditors meeting can be held. This is usually held at an independent venue (theoretically at the convenience of creditors).

2. We find that the HMRC team, called the Combined Voluntary Arrangement Service prefers to have up to 3 weeks to consider the proposals, so we always allow more than the statutory 14 day minimum period for consideration.

3. The meeting will be chaired by the advisor or an Insolvency practitioner (IP). Creditors are sometimes represented by technical professionals from other insolvency firms. The aim of the meeting is to allow the creditors to question the director's proposals; however it is not a place for settling disputes.

4. At the meeting the creditors vote on the proposal and the proposal will be approved if a majority vote of 75% by value of the total value of creditors at the meeting (whether in person or by proxy) vote in favour. A second vote excluding connected creditors is taken and provided that not more than 50% of creditors vote against the proposal it is approved.

For a very simple example of votes at a creditors meeting see below

Company Voluntary Arrangement - Example Voting

Example of Voting at an CVA Creditors Meeting

£
Total PAYE Debt 22,000.00
Total VAT Debt 25,000.00
Total Unsecured Creditors 250,000.00
Employees Claims 33,000.00
Total Debt in CVA Proposal 330,000.00

Present at Creditors Meeting

PAYE 22,000.00
VAT 25,000.00
Unsecured Creditors 121,000.00
Total Votes Cast 168,000.00

In Favour 159,878.00
Reject 8,122.00

Total %age in Favour 95.17%
Total %age Rejecting 4.83%

Proposal Accepted

YES

REMEMBER IT IS 75% OF THE VALUE OF THE VOTES CAST AT THE MEETING THAT COUNTS. IF IN DOUBT ASK KEITH STEVEN FOR GUIDANCE ON 07974 086779.

5. **In our experience the voting at meetings is an area that concerns many directors.** Well, provided the work has been done thoroughly before the CVA is filed at court then the worry should be reduced. In our

CVA's the Combined Voluntary Arrangement Service, (CVAS) which represents the HM Revenue and Customs, will always support viable proposals that are well built and show proper care and attention to detail.

6. Given that the CVAs often represents the largest votes, then we ensure that they are comfortable with the CVA process very early in the cycle of events.

7. Proper communication with creditors is a vital part of KSA's strategy for helping you build a CVA deal.

8. The Chairman controls the ability to vote and provided creditors have been asked to consider a sensibly structured deal, almost all proposals are accepted by creditors. Also the creditors may wish to modify the proposal - once again the modifications need to be approved by the majority votes above.

9. This is often done by the HM Revenue and Customs agencies to ensure future debts are paid on time and future filing of tax returns is done correctly. Occasionally other creditors may ask for a modification to the proposal.

10. At the same time as the creditors meeting, the members (shareholders) meeting is held. Members decide whether to accept the proposal as made or modified and a vote of 50% in favour is required.

11. If both meetings approve the proposal, then the meetings close. The chairman must then issue a chairman's report, within 4 days, to all creditors and the court, stating what happened, who voted and how they voted.

12. Once approved, all notified and included creditors are legally bound for the debt "frozen" in the proposal. No further legal action (except by leave of court) can be taken against the debtor company and the creditors will receive dividends from the supervisor as described in the proposal.

13. After the approval the company must make the agreed contributions to the trust account administered by the supervisor. Failure to keep up with contributions, is deemed a default and the company voluntary arrangement can be "aborted". This usually leads to liquidation or receivership.

14. In our opinion the best way to avoid this is to structure the deal on the following basis. Prudent forecasts of directors should be further scaled

back and modest forecast profits should be used as the basis for contributions BUT:

14.1. No more than 50% of profits after tax and debt repayments over the deal period should generally be contributed.

14.2. Contributions should be stepped to match profits achieved.

14.3. Any lump sum contributions during the currency of the CVA should be avoided where possible unless assets are being disposed of as part of the CVA programme.

14.4. The use of a profits ratchet allows higher repayments if modestly forecasts profits are exceeded. (This is a standard requirement of the HMRC).

15. **Even if the approach outlined here leads to small dividend repayment levels to unsecured creditors, the creditors usually prefer sensible contributions to hopelessly optimistic forecasts.**

16. **NB: there is no minimum %age payment required by law or by HMRC!**

Provided the company conforms to the CVA proposal and makes its contributions, then the CVA continues for the agreed period. The supervisor is generally not involved in the business (in our CVA's). **THE DIRECTORS REMAIN IN CONTROL.**

What if things don't go well?

If the company is not performing well and yet it would still appear to be viable, then it is theoretically possible to reconvene the creditors meeting at any time to ask the creditors to consider amendments. If the Supervisor has concerns, he can also ask the court for directions. In most cases the directors should inform the supervisor if there are any material changes to the company or its business.

What happens at the end of the CVA period?

Once the agreed period is completed and the supervisor has issued a completion certificate, then the company leaves the CVA state. Any remaining unsecured debts (where partial repayment was approved) are written off and the directors continue to run the business for the shareholders.

It is also worth pointing out that the CVA is not a panacea for your company; but it is a very powerful framework for change and protection of a distressed but viable company. In reality although difficult to propose and get approved, getting the CVA approved is the easiest part of a rescue/turnaround– making a turnaround work is much more difficult and needs professional help.

Remember:

The CVA should aim to:

- Maximise creditors' interests.
- Preserve viable but distressed businesses.
- Preserve economic activity and save jobs.
- In time return value to the creditors.
- Provide a real prospect of a return for shareholders

Company Voluntary Arrangements - Worries and Mistruths!

We cannot use the CVA mechanism because: Or the classic worries we have heard for the last 15 years doing CVA's!

So you are considering a CVA, or your accountants or other advisors have carefully recommended using the CVA to rescue and restructure the company. But the directors have a lot of fears and worries about taking this path.

Clearly, this is a huge decision for the directors to make. Make it wisely by reading all of the relevant pages in this guide.

We will lose our clients and customers.

No you will not. In over 400 cases people have said this to us and we understand why.

But, in practice, we have rarely seen a customer walk away from a business that is delivering its products and services; well and on time. Shouldn't that be your focus?

Stop firefighting and get back to doing your main roles. This way customers will stick with your company.

But keep at the old firefighting and sooner or later your performance will falter and their business may suffer. THEN you may lose them.

Should we tell our customers then?

Many people say "we cannot tell our customers that we are doing a CVA or they will walk away". That is your decision and one that should be based upon knowledge of the business relationship, their requirements and any contracts. Sometimes the best answer is to tell them with professional CVA advisors in attendance. Often this is better than a competitor telling them that you have "gone bust"?

Think what you would feel if a major supplier did not tell you of their problems and their plans to deal with it, but instead they hear from a local rival that you have "gone into liquidation"?!

Our creditors will not supply us!

Yes they will. They need to maintain their sales to your company, as much they don't like losing the money owed. We spend a lot of time on "creditor liaison". By carefully explaining what the company is doing, how it will be in their best interests and asking them to work with the company and ourselves we ensure that creditors are kept informed and on side.

Don't expect any credit terms or any favours, but being honest and open with them pays dividends in the long run. After all, it would actually be simpler to simply liquidate and walk away wouldn't it?

You are trying to maximise creditors' interests by doing the CVA, thus it's in their interests to work along with the plan.

Our staff will walk out!

Generally they will stay. If they walk out they will lose any employment rights and will not receive any redundancy, lieu of notice payments from the company or the DBIS. Further, they will not be eligible (generally) for unemployment/job seekers benefit.

So I recommend being open and honest and working out a plan for and with the employees. Proper communication is vital.

Some employees may lose their jobs as part of the restructure; this is painful and at times inevitable. We can work with you to achieve this.

The bank will appoint a receiver/administrator!

