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## Insolvency

### Insolvency - Ireland

#### 1 What are the different types and aims of insolvency proceedings?

In Ireland insolvency proceedings can be classified under the auspices of Corporate Insolvency or Personal Insolvency; the latter being substantially amended by the Personal Insolvency Act 2012 which provides additional alternatives to traditional bankruptcy. Corporate Insolvency includes winding-up by the court, voluntary winding-up (members' voluntary winding-up & creditors' voluntary winding-up), receivership and examinership. This fact sheet focuses primarily on Personal Insolvency.

Personal Insolvency Law in Ireland is governed by Bankruptcy Act 1988 (as amended) and the Personal Insolvency Acts 2012 to 2015 which provides three methods of debt resolution:

**Debt Relief Notice (DRN)** – for debts of up to €35,000 for people with virtually no assets and very low income. These arrangements are operated by the Money Advice and Budgeting Service (MABS).

**Debt Settlement Arrangement (DSA)** – for the agreed settlement of unsecured debts over a period of five or six years. Unsecured debt means debt which is not linked to any asset, for example credit card debt or credit union loans.

**Personal Insolvency Arrangement (PIA)** – for the agreed settlement of secured debt of up to €3 million (which can be increased by agreement) and unsecured debt over a period of six or seven years. Secured debt means debt which is linked to an asset, for example a mortgage on a house.

**Bankruptcy** is an option for debtors who due to their circumstances do not meet the eligibility criteria for the three debt solutions or have previously entered into one of the debt solutions but the arrangement with the creditors proved unsustainable. As soon as a debtor is made bankrupt their unsecured debts are written off in full, however, all of their assets become the property of the Official Assignee. In order to petition for Bankruptcy a debtor must have made reasonable efforts to reach an appropriate arrangement with his creditors by making a proposal for a DSA or PIA to the extent that his circumstances permit. The Personal Insolvency Act 2012 reduced the length of bankruptcy from 12 years to 3 years (subject, where applicable, to an Income Payment Order for the surplus of the debtor's income over his or her reasonable living expenses, which may extend bankruptcy to five years).

Bankruptcy must be distinguished from corporate insolvency.

Personal Insolvency: s.2(1) of the Personal Insolvency Act 2012 states that ““bankruptcy” shall be construed in accordance with the Bankruptcy Act 1988;” Section (2)1 of the 1988 Act states that “ “insolvent”, in relation to a debtor, shall be interpreted as meaning that the debtor is unable to pay his or her debts in full as they fall due;”.

The courts have also defined bankruptcy: "it is a law for the benefit and relief of creditors and their debtors, in cases in which the latter are unable or unwilling to pay their debts."

*In Re Reiman 20 [Fed Cas No.11, 673: 20 Fed Cas 490, 494 (1874)].*

When adjudicated bankrupt, all of a debtor's property is transferred to a person called the Official Assignee in Bankruptcy, head of the, Bankruptcy Division within the Insolvency Service of Ireland. The Official Assignee then arranges for the property to be sold and the proceeds generated distributed to creditors. The Official Assignee also deals with creditors. The powers, duties and functions of the Official Assignee are set out in part III of the Bankruptcy Act 1988. The Official Assignee retains his independent statutory position under the Bankruptcy Act 1988 as administrator of bankruptcies and is answerable to the High Court. Once adjudicated bankrupt, the individual is entitled to have a reasonable standard of living. This includes provision for food, clothing, education, healthcare and a modest allowance for savings.

Bankruptcy law applies only to debtors who are individuals. It is contained in the Bankruptcy Act 1988.

#### 2 What are the conditions for opening each type of insolvency proceedings?

##### Debt Relief Notice (DRN)

**A DRN enables an eligible insolvent debtor with limited disposable income and assets to write off his or her qualifying debts of up to €35,000 in circumstances where he/she is insolvent and it is unlikely that his/her financial situation will improve in the next 3 years.**

In addition, the debtors must:

have a net monthly disposable income of €60 or less after reasonable living expenses (which will be calculated by a Approved Intermediary [1] (AI) on a case by case basis using a standard template);

have assets of €400 or less (debtors are also allowed 1 item of jewellery not exceeding a value of €750, one motor vehicle worth a value of €2,000 or less and reasonably necessary household equipment/tools the combined value of which may not exceed €6,000);

be domiciled must in the Republic of Ireland, or must have, within the past year ordinarily resided or had a place of business within the Republic of Ireland;

have completed and signed a Prescribed Financial Statement (PFS) and made a Statutory Declaration that it is true and accurate;

An AI is required to sign a statement of satisfaction as to the eligibility of the debtor and the truth and accuracy of the debtor's PFS

Type of debt that may be included in a DRN:

- Credit card debt
- Overdrafts
- Personal Loans
- Credit Union Loans
- Utility bills
- Store cards

Excludable Debts in a DRN (requires consent of creditors to be included):

- Taxes, duties, levies owed or payable to the State
- Local government charges
- Amounts due to the Health Service Executive under the Nursing Home Support Scheme
- Annual service charges to owner's management companies (apartments and housing estates)
- Liabilities arising under the Social Welfare Consolidation Act 2005

- Local authority rates
- Household charges

Excluded Debts (cannot be included in DRN)

- Family maintenance payments under Court orders
- Court fines in respect of criminal offences
- Liabilities arising out of personal injury or wrongful death claims awarded by the Court
- Liabilities arising from loans obtained by fraud

Note: this is not an exhaustive list.

### **Debt Settlement Arrangement (DSA)**

A person is eligible to seek a DSA if he or she;

is unable to pay his or her debts in full as they fall due;

has one or more unsecured creditors;

is domiciled in the Republic of Ireland, or , within the past year, ordinarily resided or had a place of business within the Republic of Ireland;

has completed a Prescribed Financial Statement (PFS) and made a signed statutory declaration that it is true and accurate;

has obtained a statement from a Personal Insolvency Practitioner (PIP)[2] which confirms that the PIP is of the opinion that:

- the information in the PFS is true and accurate;
- the debtor is eligible to make a proposal for a DSA; and
- having considered the PFS there is no likelihood of the debtor becoming solvent in the next 5 years;

- if the debtor enters into a DSA there is a reasonable prospect they will become solvent within the next 5 years.

The type of debt that may be included in a DSA:

- Personal loans
- Credit Union loans
- Business/commercial loans
- Credit card loans
- Store cards
- Overdrafts
- Personal guarantees

"Excludable Debts" (requires consent of creditors to be included in DSA):

- Taxes, duties, levies owed or payable to the State
- Local government charges
- Amounts due to the Health Service Executive under the Nursing Home Support Scheme
- Annual service charges to owner's management companies (apartments and housing estates)
- Liabilities arising under the Social Welfare Consolidation Act 2005
- Local authority rates
- Household charges

"Excluded debts" (debts that cannot be included in DSA):

- Family maintenance payments under Court orders
- Court fines in respect of criminal offences
- Liabilities arising out of personal injury or wrongful death claims awarded by the Court
- Liabilities arising from loans obtained by fraud
- Secured debts

Note: This list is not exhaustive

A debtor may only seek a DSA via a PIP who will act on his or her behalf throughout the process.

### **Personal Insolvency Arrangement (PIA)**

A person is eligible to seek a PIA if he or she;

is unable to pay debts in full as they fall due;

owes debt to at least one secured creditor holding security over Irish property or assets;

has secured debts of less than €3 million, (If all the secured creditors consent, this limit may be increased.);

has co-operated under a mortgage arrears process for a period of 6 months with the secured creditor in respect of the principal private residence and the result was that no alternative repayment arrangement was agreed or the secured creditor confirmed it would not put in place such an arrangement<sup>2</sup> ;

is domiciled in the Republic of Ireland, or has, within the past year ordinarily resided or had a place of business within the Republic of Ireland;

has completed and signed a Prescribed Financial Statement (PFS) and made a Statutory Declaration that it is true and accurate;

has obtained a statement from the Personal Insolvency Practitioner (PIP) confirming that the PIP is of the opinion that:

- the information in the PFS is true and accurate;
- the debtor is eligible to make a proposal for a PIA;
- having considered the PFS there is no likelihood of the debtor becoming solvent in the next 5 years;
- if the debtor enters into a PIA there is a reasonable prospect they will become solvent within the next 5 years.

The type of debt that may be included in a PIA:

- Principal private residence housing loans
- Investment property loans
- Buy to let mortgages/loans
- Personal guarantees
- Personal loans
- Credit Union loans
- Business/commercial loans
- Credit card loans

"Excludable Debts" (requires consent of creditors to be included in PIA):

- Taxes, duties, levies owed or payable to State
- Local government charges
- Amounts due to the Health Service Executive under the Nursing Home Support Scheme
- Annual service charges to owner's management companies (apartments and housing estates)
- Liabilities arising under the Social Welfare Consolidation Act 2005
- Local authority rates
- Household charges

"Excluded debts" (debts that cannot be included in PIA):

- Family maintenance payments under Court orders
- Court fines in respect of criminal offences
- Liabilities arising out of personal injury or wrongful death claims awarded by the Court
- Liabilities arising from loans obtained by fraud

Note: This list is not exhaustive

#### **New Court Review where creditors refuse PIA proposal**

The Personal Insolvency (Amendment) Act 2015 introduced an independent review by the Courts where a proposal for a PIA which includes arrears on the borrower's home mortgage has been refused by creditors.

Previously, where a proposed Personal Insolvency Arrangement was voted on by the creditors it had to be approved by the necessary majorities of secured and unsecured creditors.

#### **Bankruptcy**

There are several steps which the debtor must take when he or she has decided (alone or with professional advice) to initiate proceedings to be adjudicated bankrupt.

The process is summarised below:

Lodge €200 with the Official Assignee

Complete a petition, which must be verified by a sworn affidavit and a sworn statement of affairs

File the above documents plus receipt for €200 with the Examiner's Office

Attend the court hearing on the date allocated by the Examiner's Office, where the judge, if satisfied, will adjudicate the debtor bankrupt

Liaise with the Bankruptcy Division case manager/case team to be interviewed about his or her assets and debts

Liaise with the Examiner's Office of the High Court in order to advertise a notice of his or her Statutory High Court Sitting in *Iris Oifigiúil* (the State gazette) and on the ISI's website or in a national daily newspaper

Attend the statutory High Court sitting. Creditors (or any member of the public may attend this Statutory Sitting (unless Court directs otherwise).

Substantive Conditions:

Debt must be a liquidated amount and not less than €20,000

There are also conditions relating to domicile/residence within the State (Section 11 of the Act)

Either a debtor or a creditor can initiate bankruptcy proceedings.

Publication Requirements:

A debtor who is adjudicated bankrupt can publish the required notice on the ISI's website, free of charge, as an alternative to a newspaper advertisement. It is still necessary to advertise in the State gazette, *Iris Oifigiúil*, and pay the required fee.

### **3 What is the role of the various participants in each type of proceedings?**

#### **Debt Relief Notice (DRN)**

Debtor

Meets Approved Intermediary (AI) to give an overview of his or her financial situation.

If eligible and wishes to apply for a DRN confirms in writing to the AI.

Gathers the relevant documents and completes application forms.

Creditor

May appeal inclusion in a DRN

Approved Intermediary

Sends DRN application on behalf of debtor to the Insolvency Service of Ireland.

Insolvency Service of Ireland (ISI)

If application is in order ISI sends it to the Court

Enters details of DRN on a public Register when it is granted.

Court

Issues a DRN.

#### **Debt Settlement Arrangement (DSA)**

Debtor

Appoints Personal Insolvency Practitioner (PIP)

Provides PIP with full details of his or her financial situation – Prescribed Financial Statement (PFS).

If eligible, completes application form and makes statutory declaration.

Agrees proposal formulated by PIP for the DSA/creditors meeting.

Implements approved DSA and pay monies to creditors through the PIP as per terms of DSA.

Participates in reviews of DSA (at least annually).

Creditor

Vote on proposed DSA at creditors meeting.

Personal Insolvency Practitioner (PIP)

Advises debtor on suitability for DSA.

On receipt of DSA application makes application to Court for Protective Certificate which protects the debtor against legal proceedings or other actions by a creditor in respect of debts for a limited time while a DSA is being put in place.

Liaises with creditors.

Formulates DSA proposal.

Issues to creditors details of proposed DSA and completed PFS.

Calls meeting with creditors.

Insolvency Service of Ireland (ISI)

Maintains on its website a list of licensed PIPs. Reviews DSA application.

Records details of Protective Certificate on public register.

Records details of DSA approved by creditors on public register. Records in the public Register of Debt Settlement Arrangements notice of completion upon successful completion of DSA.

