



# Things are looking up with Berley



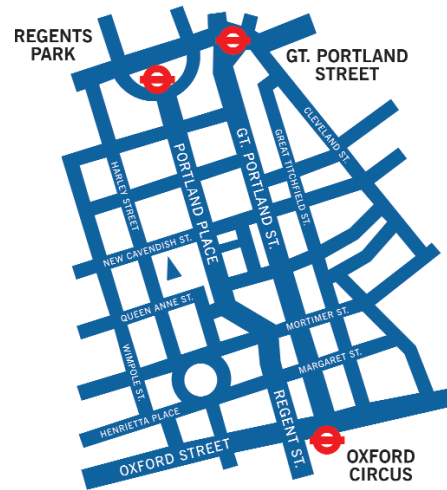
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# The onset of insolvency: directors' options





### Directors' Options

Directors have several options when their company faces the onset of insolvency. If the company is likely to be unable to pay its debts in full, directors are obliged to take into account the interests of the company's creditors when considering what to do. Directors should take great care continuing to trade whilst reviewing their options; if there is no reasonable prospect of avoiding insolvent Liquidation the directors ought to consider immediately ceasing to trade.

Initially directors may try to:

- Improve the position by restoring profitability and cash flow
- Sell the company and / or its business
- Realise assets to raise cash
- Seek fresh finance.

Where improvement is impractical, no sale is likely to be achieved or fresh finance / cash is unlikely to be available, directors must consider more formal options.

### Members' Voluntary Liquidation (MVL)

The company may simply be closed if creditors can be paid in full. Rather than striking the company off the register at Companies House, one way to conclude a company's affairs and distribute any surplus to shareholders is via a solvent Liquidation - known as an MVL. The Liquidator is appointed by the shareholders and he ensures the company's creditors are settled. An MVL may also be used for purposes of reorganisation, or in the case of owner managed businesses, to enable the shareholders to realize their interest in the company.

If the company is unable to pay creditors in full, directors should consider other options.



### Company Voluntary Arrangement (CVA)

CVA is the procedure which enables the company to put a Proposal to its creditors for a rearrangement of its affairs. The procedure is extremely flexible; the form of the CVA depends on the terms of the Proposal. A CVA may involve delayed or reduced payments of debt, capital restructuring or an orderly disposal of assets. The Proposal requires the approval of at least 75% in value of the company's creditors and is monitored by a Supervisor.

### Administrative Receivership

Administrative Receivership can occur when a company breaches the terms of its borrowing; Administrative Receivers are normally appointed by a bank. This type of receivership (there are others) is a remedy available only to a secured creditor where security was granted before 2003. An Administrative Receiver's principal function is to recover the monies owed to the secured creditor; he may continue to operate the company's business whilst trying to sell it as a going concern.

### Administration

As part of the Government's drive to promote a rescue culture, secured creditors are no longer able to appoint an Administrative Receiver under security created after 2003. A company facing financial difficulties can be placed into Administration. While a company is in Administration, creditors are prevented from taking action against it, except by consent. The company is placed under the control of an Administrator and the protection of the Court with the objective of rescuing the company as a going concern, or achieving a better result for the creditors as a whole than would be likely if the company were wound up. If the Administrator thinks these objectives are impracticable he can as a last resort realize property in order to make a distribution to secured and other creditors.

An Administrator's powers are very broad and include the ability to carry on the company's business and realize its assets. The Administrator displaces the company's board of directors from its management function and has the authority to remove or appoint directors. On conclusion of an administration the company may be returned to its directors and / or agree a CVA, go into Liquidation or be dissolved.



### Creditors' Voluntary Liquidation (CVL)

CVL occurs where the shareholders, usually at the directors' request, decide they have no alternative but to put a company into Liquidation because it is insolvent. A CVL is conducted under the effective control of the creditors, who can appoint a Liquidator of their choice, and is the usual remedy to deal with a company's irremediable insolvency.

### Compulsory Liquidation

Compulsory Liquidation (or winding up) starts with a Court Order, generally on the petition of a creditor. A winding up order is usually granted because the company is deemed to be insolvent due to failure to comply with a statutory demand for payment. In a compulsory Liquidation the function of the Liquidator is initially performed by a member of the Insolvency Service called the Official Receiver (OR). The OR becomes Liquidator immediately on the making of the winding up order. Where there are significant assets a licensed insolvency practitioner (IP) will often be appointed to act as Liquidator in place of the OR.

**This fact sheet is only an outline of the options available to directors of a company facing the onset of insolvency. Directors should always promptly seek specialist independent advice.**

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