



# ***Glossary of Terms: Insolvency and Restructuring***



## Administration

**Administration** is the court supervised process by which a **Licensed Insolvency Practitioner** called an administrator takes control of an insolvent company with a view to saving the Company or its business or selling the assets for a better price than on a **Liquidation**. The job of the administrator is to act in the interests of creditors generally: compare this with the role of the **Administrative Receiver**. As soon as a company goes into **Administration** actions by creditors (e.g. to enforce court orders or repossess assets) are put on hold.

## Administrative Receiver

an **Administrative Receiver** is a **Licensed Insolvency Practitioner** appointed by the holder of a **Debenture** whose role is to sell secured assets for the benefit of the holder of the **Debenture**. A Company will generally go into **Liquidation** after **Administrative Receivership**. Generally a **Debenture** created after September 2003 no longer gives the holder of a **Floating Charge** the right to appoint an **Administrative Receiver**.

## Administrative Receivership

**Administrative Receivership** is the process under which a **Debenture** holder appoints a **Licensed Insolvency Practitioner** to take control of a Company's business with a view to realising assets to pay off the **Debenture** holder. This process cannot generally be used for **Debentures** created after September 2003.

## Bankrupt

a **Bankrupt** is an individual who is insolvent and whose affairs are being administered by a **Trustee in Bankruptcy**.

## Bankruptcy

**Bankruptcy** is a statutory process under which a **Licensed Insolvency Practitioner** called a **Trustee in Bankruptcy**, or the **Official Receiver**, collects in and sells the assets of a **Bankrupt** to pay off his liabilities.

## BIS

**BIS** stands for the Department for Business, Innovation and Skills.

## Commercial Rent Arrears Recovery

**Commercial Rent Recovery Arrears** ("CRAR") is a replacement for the remedy of **Distraint** which will be available to landlords of commercial premises when the relevant part of the Tribunals, Court and Enforcement Act 2007 comes into force (expected in April 2012).

## CVA

a **CVA** (Corporate Voluntary Arrangement) is a procedure under which 75% by value of the **Unsecured Creditors** of a Company agree to accept part payment of what they are owed and/or to accept delayed payment. This arrangement is supervised by a **Licensed Insolvency Practitioner**. Unlike an **Administration**, with a **CVA** the Directors stay in control of the Company. Typically creditors will be offered not less than 30p in the £: **VAT Bad Debt Relief** means that creditors will be able to claim unpaid VAT as relief from HMRC.

## Chattel Mortgage

a **Chattel Mortgage** is a mortgage created by a Company over specifically identified chattels (meaning plant, equipment or other movable assets). To be legally effective against the liquidator of a company, notice of such a charge must be given to Companies House on an **MR01 Form** within 21 days of

the creation of the mortgage.

## Compulsory Liquidation

a **Compulsory Liquidation** is a court initiated **Liquidation** commenced by the issue of a winding-up petition which must be advertised in the **London Gazette**.

## Corporate Rescue

**Corporate Rescue**, also known as "corporate recovery", refers to the saving of a Company or its business either by an informal or formal **Insolvency Procedure**.

## Creditor's Voluntary Liquidation

a **Creditor's Voluntary Liquidation** is a **Liquidation** initiated by the Directors of a Company and requiring a 75% vote in favour by the shareholders and where the Directors are unable to make a **Declaration of Solvency**.

## Crystallisation

**Crystallisation** refers to the point in time at which a **Floating Charge** takes effect to prevent the Company disposing of assets without the consent of the holder of a **Debenture**.

## Debenture

a **Debenture** is legal agreement entered into by a Company with a **Secured Creditor** (normally a Bank) under which various securities are given over the Company's assets: the securities typically include a **Floating Charge**. For the securities in a **Debenture** to be legally effective as against the liquidator of a Company, the **Debenture** must be registered at Companies House within 21 days of its creation together with an **MR01 Form**.



### Declaration of Solvency

a **Declaration of Solvency** is a statutory declaration made by Directors to the effect that a Company is expected to be able to pay its liabilities within a 12 month period. The declaration has annexed to it a **Statement of Assets and Liabilities**.

