



NEWS WITH CLOUT

Offering Corporate & Personal Solvency Solutions

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LEGISLATORS MAKE CREDITORS VOLUNTARY LIQUIDATIONS MORE USER FRIENDLY

Previously, the one time constraint that hampered the effectiveness of the Creditors Voluntary Liquidation (CVL) procedures was that the creditors meeting had to be convened on the same day or day subsequent to the extraordinary meeting of members.

On the surface this would not appear to be an issue however 7 clear days notice had to be provided to creditors. This effectively meant that the company could not be put in liquidation inside 8 days. When you combine this timing issue with the fact that accompanying the notice of meeting of creditors was also a summary of affairs of the company (effectively a statement of assets and liabilities) as well as a list of creditors there could be some delay before the assets and affairs of the company found their way into the hands of the liquidator.

This had the effect of impeding the usefulness of CVL's when it is desirable to hand control to an independent and qualified third party or to be used as a tool for dealing with Director's Penalty Notices issued by the Australian Taxation Office.

As you know, the Director's Penalty Notice provides for directors to ensure one of 4 things is achieved before the expiry of 14 days from the date of the notice.

1. Pay the account in full;
2. Enter into an agreement to pay by instalments;
3. Place the company into Voluntary Administration; or
4. Place the company into Liquidation.

The expiry of 14 days without one of these things occurring has the effect of making the director personally liable for the unpaid sums.

With CVL's previously taking at least 8 days to implement we were often put in the position that the appointment of a Voluntary Administrator was the only option. This is because directors can instantly make the appointment. Voluntary Administration by its nature is a much more expensive procedure than

a CVL. If Liquidation is the only available scenario then going into Liquidation via Voluntary Administration had the affect of reducing the pool of assets available for distribution to creditors.

In our view this necessity to rely on Voluntary Administration with a view to eventual Liquidation has influenced the business community's view of Voluntary Administration as the inevitable first step to liquidation, which is not necessarily the case, nor what Voluntary Administration was designed to achieve.

With the new changes, the Liquidator must now convene the meeting of creditors within 11 days of his appointment. So if 95% of members consent to short notice for the extraordinary general meeting, placing a company in Liquidation will be very swift indeed.

In addition to the core information which is sent to creditors with the notice of meeting, being the summary of affairs, the listing of the names and addresses of the creditors and an estimate of creditors claims the new information which must now be sent to creditors includes:

- A declaration of Independence & Relevant Relationships
- ASIC & IPAA drafted information sheets on CVL procedures
- Detailed information concerning the remuneration of the Liquidator and how it is proposed remuneration be paid

The original 7 days notice for the meeting is still required and creditors can still replace the Liquidator at that meeting, but with some simple changes we are of the view CVL's have now become much more user friendly and over time the business community will come to regard Voluntary Administration as a step toward restructuring rather than being synonymous with Liquidation.

As ever we welcome all your enquiries.



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Official Website

www.cloutassociates.com.au

Contact Details

Tel: 02 6652 3288

Fax: 02 6651 9393

Email: admin@cloutassociates.com.au

Clout & Associates Senior Representatives

Morgan Chubb

Email: mjchubb@cloutassociates.com.au

David Morgan

Email: dmorgan@cloutassociates.com.au