Removes from Register of Debt Settlement Arrangements all information recorded in it in respect of DSA, within 3 months of completion of DSA.

If relevant, records the failure of the DSA on the Register of Debt Settlement Arrangements and removes those details within 3 months after the date on which the arrangement would have ended, had it not failed.

Court

Considers application for DSA, and if approves application, issues a Protective Certificate.

Considers approving DSA subject to any creditor's objection where the DSA has been approved at the creditors' meeting by 65% of creditors in value.

#### **Personal Insolvency Arrangement (PIA)**

Debtor

Provides full details of his or her financial circumstances to PIP.

Appoints PIP if he or she wishes to apply for a PIA.

Completes financial statement (Prescribed Financial Statement (PFS)).

Signs statutory declaration affirming that the PFS is a complete and accurate statement of assets, liabilities and expenditure.

Liaises with PIP in order for the PIP to prepare a proposal for a PIA, once the Court has issued a Protective Certificate,

Reviews draft proposal prepared by the PIP.

Gives consent to PIP to calling creditors to a meeting to approve the PIA, if he or she approves the proposal.

Implements terms of PIA following Court approval.

Makes payments to creditors through the PIP for the duration of the PIA.

Completes PFS for review of PIA (at least annually).

Creditor

Votes on proposed DSA at creditors meeting.

Personal Insolvency Practitioner (PIP)

Advises debtor of available options to address his or her financial difficulties and assesses whether the debtor meets the qualifying criteria for a PIA.

Provide information on PIA and the likely costs.

Assists debtor in filling out a detailed financial statement - Prescribed Financial Statement (PFS). 8.

After completing the PFS, the PIP further advises debtors of available options for addressing his or her financial difficulties, on eligibility for a PIA and if a PIA is the most appropriate option.

Prepares a statement confirming that he or she is of the opinion that:

- the information in the PFS is true and accurate;
- the debtor is eligible to make an application for a PIA;
- there is no likelihood of the debtor becoming solvent within 5 years;
- if the debtor enters into a PIA there is a reasonable prospect of the debtor becoming solvent within 5 years.

Submits completed application to ISI for consideration.

Notifies debtor when Court issues Protective certificate.

Prepares a proposal for a PIA in consultation with debtor and creditors.

Drafts proposal for a PIA for approval by debtor.

Circulate proposed PIA and PFS to creditors.

Notifies creditors and ISI when PIA approved at creditors meeting.

Notifies debtor whether Court has approved PIA.

Monitors implementation of PIA.

Reviews PIA at least annually and circulates most recent PFS to creditors.

Informs debtor, creditors and ISI of successful completion of PIA.

Insolvency Service of Ireland (ISI)

Considers completed application for PIA.

Forwards application to the appropriate Court for approval and issue of Protective Certificate.

Enters name, address and year of birth of debtor and date of issue of Protective Certificate to the Register of Protective Certificates on ISI website.

Notifies the Court where PIA has been approved at creditors' meeting.

Enters name, address and year of birth of debtor and date of commencement of PIA in the Register of Personal Insolvency Arrangements on ISI website.

Records successful completion of PIA on Register of Personal Insolvency Arrangements.

Removes from ISI information relating to debtor within 3 months of receiving notification of successful completion of PIA.

Court

Considers application for PIA, and if approves application, issues a Protective Certificate.

Considers approving PIA subject to any creditor's objection where the PIA has been approved at the creditors' meeting.

#### **Bankruptcy**

Only the High Court can adjudicate someone bankrupt.

A bankrupt person must deliver all books of account or other papers regarding his or her estate to the Official Assignee, deliver possession of divisible property to the Official Assignee, file a statement of affairs, disclose any property to the acquired post adjudication to the Official Assignee.

Section 123 of the Bankruptcy Act, 1988 sets out 16 separate offences committable by the individual all of which fall under the broad heading of failure to co-operate with the Court in the administration of the Bankrupt's estate.

#### **4 What are the effects of the opening of proceedings?**

##### **Debt Relief Notice (DRN)**

There is a 3 year supervision period from the date of issue of a DRN. During that time the creditor(s) listed in the DRN cannot pursue the debtor for debts specified in the DRN. This does not apply to secured creditors.

The debtor must inform Insolvency Service of Ireland (ISI) of any material change in circumstances, where monthly net income increases by €400 or more, or where the debtor receives a gift or sum of money of €500 or more. In such cases 50% must be surrendered to the ISI for the benefit of creditors.

At the end of the 3 year supervision period, all debts listed in the DRN will be written off in full. Details of the DRN will also be removed from the public Register for Debt Relief Notices and creditors will be notified of that fact. The ISI will issue a Debt Relief Certificate to the debtor confirming his or her discharge from the debts listed in the DRN.

#### **Debt Settlement Arrangement (DSA)**

A debtor who applies for a DSA is required to act in good faith in dealings with the PIP and to make a full disclosure to the PIP of all his or her assets, income and liabilities and any circumstances that may have a bearing on the application. The debtor has a duty to comply with any reasonable request from the PIP to provide assistance, documents and any information deemed necessary including debt, employment, business, social welfare or other financial records.

A debtor in a DSA must inform the PIP of changed circumstances during the lifetime of the arrangement which affects his or her ability to make repayments under the DSA.

The debtor may not obtain credit either on his or her own or with any other person for an amount of more than €650 from any person, without informing that person that he or she is subject to a DSA.

The debtor may not transfer, lease, grant security over, or otherwise dispose of any interest in property above a prescribed value other than in accordance with the DSA.

The debtor may not pay to creditors any additional payments separate to the PIA in respect of debts covered in the DSA.

#### **Personal Insolvency Arrangement (PIA)**

A debtor who applies for a PIA is required to act in good faith in dealings with the PIP and to make a full disclosure to the PIP of all his or her assets, income and liabilities and any circumstances that may have a bearing on the application. The debtor has a duty to comply with any reasonable request from the PIP to provide assistance, documents and any information deemed necessary including debt, employment, business, social welfare or other financial records.

A debtor in a PIA must inform the PIP of changed circumstances during the lifetime of the arrangement which affects his or her ability to make repayments under the PIA.

The debtor may not obtain credit either on his or her own or with any other person for an amount of more than €650 from any person, without informing that person that he or she is subject to a PIA.

The debtor may not transfer, lease, grant security over, or otherwise dispose of any interest in property above a prescribed value other than in accordance with the PIA.

The debtor may not pay to creditors any additional payments separate to the PIA in respect of debts covered in the PIA.

#### **Bankruptcy**

Upon adjudication debt is written off. All property of a bankrupt person becomes vested in the Official Assignee who now administers the estate. Unsecured creditors can no longer seek repayment directly. They must deal directly with the Official Assignee. The bankrupt person must contribute any surplus income (following deduction of Reasonable Living Expenses based on his or her personal/family circumstances) to the Official Assignee. The bankrupt person's name will appear in the public Bankruptcy Register, which is kept in the Office of the Examiner of the High Court.

#### **Income**

The Official Assignee will negotiate an Income Payment Agreement or seek an Income Payment Order for the surplus of the individual's income over the reasonable living expenses, based on [the ISI's guidelines](#). The agreement or order will last up to 5 years. No deductions are made from social welfare payments.

#### **Assets**

All assets, with the exception of necessities up to a value of €6,000, are transferred to the Official Assignee, who will sell them.

The individual is entitled to retain the following as 'excluded items' from bankruptcy to a value of €6,000, although he/she may apply to the court to increase that figure:

Clothes

Furniture and tools or equipment relating to trade

Necessities for your family and any dependent relatives living with you

Once the assets are sold, the Official Assignee will pay costs, fees, expenses, and certain priority debts, such as taxes, and distribute the remainder among unsecured creditors.

If the bankrupt individual acquires assets after the date when he/she is made bankrupt (for example, through inheritance) the Official Assignee can claim them and sell them for the benefit of creditors.

If the bankrupt individual owns a family home, by him/herself or with another person, the Official Assignee may only sell it with the permission of the court. Where this permission is sought, the court will balance the interests of creditors against the interests of family and may decide to postpone the sale of the home.

If a bankrupt individual holds property jointly (for example, with a spouse or civil partner) the bankruptcy will cause the joint ownership to be split between the Official Assignee and the non-bankrupt co-owner.

Section 3 of the Bankruptcy Act, 1988 defines property as including "money, goods, things in action, land and every description of property, whether real or personal and whether situate in the State or elsewhere; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined".

#### **5 What are the specific rules related to certain categories of claims?**

Categories of Claims to be lodged

1. Preferential Claims

2. Non Preferential Claims

The several claims within each of the above categories rank *pari passu* as between themselves.

Preferential Claims, as a generality, include rates, taxes and social insurance contributions. They are set out in detail in Section 81 et seq. of the Bankruptcy Act 1988 (as amended).

Third Parties' Rights

These are quite limited and are dealt with in part III of the Act. Particular reference is made to property held by the Bankrupt as a Trustee and there are certain limitations on the Official Assignee's powers in relation to copyright.

#### **6 What are the rules relating to detrimental acts?**

Annulment of a Bankruptcy

Section 16 of the Act sets out a procedure whereby a bankrupt individual may "show cause" against the validity of the Adjudication Order. Showing cause is a limited form of appeal against adjudication which requires that the Court be satisfied that one or more of the requirements set out in Section 11(1) of the Bankruptcy Act 1988 have not been met. If a bankrupt individual succeeds in showing cause then the Court is required to annul the bankruptcy. If the bankrupt individual fails in an application to show cause there is a right of appeal to the Court of Appeal.

#### **7 What are the conditions for the lodgment and admission of claims?**

Lodgment and admission of Claims:

This is dealt with in the First Schedule to the Bankruptcy Act.

Only Creditors who prove their claims in the Bankruptcy can share in any dividend. The Official Assignee can fix the time within which claims must be submitted. Proof of Debt may be furnished by way of a detailed statement of account, an affidavit of debt or other prescribed means.

#### **8 What are the rules relating to reorganisation proceedings?**

Not relevant to Bankruptcy except for the Petition for Arrangement referred to under "Pre Insolvency Proceedings" at Question 2. above.

#### **9 What are the rules relating to the winding-up proceeding?**

Winding-up in Irish Law is a term relating to the Liquidation of Companies and therefore not relevant to bankruptcy. Realisation of assets and distribution of proceeds in a bankruptcy are dealt with in Part III of the Bankruptcy Act 1988 (as amended).

#### **Discharge from bankruptcy**

A bankrupt individual is automatically discharged from bankruptcy 3 years after the order of adjudication unless the bankruptcy has been extended by the High Court which has the power to so extend for up to an additional 5 years where it has found there has been a failure to co-operate by the bankrupt individual in the realisation of assets or where income or assets have not been disclosed by the bankrupt. An extension application can be made by the Official Assignee, a Trustee or a creditor. An individual's name will remain on the register, as a discharged bankrupt. If there is an *Income Payment Order* in place, an individual still has to comply with it until it expires. An *Income Payment Order* can last up to 5 years.

An individual can also be discharged from bankruptcy earlier than 3 years if certain conditions are met.

If all the costs, fees, expenses and preferential debts (such as certain tax debts) in the bankruptcy have been paid, it is possible to be discharged from bankruptcy early in any of the following ways:

1. If the unsecured creditors have been paid in full ("100% dividend")

2. If the unsecured creditors give their consent.

3. Where 60% in number and value of the unsecured creditors agree to accept an offer in settlement of their debt (called an Offer of Composition).

When a bankruptcy has been discharged on grounds 1 to 3 above, any money or property remaining in the estate is returned to the individual, provided all the costs, court fees, expenses and preferential debts of bankruptcy are paid.

Where a bankruptcy has been automatically discharged after 3 years assets continue to vest in the Official Assignee.

#### **Stigma**

When an individual has been adjudicated bankrupt, he or she will be guilty of an offence if:

The person does not disclose the bankruptcy when obtaining credit of €650 or more.

When trading in a name other than that in which he or she was made bankrupt.

He or she acts as a director, manager, auditor, liquidator or receiver of a company without permission of the court (this is pursuant to section 183 of the Companies Act rather than the Bankruptcy Act).

These offences carry a maximum penalty of 5 years in prison and a fine of €1,270.

#### **Other consequences of bankruptcy are:**

If wishing to travel outside the State, the individual should tell the Official Assignee. Those declared bankrupt cannot be granted an **enduring** power of attorney on behalf of someone else, and if already in possession of said, it is automatically revoked when declared bankrupt.