Again this is simply not true IF a cogently structured plan and a well, presented approach to the bank is used. In 15 years I have only see a bank do this once or twice and that was because they simply did not believe the directors were honest and acting properly.

Most banks are much more supportive now of "out of court" restructurings like CVA, as it avoids the usual asset meltdown and costs of say administration. Although the CVA cannot affect the rights of the bank or lender they are stakeholders and should be closely involved in the process.

HM Revenue & Customs will not support a CVA!

Yes, they will if it is a properly structured, well thought-through plan and the company has been compliant with tax rules in the past.

The HMRC agency that decides on these proposals is called the Combined Voluntary Arrangement Service. Currently it votes in favour of c73% of all proposals. However, we have a >95% approval record.

What if a Creditor Starts Legal Actions?

In 1995 case law was reported that provides a very powerful argument. **Re Dollar Land (Feltham) & Ors [1995] BCC 740** reported that the court decided that a winding-up order should be rescinded if there was a real prospect that CVA proposals would be approved by the company's creditors. In other words let the creditors' majority decide.

We use this argument to STOP petitions being issued in the first place, saving the creditor money for costs and fees and also removing the risk of the petition against the client.

If a petition is already issued before we're appointed to assist, and a hearing date is due before we can file the CVA meeting notice, we talk to the plaintiff to get them to stop their actions as above, or to prevent the advertisement of the petition. Usually the petitioner is the Crown (HMRC).

Most HMRC petitions are stopped or adjourned in this way, so we can get on with the CVA production. This is a powerful approach that is built on common sense and a case that said "look is it equitable for one creditor to knock a company down when all the other creditors may agree a CVA"? Obviously not and we've defeated petitions in courts across the UK this way.

Aggressive Petitioners?

If the petitioner will not withdraw or threatens advertisement, the company could use an application to Court to request a hearing adjournment and seek a Validation order from the Court saying that the hearing is adjourned and the company can progress the CVA proposal to filing and creditors meeting.

The bank account is usually frozen by the bank if the petition is advertised, although there is no legal requirement to do so. So by obtaining the validation order the bank can then reopen the bank facilities.

So we believe that by careful discussions and complete honesty with creditors, using powerful case law and common sense we can effect a **de facto moratorium** that works in virtually every case.

Dealing with Secured lenders – Banks, Leases, Factoring and CID.

Many of our clients are very worried that the secured lenders will not support the restructure of the company using a CVA or a pre-pack Admin.

All major clearing banks have a pretty healthy approach to restructure where the directors are acting responsibly and quickly. Banks fear control is taken away from directors by petitioning creditors like HMRC or suppliers.

So, when a company is at risk (and generally the bank will know there are difficulties even if the board has kept quiet) the bank will monitor events, filing of management information, County Court Judgments and other legal actions.

In our view, it is always best to get the bank involved as soon as appropriate. Usually we advise clients to go to the bank with the solution generally mapped out. This may require a plan in writing or PowerPoint Presentation and at least a semblance of a CVA proposal with a statement of affairs even if the finished article is some way off.

In general terms the bank will see the CVA as positive because it helps cashflow, reduces the risk of creditors' legal actions and it shows the board is acting professionally and properly in a timely fashion.

The bank manager or factoring manager will often pass the client to the bank's special risk teams for assessment and review.

Bank debentures and lending facility letters generally provide for the bank to appoint a receiver or administrator in the event of default. This is known as the bank's remedy. But this is very rare in a CVA scenario. The bank will prefer to keep its powder dry and keep their remedy in abeyance.

The bank will generally not want to appoint an administrator or receiver, because this could lead to a reduction in the value of assets and in the business itself. In many cases the bank would see a lower recovery and therefore seek to reply upon personal guarantees.

A CVA does not normally impact upon the banks security and may not crystallise losses unless agreement is reached with the bank as part of the CVA scheme.

A well structured CVA can greatly improve the bank's recovery, maintain its security and remedy and so the banks are, in our experience, very supportive of a well structured CVA recovery plan.

It is possible that a CVA alone cannot provide the working capital improvements needed. We have frequently asked for capital payments holidays for lease and HP agreements and bank loans. If a good case is made using quality financial forecasts

and cashflow projections then often the secured lender(s) will agree to help the company through the dark periods ahead.

Banks want to support their customers, they don't want to knock the business down and see a possible loss. Even with personal guarantees in place, they will seek to find solutions with the company's board.

With the 2009 recession getting worse (or better you decide) most banks will support a restructure, even if frankly they do not fully understand what a quality CVA is.

HOWEVER, don't "act", don't provide the bank with information and don't seem to "get" how bad things are and the bank can appoint investigating accountants or even worse administrators very rapidly.

What are investigating accountants (or reporting accountants)?

When a business has financial or operating difficulties it can often breach its borrowing facilities from the bank or from factoring companies. This can lead to bounced cheques, problems with the payments of direct debits, missed loan repayments and generally builds pressure on the cashflow.

Banks have quite sophisticated systems for monitoring this risk, but often they are "in the dark" with regard to the up to date financial performance of the company that owes it the money. One way of addressing this is to demand (as their borrowing conditions usually allow) detailed and up to date information from your company.

If such information is difficult or impossible to produce because of failings in the financial reporting systems within the business then they will worry that old and out of date information is being used to run the company and their lending could be at more risk.

You may have noticed by now that bank's do not like risk! So the next remedy is to insist upon the introduction of investigating accountants. This will normally be paid for by the company, thus the act of appointing investigating accountants could lead to further breach of the facilities!

Investigating accountants (IA) usually have a brief to investigate the following

- Cashflow, current daily and for say the next 12 months, month by month.
- The current profit and loss activity, previous results and forecasts for say the next 12 months month by month.

- Performance against your past forecasts (in other words can your forecasting be relied upon).
- They will investigate the current creditors and forecast that for say the next 12 months month by month. They will look for red letters from creditors leading to CCJ's Warrants, Statutory Demands and winding up threats.
- They will check to see if the company is up to date with the Crown creditors (PAYE and VAT), or if in arrears.
- They will check the quality of debtors in the business.
- The strength of financial reporting will be assessed, as will the people involved.
- They will look at the business and marketing plans and check whether they are fit and feasible for the business.

Taking all of the above into consideration they will then write a report for the lender to state the options the lender should consider and what their recommendations are.

The options they can outline for the bank are not covered in this guide (see www.companyrescue.co.uk for more in-depth guides to receivership, administration, liquidation), advancing more money to help a short term requirement (yes that does happen!), withdrawing banking facilities, asking the shareholders to put more money in etc.

What will this cost?

Well the answer is how long will it take and who is doing it. Usually it is an insolvency practitioner and some of his/her managers/admin staff as a team.

I have seen IPs charge anything from £10,000 to £200,000 depending upon the complexities and size of the company or group. BUT the bank almost always insists that the company pays for this as their terms of lending do allow this.

Even if you refuse to pay and refuse to issue a cheque, the bank has the ability to "dock" the money from the company's account!

But we cannot afford that?

Yes that's part of the problem. You can always refuse to pay and state that the board/finance managers will do much of the information provision, but generally there is a significant cost and it is seldom that the bank gets the work done for nothing or agrees to pay for it.

All the more reason to go to the bank and show your funder you are acting with a CVA and as a board, not sticking heads in the sand.

Will we see the report?

Often no, however if you have a cooperative approach then the bank will share some or all of the report with you. Often the recommendation in the report remains confidential. So you may pay for it but you often cannot get access to it.

Will we have any input into the report?

It's much better to take part and put your views across forcibly with good information to back it up. So if you have not got that level of information (particularly as described above allied to information on orders, sales, enquiries, marketing, restructuring plans, downsizing and cost cutting) then you must get it to get your views across.

Who can we get to help?

You can often get assistance from your accountants/auditors. But if they're not up to speed with the problems, then that can be counter-productive as they will generally look on negative information as a weakness that the bank may exploit.