### Directors' Disqualification Order

a **Directors' Disqualification Order** is an order banning a person from being a Director of a Company or being concerned in its promotion or management. **Licensed Insolvency Practitioners** are required to report to **BIS** within 3 months of their appointment as to the conduct of each Director (or person who was a Director in the preceding 12 months). A person can be disqualified for up to 15 years.

### Distraint

**Distraint**, also known as "distress", means the legal process by which a bailiff or other Court Officer takes possession of goods with a view to selling them at auction. The net proceeds after the costs of sale are used to pay off the Judgment creditors (creditors who have obtained a court judgment), Landlord or HMRC each of whom can use this process. In the case of a Landlord and HMRC no Court Order is needed meaning a Company in financial difficulty can be at severe risk. Protection may be provided by **Administration**, a **Moratorium** ahead of a **CVA** or (to a certain extent) by a **Winding-up Petition**.

Distress for rent arrears will be abolished by the Tribunals, Court and Enforcement Act 2007 and replaced with new procedures. See **Commercial Rent Arrears Recovery**.

### Enterprise Act

The **Enterprise Act 2002** which established **Administration** as the preferred **Insolvency**

**Procedure** (instead of **Administrative Receivership**) for the sale of a business as a going concern by preventing the appointment of administrative receivers except under **Debentures** granted before September 2003.

### False Accounting

**False Accounting** refers to the making of incorrect accounting entries by a Company's Directors with a view to deceiving creditors. This is a criminal offence.

### Fixed Charge

a **Fixed Charge** is a charge over specific, identifiable property (which can include future property) which prevents the Company granting the charge from disposing of that property. A **Fixed Charge** will typically be granted over such assets as real property (land and buildings) and intellectual property which will need to be retained by the Company for the purposes of carrying on its business. Compare **Floating Charges** which are granted over assets, such as stock in trade, with which the Company will need to deal when carrying on its business.

### Floating Charge

a **Floating Charge** is a charge contained in a **Debenture** that enables a Company to give security whilst retaining possession and legal ownership of its assets and being able to sell them in the ordinary course of business until **Crystallisation**.

### MR01 Form

**MR01 Form** is the form filed at Companies House to give notice of a **Debenture** or other security and relevant particulars. This form puts other creditors on notice as to what security has been given to the creditor who has filed the form.

### IVA

**IVA** stands for 'Individual Voluntary Arrangement'. Under an **IVA** an individual reaches an agreement with 75% by value of its **Unsecured Creditors** to pay them only part of what they are owed and/or to defer payment to them. The process must be supervised by a **Licensed Insolvency Practitioner**.

### Insolvency

**Insolvency** can either be balance sheet insolvency (where liabilities exceed assets) or cash flow insolvency (where liabilities cannot be paid as they fall due).

### Insolvency Procedure

**Insolvency Procedure** means one or more of the procedures under the Insolvency Act 1986 in which assets are realised by a **Licensed Insolvency Practitioner** for the benefit of a Company's creditors.

### Judgment Debt

a **Judgment Debt** is the sum owed by a Company or individual to a creditor who has obtained a court judgment in his favour.

### Licensed Insolvency Practitioner

a **Licensed Insolvency Practitioner** is a person (usually an accountant) who is authorised by **BIS** to be responsible for **Insolvency Procedures**.

### Liquidation

**Liquidation** is the process of collecting in a company's assets and paying off its liabilities, also known as "winding up". Where the company's liabilities exceed its assets this process should be undertaken by a **Licensed Insolvency Practitioner** whose function is to



protect the Company's assets, hold Directors to account and pay creditors according to a statutory priority.

## London Gazette

the **London Gazette** is the official publication that lists insolvency events including advertisements in relation to winding-up petitions. A bank will freeze a company's bank account on seeing the advertisement.

## Members' Voluntary Liquidation

a **Members' Voluntary Liquidation** is a **Liquidation** initiated by the Directors of a Company and requiring a 75% vote in favour by the shareholders and where the Directors are able to make a **Declaration of Solvency**. Cf. a **Creditors Voluntary Liquidation**.

## Moratorium

a **Moratorium** is an arrangement under which a Company is given a period of time by the courts to reach a compromise with its creditors. A small company can have the benefit of a moratorium (up to 28 days) after they have posted **CVA** proposal to creditors. This works in a similar way to **Administration** to protect the Company but is a little used procedure. A company qualifies as a small company if it satisfies two of the following requirements:

- annual turnover must be not more than £6.5 million;
- balance sheet total must be not more than £3.26 million; and
- average number of employees must be not more than 50.