Under the [Charities Act 2009](#), the individual may not be a trustee of a charity if adjudicated bankrupt.

Some professional bodies disqualify members who are adjudicated bankrupt

Forms required to apply for bankruptcy include:

No. 13 Petition and an affidavit of Petitioner

No. 23 Statement of Affairs,

No. 15 Order of Adjudication

No. 19 Notice of Adjudication

No. 46 Warrant of Seizure Section 27 Bankruptcy Act 1988

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[1] Approved Intermediaries (AIs) are people who have been approved by the Insolvency Service of Ireland to act on the debtor's behalf as intermediaries in the DRN process. While they act on behalf of the debtor, AIs also have a number of statutory obligations to creditors.

[2] A Personal Insolvency Practitioner (PIP) has functions under insolvency legislation and is authorised and regulated by the Insolvency Service of Ireland. A PIP liaises between the debtor and the creditors in relation to a Debt Settlement Arrangement (DSA) or a Personal Insolvency Arrangement (PIA). The PIP advises the debtor directly and negotiates the arrangement on his or her behalf. While the PIP acts on behalf of a debtor, the PIP also has a number of statutory obligations to creditors.

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## **Insolvency - Malta**

### **1 What are the different types and aims of insolvency proceedings?**

A distinction is to be made between traders and companies – under Maltese law traders are declared bankrupt while companies are declared insolvent. Bankruptcy: every trader who suspends payments of his debts is in a state of bankruptcy. The trader or his lawful representative can make a declaration of this state before the Civil Court, First Hall. Such a declaration can also be made by the creditors. Bankruptcy of traders is regulated by Articles 477 et seq of the Commercial Code (Chapter 13 of the Laws of Malta).

Dissolution: this procedure precedes the winding up and subsequently the striking off of a company.

Appointment of a provisional administrator: this is not a stand-alone procedure under Maltese Company law. The provisional administrator is a court-appointed official who is bestowed with powers and functions relative to the administration of the state or business of the company.

Members' voluntary winding up: this is a procedure that can be adopted for the purpose of winding up of a company which is solvent. Under this procedure, the directors make a declaration during the month immediately preceding the resolution to wind up that they have made a full inquiry into the company's affairs and that they have formed the opinion that the company will be able to pay its debts in full within a maximum of 12 months from the date of resolution.

Creditors' voluntary winding up: This procedure commences subsequent to an extraordinary resolution of the members of the company. The winding up commences on the date of resolution for dissolution and consequential winding up of the company (or such later date as may be specified in the resolution) and the company is deemed to be dissolved on that date.

Court winding up: may be commenced by the application to court made by any interested person. Where a winding up order has been made, the company shall be deemed to have been dissolved at the time of filing of the winding up application. A court winding up is a court-controlled process, although many of the day-to-day activities will be exercised by the official receiver or liquidator.

Company reconstruction: this is a scheme of compromise or arrangement proposed between a company and its creditors, or class of them, or between the company and its members' or any class of them.

Company recovery procedure: this procedure is commenced by an application made to the court when a company is unable to pay its debts or is imminently likely to become unable to pay its debts. A company recovery order will be made for a maximum of 12 months, extendable for an aggregate maximum of 12 months. At the end of every four months from the date of the order, the special controller shall submit to the court a comprehensive report in writing on the proceedings of his administration and of his proposals regarding the prospects for the recovery of the company as a viable concern in whole or in part. At the conclusion of the special controller's period of appointment (unless otherwise terminated earlier) he will submit a detailed report to court as to whether or not the company has a reasonable prospect of continuing as a viable concern in whole or in part and whether the company will be in a position to repay its debts regularly in the future. If the report is positive, it will include a detailed recovery plan which, if approved by the court (whether or not with amendments), will be binding on all interested parties for all purposes of law. If the report is negative, or the company recovery procedure is otherwise terminated due to the lack of reasonable prospect of the company continuing as a viable going concern which could pay its debts regularly in the future, the court will order that the company is wound up by the court.

## **2 What are the conditions for opening each type of insolvency proceedings?**

Bankruptcy: The declaration of bankruptcy by the trader shall contain his name and surname, and must state the nature of the business carried on by him, the name, surname and other particulars of each of his creditors together with their place of residence, and the quality and nature of the debts. Together with the declaration, the trader is to file all commercial books and papers. Where a trader has presented such declaration, the court registrar, by letter, call upon the creditors mentioned in the declaration to appear before the Civil Court, First Hall, there to show cause why their debtor should not be declared to be in a state of bankruptcy, and in order that curators may be appointed. The registrar shall cause the declaration to be published, by means of a notice containing an abstract of the same, in the Government Gazette and in one or more newspapers. On the other hand, when a demand for a declaration is made by a creditor, the party making the demand shall give security in an amount not exceeding €465.87 by way of penalty in favour of the party against whom the demand is made.

Dissolution: A company will be dissolved and consequently wound up where the company has by extraordinary resolution resolved that it be dissolved and consequently wound up either by the court or voluntarily. The Companies Act does not specify or place any limitation on the grounds which can form the basis of a decision of the shareholders to wind up the company. A company may also be dissolved and eventually wound up following a court application. A company may be dissolved and eventually wound up by the court in the event that the business of the company is suspended for an uninterrupted period of 24 months or if the company is unable to pay its debts. Furthermore, the Companies Act provides that a company shall be dissolved by the court, and wound up either by the court or voluntarily (in accordance with the court's discretion) in any of the following cases:

where the number of members of the company is reduced to below two and remains so reduced for more than six months. This does not apply to single member companies;

where the number of directors is reduced to below the minimum prescribed by law and remains so reduced for a period of six months;

if the court is of the opinion that there are grounds of sufficient gravity to warrant the dissolution and consequent winding up of the company; or

when the period stipulated in the memorandum and articles for the expiration of the company has expired, or an event occurs on the occurrence of which the memorandum or articles provide that the company is to be wound up, and there has been no extraordinary resolution to the effect that the company should be wound up voluntarily.

Appointment of provisional administrators: Under the Companies Act, the court may, in the course of a winding up by the court, by order appoint a provisional administrator at any time after the presentation of a winding up application and before the making of a winding up order and either the official receiver or any other competent person may be so appointed.

Member's voluntary winding up: A members' voluntary winding up occurs following an extraordinary resolution of the general meeting of the company.

Following such a resolution, the company must deliver a notice of the relevant resolution to the Registrar of Companies within 14 days of the resolution. The directors of the company must make a declaration during the month immediately preceding the resolution to wind up that they have made a full inquiry into the company's affairs and that they have formed the opinion that the company will be able to pay its debts in full within a maximum of 12 months from the date of the resolution.

Creditors' voluntary winding up: creditors' voluntary winding up takes place subsequent to an extraordinary resolution of the company members and the dissolution of the company will be deemed to have occurred as at the date of the resolution. A notice of the resolution must be delivered to the Registrar within 14 days of the dissolution.

Winding up by the Court: An application to the court may be made either by the company itself following a decision of the general meeting or by its board of directors or by any debenture holder, creditor/s or by any contributory or contributories. This is the only method by which a creditor can initiate a winding up. A limited power to initiate winding up proceedings is also granted to the Registrar of Companies.

Company reconstruction: this procedure requires a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting.

Company recovery procedure: Where a company is unable to pay its debts or is imminently likely to become unable to pay its debts, a company recovery application may be made to the court. Such an application requests the court to place the company under the recovery procedure and to appoint a special

controller to take over, manage and administer the business of the company for a period to be specified by the court. The application may be made by the company following an extraordinary resolution, by the directors following a decision of the board of directors, or by the creditors of the company representing more than half in value of the company's creditors.

### **3 What is the role of the various participants in each type of proceedings?**

**Curator of a bankrupt trader:** The court by the judgment declaring the bankruptcy, whether the proceedings were taken upon the declaration of the bankrupt himself or upon the demand of the creditors, appoint one or more curators to exercise the functions assigned to them. The curators shall cause a notice containing an abstract of the judgment declaring the bankruptcy to be published in the Government Gazette and in one or more newspapers. The possession of all property and all rights of any kind whatsoever belonging to the bankrupt, as well as all rights and property which he may acquire until his discharge, shall vest in the curators. Furthermore, the curator takes possession of every other thing which is still in the possession of the bankrupt or belongs to him. The curators shall receive all sums due to the bankrupt. The curators shall sell, by means of a licensed auctioneer, such goods and merchandise as are perishable, after stating their reasons to the judge and obtaining his authority. Non-perishable merchandise cannot be sold by the curators, before the proceedings relating to the composition or arrangement provided for in the following articles have taken place, except in pursuance of a judgment of the court upon a sworn application issued against the parties interested. It shall be lawful for the curators, with the authority of the judge, to continue to carry on the business of the bankrupt, where they are of opinion that the continuation of such business will afford a means of re-establishing the bankrupt's affairs, or of increasing his assets for the benefit of the creditors. The curators, on entering upon the duties of their office, must take every necessary step for the preservation of the rights of the bankrupt as against his debtors; they shall also cause to be registered in the Public Registry any hypothec affecting the property of the debtors of the bankrupt if he has failed to do so. It shall be the duty of the curators to sue for the payment of the debts, of whatsoever kind, due to the bankrupt, for the benefit of the creditors, but it shall not be lawful for the curators to make any compromise or refer any dispute to arbitration, without the consent in writing of the majority in value of the creditors of the bankrupt, and the authority of the judge. Within the period of one month from the judgment declaring the bankruptcy, the curators shall, notwithstanding any appeal from such judgment, make up an inventory of the bankrupt's property.

**Provisional administrator:** in the course of the winding up by the court, the court may by order appoint a provisional administrator at any time after the presentation of a winding up application and before the making of a winding up order and either the official receiver or any other competent person may be so appointed. The provisional administrator holds office until such time as the winding up order is made or the winding up application is dismissed unless before such time he resigns or is removed by the court upon good cause being shown. During a winding up by the court, the provisional administrator will take into his custody or under his control all the property and all rights to which he has reasonable cause to believe the company to be entitled. The provisional administrator may, if he is satisfied that the nature of the estate or business of the company, or the interest of the creditors or contributories, generally require the appointment of a special manager, apply to court and request the appointment of a special manager. The court may accede to such request at its discretion. The special manager will be entrusted with such functions and powers as the court may direct.

**Official receiver:** where the court has made a winding up order or appointed a provisional administrator, the official receiver shall receive a statement as to the affairs of the company and this should be done in the prescribed form or any form which the official receiver accepts, verified by affidavits and showing the particulars of its assets, debts and liabilities, names, residence and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further information as may be prescribed or as the official receiver may require. When a winding up order is made, the official receiver shall as soon as practicable carry out such investigations as s/he may deem appropriate and submit to the court a preliminary report. This is regulated by the Companies Act (Chapter 386 of the Laws of Malta) namely Articles 225 – 227. When there is a procedure of court winding up, the official receiver by virtue of his office and upon notification by the court, becomes the liquidator of the company and continues in office until another person becomes liquidator (Article 229).

**Liquidator:** the creditors and the contributories at their respective meetings may nominate a person to be liquidator. The nomination by the creditors shall be made by resolution of the creditors, and the nomination by the contributories shall be made by a resolution of the contributories. Where no person is nominated by the creditors and contributories to act as liquidator, the official receiver may, at any time, apply to the court for the appointment of a liquidator. Whether a company is being wound up by the court, the liquidator or provisional administrator, shall take into his custody or under his control all the property and all rights to which the has reasonable cause to believe the company to be entitled.

Article 238 (1) of the Companies Act indicates the powers of the liquidator with the sanction either of the court or of the liquidation committee:

- (a) to bring or to defend any action or other legal proceeding in the name and on behalf of the company;
- (b) to carry on the business of the company so far as may be necessary for the beneficial winding up thereof;
- (c) to pay creditors according to their ranking at law;
- (d) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or which may be due in damages against the company or whereby the company may be rendered liable, and to refer any such matter to arbitration;
- (e) to make calls on contributories or alleged contributories and to effect any compromise or arrangement in relation to debts, liabilities and claims of the company present or future, certain or contingent, ascertained or which may be due in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or alleged debtor, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof;
- (f) to represent the company in all matters and to do all such things as may be necessary for winding up the affairs of the company and distributing its assets

Article 238 (2) of the said Act indicate the powers the liquidator has ex officio:

- (a) to sell the movable and immovable property, including any right, of the company by public auction or private agreement with power to transfer the whole or any part thereof;
- (b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents;
- (c) to raise on the security of the assets of the company any money requisite;
- (d) to appoint a mandatory to act for him in his capacity as liquidator for particular purposes.