We can help your business prepare restructuring plans; we have worked with dozens of companies and advised them how to plan their actions when the bank starts putting pressure on the facilities and asking for investigating accountants. Then we will normally help present those plans to the bank, this may avoid investigating accountants or indeed reduce their negative reports to the bank.

Our adage is "go to the bank with the solution not the problem"!

HMRC, QIE and the CVA process.

The company enters the CVA state when the creditors say they have approved the proposal (with or without modifications).

Even if the company takes 6-12 weeks to propose and get the CVA approved it is NOT IN CVA! Some of our clients believe that when the board has resolved to propose a CVA that's it, the company is in a CVA! Not so.

However, in this period between passing a board resolution to propose a CVA and the approval date, the company does not need to pay PAYE or VAT! This can be a huge advantage for cashflow and the company can often remove immediate cashflow pressures through this leverage.

So why don't you pay PAYE and VAT? The answer is the QIE or **qualifying insolvency event**.

When the company voluntary arrangement is approved by creditors it enters the CVA - that's the qualifying insolvency event and the PAYE scheme and the VAT Scheme are effectively terminated that day, before new ones can start.

This allows the company/HMRC to carefully close the schemes down and work out the EXACT CVA Claim. This is called claim adjudication.

If your company is employing people and producing VAT inclusive invoices then this allows a boost to cashflow. Allied to being able to terminate employment contracts these two are powerful benefits to the company entering CVA.

In a pre-pack administration or trading administration the QIE is the date of appointment, so the administrator MUST pay the PAYE and VAT during his appointment period. So you can see in CVA the business can generate improved cashflow and working capital.

Case Studies

http://www.companyrescue.co.uk/case-studies/cva-case-studies

Please see this page for more about KSA Group and the team.

Free call national helpline on 0800 9700 539, London 020 7887 2667, Birmingham 0121 378 0671, Berwick 01289 309 431 or Newcastle 0191 482 3343.

THINK OUR INNOVATIVE TURNAROUND APPROACH COULD BE A USEFUL TOOL TO HELP YOUR PUB COMPANY? THEN YOU NEED TO TALK TO US NOW.

CALL 0800 9700 539 AND ASK FOR KEITH STEVEN.

KSA GROUP

Company Rescue

Advantages v disadvantages of CVA and Liquidation for “ABC Pubco Ltd”.

CVA Deal	Creditors Voluntary Liquidation
Control – directors remain in control.	The liquidator is in control. He decides if company assets are sold, its wound up or put into CVA.
Breathing Space. Allow detailed analysis of the business requirements, production of marketing and business plan.	A phoenix is possible but the buyer of the assets needs cash and working capital to start again.
Defer VAT. Then available for CVA costs and working capital, not for creditors.	Fees would be £5-7,000, may be much higher
Freeze Inland Revenue payments until CVA agreed. IR cannot pursue company for existing debts.	Trade can be damaged.
Time defined process – fixed date of creditors meeting means crystallising of position.	Where will the business trade from – a new lease will be required.
Personal guarantees not called in	PG’s crystallised, for directors
May cause disruption to supplies while proforma is used. But trade credit will be granted in 6-12 months. More accounting/admin. work	Can terminate onerous contracts. New company must register for VAT and tax ASAP. Needs new bank account, not a straight forward process now.
Flexible plan under the CVA, we would forecast minimal monthly contributions to the CVA as profits will be low in year 1. Profit related ratchet kicks in if the business exceeds profit forecast.	Lose trade and tax debt. Clean balance sheet. Lose tax losses
No directors conduct investigation	Directors’ conduct must be investigated.
Utilise current stock to turn into cash.	Debtors will be tough to collect, WIP sold for nil value.
No new capital needed to re-start, simply use existing assets.	Will the new business have adequate working capital to survive?

Therefore, our strongly held view is IF THE BUSINES IS VIABLE that the flexible CVA model is the most effective route forward. The bullet points of the suggested CVA strategy are:

- **Propose CVA in 2-6 weeks, use period to build outline plan, work out requirements**

- **Buy breathing space, remove freneticism, allows controlled restructure. Get you focused on your jobs.**

CVA v Administration Comparison Table for "ABC Pubco Ltd".

CVA

CVA	Administration
Control – directors remain in control. They are helped by KSA. Obviously some directors do not want such close involvement.	The Administrator is in control. He decides if company is sold, liquidated or put into CVA. Directors have no control or input.
Breathing Space. Time to deal with the potential loss of confidence of any suppliers. Allow detailed analysis of the business requirements, production of marketing and business plan.	Breathing Space to allow restructure, sale or closure. Company can propose a CVA if management and finance available.
Creditors receive dividends over time, they will be happy to receive that and KEEP a customer.	In pre-pack creditors receive very little dividend but may keep customer if they supply newco. If Admin followed by CVA they receive dividend.
The fees are not insubstantial for a CVA. They have to be paid out of cashflow. However, see below, cashflow is much improved by the CVA process. Effectively the tax man pays for the deal.	Administration fees would be higher than CVA. Administrator controls the cash and takes his fees as he needs them (subject to later ratification from creditors). Lawyers generally must be involved and they cost!
Leverage tax debts into the CVA. By not paying VAT PAYE until the CVA is approved.	Administrator MUST pay tax and VAT during Admin period. If pre-pack used then the "Newco" must also pay tax and VAT from the outset. NO tax leverage.
Most overdrawn director's current accounts can be reversed back into PAYE. Increases tax debt but generally no action against the director.	If not cleared before any Administration directors are required to **personally repay their overdrawn directors current accounts**.
Time defined process – fixed date of creditors meeting means crystallising of position. KSA talks to creditors, removes pressure from directors.	Equity value of the business written off. (Unless CVA proposed after Administration). Loans written off. You would have to "buy back" the business if pre-pack. Or third party can acquire it.
Flexible plan under the CVA, we would forecast minimal monthly contributions to the CVA as profits will be low in year 1. Profit related ratchet kicks in if the business exceeds profit forecast.	All invoices, purchase orders, faxes, emails and letters will have to state the company is in Administration. This could severely damage marketing. Does not apply in pre-pack.
Protects the company from aggressive action by creditors. Exclude critical creditors but likely that company will have to pay upfront (pro-forma) for new services/ supplies.	Unsecured creditors generally lose their money, no exceptions. Newco would have to pay upfront (pro-forma) for services/supplies.

The company can utilise current work in progress to turn into cash. Collect out WIP & debtors. Both over time and with no reduction in asset value.

No investigation into directors' conduct.

No protection if the CVA fails quickly and liquidation follows.

Summary

Considering the advantages and disadvantages of the two options, our strongly held view is that the CVA model is the most effective route forward for most struggling but VIABLE Pub Companies. The bullet points of the suggested CVA strategy would be:

- **Propose CVA in 4-8 weeks, use period to build outline plan, work out requirements. KSA controls the creditors for you.**
- **Buy breathing space, remove freneticism, allows controlled restructure. Get directors focused on your jobs not firefighting and fighting the Tax man.**
- **Recover control and refocus directors on the company.**
- **Get CVA approved, help restructuring and attract new profitable business.**
- **Save a viable business.**
- **Avoid the possibly huge meltdown of Administration or pre-pack/liquidation will lead to.**
- **You can still sell the business in future out of the CVA under board's control.**

Wrongful trading, Preferences and the other rules to be aware of.

A man in the pub said to me if your company is insolvent, then this is Wrongful Trading"!

What is Wrongful Trading?

We are often asked what this means because directors have talked to their accountants, advisors, insolvency practitioners or a man in the pub. They may have said "be careful if your company is insolvent then **you will be guilty of "wrongful trading"**!