## Official Receiver

an **Official Receiver** is a Government Officer employed by the Insolvency Service to act as Liquidator of Companies and as Trustee in Bankruptcy of individuals.

## Phoenix Company

a **Phoenix Company** is a new company which takes over the business and assets of a company that has become insolvent. The name by which the insolvent company was known is a **Prohibited Name** unless certain procedures are followed. Failure to follow these procedures is a criminal offence and the Director becomes personally liable for all of the debts of the new company. See the Everyman Legal Fact Sheet entitled "**Phoenix Companies: Restrictions on the Re-use of Names following Insolvency**".

## Preference

a **Preference** is the act of preferring one creditor to another, e.g. by making a distribution to that creditor or granting some form of security for his debt in preference to the other creditors. This is unlawful if done with the intention of preferring the creditor but not if done with a view to saving the business.

## Prohibited Names

see **Phoenix Company**.

## Rescue Culture

the term **Rescue Culture** refers to the culture embodied in the **Enterprise Act** of saving businesses and jobs through Administration or other form or informal **Insolvency Procedure**.

## Secured Creditors

a secured creditor of a Company is a creditor who has taken **Security** over the Company's assets for the payment of debts due to them. A **Secured Creditor** is entitled to be paid before the **Unsecured Creditor** by reference to the realised value of the assets that are secured.

## Security

a **Security** over the assets of a company generally takes the form of a **Debenture** containing **Fixed Charges** and/or **Floating Charges** or can be a mortgage or legal charge over real property independent of a **Debenture**.

## Statement of Assets and Liabilities

a **Statement of Assets and Liabilities** is a statement of the Directors produced as part of an **Insolvency Procedure** in which they list the Company's assets and liabilities and the estimated shortfall to **Secured Creditors** and **Unsecured Creditors**.

## Striking Off

**Striking Off** is the process under which Companies House strike a Company from the Register, usually on the application of the directors of the Company. This procedure should not be used where the Company has assets because they will revert to the Crown as *bona vacantia* ("ownerless goods").

## Trustee in Bankruptcy

a **Trustee in Bankruptcy** is the person who is responsible for administering the estate of a **Bankrupt**.

## TUPE

**TUPE** stands for the Transfer of Undertakings (Protection of Employment) Regulations 2006. Under **TUPE**, the purchaser of a business from an **Administrator** can become liable under contracts of employment between the insolvent company and its employees (or former employees).

## Unsecured Creditors

an unsecured creditor of a Company is a



creditor who has not taken any form of security over the assets of the Company. An **Unsecured Creditor** is paid out after the **Secured Creditors** but since the **Enterprise Act** a pool of assets (broadly equal to 20% of those secured by floating charge) is distributed to Unsecured Creditors under certain circumstances.

## VAT Bad Debt Relief

**VAT Bad Debt Relief** enables an organisation to claim relief on VAT charged to customers which has not been paid.

## Voluntary Liquidation

a **Voluntary Liquidation** can either be a **Creditors' Voluntary Liquidation** (where the company's liabilities exceed its assets) or a **Members' Voluntary Liquidation** (where the company is solvent).

## Walking Possession

**Walking Possession** is the process where a bailiff who is distraining (see **Distrain**) allows a Company to retain possession of listed items for a 5 day period before he returns to collect them for auction if the Company cannot pay the debt allowed.

## Winding-up Petition

a **Winding-up Petition** is an application to the

Court for an order that a Company should go into **Compulsory Liquidation** because it is insolvent and unable to pay its debts as they fall due. This procedure should not be used for claims where there is a genuine dispute: here the creditor should first bring a court claim and then use the Judgment Debt as the basis for the petition. A petition cannot be advertised sooner than 7 days from service or later than 7 days from the hearing date. This time constraint allows a Company to apply to the Court or an order to restrain the advertisement of the petition in the **London Gazette**. A company's bankers will freeze its account when a petition is advertised.

## Wrongful Trading

the term **Wrongful Trading** refers to the risk for Directors of personal liability to contribute to the assets of a Company if they allow it to continue to trade when there is no reasonable prospect of avoiding insolvent liquidation.



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