The exercise by the liquidator of the powers conferred to him / her are subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

Furthermore, the liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes. The liquidator may apply to the court for directions in relation to any particular matter arising under the winding up.

On the other hand, the liquidator shall have regard to any directives that might be given by resolution of the creditors or contributories at any general meeting or by the liquidation committee. Every liquidator of a company which is being wound up by the court shall keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings. The liquidator shall give the official receiver such information and such access to and facilities for inspecting the accounts, accounting records and documents of the company and general aid as may be required for enabling the official receiver to perform his duties.

Every liquidation of a company shall at such time as may be prescribed but not less than twice in each year during his tenure of office, send to the Registrar of Companies (within the Malta Financial Services Authority) an account of his receipts and payments as liquidator. These accounts shall be made in proper form, in duplicate and shall be certified by the liquidator.

Special controller: If the court makes a company recovery order, it will appoint a special controller to take control of the company's business and assets, to manage the company and its business and to ascertain whether a recovery plan is viable and, if so, to prepare and submit his report thereon to the court within two months of his appointment. The special controller must take into account the best interests of the company, its shareholders and creditors together with the interests of any other interested party. A company recovery order may, upon the application of a special controller, be extended to any company within the same group.

#### **4 What are the effects of the opening of proceedings?**

The effects vary as to the type of proceeding. In bankruptcy, traders stop managing the business and all assets and capital are managed by the curator. Dissolution, members' voluntary winding up and court winding up are procedures used to terminate the existence of a company, where the company is deemed to have been dissolved at the start of this process and its business is subsequently wound up and assets distributed. The process ultimately concludes with the company's name being struck off the Registrar of Companies. Upon opening such proceedings, the powers of the members of the company cease. On the other hand, as the name of the procedure entails, company reconstruction and company recovery procedures are procedures with the aim to save the company from going into dissolution. Kindly refer to the answers of questions 1, 2 and 3 above.

#### **5 What are the specific rules related to certain categories of claims?**

Ranking of claims is according to the normal civil law rules, to be found in Title XXIII of the Civil Code, Chapter 16 of the Laws of Malta. Among the claims that have priority over other claims, one can find social security contributions to be paid by the employer on behalf of employees, funeral expenses and servants' wages.

#### **6 What are the rules relating to detrimental acts?**

In a winding up by the court, any disposition of the property of the company, including any right of action, any transfer of shares, or the alteration in the status of members made after the date of the filing of a winding up application, will be void unless the court orders otherwise.

In any voluntary winding up, whether by way of a creditors' voluntary winding up or a members' voluntary winding up, any transfer of shares, not being a transfer made with the sanction in writing of the liquidator, and any alteration in the status of the members of the company made after, or so as to have effect after, the date of the resolution to wind up, will be void.

Fraudulent preference provisions are also available in respect of any companies that have gone into insolvent liquidation (either by a court winding up or a creditors' voluntary winding up). The law provides that the transfer of any property or assets and any charge against the company done within six months prior to dissolution shall be void (Article 303 of the Companies Act). Any privilege, hypothec or other charge, or transfer or other disposal of property or rights, and any payment, execution or other act relating to property or rights may be challenged as a fraudulent preference against the company's creditors if it constitutes a transaction at an undervalue. In determining whether such a preference has been given, one would look into the effect such a transaction has in placing the creditor of a company going into insolvent liquidation in a better position than he would have been had that act or omission not occurred. There is a defence if the person in whose favour the transaction is made, done or incurred, proves that he did not know and did not have reason to believe that the company was likely to be dissolved by reason of insolvency. In the event of the company going into insolvent liquidation, a fraudulent preference can be set aside and a secured creditor who is a beneficiary of a deemed fraudulent preference will have his debt effectively written off to the extent of the value of his security.

#### **7 What are the conditions for the lodgement and admission of claims?**

A creditor is required to submit to the liquidator a proof of the debt which it claims to be due to it from the company and, if the creditor wishes to vote at the first meeting of creditors, this proof must be lodged by the time indicated for that purpose in the notice of the meeting. In the case of a subsequent meeting of creditors, a creditor can only vote if it has lodged with the liquidator a proof of the debt which it claims to be due and which has been admitted, wholly or in part, before the meeting. The amount of the claim for which the creditor is admitted by the liquidator will determine both the proportion of its share in any distributions and the scope of its influence in votes of the creditors as resolutions are passed when a majority in value of those present (personally or by proxy) and voting are in favour of the resolution.

The court has the power to specify a cut-off date or dates by which creditors are to prove their debts or claims or are to be excluded from the benefit of any distribution made before those debts are proved.

A creditor's rights to attend and vote at a creditors' meeting in the event of a creditors' voluntary winding up does not depend upon the submission of a proof of debt to the liquidator, although in practice this will be the method of determining the value of the creditor's claim and the creditor's vote. Again, in both a members' voluntary winding up and a creditors' voluntary winding up the liquidator has power to apply to court to specify a cut-off date for the proving of claims in relation to a given distribution.

Maltese law does not expressly limit the basis and description of debts which may be proved and all claims against the company, present or future, certain or contingent, ascertained or which may be due in damages, are admissible and can be proved against the company. A just estimate is made, so far as possible, of the value of such debts or claims as may be subject to any contingency or which are due in damages but not ascertained, or which for some other reason do not bear a certain value.

#### **8 What are the rules relating to reorganisation proceedings?**

Kindly refer to questions 1 and 2.

#### **9 What are the rules relating to winding-up proceedings?**

Kindly refer to questions 1 and 2.

#### **10 What are the conditions for the closure of the proceeding?**

In the case of company recovery procedure an order will be made for a maximum of 12 months, extendable for an aggregate maximum of 12 months. At the end of every four months from the date of the order, the special controller shall submit to the court a comprehensive report in writing on the proceedings of his administration and of his proposals regarding the prospects for the recovery of the company as a viable concern in whole or in part. At the conclusion of the special controller's period of appointment (unless otherwise terminated earlier) he will submit a detailed report to court as to whether or not the company

has a reasonable prospect of continuing as a viable concern in whole or in part and whether the company will be in a position to repay its debts regularly in the future. If the report is positive, it will include a detailed recovery plan which, if approved by the court (whether or not with amendments), will be binding on all interested parties for all purposes of law. If the report is negative, or the company recovery procedure is otherwise terminated due to the lack of reasonable prospect of the company continuing as a viable going concern which could pay its debts regularly in the future, the court will order that the company is to be wound up by the court.

On the other hand in the case of members' voluntary winding up, creditors' voluntary winding up and court winding up, the affairs of a company will have been wound up when the liquidator has realised all the property of the company as can, in his opinion, be realised without needlessly prolonging the liquidation and he has made an audited account of the winding up, showing how the winding up has been conducted and how the property of the company has been disposed of and has drawn up a scheme of distribution indicating the amount due in respect of each share from the assets of the company, where applicable, to be laid before the general meeting. The Registrar, on receiving the account, the scheme of distribution, if any, together with the auditor's report as well as the return of the meeting, shall forthwith register them and on the expiration of three months from the publication of the relevant notice, the Registrar shall strike the company's name off the Register. This however remains subject to the power of the court to order it to be reinstated on the application of an interested person, on the basis that the winding up and striking off of the company has been invalidated by fraud or illegality of a material nature, and the winding up should be reopened. This is however a remedy of last resort only and will be available only for a period of five years after the date on which the company's name was struck off the Register. Also by way of exception, and for a similar five-year period, an application may be made to court by any interested person to rectify the scheme of distribution where the liquidator has failed to take any asset into account in the course of the winding up.

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## **Insolvency - England and Wales**

### **1 What are the different types and aims of insolvency proceedings?**

Insolvency is defined alternatively as having insufficient assets to meet all debts, or being unable to pay debts when they are due.

In addition to the below proceedings, companies and individuals can enter into informal arrangements with their creditors to accept less than the full amount they are owed, but such arrangements are not binding and there is no obligation for creditors to accept an arrangement.

#### ***Corporate Insolvency Procedures***

##### ***Administration***

There are three statutory objectives of administration (in hierarchical order):

The rescue of the company as a going concern;

Achieving a better result for creditors than if the company were wound up;

Realising property to make a distribution to one or more secured or preferential creditors.

An administrator must act in the interests of the creditors as a whole, and even when pursuing the third objective must not unfairly harm the interests of unsecured creditors.

##### ***Administrative Receivership***

An insolvency practitioner is appointed by the holder of security under a floating charge that covers the whole or substantially the whole of the company's assets. In most cases the charge must have been created before 15 September 2003. A floating charge is one that does not give the charge holder any immediate right in rem over the assets covered by the charge. The company is free to deal with the charged assets until such time as the charge crystallises. The administrative receiver's task is to realise those assets on behalf of the charge holder and is primarily answerable only to the appointing floating charge holder.

##### ***Liquidation (Winding-up)***

This involves the realisation and distribution of a company's assets and usually the closing down of the business. There are three types of liquidation:

Compulsory – where the court makes a winding-up order on the application of, usually, a creditor;

Creditor's voluntary – where the company is insolvent and decides to wind itself up; and

Member's voluntary – where the company is solvent and decides to wind itself up.

##### ***Voluntary Arrangements***

A company voluntary arrangement is a binding and formal arrangement under which creditors may agree to accept less than the full amount they are owed, usually paid over a period of three to five years. If accepted by 75% of creditors, the arrangement is binding on all creditors who were entitled to vote at the meeting (or would have been entitled to vote had they been there).

#### ***Individual Insolvency Procedures***

##### ***Debt Relief Orders***

A debtor with debts of no more than £20,000 may apply to the official receiver for a debt relief order, which protects them from actions by their creditors.

Such applications are made electronically through an authorised intermediary, and are determined by the official receiver.

##### ***Bankruptcy***

A debtor may be made bankrupt by the court on the application of a creditor owed more than £5,000. A debtor may also apply for their own bankruptcy to an adjudicator, who is a person appointed by the Government and who determines the application. A trustee is appointed to realise and distribute the assets of the debtor to creditors.

##### ***Voluntary Arrangement***

A binding and formal arrangement, under which creditors may agree to accept less than the full amount they are owed, usually paid over a period of three to five years or introducing third party payments. If accepted by 75% of creditors, the arrangement is binding on all creditors who were entitled to vote at the meeting (or would have been entitled to vote had they been there).

### **2 What are the conditions for opening each type of insolvency proceedings?**

#### ***Corporate Insolvency Procedures***

##### ***Administration***

The company must be, or likely to become, unable to pay its debts. In the case of a holder of a qualifying floating charge the only condition is that the charge must be enforceable.

Administrators may be appointed by the court, on the application of the company, its directors, or a creditor; alternatively the company or its directors may appoint an administrator without application to court; or by the holder of a floating charge over the company's property.

#### *Administrative Receivership*

The floating charge that the appointer holds over the company's assets must be enforceable; the terms of appointing are usually determined by the security documentation.

#### *Liquidation (Winding-up)*

##### a) Compulsory

The circumstances in which the court may wind up a company are set out in section 122 of the [Insolvency Act 1986](#), the most common being that the company is unable to pay its debts.

##### b) Creditor's voluntary liquidation

For a creditor's voluntary liquidation the company will decide by special resolution, passed at a meeting of the company, that it be wound up. In most cases the company will appoint a liquidator at that meeting.

The company must call a meeting of creditors within 14 days of that resolution, to consider the liquidator appointment.

##### c) Member's voluntary liquidation

Where a solvent company is to be wound up, the company may pass a resolution that a liquidator be appointed. The directors must certify that the company is solvent.

#### **Individual Insolvency Procedures**

##### *Debt Relief Order*

*As well as having debts of less than £20,000, to apply for a debt relief order a debtor must have assets of less than £1,000 (excluding a reasonable motor vehicle), and surplus income of £50 per month or less. In addition, the debtor must not be subject to any other insolvency proceedings and must not have entered into any transactions which disadvantaged creditors in the previous two years.*

##### *Bankruptcy*

The court may make an individual bankrupt on the application of a creditor owed more than £5,000, although a joint petition may be presented by two or more creditors in which case the debts owed to each are aggregated. The debt must be unsecured. The petition must demonstrate that the debtor is unable to pay the debt, which must be shown through an unsatisfied statutory demand for payment, or by an unsatisfied execution in respect of a judgment debt. In the case of a debtor's application, there is no minimum debt level but the debtor must be unable to pay their debts. There must be no other bankruptcy petition pending.