Often this is simply not true!   The simple explanation is this:

Is the company insolvent? If yes then the directors must act properly and responsibly. If they do not act properly or the way any reasonable person would have acted, then this may possibly be seen as acting wrongfully.

If wrongful trading is proven, then the directors can be made personally liable for the company's debts from the time they knew the company was insolvent.

The tests for wrongful trading actions include:

1. Not filing Annul Returns for the company at Companies House.

2. Not filing annual or audited accounts at Companies House.

3. Not operating the PAYE scheme correctly, failing to pay PAYE and NIC when due.

4. Not operating the VAT scheme correctly.

5. Taking excessive salaries when the company cannot afford them.

6. Taking credit from suppliers where there was no "reasonable prospect" of paying the creditor on time.

7. Willfully piling up debt.

8. When in a hole keeping digging!

Please note you don't have to tick all of the above tests to be at risk of wrongful trading!

Formal insolvency procedures

But this can only apply in terminal insolvency. Wrongful trading actions can only be commenced after a formal insolvency event. What is a formal insolvency event?

For example Creditors Voluntary Liquidation, Administration, Administrative Receivership or Compulsory Liquidation. It does not apply in Company Voluntary Arrangements, Trading Out, and Refinancing.

What if there is no insolvency event?

The actions may occur and the company may not enter any formal insolvency. If that happens then be very careful! Keep records of why returns were not filed on time. Write careful minutes of board meetings and shareholders meetings. Keep them safe. In future they **may help protect you as a director.**

The common sense answer to wrongful trading is – if your company is insolvent and you know it – DON'T KEEP DIGGING THE HOLE! Take advice from us immediately on 0800 9700539.

What does not operating the PAYE/VAT scheme actually mean?

Not paid the deductions of PAYE and NIC across to HM Revenue & Customs? Well, as you will now know that is something that they do not like! Basically, its tax payer's money and the collectors are there to collect it.

HMRC (what was the Inland Revenue and HM Customs & Excise previously as separate government organisations) now has a central database and can spot slow payments or missed payments much more quickly now.

If your company is not paying PAYE & NIC on time then it is probably insolvent, so see our guide to "Is our company Insolvent".

Non payment of tax is a failure to comply with the tax legislation and also signifies publicly (loud and clear to HMRC) that the company is potentially insolvent. So, you need to act properly and deal with this serious threat to your company.

If the company is still viable but just needs breathing space why not propose a time to pay deal? See our guides to time to pay deals or to buy our Experts Time to Pay Programme (click the link).

KSA GROUP

Company Rescue

PERSONAL LIABILITY

Remember that if the company is insolvent you could be personally liable for the debts, if you continue to trade, whist doing nothing about the problems that it faces. Wrongful trading can be a real problem where ongoing tax arrears are building up and the company later enters insolvent liquidation.

So, act carefully, keep notes of any decisions and always write names of people you speak to at HMRC down. Take advice from experts, above all act promptly as delay may just lead to more problems for you as directors.

What are the Available Options?

Once you have read more about the problem on our guide pages like Is our Company Insolvent? Directors Do's and Don'ts and Warning Signs? Then the options you have available are:

1. Time to Pay Deal with Tax and VAT. Why not use our expert programme, written by our MD Keith Steven, we guarantee you'll get a time to pay deal with HMRC or your money back.

2. Trading out, visit this guide to how to deal informally with the problem. This can avoid formal approaches like Voluntary Liquidation, CVA, Compulsory Liquidation and Administration.

3. Some tips...on time to pay deals.
   - 3.1. Don't wait until legal actions have been taken against the company to ask for a "time to pay" deal with HMRC.
   - 3.2. Try to plan the cashflow of the business well in advance - you have a legal obligation to do this! If the directors do not think the company has sufficient cash to trade they should consider the obligations and options and plan a way forward.
   - 3.3. Don't be too ambitious in planning repayment; you will have bad months as well as good, so be careful with the cashflow forecasts.
   - 3.4. Ask for 18 months to pay back PAYE, knowing that you will probably get 6-9 months at most.
   - 3.5. Ask for 6 months for VAT.
   - 3.6. If your cashflow forecast says you cannot afford that fast a repayment programme, then consider a company voluntary arrangement - CVA.

3.7. We think that, if the company is viable but insolvent, this is the most powerful way of dealing with a serious cashflow problem and tax arrears (which proves insolvency).

2.1. Important tips, HMRC supports well proposed CVA's!

2.2. Secondly, you do not have to pay back all of the debt.

2.3. Thirdly, you remain in control.

2.4. Fourthly, the creditors pay for the CVA!

4. Do Nothing! Are you serious? Actually this will lead to:

4.1. Bailiffs, Sheriffs, walking possession, distraint and more worry - see here for How to deal with Legal Actions .

4.2. Formal insolvency like Creditors Voluntary Liquidation, Administration, Administrative Receivership.

So don't risk wrongful trading, it could lead to personal action against you, the loss of your home, your marriage and bankruptcy.

Directors Overdrawn Current Accounts? Why do they matter and what can we do with them?

Directors' overdrawn current accounts in Pub Companies.

In more than 75% of our enquiries from directors of struggling companies, we find that this is a major problem, so what is an overdrawn director's current account?

Well, usually the company is making some profits and your accountants advise you to save tax by paying your directors a small salary and then you take dividends from the reserves of profits made in the past and current years. SO off you go taking money out of the business as instructed.

THEN something goes wrong!

Although the advice is generally sound from a tax reduction perspective, when a company is performing well; it's when things go wrong that directors can end up with serious personal liability problems.

Technical Issues
=============

Having an overdrawn director's current account is actually a breach of the Companies Act 1985. All accounts filed at Companies House should refer to any overdrawn Current accounts as loans to the director concerned. You must try to get these paid back or reversed in subsequent periods as the Revenue will tax you on a fairly penal rate if you do not.

If the company has no distributable reserves, it cannot pay dividends. So if your company's balance sheet starts a year with nil or negative reserves , then if you make no profit you MUST STOP taking dividends as soon as you are aware of this.

It is much better to pay yourselves through PAYE and pay the tax/NIC. If the company cannot afford to pay you GROSS - then it is pretty much insolvent.

What can we do? Well options include:

- Repay the debt you personally owe to the company.
- Offset any loans the directors have made to the company (this is called set off).
- Take your full salary but reduce the cash you take out of the business to gradually offset the account. So pay yourself £4,000 per month but take £1,000. Remember to pay tax on the £4,000!

- Make a lot of profits in future periods to offset it!
- Use a Company Voluntary Arrangement to reverse the account through the PAYE Scheme.

What happens in liquidation if we have overdrawn current accounts?

In liquidation the liquidator can demand that directors repay their overdrawn directors current account to the company for the benefit of the creditors. They can take legal action to make directors pay this or even make you bankrupt**. So you could lose your house if your director's current account is overdrawn and not recovered.**

Example Case Study
================

So here is an example case study / guide. If you need more detail call us now.

See if this rings any bells and then call us for help.

Mr Jones and Mr Smith set up a limited liability company based in London. It is a pub operating company and they formed it in 2007.

Sales built quite quickly based upon their extensive marketing to £1.2m sales. Their accountants told them that the company had made £80,000 net profit in year 1 and that this would be taxed for corporation tax purposes at roughly 20%.

So he advised them to leave their PAYE salaries at a lower level each month in year 2 and take dividends from the reserves and future profits.

This they did for a number of years and paid themselves quite well as the company was profitable each year.

Then that "something happened".

Their recession bit hard in 2010 and sales fell back again to below break even.
This led to a situation that was clearly not planned for. In 2010 the company had a bad trading year and made a huge loss for the year of £100,000.

As a result the balance sheet then became negative and they saw the first flashes of a cashflow crisis looming.

