Options considered with the Directors

If your Company has debt problems, there are a number of possible alternatives that can help you to manage them. We will briefly summarise the advantages and disadvantages of each option and discuss them in the light of your Company's circumstances:

<u>Doing nothing discussed</u>
ADVANTAGES
No formal insolvency process entered
Maintain reputation of the Company and value of any goodwill
Directors maintain control of the Company

DISADVANTAGES
Any creditor may seek to wind-up the Company
Any execution or distress may occur
Risk of trading whilst insolvent - Directors personally liable for any losses
Directors may be disqualified from acting as a Director for up to 15 years if they traded whilst insolvent

<u>Informal arrangement discussed</u>
ADVANTAGES
No formal insolvency process entered
Maintain reputation of the Company and value of any goodwill
Directors maintain control of the Company

DISADVANTAGES
Agreement not binding
Any creditor may seek to wind-up the Company
Any execution or distress may occur
Risk of trading whilst insolvent - Directors personally liable for any losses
Directors may be disqualified from acting as a Director for up to 15 years if they traded whilst insolvent

<u>Re-financing discussed</u>
ADVANTAGES
No formal insolvency process entered
Maintain reputation of the Company and value of any goodwill
Directors maintain control of the Company

DISADVANTAGES
May require some form of personal guarantee from the Directors
and/or the granting of specific security over one or more of the Company’s assets
Depending on Company history, the availability of a re-financing solution may be restricted by the Company’s past credit history, the willingness of the Directors to guarantee any borrowing, whether the Company has any free assets to offer as security and the amount of secured borrowing it already has

Sale discussed

ADVANTAGES

Strong brand identity or intellectual property
Sale including the liabilities

DISADVANTAGES

Marketing and lead time to find a purchaser
Continuing deterioration of the situation
Purchaser may not be willing to take on the liabilities

Administration discussed

ADVANTAGES

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

DISADVANTAGES

Once an administrator is appointed, they take over the running of the Company from the Directors and are responsible for any decision to continue or discontinue trading and have control over how the Company and/or its assets are disposed of.
The ability to continue trading depends on the availability of funds for working capital

Company Voluntary Arrangement (CVA) discussed

ADVANTAGES

Enables the Company to compromise debts owed
Binds all creditors
Flexible
Directors retain control of the Company
Once the arrangement is successfully concluded the Company remains in the control of its existing shareholders and management
Company able to continue to trade without adverse publicity

DISADVANTAGES

No moratorium available unless small company or you go into administration first
Need to ensure that the issues leading to insolvency have been addressed otherwise the CVA will fail
HMRC will require all returns to be up to date before considering

Members' Voluntary Liquidation discussed

ADVANTAGES

A way to distribute the assets of the Company to shareholders
No investigation into the conduct of the Directors

DISADVANTAGES

Company must be solvent

<u>Creditors' Voluntary Liquidation discussed</u>
ADVANTAGES
Directors of an insolvent company can voluntarily take steps to wind up the Company
Limiting ongoing liability for trading whilst insolvent.

DISADVANTAGES
The Company will no longer be able to trade except as an orderly wind down
The Liquidator will take control of the assets

<u>Compulsory Liquidation discussed</u>
ADVANTAGES
The Company will no longer incur any further liabilities

DISADVANTAGES
Compulsory liquidation (CWU) is the process where the Court orders that the Company is wound up
Official Receiver is initially appointed Liquidator although they may subsequently be replaced by an Insolvency Practitioner
Once appointed, the Liquidator takes control of the Company from the Directors
The Company to cease trade except for an orderly wind down
Increased costs deducted from realisations