### **3 What is the role of the various participants in each type of proceedings?**

#### *The Court*

The exact role and function of the court depends on the type of proceedings, though in most insolvency proceedings the administrator, liquidator or trustee is an officer of the court and acts under its ultimate supervision, even if not appointed by the court. Creditors may apply to court to review their acts or omissions or challenge their remuneration and expenses. The court has wide powers to give directions and remove or replace an administrator, liquidator or trustee. The exception to this is administrative receivership, where the court only has the power to remove the administrative receiver, but not to appoint a replacement.

In voluntary arrangements, the court may consider a challenge of the decision at the initial meeting of creditors on the grounds that there has been some kind of material irregularity, or the arrangement itself if it unfairly prejudices the interests of a creditor or member. Remuneration and expenses are set out in the terms of the arrangement.

#### *Insolvency Practitioners*

The insolvency practitioner appointed as office-holder (administrator; administrative receiver; liquidator; nominee; supervisor; or trustee in bankruptcy) administers the proceedings, deals with creditors' claims and realises assets and distributes the proceeds to creditors. In administration, administrative receivership and liquidation, the insolvency practitioner must report to the Secretary of State on the conduct of the directors.

In order to act as an office-holder in any insolvency procedure an individual must meet certain requirements as to qualification, and be authorised to act as an insolvency practitioner by one of five Recognised Professional Bodies. These monitor the performance of their members to ensure that they are fit and proper persons to act as insolvency practitioners. The Secretary of State acts as an oversight regulator.

Insolvency practitioners must comply with mandatory best practice guidelines and an insolvency code of ethics, together with the rules and bylaws of their authorising body.

#### *Creditors*

In administrations, liquidations and bankruptcies the interests of all creditors have to be taken into account. Creditors are notified of the opening of proceedings and receive annual progress reports from insolvency practitioner office-holders (six monthly in administration). Creditors may participate in meetings and vote on proposals and the remuneration and expenses of an office-holder.

In administrative receiverships the office-holder's duty is principally to act in the interest of the appointing charge holder.

#### *Directors*

In all forms of insolvency proceedings the directors have a statutory duty to co-operate with and provide information to the relevant office-holder and, in compulsory liquidations, to the official receiver.

#### *Bankrupts*

The bankrupt has a statutory duty to co-operate with and provide information to the official receiver and the trustee.

#### *The Official Receiver*

[The Official Receiver](#) is both a civil servant and an officer of the court. Official receivers determine applications for debt relief orders, and are appointed trustees in bankruptcy and liquidators in compulsory liquidation proceedings, though they may be replaced in those offices by insolvency practitioners. Official receivers have a statutory duty to investigate the causes of insolvency and to report on the conduct of bankrupts and directors. They may also, with the authority of the Secretary of State, apply to the court for company director disqualification orders, debt relief restriction orders, and bankruptcy restriction orders, where it is apparent that the behaviour of the person subject to the application was culpable or irresponsible, and it is in the public interest to do so. Alternatively official receivers may agree disqualification or restriction undertakings with those persons as a way of avoiding court proceedings.

#### *The Adjudicator*

An adjudicator is appointed by the Secretary of State, and determines bankruptcy applications made by debtors themselves. An adjudicator may not also be an official receiver.

#### **4 What are the effects of the opening of proceedings?**

Notice of the opening of proceedings is published in the London Gazette and may also be published in local news media. Notice is also given to the registrar of companies in corporate insolvency and to the Chief Land Registrar in the case of personal insolvency.

The ownership of a company's assets remains with the company after it enters the insolvency procedure and come under the control of the administrator or liquidator.

When a company enters, or proposes to enter, administration a moratorium comes into effect that prevents creditors from taking action against the company. In winding up, no action or proceeding can be proceeded with or commenced against the company or its assets unless the court allows it.

A debt relief order prevents creditors from taking action against the person in respect of their debt.

In bankruptcy, the bankrupt person's assets vest in the trustee in bankruptcy, with certain exemptions such as clothing, household furniture and tools of the trade.

Until their discharge from bankruptcy, the bankrupt person is subject to certain restrictions. In particular they are disqualified from acting in the promotion, formation or management of a limited company and must disclose that they are undischarged from bankruptcy proceedings when obtaining credit of over £500.

Any individual who is bankrupt or the subject of a debt relief order or voluntary arrangement will have their name, address and date of birth, together with details of the insolvency proceedings and of any trading published in the individual [insolvency register](#).

When a bankruptcy order has been made or a petition has been presented, the court can stop any legal action against that individual. After the making of a bankruptcy order, no action may be commenced against the person without the court's leave.

A company or individual will generally cease trading when proceedings are opened, though the administrator, liquidator or trustee may allow trading to continue.

In both company and individual voluntary arrangements, creditors who are bound by the terms of the arrangement may not take any action to pursue their debts unless this has been provided for.

##### *Employees*

The treatment of employees depends on the type of proceeding. For example in administrations and administrative receiverships the office-holder has 14 days to decide whether to retain all or any of the employees. By contrast in a compulsory liquidation any contracts of employment are terminated when proceedings are opened.

Where an employee is owed certain debts, for example wages, they are able to claim that money, subject to statutory limits, from the Government. Where such payments are made the Government will claim in the insolvency proceedings in place of the employee.

#### **5 What are the specific rules related to certain categories of claims?**

##### *Rights in Rem*

Holders of fixed security over the assets of a company or an individual have the right to any proceeds of those assets ahead of other creditors. The rights of the secured creditor to enforce their security are generally unaffected by insolvency, though they must account to the office-holder following the sale.

##### *Set-Off*

The insolvency legislation deals with set-off where there are mutual dealings between third parties and a company or an individual prior to administration, liquidation or bankruptcy.

##### *Reservation of Title*

Creditors who have supplied goods under a contract with a reservation of title clause have the right, in certain circumstances, to recover their goods from the insolvency office-holder.

##### *Contracts of Employment*

In administrations and administrative receiverships the office-holder has 14 days to decide whether to retain all or any of the employees. By contrast in a compulsory liquidation the employee's contracts of employment are automatically terminated when the court makes the order.

Certain debts due to employees are, subject to statutory limits, preferential and paid in priority to floating charge holders and ordinary unsecured creditors (though in many cases some of those debts will be paid by the Government who will take the place of the employee in claiming in the insolvency proceedings).

##### *Priority of Creditors*

Generally speaking creditors are paid in the following priority:

Fixed charge holders;

Preferential creditors, including unpaid wages or payment in lieu of notice to employees;

Floating charge holders and

Unsecured creditors.

The costs, fees and expenses of the proceedings, including the petitioning creditors costs and the remuneration and expenses of the office-holder, are paid in priority to claims by creditors, subject to payment of fixed charges.

##### *Taxation*

The Government does not have any preferential status, and claims for unpaid income tax; national insurance contributions and value added tax are treated as ordinary unsecured claims.

#### **6 What are the rules relating to detrimental acts?**

There are a number of provisions which apply to administrations, liquidations and bankruptcies by which the office-holder can apply to court to seek to claw back money for the benefit of creditors. The principal provisions are:

##### ***Transactions at an undervalue***

###### *Administrations and Liquidations*

If during the two years prior to presentation of the winding up petition or administration, any assets of the company were transferred for consideration less than their value, then the court may, on the application of the office-holder, make an order restoring the position to that prior to the transaction taking place..

###### *Bankruptcies*

If during the period of 5 years ending with the date of the bankruptcy petition or application, the bankrupt person transferred assets for consideration of less than their value, then the court may, on the application of the trustee, make an order restoring the position to that prior to the transaction taking place. If the transaction occurred more than 2 years before the petition or application, then it must have been made at a time when the person was insolvent for a transaction at undervalue to have occurred.

## **Preferences**

### **Administrations and Liquidations**

If office-holder a payment is made to a creditor or guarantor of a debt with the intention of putting them in a better position relative to the other creditors (a preference payment), then the office-holder may apply to court for an order restoring the position to what it would have been if the company had not made that payment.

For a payment to be a preference, it must have taken place within the period of six months ending with the presentation of the winding up petition or the administration. Where the payment was made to a connected person or associate of the company (for example a director or an associated company) then the period is extended to two years.

### **Bankruptcies**

If a payment is made to a creditor or guarantor of a debt with the intention of putting them in a better position relative to the other creditors (a preference payment), then the office-holder may apply to court for an order restoring the position to what it would have been if the person had not made that payment.

For a payment to be a preference, it must have taken place within the period of six months ending with the presentation of the bankruptcy petition or application. Where the payment was made to an associate (for example a spouse or a relative) then the period is extended to two years.

### **Avoidance of property dispositions**

In a compulsory liquidation any transfer of shares, payment of money or sale of property after the presentation of the petition is void unless ratified by the court. In bankruptcy, any disposition of property made by the individual after the presentation of the petition or the making of the application, is void unless the court orders otherwise.

### **Trading with knowledge of insolvency, fraudulent trading, misfeasance**

Where a director has caused a company to trade whilst insolvent or a person has been a knowing party to a company trading fraudulently, the liquidator or administrator may apply to court for an order that that person contribute to the assets of the company from their personal assets.

A similar claim may be made by a liquidator where a director has misapplied company assets or become accountable for them, or has acted in breach of their fiduciary duty to the company.

## **7 What are the conditions for the lodgement and admission of claims?**

There are broadly similar rules for lodging claims with the office-holder in all insolvency proceedings. There is no blanket deadline for the admission of claims for either voting or dividend purposes, instead such deadlines are given in any notice to creditors.

Within the preferential and unsecured creditor classes all creditors rank equally within their class and share in the available assets in proportion to the amount that they are owed. Preferential claims are subject to statutory limits; once that amount has been paid the remainder of any claim is treated as unsecured.

If a company has more than one creditor secured by a floating charge they are paid in the order which the charge was granted unless there is an agreement to the contrary. Any shortfall due to a fixed or floating charge holder ranks as an unsecured claim.

## **8 What are the rules relating to reorganisation proceedings?**

The provisions relating to company voluntary arrangements and administrations are set out in Parts 1 and 2 of [the Insolvency Act 1986](#) and Parts 1 and 2 of the [Insolvency Rules 1986](#), respectively.

The provisions relating to individual voluntary arrangements are set out in Part 8 of the Insolvency Act 1986 and Part 5 of the Insolvency Rules 1986.

## **9 What are the rules relating to winding-up proceedings?**

The provisions relating to winding-up proceedings are set out in Part 4 and 5 of the [Insolvency Act 1986](#) and Part 4 of the [Insolvency Rules 1986](#).

## **10 What are the conditions for the closure of the proceeding?**

Proceedings generally end once all assets have been realised and a final distribution made, with the release of the administrator or liquidator and the dissolution of the company.

An individual is automatically discharged from bankruptcy after 12 months, unless their discharge period is suspended by the court for, for example, a failure to co-operate with the official receiver or trustee. The administration of the estate and realisation of assets continues beyond the date of discharge and is ended when the trustee has realised and distributed any assets and seeks his or her release.

A bankruptcy order may be annulled (cancelled) by the court if all the debts, fees and costs of the proceedings are settled in full, or if the order ought not to have been made.

The conditions relating to the ending of an administrative receivership will be regulated by the security documentation.

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## **Insolvency - Northern Ireland**

### **1 What are the different types and aims of insolvency proceedings?**

Insolvency is defined alternatively as having insufficient assets to meet all debts, or being unable to pay debts when they are due.

Companies and individuals can enter into informal arrangements with their creditors to accept less than the full amount they are owed. Such arrangements are not binding and creditors are not obliged to accept an arrangement.

### **Corporate Insolvency Procedures**

#### **Administration**

Administration has three statutory objectives (in hierarchical order):

Rescue of the company as a going concern;

Achieving a better result for creditors than if the company were wound up;

Realising property to make a distribution to one or more secured or preferential creditors.

An administrator must act in the interests of the creditors as a whole, and even when pursuing the third objective must not unfairly harm the interests of unsecured creditors.

#### **Administrative Receivership**

An insolvency practitioner is appointed by the holder of security under a floating charge that covers the whole or substantially the whole of the company's assets. A floating charge does not give the charge holder any immediate right in rem over the assets covered by the charge. The company is free to deal with the charged assets until such time as the charge crystallises. The administrative receiver's task is to realise those assets on behalf of the charge holder and is primarily answerable only to the appointing floating charge holder. Subject to certain exceptions it is not possible to appoint an administrative receiver in respect of a floating charge created on or after 27 March 2006.

#### *Liquidation (Winding-up)*

Liquidation involves the realisation and distribution of a company's assets and usually the closing down of the business. There are three types:

Compulsory – where the court makes a winding-up order on the application of, usually, a creditor;

Creditor's voluntary – where the company is insolvent and decides to wind itself up; and

Member's voluntary – where the company is solvent and decides to wind itself up.