So no further dividends could be taken AND the directors now had overdrawn directors' current accounts to the tune of £70,000. With cashflow pressure

mounting they came to KSA and said they needed to restructure the company or close it.

This was our advice: consider the options, set out your objectives, look at the viability of the company and then make a decision to ACT. **Call KSA in and we will set out the options in writing and in expert detail - that will help you decide.**

Stop Options

If the company entered a formal terminal insolvency like administration, receivership, voluntary liquidation or compulsory liquidation, then the insolvency practitioner/liquidator could have demanded that the directors repay the £70,000 back to the company for the benefit of creditors.

This could have caused them personal financial hardship and with personal guarantees to the bank of over £200,000, the last thing they wanted to do was liquidation or administration. Indeed it was likely that personal Bankruptcy would follow.

Go Options

So we looked at the Go Options with them. (By the way we never charge for this detailed advice) and these included Trading Out, Trade Sale, CVA and or refinancing.

The key test is viability. We felt that one bad year did not equate to a bad business. Far from it, this was a good business with dedicated directors and staff. So we said look at Go options and try and select the best option with our help.

We recommended that CVA would be the best solution and this was why.

Some of the overdrawn directors current account liability would be "reversed", in other words the payments would be treated as being net pay through the PAYE scheme. This of course generates a larger PAYE and NIC liability. But using the CVA the debt would be bound by the process. Along with reduction in people and managers (the lost contract meant that they had too many people) the company was forecasting a modest profit at best or just below break-even at worst.

- The benefits for creditors were that they got a deal paying 55% of their old debt back over 5 years and kept their customer.

- The benefits for the company were a downsized business, lower costs; long term survival, no lost contracts and we removed cashflow pressures whilst keeping the bank happy.
- The benefits for the directors were that they avoided personal liability, avoided the failure, avoided bank personal guarantees being called up and also avoided the £70,000 debt to the company.
- Plus as owners of the company they have long term employment and a valuable future business.
- A great deal all round and guess what? The reversed tax was included in the CVA vote and HMRC supported the deal.

So if you or your directors have an overdrawn current account and a company that is under real pressure then call us on 0800 9700539. As the above case shows, we can save your business and help you as directors.

Employees and CVA's the process of redundancy in CVA and Pre-Pack

Using CVA case law (Doorbar) the company can terminate the employment contract of ANY member of staff or members. This is often critical in deciding how to restructure direct costs and overheads.

1. Step 1: choose the roles /people to be made redundant.
2. Step 2: pay them to the date they are made redundant, and any holiday pay due.
3. Step 3: issue a P45 and ask them to leave immediately.
4. Step 4: hand them a letter explaining how they can claim redundancy and lieu of notice payments from the Government. They will need to file a RP1 form so they claim. NB they cannot claim until the company CVA is approved (Qualifying Insolvency Event).
5. Step 5: get on with the rescue!

So the CVA can ride roughshod over employment legislation and normal contractual obligations. This is powerful stuff and KSA has internal experts who can guide CVA clients through this process. We are often asked to remove employees because most people do not know how powerful CVA is.

Now think how you can cut costs knowing that there is no requirement for 90 day or 30 day consultations, no skills matrix process and no risk of a tribunal award knocking cashflow.

Yes that is right - even if a disgruntled employee is made an award by a tribunal the claim is bound by the CVA process and the Government will pay (to capped limits) their claims.

Pre-Pack Administrations and Unwanted Employees

However powerful a PPA is for getting rid of debts, it has real problems such as TUPE.

Generally speaking, under the Transfer of Undertaking rules the new company will have to meet the employment claims of the old company. This means it is practically difficult to remove unwanted employees.

The only way around this is to make unwanted employees redundant well in advance of the PPA process, even then they may bring claims for unfair dismissal to the newco. This could of course lead to employment tribunals if not handled well and it is possible that this tribunal award could be awarded against the new company.

Specialist advice is required when planning pre-packs to ensure that this issue is carefully planned.

Summary: Turning Around or Rescuing Your Pub Company.

We hope this guide is useful reading for you and your colleagues. Over many years we have built up this approach of giving good quality guidance to struggling company directors, accountants and investors. We figure that giving free general advice will save many businesses, whilst other people will need our hands-on advice and call us directly.

As you will know all pub companies are the same and yet all are different – so this general guide may not have answered all your questions. Please feel free to call our expert advisors on the numbers below, or email the author who has experience over 15 years of assisting pub companies.

Keith Steven 07974 086779 keiths@ksagroup.co.uk

KSA Helpline 0800 9700539 Open 8.30 am to 5pm weekdays.

Partnerships

The trading style of a partnership is good for tax reasons, but little else in my view. If the partnership doesn't have a formal partnership agreement set out in the beginning it can end up a fearful mess and can lead, in insolvency, to the bankruptcy of the individual partners.

The options available are very similar to those of a company so read all of the above. But the added personal liability element is the key to worry about.

Solutions re available for viable but struggling pub partnerships such as

- PVA (partnership voluntary arrangements)
- Simultaneous or interlinking individual voluntary arrangements ;

If the business is not viable then the partnership can be wound up (very similar to creditors voluntary liquidation above) and or the partners can go bankrupt.

So what is a Partnership Voluntary Arrangement (PVA)?

The best way to think of an PVA (or the very similar CVA) is as a deal between the debtor (the partnership that owes the money) and the creditors; the people or businesses to whom the money is owed.

Where the debtor cannot pay off its debts on time or they are insolvent (for a definition of insolvency click the insolvent? guide) or if your partnership is under huge pressure and you personally cannot deal with the partnership and individual partner's creditors satisfactorily, than a SIMIVA can often be a good solution.

Making a payment on a regular periodic basis the partnership and the individual debtors can bring together all of his or her debt problems (except where the

creditor has security such as a mortgage over property) and get on with their business and their lives.

Who should use a PVA?

It is imperative that the PVA is only used where a partnership's business is viable or where it has disposable assets that can be turned readily into money in the short to medium term. Using the PVA can allowed time to sell such assets for better value than a liquidator or bankruptcy trustee can obtain.

If the business isn't viable it should be wound up (see winding up the partnership) as soon as possible and individual bankruptcy initiated if required.

To understand the IVA process please read below

PVA's a guide

See PVA's a flowchart for easy-to-follow pictorial view of the IVA process.

Debtors who run small or not so small businesses partnership can often find themselves in a position where the business is struggling financially.

Most small businesses in the UK suffer from being undercapitalised at some stage. It may be that you did not have enough money to start a business off, that the bank or other financial providers are unable to fund you to the level you needed; or that you have had bad debts: failed contracts or simply have not managed to get the business to a level of making profits yet.

The partnership is usually under extreme cashflow pressure and cannot manage the problem. Business is suffering because the partners are firefighting and not concentrating on running the business. This can become all-consuming. Dealing with irate creditors is also a very tiring and lonely process. This can often lead to a downward spiral towards the closure of the business and bankruptcy of the individuals.

After that if you have decided that the PVA is the most appropriate route, make a list of all of your partnership creditors AND a list of the individual partners assets and liabilities. Don't make the mistake of saying a creditor isn't due for payment now, include all current and future debts.

For example, we often meet partners who have habit of "compartmentalising" their debts. An example is: they know the VAT isn't due until the end of the month after this and therefore they don't see it as a liability. It IS a liability now and one should estimate to an appropriate point in time (say the end of the current month) how much is due to every creditor.

It is possible to estimate these debts because sometimes it's impossible to make detailed and exhaustively accurate lists. The law allows for an estimated statement of your debt to be used as the basis for preparing a proposal to deal with that problem.

Then make a list of all of the partnership's assets and all of the individual partner's assets. Put reasonable values on them and if you cannot ascertain values for assets estimate – try getting an idea from similar assets or priced assets. (Use the internet to get car valuations etc). The law doesn't envisage you going out get professional valuations for every asset because this would be too time-consuming and costly.

