

DIRECTORS GUIDE

ADMINISTRATION VS COMPANY VOLUNTARY LIQUIDATION (CVL)

When a company faces severe financial difficulties, directors may need to consider formal insolvency procedures to resolve the situation. Two of the most commonly used insolvency procedures are Administration and Company Voluntary Liquidation (CVL). Both serve different purposes and have distinct implications for the company, its directors, and its creditors.

This guide compares Administration and CVL to help directors understand the key differences, advantages, and disadvantages of each procedure, and which might be more appropriate for their circumstances.

What is Administration?

Administration is a formal insolvency procedure aimed at rescuing a company or achieving a better outcome for creditors than immediate liquidation. The company remains under the control of the directors initially, but an Administrator (an insolvency practitioner) is appointed to take control of the company and manage its affairs.

The primary objective of administration is to:

- Rescue the company as a going concern (if possible).
- Achieve a better return for creditors than an immediate liquidation.
- Sell the company's assets or business to pay off creditors.

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Key Features of Administration:

- The Administrator takes control of the company and has full decision-making authority.
- The company is protected from creditor actions during the administration process (via a moratorium).
- The goal is to restructure the business, potentially by selling it or part of its assets, and return some value to creditors.
- The company can be returned to the directors if it is successfully rescued.

When is Administration Used?

- When the company has a reasonable chance of being rescueded or restructured.
- When a sale of the company's business could help generate more value for creditors than a liquidation.
- When creditors or directors want to protect the company from immediate legal action (e.g., winding-up petitions or enforcement actions).

What is Company Voluntary Liquidation (CVL)?

A Company Voluntary Liquidation (CVL) is a formal insolvency procedure where the company's affairs are wound up, and its assets are sold to pay creditors. Unlike administration, CVL is used when the company is insolvent and there is no realistic prospect of recovery.

In a CVL:

- The company enters liquidation voluntarily with the agreement of its directors and shareholders.
- A Liquidator is appointed to take control of the company, sell its assets, and distribute the proceeds to creditors.
- The goal is to maximize creditor returns through the liquidation of assets, but the business ceases to operate.

Key Features of CVL:

- The company ceases to trade once the CVL is initiated.
- A Liquidator takes control of the company, winding it up and selling assets.
- Any remaining debts after asset sales are unlikely to be paid in full.
- Directors' role in the company ends once the Liquidator takes control.
- Directors can often avoid personal liability if they have acted properly.

When is CVL Used?

- When the company is insolvent and unable to continue trading.
- When the company's financial position is beyond recovery, and there are no realistic prospects for restructuring.
- When the directors wish to voluntarily wind up the company to avoid compulsory liquidation.
- When it is in the best interest of creditors to realize assets and distribute them.

Feature	Administration	Company Voluntary Liquidation
Purpose	To rescue the company or achieve a better outcome for creditors	To wind up an insolvent company and liquidate its assets
Control of the company	Administrator takes control, directors may remain involved	Liquidator takes full control, directors no longer manage the company
Business Continuity	Company can continue trading (restructured or sold)	The company ceases to trade immediately
Creditor Protection	Creditors are temporarily protected from legal actions via a moratorium	Creditors are not protected; liquidation starts immediately
Asset Realisation	Sale of assets or business may occur to rescue the company	Assets are sold to pay off creditors
Outcome for creditors	May result in partial repayment of creditors or rescue of the company	Creditors are paid from the proceeds of asset sales, but often not fully
Timeframe	Aimed at quick rescue or sale, usually within 12 months	Typically takes several months to complete
Director's Responsibility	Directors may remain involved but must cooperate with the administrator	Directors' responsibilities end once the CVL is initiated
Legal Fees	Generally higher costs due to restructuring and sale efforts	Relatively lower costs, primarily for asset liquidation and distribution

Advantages and Disadvantages of Administration

Advantages:

- **Rescue Opportunity:** Administration provides a potential route for the company to be rescued or restructured, either through a sale or business plan.
- **Creditor Protection:** The company is protected from creditor action, including legal proceedings and winding-up petitions, allowing it to trade and attempt recovery.
- **Business Continuity:** If a buyer is found, the company can continue to trade, saving jobs and potentially preserving value for stakeholders.
- **Better Creditor Returns:** Creditors may receive more from a business sale in administration than from immediate liquidation.

Disadvantages:

- **Costly Process:** The administration process can be expensive, particularly if a sale or restructuring is complicated.
- **No Guarantee of Rescue:** Not all companies will be successfully rescued, and in some cases, the company may still be liquidated if restructuring fails.
- **Loss of Control:** The directors lose control of the business, as the Administrator takes over.
- **Complexity:** The process can be complex and involve lengthy negotiations with creditors.

Advantages and Disadvantages of CVL

Advantages:

- **Voluntary Process:** A CVL allows directors to take the initiative in winding up the company and handling its insolvency, potentially avoiding the negative consequences of compulsory liquidation.
- **Creditors' Voluntary Agreement:** The company's creditors may receive a better return than if the company were wound up by the courts.
- **Personal Liability Protection:** Directors are generally protected from personal liability if they have acted correctly, and the company's debts are dealt with through the liquidation process.
- **Relatively Simple Process:** The process of liquidation is straightforward, and a liquidator is appointed to handle the company's assets and debts.

Disadvantages:

- **Company Ceases to Trade:** The business must stop trading immediately, and employees may lose their jobs.
- **No Chance of Rescue:** Unlike administration, CVL is not aimed at rescuing the company or restructuring the business. The company's assets are sold, and the business ceases to exist.
- **Creditors May Receive Less:** Creditors will likely only receive a portion of what they are owed, depending on the asset sale value.
- **Reputation Impact:** The company's closure could harm the reputation of the directors, especially if the company had a significant public profile.

Choosing Between Administration and CVL

The decision between entering administration or a CVL depends on the company's specific circumstances. Directors must carefully evaluate the financial position, the likelihood of rescuing the business, and the best interests of creditors.

When to Choose Administration:

- If the company has a reasonable chance of being rescueded through a restructuring or sale.
- If directors believe the company can continue to trade and generate value for creditors.
- If a business sale can bring in more value than liquidation.

When to Choose CVL:

- If the company is insolvent and there is no realistic chance of recovery.
- If the company is no longer viable and continuing to trade is not an option.
- If directors want to voluntarily wind up the company and comply with their legal duties.

Conclusion

Both **Administration** and **CVL** are valuable insolvency tools, but they serve different purposes. Administration is often appropriate for companies that have a chance of recovery or restructuring, while CVL is the path taken when the company is beyond recovery and must be wound up.

Directors must carefully consider the company's financial position, long-term prospects, and the interests of creditors when choosing between these two options. Seeking professional advice from an insolvency practitioner is essential to determine the most appropriate course of action.

If you need more specific advice or further details on either process, feel free to ask!