#### *Voluntary Arrangements*

A company voluntary arrangement is a binding and formal arrangement under which creditors may agree to accept less than the full amount they are owed, usually paid over a period of three to five years. If accepted by 75% of creditors by value, the arrangement is binding on all creditors.

### **Individual Insolvency Procedures**

#### *Bankruptcy*

A debtor may be made bankrupt by the High Court on the application of a debtor or any creditor owed more than £750. A trustee is appointed to realise and distribute the assets of the debtor to creditors.

#### *Voluntary Arrangement*

A binding and formal arrangement, under which creditors may agree to accept less than the full amount they are owed, usually paid over a period of three to five years, although the period can be shorter if third party payments are introduced. If accepted by 75% of creditors by value, the arrangement is binding on all creditors.

#### *Debt Relief*

A debtor can apply to the Official Receiver for a debt relief order. This provides a one year moratorium from action by creditors in respect of debts listed in the order. Liability for those debts is extinguished at the end of that year. Strict eligibility conditions apply, including that the debtor's total debts do not amount to more than £20,000 the total value of their assets other than those which are exempt does not exceed £300 and they do not have more than £50 surplus income in the month.

## **2 What are the conditions for opening each type of insolvency proceedings?**

### **Corporate Insolvency Procedures**

#### *Administration*

Administrators may be appointed by the High Court, on the application of the company, its directors, or a creditor; or the holder of a floating charge over the company's property. Alternatively the company or its directors or the holder of a floating charge over the company's property may appoint an administrator without application to the High Court.

In the case of an appointment by the High Court the company must be, or be likely to become, unable to pay its debts. In the case of an appointment by the holder of a qualifying floating charge the only condition is that the charge must be enforceable.

#### *Administrative Receivership*

The floating charge that the appointer holds over the company's assets must be enforceable; the terms of appointment are usually determined by the security documentation.

#### *Liquidation (Winding-up)*

##### a) Compulsory

The circumstances in which the High Court may wind up a company are set out in Article 102 of the Insolvency (Northern Ireland) 1989, the most common being that the company is unable to pay its debts.

##### b) Creditor's voluntary liquidation

For a creditor's voluntary liquidation the company will decide by special resolution, passed at a meeting of members and officers, that it cannot continue its business because of its liabilities and that it is advisable that it be wound up.

The company must call a meeting of creditors within 14 days of that resolution, to consider the appointment of a liquidator.

##### c) Member's voluntary liquidation

Where a solvent company is to be wound up, the company may pass a resolution that a liquidator be appointed. The officers must certify that the company is solvent.

### **Individual Insolvency Procedures**

#### *Bankruptcy*

The High Court may make an individual bankrupt if that person is unable to pay his/her debts, either on the application of the debtor or a creditor owed more than £750.

#### *Voluntary Arrangement*

A debtor can seek an interim order from the Court giving him protection from creditors while trying to set up a voluntary arrangement if he is in a position to petition for his own bankruptcy or is an undischarged bankrupt.

#### *Debt Relief*

The Official Receiver can make a debt relief order in the case of an individual who is unable to pay his debts. The debtor must meet a number of eligibility conditions, the main ones being that his total debts do not exceed £15,000, his total assets, other than certain excluded items, are not worth more than £300 and he does not have more than £50 surplus income in a month.

## **3 What is the role of the various participants in each type of proceedings?**

#### *The High Court*

The role and function of the High Court depends on the type of proceedings, though in most insolvency proceedings the administrator, liquidator or trustee is an officer of the court and acts under its ultimate supervision, even if not appointed by the court. Creditors may apply to court to review their acts or omissions or challenge their remuneration and expenses. The High Court has wide powers to give directions and remove or replace an administrator, liquidator or trustee.

The exception to this is administrative receivership, where the High Court only has power to remove the administrative receiver, but not to appoint a replacement.

In voluntary arrangements, the High Court is only available to consider a challenge to the decision at the meeting of creditors which approved the arrangement. Remuneration and expenses are set out in the terms of the arrangement.

#### *Insolvency Practitioners*

The insolvency practitioner appointed as office-holder (administrator; administrative receiver; liquidator; nominee; supervisor; or trustee in bankruptcy) administers the proceedings, deals with creditor's claims and realises assets and distributes the proceeds to creditors. In administrations and creditors voluntary liquidations, the insolvency practitioner must report to the Department of Enterprise, Trade and Investment on the conduct of the directors. In order to act as an office holder in any insolvency procedure an individual must meet certain requirements as to education and qualification, and be authorised to act as an insolvency practitioner by one of seven Recognised Professional Bodies or directly by the Department of Enterprise, Trade and Investment. The Department of Enterprise, Trade and Investment also monitors the performance of each of the Recognised Professional Bodies to ensure that their members are fit and proper persons to act as insolvency practitioners.

Insolvency practitioners must comply with mandatory best practice guidelines and an insolvency code of ethics, together with the rules and bylaws of their authorising body.

#### *Creditors*

In administrations, liquidations and bankruptcies the interests of all creditors have to be taken into account. Creditors are notified of the opening of proceedings and receive annual progress reports (six monthly in administration). Creditors may participate in meetings and vote on proposals and the remuneration and expenses of an office-holder.

In administrative receiverships the office holder's duty is principally to act in the interest of the appointing charge holder.

#### *Directors*

In all forms of insolvency proceedings the directors have a statutory duty to co-operate with and provide information to the relevant office holder and, in compulsory liquidations, to the official receiver.

#### *Bankrupts*

The bankrupt has a statutory duty to co-operate with and provide information to the official receiver and the trustee.

#### *The Official Receiver*

The Official Receiver is both a civil servant and an officer of the court. The Official Receiver is appointed as trustee in bankruptcy and liquidator in compulsory liquidations, though he may be replaced in that office by an insolvency practitioner. The Official Receiver has a statutory duty to investigate the causes of insolvency and to report on the conduct of a bankrupt or director.

#### *Appeals*

Appeals in insolvency proceedings are provided for in Rules 7.42 to 7.44 of the [Insolvency Rules \(Northern Ireland\) 1991](#).

### **4 What are the effects of the opening of proceedings?**

Notice of the opening of proceedings is published in the Belfast Gazette and in a local newspaper. Notice is also given to the Enforcement of Judgments Office and in the case of personal insolvencies to the Registry of Deeds.

Administrators and administrative receivers must give notice of their appointment to the registrar. Copies of resolutions to wind up companies and winding up orders made by the Court must be sent to the registrar of companies.

The ownership of a company's assets remains with the company after it enters the insolvency procedure and come under the control of the administrator or liquidator.

When a company enters, or proposes to enter, administration a moratorium comes into effect that prevents creditors taking action against the company. In winding up, no action or proceeding can be commenced or proceeded with against the company or its assets unless the court allows it.

In bankruptcy, the bankrupt's assets vest in the trustee in bankruptcy, with certain exemptions such as clothing, household furniture and tools of the trade. Until their discharge from bankruptcy, the bankrupt is subject to certain restrictions. In particular they are disqualified from acting in the promotion, formation or management of a limited company and must disclose that they are an undischarged bankrupt when obtaining credit of over £500.

Any individual who is bankrupt or the subject of a Debt Relief Order or voluntary arrangement will have their name, address and date of birth, together with details of the insolvency proceedings and of any trading name appear on the appropriate Register.

When a bankruptcy order has been made or a petition has been presented, the High Court can stop any legal action against the individual.

A company or individual will generally cease trading when proceedings are opened, though the administrator, liquidator or trustee may allow trading to continue.

#### *Employees*

The treatment of employees depends on the type of proceeding. For example in administrations and administrative receiverships the office holder has 14 days to decide whether to retain all or any of the employees. By contrast in a compulsory liquidation or bankruptcy any contracts of employment are terminated when proceedings are opened.

Where an employee is owed wages or payment in lieu of notice of redundancy, they are able to claim that money, subject to statutory limits, from the Government. Where such payments are made the Government will claim in the insolvency proceedings in place of the employee.

### **5 What are the specific rules related to certain categories of claims?**

#### *Rights in Rem*

Holders of fixed security over the assets of a company or an individual have the right to any proceeds of those assets ahead of other creditors. The rights of the secured creditor to enforce their security are generally unaffected by insolvency, though they must account to the office holder following the sale.

#### *Set-Off*

The insolvency legislation deals with set-off where there are mutual dealings between third parties and a company or an individual prior to administration, liquidation or bankruptcy.

#### *Reservation of Title*

Creditors who have supplied goods under a contract with a reservation of title clause have the right, in certain circumstances, to recover their goods from the insolvency office holder.

#### *Contracts of Employment*

In administrations and administrative receiverships the office holder has 14 days to decide whether to retain all or any of the employees. By contrast in a compulsory liquidation the employee's contracts of employment are automatically terminated when the court makes the order.

Debts due to employees are, subject to statutory limits, preferential and paid in priority to floating charge holders and ordinary unsecured creditors.

#### *Priority of Creditors*

Generally speaking creditors are paid in the following priority:

Fixed charge holders;

Preferential creditors, usually unpaid wages or payment in lieu of notice to employees;  
Floating charge holders; and  
Unsecured creditors.

The costs, fees and expenses of the proceedings, including the petitioning creditors costs and the remuneration and expenses of the office holder, are paid in priority to any claims by creditors.

#### *Taxation*

The Government does not have any preferential status, and claims for unpaid income tax; national insurance contributions and value added tax are treated as ordinary unsecured claims.

### **6 What are the rules relating to detrimental acts?**

There are a number of provisions which apply to administrations, liquidations and bankruptcies by which the office holder can apply to court to seek to claw back money for the benefit of creditors. The principal provisions are:

#### ***Transactions at an undervalue***

##### *Administrations and Liquidations*

If the office holder has evidence that any assets of the company were transferred for no consideration or at a price which was significantly less than their value, they may apply to the High Court for an order restoring the position to what it would have been if the transaction in question had not taken place.

The transaction must have taken place within two years of the presentation of the winding up petition or the date that an administration application, or a notice of intention to appoint, was filed with the High Court; or if no such notice of intention to appoint was filed, the date the company entered administration.

##### *Bankruptcies*

If the office holder has evidence that any assets of the company were transferred for no consideration, at a price which was significantly less than their value, or in consideration of marriage they may apply to court for an order restoring the position to what it would have been if the transaction in question had not taken place.

The transaction must have taken place within five years of the date on which the bankruptcy petition was presented.

#### ***Preferences***

##### *Administrations and Liquidations*

If the office holder has evidence that a third party, a creditor or guarantor of a debt, has been put in a better position than would have been the case had the transaction not taken place, they may apply to the High Court for an order restoring the position to what it would have been if the company had not given that preference.

The preference must have taken place within six months of the presentation of the winding up petition, the date that an administration application (or a notice of intention to appoint) was filed with the High Court; or if no such notice of intention to appoint was filed, the date the company entered administration. If the preference was given to a connected person or associate of the company (for example a director, associated company, a member of a persons immediate family) the period is extended to two years and is assumed to have been made with the intent of putting that person in a better position.

##### *Bankruptcies*

If the trustee has evidence that a third party, a creditor or guarantor of a debt, has been put in a better position than would have been the case had the transaction not taken place application can be made to the High Court for an order restoring the position to what it would have been if the individual had not given that preference.

The preference must have taken place within six months of the presentation of the bankruptcy petition. If the preference was given to an associate, such as a spouse or immediate family member then the period is extended to two years, and it is assumed to have been made with the intention of putting that person in a better position.

#### ***Avoidance of property dispositions***

In a compulsory liquidation or bankruptcy any transfer of shares, payment of money or sale of property in the period between the presentation of the petition and the opening of proceedings is void unless ratified by the High Court.

### **7 What are the conditions for the lodgement and admission of claims?**

All insolvency office holders must notify creditors of their appointment and have a duty to report on the progress in the proceedings annually (every six months in administration).

In all other insolvency proceedings, corporate and individual, there are broadly similar rules for lodging claims with the office holder. There is no blanket deadline for the admission of claims for either voting or dividend purposes, such deadlines are given in any notice to creditors, usually by 16:00 on the day prior to any meeting.

Within the preferential and unsecured creditor classes all creditors rank equally within their class and share in the available assets in proportion to the amount that they are owed. Preferential claims are subject to statutory limits; once that amount has been paid the remainder of any claim is treated as unsecured.

If a company has more than one creditor secured by a floating charge they are paid in the order in which the charges were granted unless there is an agreement to the contrary. Any shortfall due to a fixed or floating charge holder ranks as an unsecured claim.