Perhaps the most important process to go through is to look dispassionately at the business and decide whether it is viable. For example see 99 marketing questions. Decide whether there is enough activity for your business to be profitable with its current overheads or if it were to be restructured.

Often it can be just down to removing a couple of problem areas which if resolved could lead to the business being viable. If so we can help in such a restructuring call us on **0800 9700 539** for assistance.

If however the business has never made profit, sales are not rising to the level where overheads start and known prospects aren't great then a PVA **is not suitable.**

Now that you have established the true position the business' debtors, creditors and its viability you should consider the PVA process. If you wish to discuss your information contact us or any local insolvency or turnaround practitioner. We will talk you through the issues of viability, determination and ability to structure a deal free of charge. Call now.

Once a decision is taken to go ahead you will need to appoint a turnaround advisor and or a nominee. An advisor would assist you in building the proposal, collating all the necessary information and dealing with all of the aggressive and passive creditors. The advisor may also seek to discuss the position with your bank and secured lenders, the Inland Revenue and VAT Office. At some stage however a nominee is necessary. A nominee is a short name for the nominated supervisor - this is a licensed insolvency practitioner for licensed by the DTI and is usually a chartered accountant in this country.

The nominee's job is to review the proposals of the debtor produced either by the debtor himself or by the advisor in conjunction with the debtor. If he can satisfy itself that the proposals maximise creditors interests, are achievable and realistic he or she will put their name to the proposal and sponsor it to the court and to the creditors. It is important to remember that the proposal will be your proposal and that you have to swear an affidavit saying that is true incorrect to the best of your ability.

Writing the proposal

The law envisages that the debtor(s) will write the proposal and then ask an insolvency practitioner (IP) to act for him or her. Of course the legal process is complicated and you have a business to run. Therefore it is probably best to use experienced, pragmatic and respected Turnaround practitioners or insolvency advisors to help you write the proposal. Regardless of whom you use the following points should be remembered:

1. Base it on sensible cashflows, sales and costs. Don't guess, don't expect large increases in sales.
2. Expect that things in the first year will be a difficult and that sales mean indeed fall.
3. As a result expect to suffer in the first year and do not promise to make large payments in the first year the maximum amount in we would usually allow most debtors to repay in the first year is £12,000 for a partnership or less for an individual debtor.
4. Don't promise too much but as above make sure it repayments are affordable.

PVA Proposal contents

The proposal should include a current description of why the business has failed and why it is insolvent. It should also detail what the structure of the deal is and how the creditors are going to be repaid. To help the creditors decide whether to accept the PVA it must contain what is called a statement of affairs. Or SOFA for short. A SOFA paints a picture of your financial position and demonstrates that you are insolvent. It will also show what would happen if you went into liquidation and what the outcome would be if the PVA were approved and successful.

The document will describe how long the deal is for. Typically most VA's last between three and five years. And the document will describe how much the partnership will pay from the business in the months and years ahead to its creditors.

After the document has been completed and the affidavit sworn it can be filed at court. The purposes of this are to ensure that the document that is filed at court is the same that is circulated to all creditors and to apply for a moratorium (called an interim order) to protect the debtor in the period between the application to court and the date of the creditors meeting.

Creditors meetings and voting

After the proposal has been filed and posted to every known creditor, a creditor's meeting is called. There is a statutory minimum period of 14 days (plus post days) before this creditors meeting can be held from the date of the receipt of the document by the creditors. This is to allow adequate time for them to consider the documents contents and to make objections or modifications.

Once this process has been completed a creditors meeting is called. The PVA needs 75% support from creditors WHO VOTE on the day. This is usually controlled by HMRC who will support a well structured PVA.

What if the partnership isn't viable?

Partnership Winding Up

Where the partners have decided that the partnership has no viable future or purpose then a decision may be made to cease trading and wind up the partnership. Clearly such a decision should not be taken lightly and we would recommend that all other options are carefully considered and compared to the objectives of the partnership and the individual partners.

There are two basic ways that the partnership can be wound up: the creditor's petition and a partner's petition

Creditor's Petition

A creditor can petition to wind up the partnership but not issue bankruptcy petitions against the individual partners. Or the creditor can issue a petition to wind up the partnership concurrently with a bankruptcy petition against one or more of the individual partners.

Partner's Petition

The partners can petition to wind up the partnership but not issue bankruptcy petitions against the individual partners. Or the partners can issue a petition to wind up the partnership concurrently with a bankruptcy petition against the individual partners.

The Winding-Up Process

The partnership is treated much like an unregistered company and is wound up in the same way as a company. The tasks of the liquidator are therefore to

1. Realise the assets in the partnership including any deficiencies due on the partner's individual capital accounts (the partners will have to pay such deficiencies if required). All debtors, property and other assets will be collected by the liquidator.
2. Investigate the conduct of the "officers of the partnership" just as the liquidator in a company liquidation must do.

   2.1. Interestingly the liquidator can initiate actions against the partners to seek to disqualify them as partners in a partnership (Insolvent Partnerships Order 1994)

   2.2. The liquidator must also ascertain whether any transactions have taken place that put the partners (individually or collectively) into a better position than they should be then such transactions (known as preferences or transactions at undervalue). If such transactions have been completed before the winding up, they can be un-done. The court can order that the partners reverse the transaction.
3. The liquidator completes his /her work by making payments (called distributions) to the creditors in order of priority (if any distributions can be made).

It is usually preferable to allowing creditors to wind the company up. Common sense dictates that allowing creditors to initiate such proceedings indicates to creditors and the liquidator that the partnership /partners have failed to act in the best interests of the body of creditors as a whole. Many people in companies or partnerships are told by accountants or advisors to just cease trading and "let someone wind the thing up". In our opinion this is very poor advice. We always recommend taking decisions to ACT.

The Advantages of Winding up

By initiating such action themselves the partners as individuals may avoid the disqualification of the partners and as company directors, however this will depend on their actions pre the failure and whether they had acted at all times correctly and in the creditor's interests.
The creditors will know that an insolvency practitioner must be appointed where the winding up process is used. This can ensure (sometimes) a better return, investigation into the officers conduct pre insolvency and the knowledge that the partnership will not increase debts.

In rescue and restructuring work the partnership can quickly terminate leases and contractual liabilities.

Disadvantages of Winding up

As in all liquidations the assets of the business can be much less than if the business continued. Such insolvency "meltdown" frequently disappoints officers of companies or partnerships because they believe that the values are much higher than can be achieved at, say, a liquidation auction. Add to this the crystallising of claims such as landlord's lease liabilities, HP, lease contracts and employee claims and the overall debt position can actually increase.

This double whammy often leads to nil or very small dividends for unsecured creditors.

Winding up can be a very expensive process and the cost of the work undertaken can be recovered from the assets of the business if there are sufficient funds to do so. But if the assets are insufficient (especially after a meltdown) the partners themselves must make up the fees and costs shortfall.

From the partner's perspective winding up can lead to their personal bankruptcy if they are called upon to make good the deficiencies of the partnership. They can also be disqualified if the liquidators' investigation uncovers misfeasance or mis-conduct and they cannot re-use the trade name of the partnership for up to 5 years.

Most creditors are unlikely to see any real dividend unless the partners can make up the shortfalls. But if a rescue plan (such as simultaneous individual voluntary arrangements (SIMIVA) partnership voluntary arrangements (PVA) or partnership administrations (PA) is used they may see higher returns and continuance of trade in the future which can be equally important to receipt of debts.

Finally

Before deciding to wind up the partnership please review all the contents of this guide and our website and take advice from either an insolvency/turnaround practitioner in your area or call us on 0800 9700 539. Or email us with your basic details and we will call you back at an agreed time and in confidence.