### **8 What are the rules relating to reorganisation proceedings?**

The provisions relating to company voluntary arrangements and administrations are set out in Parts II and III of the [Insolvency \(Northern Ireland\) Order 1989](#) and Parts 1 and 2 of the Insolvency Rules (Northern Ireland) 1991, respectively.

The provisions relating to individual voluntary arrangements are set out in Part VIII of the Insolvency (Northern Ireland) Order 1989 and Part 5 of the Insolvency Rules (Northern Ireland) 1991.

### **9 What are the rules relating to winding-up proceedings?**

The provisions relating to winding-up proceedings are set out in Part V of the Insolvency (Northern Ireland) Order 1989 and Part 4 of the Insolvency Rules (Northern Ireland) 1991.

### **10 What are the conditions for the closure of the proceeding?**

Proceedings generally end once all assets have been realised and a final distribution made with the release of the administrator or liquidator and the dissolution of the company.

An individual is automatically discharged from bankruptcy after 12 months, unless their discharge period is suspended by the court for a failure to co-operate with the proceedings. The administration of the estate and realisation of assets continues beyond the date of discharge and are ended when the trustee has realised and distributed any assets and seeks his or her release.

A bankruptcy order may be annulled (cancelled) by the court if all the debts, fees and costs of the proceedings are settled in full, or if the order ought not to have been made.

The conditions relating to the ending of an administrative receivership will be regulated by the security documentation.

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## Insolvency - Scotland

### 1 What are the different types and aims of insolvency proceedings?

Insolvency is defined as having insufficient assets to meet all debts, or being unable to pay debts when they are due.

#### *Debt Arrangement Scheme*

Rather than insolvency, the [Debt Arrangement Scheme](#) (DAS) is a statutory debt management scheme run by the Scottish Government to help debtors to pay their debts by giving them more time to pay without hassle or threat of court action from their creditors. DAS freezes interest, fees and charges on their debts from the date the DAS payment programme application is made.

#### *Personal Bankruptcy/Sequestration*

Personal bankruptcy is called sequestration in Scotland. A debtor may apply to [Accountant in Bankruptcy](#) (AiB) for their own bankruptcy or a creditor can present a petition at a sheriff court to make someone bankrupt.

Individuals can also enter into a private arrangement with an Insolvency Practitioner called a Trust Deed.

An award of sequestration is placed on the Register of Insolvencies (RoI) which is a statutory register about the insolvency of individuals and businesses in Scotland.

#### *Corporate Insolvency Procedures*

**Administration**- Designed for rescuing the company or getting a better outcome for creditors than could be achieved in a winding-up.

**Receivership**- An insolvency practitioner appointed by the holder of security under a floating charge who has rights over that part of the property of a company which is subject to the floating charge. A floating charge is one that does not give the charge holder any immediate right in rem over the assets covered by the charge. The company is free to deal with the charged assets until such time as the charge crystallises.

**Liquidation (Winding-up)**- This involves the realisation and distribution of a company's assets and usually the closing down of the business. There are three types of liquidation:

Compulsory – where the court makes a winding-up order

Creditor's voluntary – where the company is insolvent and decides to wind itself up; and

Member's voluntary – where the company is solvent and decides to wind itself up.

Corporate Insolvency is in general a matter for the UK Government and is regulated by the [Insolvency Act 1986](#). There are some elements which are specific to Scotland which are described on the website of the [Accountant in Bankruptcy](#). Further information on Corporate Insolvency can be found on the website of the [Insolvency Service](#).

### 2 What are the conditions for opening each type of insolvency proceedings?

#### *Sequestration*

In sequestration a debtor has to be able to demonstrate that they are apparently insolvent. These are detailed in Section 7 of the [Bankruptcy \(Scotland\) Act 1985](#) (as amended). Additionally, the following terms must be met:

A creditor can ask a sheriff to award bankruptcy against a debtor if:

The creditor is owed at least £3000 or

A joint petition with other creditors providing the combined debts are at least £3000; and

The creditor has sent a copy of the Scottish Government's Debt Advice and Information Package to the debtor and

Can show the debtor is apparently insolvent.

A debtor can apply to AiB for their own bankruptcy if he/she:

owes a total debt of £1500 or more

is living in Scotland or has lived in Scotland sometime during the last year

has not been made bankrupt in the last 5 years

pays the application fee of up to £200 depending on which route they are eligible to apply through

has received money advice from an approved money advisor.

#### *Corporate Insolvency Procedures*

##### **Administration**

The company must be, or likely to become, unable to pay its debts. In the case of a holder of a qualifying floating charge the only condition is that the charge must be enforceable.

The company, directors, creditors and others can apply to the court for an administration order.

##### **Receivership**

The floating charge that the appointer holds over the company's assets must be enforceable.

The terms for appointing a receiver are regulated by the security documentation. A security document is any document that gives a creditor security over the assets of a company.

##### **Liquidation (Winding-up)**

###### a) Compulsory

An insolvency practitioner will be appointed as interim liquidator by the court at a court hearing. The creditors or contributors can appoint a different insolvency practitioner, though in practice it may be the same person. Section 122 and 123 of the 1986 Act refer to the grounds for winding-up.

###### b) Voluntary

The circumstances under which a company may be wound up voluntarily are set out in section 84 of the 1986 Act.

###### c) Creditor's

For a creditor's voluntary liquidation the company will decide by resolution that it cannot continue its business because of its liabilities and that it is advisable that it be wound up.

d) Member's

In a member's voluntary liquidation the company must be solvent.

Once appointed the liquidator has to give notice of the appointment by placing an advert in appropriate media and by sending notice to the Registrar of Companies/AiB. The RoI will also be updated.

### 3 What is the role of the various participants in each type of proceedings?

#### *Sequestration*

Accountant in Bankruptcy (AiB) is responsible for administering the process of personal bankruptcy and recording corporate insolvencies in Scotland.

In Scotland a sequestration is awarded by the Court of Session, Sheriff Court or AiB depending where the applicant lodged the petition. The court or AiB decides whether an application is valid and if so will award sequestration.

A Licensed Insolvency Practitioner or AiB is appointed as trustee in sequestration. The trustee takes control of all the debtor's assets with a view to realising them for the benefit of the creditors.

A debtor is obliged to co-operate with his trustee and disclose all assets. The trustee will look at a debtor's income and assess a reasonable amount of money for them to live on. A trustee will assess whether or not a debtor has any surplus income and, if they do, a contribution must be made from this. This is known as a Debtor Contribution Order.

Creditors' claims are lodged with the trustee. Creditors have rights to appeal against some decisions made by the trustee and the remuneration.

#### *Corporate Insolvency*

##### **The Court**

The role and function of the court depends on the type of proceedings:

##### **Administration**

This is a court based procedure where the administrator is an officer of the court and they can seek directions of the court.

##### **Receivership**

This is not usually a court based process. A court can be approached for directions.

##### **Liquidation (Winding-up)**

Compulsory- This is a court based procedure

Voluntary- This is not a court based procedure, but applications can be made to the court where there are matters of dispute.

##### **Insolvency Practitioners**

An individual must be an insolvency practitioner authorised by the Secretary of State or by one of seven Recognised Professional Bodies.

The powers of the office holder in administrations, liquidations and bankruptcies are set out in the Insolvency Act 1986.

The powers of the receiver are primarily set out in the relevant security documentation.

##### **Creditors**

In administrations and liquidations the interests of all creditors have to be taken into account. In receivership the office holder's duty is principally to act in the interest of the appointing charge holder.

##### **Directors**

In all forms of insolvency proceedings the directors have a statutory duty to co-operate with and provide information to the relevant office holder.

### 4 What are the effects of the opening of proceedings?

#### *Sequestration*

All assets in a sequestration vest in the trustee for the benefit of the estate with the exception of certain items as detailed in the [Debtor's \(Scotland\) Act 1987](#).

The ranking of creditors' claims is set out in Section 51 of the Bankruptcy (Scotland) Act 1985, (as amended). They rank after the expenses of the trustee, funeral expenses of the debtor, petition expenses, preferred debts, ordinary debts, interest on preferred debts, interest on ordinary debts and postponed debts.

A creditor may not pursue a debtor for pre-sequestration debt and must submit a claim to the trustee.

Assets are anything that belongs to the debtor that may be realised and used to repay their debts.

#### *Corporate Insolvency*

The ownership of the assets remains with the company after it enters the insolvency procedure.

##### **Claims**

The categories of claims that a creditor may have are as follows:

Secured

Preferential

Unsecured.

##### **Moratorium**

When a company enters administration a moratorium comes into effect that prevents creditors from taking action against the company.

When a winding-up order is made against a company no action can be proceeded with against the company or its assets unless the court allows it.

### 5 What are the specific rules related to certain categories of claims?

#### *Sequestration*

See the answer to question 4 above regarding ranking in sequestration.

#### *Corporate Insolvency*

Holders of fixed security over the assets of a company or an individual have the right to any proceeds of those assets ahead of other creditors.

The insolvency legislation deals with set-off where there are mutual dealings between third parties and a company or an individual prior to administration, or liquidation.

Creditors who have supplied goods under a contract with a reservation of title clause have the right, in certain circumstances, to recover their goods from the insolvency office holder.

The effect of insolvency proceedings on employees depends on the type of proceeding. Debts due to employees are preferential and paid in priority to floating charge holders and ordinary unsecured creditors.

Generally speaking creditors are paid in the following priority:

Fixed charge holders

Preferential creditors

Floating charge holders

Unsecured creditors.

## **6 What are the rules relating to detrimental acts?**

### *Sequestration*

If a creditor presents a petition to the court a warrant to cite is granted and served on the debtor. If a debtor wishes to defend a petition, they may then appear in court to show why a sequestration should not be granted. If the debtor is able to demonstrate this, the petition will be dismissed.

When a debtor applies for their own bankruptcy and the application form is correctly completed with the fee and all the information needed, bankruptcy will normally be awarded within five working days of AiB receiving it.

After a sequestration has been awarded, a debtor, any creditor, a trustee, or any other person having an interest can apply to the Sheriff Court or AiB for recall. An application to AiB can only be on the grounds that the debtor has paid or is able to pay their debts in full along with the costs of the bankruptcy including the trustee's fees and outlays. Recall effectively restores the debtor to the position they would have been in had the sequestration not been awarded.

If a debtor applies for their own bankruptcy, they will normally be discharged one year after the date the bankruptcy was awarded. If a creditor has petitioned for the bankruptcy, discharge will be one year after the date the court issued the warrant citing the debtor to appear at a hearing. However, if the debtor does not cooperate with their trustee, discharge can be postponed indefinitely.

Bankruptcy Restrictions were introduced by legislation on 1 April 2008 and impose certain restrictions on a debtor where there has been a level of misconduct by the debtor either before or after the date of bankruptcy, as described in section 56B of the Bankruptcy (Scotland) Act 1985 (as amended). The restrictions remain in force after the date of discharge for periods varying between two and 15 years, depending upon the severity of the misconduct.

### *Corporate Insolvency*

There are a number of provisions which apply to administrations, and liquidations by which the office holder can apply to court to seek to claw back money. The principal provisions are:

#### **Gratuitous Alienation**

##### *Administrations and Liquidations*

If the office holder has evidence that any assets of the company were transferred for no consideration or significantly less than their value, then application can be made to a court to restore the position to what it would have been if the alienation had not taken place.

The alienation must have taken place five years before the company began to be wound up or an administration order was granted if the alienation was made to an associate, or within two years if made to another person.

Alienations in the interim period between filing documents at court and the company entering administration or being wound up are also caught.

#### **Unfair Preferences**

##### *Administrations and Liquidations*

Under Section 243 of the 1986 Act, the Court must grant an order to set aside, restore the companies' assets or otherwise grant redress for, a transaction entered into by the company within 6 months before the company commenced being wound up, (or an administration order made in relation to it)

Transactions in the interim period between filing documents at court and the company entering administration or being wound up are also caught.

## **7 What are the conditions for the lodgement and admission of claims?**

### *Sequestration*

Creditors are invited to submit a claim in a sequestration when they are advised about it by the trustee. The submission of claims at this stage allows creditors to vote at statutory meetings. If a trustee has ingathered sufficient funds to pay a dividend, the creditors will be asked to submit a formal claim and proof of debt. The trustee will then adjudicate on the claims and decide what ranking they should be given.

### *Corporate Insolvency*

All insolvency office holders are required to provide information to unsecured creditors, details of their reporting duties are set out in the 1986 Act and the [Insolvency \(Scotland\) Rules 1986](#).