Individuals or Sole Traders Running Pubs

This is probably the most common trading style in the pub sector. There are fewer options available for sole traders, bankruptcy , IVA, or trading out/refinancing (covered earlier in this guide)

What if there was a way I could save the business, get rid of some costs and or staff, rebuild our sales and profits without closing it? I don't want to see all of our hard work destroyed and have the misery of going bankrupt"! There is a great potential solution for your problem and you have found it...... An IVA could be the answer to your problems and could protect you from your creditors.

Individual Voluntary Arrangements A Simple Guide

An IVA is a powerful insolvency tool that will ringfence your creditors (that's all your business and personal debts but not a mortgage) and take away the pressure.

It is a deal between the insolvent sole trader and its creditors; this legally binding contract allows you to repay some or all of the historic debts from future profits over a period of time. Debtors (you) stay in control and it stops any legal actions if you use a quality advisor. It has been in UK law since 1986 and is one of the Government's preferred rescue options.

Isn't that better than going bust, closing down and every creditor losing their money and an ongoing customer?

IVA's are amazing for rescuing a distressed business when you know it can be profitable in future. You can make employees redundant with no cash cost, get out of property leases and problem contracts and make the business profitable again with the IVA and our help!

In the time it takes us to organise the IVA for you, we will freeze your payments to VAT, PAYE and creditors. Then together we offer the creditors a deal over time to pay something back from future profits. This improves the cashflow in your business.

We are often asked "If it's so great why doesn't everyone use the IVA if their business gets into trouble"? The answer is because very few people know about this fantastic tool and most sole traders with problems end up going bust because they are scared of insolvency.

Useful Guides to IVA:

Individual Voluntary Arrangement Detailed Guide - all you need to know about IVA's from framing the deal through to creditors' votes.

What are the downsides? A fee is payable and your credit rating will be affected for up to 6 years after the IVA. You may have to give your share of the equity in your home to the creditors as part of the deal. All of this is much better than bankruptcy by the way!

KSA GROUP

Company Rescue

Trading In Scotland as a Sole Trader?

There are no IVAs in Scotland unfortunately. The alternative is either to go into sequestration (equivalent of bankruptcy in England) or propose a Trust Deed.

Sequestration A Guide

When a person who lives in Scotland is unable to pay off his or her debts this is the "last resort". The decision to go into sequestration (equivalent of bankruptcy in England) must not be taken lightly. In our opinion you should explore ALL OTHER OPTIONS FIRST.

Once bankruptcy had a stigma, now it is much less so. But it is still a major step. Read this site in detail and or take professional advice BEFORE taking this step.

Sequestration involves the transfer of your assets and property into the hands of a Trustee for the benefit of the lenders. The Trustee in Sequestration has a duty to sell the assets/property that are collected. The Trustee may also seek a voluntary contribution from your income if you are in regular employment and are earning more than you need to live.

A creditor can initiate sequestration if you owe them money (over £1,500)

This is the main insolvency procedure for individuals in Scotland and begins with a petition to the sheriff's court. This can be lodged by:

- The debtor (that's you) if their total indebtedness is in excess of £1,500
- A creditor whose debt is in excess of £1,500
- A trustee under a failed trust deed

If you lodge the petition yourself, the sheriff will award the sequestration and this will be the date of commencement of the sequestration. This can be done where you owe more than £1,500 to creditors and where a lender has served a Charge for Payment and fourteen days notice have elapsed or, a creditor has issued a Statutory Demand and 21 days have elapsed.

If the petition is lodged by either a creditor or a trustee, a warrant to cite will be formally served on the debtor.

This warrant will call the debtor to appear before the sheriff's court. Sequestration can be avoided if the debtor can produce real evidence that the debt has been paid or he has the means to pay or compound the debt with the creditor(s), be warned

though it is vital to be able to show strong reasons why you should not be made bankrupt.

If this cannot be done or if you do not appear in court, the sequestration will be awarded and will be deemed to have commenced from the date the court issued the warrant to cite.

With some exceptions, all assets, including the debtor's home (if owner-occupied), are vested with the trustee and he has a duty to sell the assets to realise value for the creditors.

If you earn more than you need to live then the trustee may also request a voluntary contribution from earnings as well as any other assets that may materialise during the period of the sequestration, such as an inheritance or a redundancy payment.

During the sequestration, the debtor is restricted in a number of ways including being unable to incur credit over £250 without declaring that they are an undischarged bankrupt. This can often rule out the possibility of continuing to trade as a sole trader.

Additionally, the debtor in sequestration cannot act as a director of a limited company, or as a governor or a member of a school board or as a member of Parliament.

The debtor is automatically discharged from the sequestration after three years unless he or she does not cooperate with the Trustee. In some cases the period of the sequestration can be extended by the court for up to two years.

Self Sequestration

This can be done where you owe more than £1,500 and a lender has served:

- a Charge for Payment and fourteen days notice have elapsed or
- a Statutory Demand and 21 days have elapsed or
- you have received an Earnings Arrestment as a result of a Charge for Payment

Advantages of Sequestration

- It crystallises the position - and it stops creditors pursuing you
- It ends the worry
- You will not have to make further payments to your lenders.

- You may expect to be discharged after 3 years and will then be free of debt (unless you have built up new debt since the date of your Sequestration).

Disadvantages of Sequestration

- If you own any valuable property, including your matrimonial home you will probably lose them.
- You may not obtain credit over £250 unless you tell the new lender that you are an un-discharged bankrupt.
- You may not be a director of a company.
- If you are in paid employment you may have to make a contribution for "excess" earnings.
- If you inherit any money or property after the date of your Sequestration and before the date of your discharge you will have to surrender it to your Trustee.
- Your credit rating will be damaged
- It is a public event - which can be advertised in local press
- Secured debt, CSA and fines are not included in bankruptcy
- It's a court process - that can be frightening
- You have to report to the Trustee and adhere to his wishes.

Scottish Trust Deeds

A Guide to Trust Deeds (NB. Applies in Scotland Only)

If you have established that you are insolvent and you live in Scotland then you may wish to consider this option. It can be a powerful and successful way of dealing with the debt problem but should not be taken lightly. It is still a formal insolvency mechanism and one that requires a licensed insolvency practitioner to act as Trustee.

Basically a Trust Deed is a document appointing an Insolvency Practitioner to deal with your financial affairs. By agreeing to the Trust Deed and signing the document, you are legally obliged to abide by the terms of the deed and agree to a repayment proposal, under the guidance of the Trustee. The proposal can propose a repayment of a proportion of the unsecured debts that you owe and they last for a set period (usually 3 years).

How does it work?

Once you have decided to act, you will meet with the insolvency practitioner and agree that you are insolvent but it would maximise creditors' interests to propose a Trust Deed rather than sequestration (Bankruptcy).

The IP will work with you to analyse your financial position and prepare a document to circulate to the creditors.

Once they are notified of the Trust Deed, they have a period of 5 weeks to object to it. For a Trust Deed to fail, your Trustee will have to receive objections in writing from more than 50% of your creditors or at least one third in monetary value.

The interesting thing is that creditors who do not write back to the Trustee with a specific objection are deemed to have accepted the Trust Deed. Most Trust Deeds are accepted by creditors; this is because the alternative is usually much worse than the Deed's provisions. In Sequestration it is likely that they will receive nothing, so something is deemed to be better than nothing.

Once the period of 5 weeks expires, the Trust Deed is accepted and protected and thereafter all creditors are bound by it. If less than 50% or less than one third object to it, they are still bound by the Trust Deed and cannot carry out any action against you for recovery of any debts.

Advantages of Trust Deeds

Once the Deed is prepared the Trustee writes to all creditors and places an advert in the Edinburgh Gazette. Provided not more than 1/3 rd of creditors by value do not object, the Trust Deed will be automatically registered as "protected", thereby preventing creditors from petitioning for the debtor's sequestration or taking any other steps to recover debts due to them.

By agreeing to the Trust Deed you will be protected from your creditors. This will avoid sequestration, wages being arrested and other creditor pressures.

It puts the debtor rather than creditors in control of the debtor's financial situation and reduces the costs. It's a cheaper method for creditors than sequestration as it costs less to administer than sequestration and allows the debtor the right to fulfill certain public offices.

Property which is transferred to the trustee may be sold by him whenever it is in the interest of your creditors for him to do so. This can include your home provided the Trustee gets permission by other occupiers or owners. Where there is a joint mortgage and no equity or only modest equity, it may be better to do a Trust Deed that excludes the property.

Disadvantages of Trust Deeds

You may lose all of your property and assets (other than tools of the trade and modest car). Your credit rating will be seriously affected. You cannot act as a company director. If you fail to keep to the terms of the Deed the trustee can petition for your sequestration.

The trustee can also petition for your sequestration if he considers that would be in the best interests of your creditors, for example, by obtaining the greater statutory powers available to a trustee in sequestration.

What are the impacts of the various insolvency tools on the Pub licence?

The Licensing Act 2003 and the effects of insolvency

The Law.

Alcohol and Entertainment Licenses are regulated by the Licensing Act 2003. The Act was put in place with the aim of reducing alcohol misuse, reducing crime and disorder, protecting children and encouraging tourism. It defines 'licensable' activities as:

- Sale by retail of alcohol
- Performance of plays
- Exhibition of films
- Indoor sporting events
- Boxing and Wrestling
- Live music
- Playing recorded music and Dancing
- Late night refreshments

Application must be made to the local authority for a Premises License which allows its holder to carry out licensable activities on a specified property, subject to various conditions. The Premises License can be granted to an individual, company or other type of organisation.

As a licensee you'll know that although you hold a Personal Licence the sale of alcohol on your premises is actually permitted by the Premises Licence under the supervision of the Designated Premises Supervisor (DPS) or Personal Licence holder.

It is therefore the Premises Licence that is all important. However, and this is vital, under the Licensing Act 2003 the Premises Licence becomes invalid immediately the holder, whether it be an individual or a company, becomes insolvent. You must be aware that no licensable activities may lawfully be carried on from the premises from the moment the licence lapses and that any trading from the premises before

the licence is reinstated is unlawful and has the potential to carry a £20,000 fine or six months imprisonment.

The provision within the Act states in Part 3, Section 27, subsections 3 & 4

For the purposes of this section, an individual becomes insolvent upon -

- ***the approval of a voluntary arrangement proposed by him;***
- ***being adjudged bankrupt or having his estate sequestrated; or***
- ***entering into a deed or arrangement made for the benefit of his creditors or a trust deed for his creditors.***

For the purposes of this section a company becomes insolvent upon -

- ***the approval of a voluntary arrangement proposed by its directors;***
- ***the appointment of an administrator;***
- ***the appointment of an administrative receiver;***
- ***the company going into liquidation.***

A Solution

BUT, this does NOT automatically mean calling 'time' on your business! The lapse of the Premises Licence in the event of insolvency is not as final & absolute as most people think however.

In simple terms you would have two options.

Firstly, the licence can be reinstated if the Insolvency Practitioner (IP) who has been appointed to handle the insolvency submits, to the relevant licensing authority, an Interim Authority Notice (IAN) within seven days (not working days) of the approval of the relevant voluntary arrangement or of the relevant appointment. If no such authority notice is submitted within the seven day period the licence cannot be reinstated and a new licence would need to be obtained.

A copy of the IAN must also be given to the Chief Police Officer for the area. Provided the notice is properly served, the premises licence is reinstated from the time that the notice is received by the licensing authority; and from that time the person who gave the notice is the holder of the Premises Licence. However, an IP would be reluctant to submit an IAN unless steps had already been taken to transfer the Premises Licence to a new holder and the transfer was very close to being granted by the licensing authority. If an IP agrees to submit an IAN this will always be on a temporary basis and he can withdraw that notice at any time.

The second option, much preferred by IP's, for obvious reasons, is to have transferred the Premises Licence to a new holder prior to appointing an IP in an insolvency event.

These issues would need to be discussed with a member of our team in detail as each case is individual and may present its own unique set of problems.

Who is the Premises License holder?

If the individual or company that becomes insolvent is NOT the Premises License holder then this naturally removes the threat of the License lapsing. If you are a tenant and your landlord is a brewery or pubco it may be that *they* are the Premises License holder. This is quite common and offers the landlord some security in the event that their tenant becomes insolvent. In other words, the Premises License wouldn't automatically lapse upon insolvency and the business could continue to trade. Great news you may think!

Not necessarily! - You may well have a clause in your Tenancy Agreement/Lease with regards to those tenants who become insolvent. Generally though, that will give the Landlord/Brewery/Pubco the OPTION of determining the agreement/lease and it is certainly not a foregone conclusion that this will occur. In the current economic climate, logically the landlord should then take the commercial view that you are more use to them remaining in place.

Although, that may depend upon whether they are one of your creditors.....

Finally

As you will know by now, being involved in the licensed trade can be a continual uphill struggle and has its own very unique set of complicated problems maybe not experienced by other types of business.

Frequently, you and your family's home are also linked directly to your business and this will naturally make your decisions even more difficult.

For these reasons you MUST get specialist advice and help when things start to go wrong. Contact us today on 0800 9700539 or call Keith Steven on 07974086779

About The Author

Keith Steven Turnaround Practitioner, Pre-Pack and CVA Expert!

Keith Steven is a Company Doctor and Turnaround Expert

His motto "We save viable businesses; we help you close those that are not"!

Keith is the author of the content of this programme and all of KSA's web sites. He is managing director of Company Rescue Ltd and KSA - a specialist firm of turnaround practitioners.

Keith started his career as a retailer and experienced the savage recession of the 1990's first hand. This was before the banks had any idea about dealing with SME's failure. Close struggling businesses first; ask questions later, was the response then. Of course this was driven by insolvency practitioners who wanted big fees.

So he learned a lot in a short time and thought **"how can we help struggling businesses"?**

He joined a specialist insolvency and turnaround firm in London in 1994 and has helped set up two venture capital companies since, specialising in the distressed / turnaround sector. What a great learning curve that was.

Keith is a former director of the UK Turnaround Management Association and an associate of the Turnaround Finance Group.

His website was launched in 2000 and was re-launched in 2011. Since then we have added over 900 pages of content and are adding guides and information every week. So, now we have improved it but welcome any suggestions from you, the reader. So we hope our expert CVA guide and our website helps your business.

Over 5,000 people have contacted KSA since Keith launched www.companyrescue.co.uk in 2000 and over 500 companies have now been directly assisted by the author over the last 15 years with assignments ranging from large multinational projects with £500m sales to small manufacturing companies with 3 people.

Contact Keith on **0800 9700 539** or **07974 086779 or** by email at keiths@companyrescue.co.uk

Keith will do everything in his power to help your business. As a team at KSA most of us have been there and know what you are going through.

After thought from Keith: "If half of the Pub people that use this guide chose the CVA or PVA path we would see a huge jump in Company Rescues in the UK. Right now most people don't use CVA because of fear of the process. I think this is a waste of good businesses and huge emotional distress is the result.

Obviously, this guide is generalist, we have many years of hands on turnaround experience, and most of the tricks of our specialist trade ARE NOT included in this guide. If your Pub business needs a rescue, call me.

Thank you for using our programme. We hope it has assisted you.

Please email any comments or specific questions to

Robert Moore at Robertm@ksagroup.co.uk

KSA Group's Expert Guide to

Turning Around or Restructuring Your Pub Company™