#### **Insolvency (Scotland) Rules 1986.**

There are no distributions to unsecured creditors in receiverships and there are accordingly, no rules regarding the proving of their claims.

In other insolvency proceedings, the rules for lodging claims are set out in the Insolvency (Scotland) Rules 1986. The rules also set out the provisions relating to the admission of those claims by the office holder.

Within the preferential and unsecured creditor classes all creditors rank equally within their class and share in the available assets in proportion to the amount that they are owed.

## **8 What are the rules relating to reorganisation proceedings?**

### *Corporate Insolvency*

Viable companies that get into financial difficulties can seek rescue through administration or a company voluntary arrangement (CVA). Many company rescues that flow out of an administration are done through a CVA. In order to obtain a CVA at least 75% of the creditors have to approve the proposals put forward by the directors, or the administrator. Once approved the arrangement is binding on all creditors who received notice of the proposals.

The provisions relating to CVAs and administrations are set out in Parts I and II of the 1986 Act and Parts 1 and 2 of the Insolvency (Scotland) Rules 1986, respectively.

## **9 What are the rules relating to winding-up proceedings?**

### *Sequestration*

Once a trustee in sequestration has gathered sufficient funds to pay a dividend to creditors the trustee will formally adjudicate on the claims. The debtor and the creditors have the right to appeal to the sheriff about the adjudication. Once that appeal period has passed the trustee prepares a scheme of division which details their remaining costs and the amounts payable to each class of creditor. This is audited along with the penultimate account and the debtor and creditors have the right to appeal against the amount of remuneration and outlays to the sheriff. Once any appeals are dealt with the trustee will pay the dividend to creditors.

### *Corporate Insolvency*

The provisions relating to winding-up proceedings are set out in Part IV and V (unregistered companies) of the 1986 Act and Part 4 of the Insolvency (Scotland) Rules 1986. The provision empowering a liquidator to sell the company's assets is set out in paragraph 6 of schedule 4 to the 1986 Act. The provisions relating to distributions to creditors are contained in the Insolvency (Scotland) Rules 1986.

## **10 What are the conditions for the closure of the proceeding?**

### *Sequestration*

Once the final account has been audited and any dividend paid the trustee will apply to AiB for their discharge.

The record is retained on the RoI for two years after the date of the trustee's discharge and is a public record which can be searched. A record of the bankruptcy may remain on lists maintained by credit reference agencies for up to six years following discharge.

## Corporate Insolvency

The provisions relating to the ending of administrations and liquidations are set out in the 1986 Act and the Insolvency (Scotland) Rules 1986.

The conditions relating to the ending of an administrative receivership will be regulated by the security documentation.

### Sanctions

There are civil and criminal sanctions which can be levied against directors who abuse the privilege of limited liability

#### Civil

Where a company enters administration or receivership or goes into liquidation, if a director has acted in a way that makes him unfit to be a director then he can be disqualified from acting as a director or being involved in the management of a company for a period between two and fifteen years.

In liquidations a director can also be ordered by the court to contribute to the company's assets if the director has caused the company to continue trading to the detriment of creditors after he knew that the company was insolvent.

#### Criminal

There are a number of specific offences set out in the 1986 Act for companies in liquidation for which a director can be prosecuted. In addition it is possible to prosecute directors for company law offences and any other criminal matter that may be evidenced.

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Member States in charge of the management of national content pages are in the process of updating some of the content on this website in the light of the withdrawal of the United Kingdom from the European Union. If the site contains content that does not yet reflect the withdrawal of the United Kingdom, it is unintentional and will be addressed.

## Insolvency - Gibraltar

### 1 What are the different types and aims of insolvency proceedings?

Insolvency can be very generally defined as the inability to pay one's debts. Gibraltar law does not provide any statutory definition for the term "insolvency" although Section 42(3) (b) of the [Bankruptcy Act](#) provides, in the context of Administration of Property, as follows:

"insolvent" means in respect of a Settlor, any Settlor whose liabilities, both actual and contingent or prospective, exceed the value of his assets".

#### Pre-Insolvency Proceedings

##### Personal Insolvency Procedures

Through the use of a "composition" or a "scheme of arrangement", the debtor may have the means to satisfy his creditors by giving them the best possible method of settlement of their debts without the debtor facing the difficulties and expenses of having a full adjudication order made against him.

Composition – the debtor undertakes to settle his debts with his creditors in a stated manner whilst retaining possession of his assets throughout the term of the composition.

Scheme – the debtor undertakes to settle his debts but through the medium of a trustee, who administers the proceedings and has control of the debtor's assets.

Another option for a debtor is provided by the Deeds of Arrangement Act where he can enter into a Deed of Arrangement with some or all of his creditors and thereby avoid the publicity and difficulties of bankruptcy.

##### Corporate Insolvency Procedures

Arrangements can be made between a company and its creditors. Where such a compromise or arrangement is proposed, the Supreme Court may order a meeting of creditors. If three quarters in value of the creditors are present and vote either in person or by proxy to agree to any compromise or arrangement, the same shall, if sanctioned by the court, be binding on all the creditors and the company.

Provisions also exist to facilitate the reconstruction and amalgamation of companies.

##### Formal Insolvency Procedures

###### Personal

A legal process in which an insolvent debtor is obliged by the court to account for his financial situation and be directed as to how to pay off his creditors as fairly as possible. Invariably, this involves the realisation and distribution of assets. An individual can be adjudged bankrupt on the application of a creditor or by the debtor himself.

###### Corporate

The "winding up" of a company to realise and distribute its assets. At the conclusion of the winding up proceedings, the company is dissolved. The three types are:

Compulsory – where the court makes a winding up order upon the application of a creditor or creditors (including any contingent or prospective creditor or creditors) and/or a contributory or contributories;

Voluntary – where the company's members resolve by extraordinary resolution that because of its liabilities, the company cannot continue in business and that it is advisable to wind up;

Voluntary subject to the Supervision of the Court – where a company has passed a resolution for voluntary winding up, the Supreme Court may make an order that the winding up continue subject to the supervision of the court on such terms and conditions the court may think fit and with liberty to apply for creditors, contributories or others.

### 2 What are the conditions for opening each type of insolvency proceedings?

#### Corporate Insolvency Procedures

##### (a) Compulsory Liquidation

The circumstances in which the court may wind up a company are set out in Section 156 of the [Companies Act](#). These are:

the company has by special resolution resolved that the company be wound up by the court;

default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

the number of members is reduced, in the case of a private company, below one, or, in the case of any other company, below seven;

the company is unable to pay its debts;

the court is of the opinion that it is just and equitable that the company should be wound up.

The application is made to the Supreme Court of Gibraltar by petition either by the company, a creditor (or creditors), a contributory (or contributories), or by all or any of those parties, together or separately.

On the subsequent making of a winding up order, a copy of the order must be forwarded by the company to the Registrar of Companies.

Where a liquidator is appointed in place of the official receiver, the notice of the appointment specifying the name and address of the liquidator must be (1) filed at the Supreme Court; (2) served upon the company at its registered office; and (3) published in the Gibraltar Gazette.

#### **(b) Voluntary**

A company may be wound up voluntarily in accordance with Section 204 of the Companies Act:

when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; if the company resolves by special resolution that the company be wound up voluntarily; if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

When a company has passed a resolution for voluntary winding up, it must, within seven days after the passing of the resolution, give notice of the resolution by placing an advertisement in the Gibraltar Gazette.

#### **Personal Insolvency Procedures**

A debtor may be adjudged bankrupt provided he is a person, whether a British subject or not, who at the time he committed an act of bankruptcy, was (1) personally present in Gibraltar; or (2) ordinarily resident in Gibraltar or had a place of residence in Gibraltar; or (3) was carrying on business in Gibraltar personally or by means of an agent or manager; or (4) was a member of a firm or partnership which carried on business in Gibraltar.

An act of bankruptcy is defined in Section 3(1) of the Bankruptcy Act and can be summarised as follows:

Makes a conveyance or assignment of property to trustees for the benefit of his creditors;

Makes a fraudulent conveyance, gift, delivery or transfer of property;

Makes a fraudulent preference;

Leaves Gibraltar with intent to defeat or delay his creditors;

After execution from a court action, his goods are held or sold by the marshal after 21 days;

Declares his inability to pay his debts;

A petition is made by a creditor.

### **3 What is the role of the various participants in each type of proceedings?**

#### **The Court**

The role and function of the Court depends on the type of proceedings before it:

#### **Liquidation**

Compulsory – This is a court based procedure where a company is placed into compulsory liquidation by a court order.

Voluntary – This is not a court based procedure but the court can intervene if the supervision of the court is sought or where ancillary applications are, as a matter to law, to be made to the court.

#### **Bankruptcy**

This is a court based procedure where an individual is made bankrupt by a court order.

#### **Others who can act in Insolvency Proceedings**

#### **Liquidation**

**(a) Liquidator** – a person appointed to conduct the winding up of a company; to bring and defend actions in its name and do all necessary acts on behalf of the company.

**(b) Creditors** – Creditors play an important role in liquidation in that their interests have to be taken into account.

**(c) Directors** – Directors have a duty to co-operate with and provide information during the course of the liquidation.

#### **Bankruptcy**

**(a) Official Trustee** – the role of the official trustee is to act as receiver and manager of a debtor's property until a composition or scheme is approved or the debtor is adjudged bankrupt, and to act as trustee where the debtor is adjudged bankrupt.

**(b) Creditors** – Creditors also play an important role in bankruptcy proceedings.

**(c) Debtor** – A debtor can institute his own bankruptcy proceedings and has a duty to fully assist with the bankruptcy proceedings.

### **4 What are the effects of the opening of proceedings?**

Assets can be generally defined as property that is available for the payment of the debts of an individual or company.

#### **Corporate Insolvency**

Where a winding up order has been made, the liquidator takes into his custody or control, all the property and things in action to which the company is or appears to be entitled. The court can also direct that all or part of property belonging to the company or held by trustees on its behalf vest in the liquidator in his official name.

In every winding up, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, are admissible to proof against the company.

At any time after the presentation of a winding up petition and before a winding up order has been made, the company (or a creditor/contributory) may apply for a stay of proceedings of any action against the company pending in the court. The company (or creditor/contributory) may also apply to the court to restrain further proceedings in any other actions pending against the company.

#### **Personal Insolvency**

Once an official trustee has been appointed, it is his duty to act as receiver and manager of the debtor's estate until a composition or scheme is approved or the debtor is adjudged bankrupt, and to act as trustee where the debtor is adjudged bankrupt. Immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the official trustee.

Generally, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, constitute debts provable in bankruptcy.

The court may, at any time after the presentation of a bankruptcy petition, stay any action, execution or other legal process against the property or person of the debtor. Any court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it thinks fit.

### **5 What are the specific rules related to certain categories of claims?**

#### **Personal Insolvency**

#### **Mutual Credit & Set-Off**

Where there have been mutual credits, mutual debts or other mutual dealings between a debtor against whom a receiving order has been made and any other person proving or claiming to prove a debt under the receiving order, account will be taken of what is due from one party to the other in respect of such

mutual dealings. The sum due from the one party will be set off against any sum due from the other party, and no more than the balance of the account will be claimed or paid. However, a person is not entitled to claim the benefit of any set off against the property of a debtor where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor.

#### **Priority of Debts**

Priority is given to the following equally:

all local rates and taxes

all wages or salary of any clerk/servant for services rendered to the bankrupt for 4 months before the date of the receiving order

all wages of any labourer or workman not exceeding £200 for services rendered during 2 months before the date of the receiving order

all amounts payable by the bankrupt in respect of compensation under the provisions of the [Contract and Tort Act](#) (not exceeding £500 in any individual case), the liability for which accrued before the date of the receiving order

all amounts payable by the bankrupt in respect of contributions as employer of any person under the [Social Security \(Employment Injuries Insurance\) Act](#) and under the [Social Security \(Insurance\) Act](#).

Subject to the above, all provable debts are to be paid "pari passu".

#### **Corporate Insolvency**

##### **Set-Off**

The court may, at any time after making a winding up order, make an order for any contributory on the list of contributories to pay any money due from him to the company. In making such an order in the case of an unlimited company, allow the contributory by way of set-off any money due to him by the company, but not any money due to him as a member of the company in respect of a dividend or profit. In the case of both limited and unlimited companies, once all the creditors have been paid in full, any money due on any account to a contributory from the company may be allowed by way of set-off.

##### **Priority of Debts**

Priority is given to the following equally:

all local rates & taxes

all wages or salary of any clerk/servant for services rendered to the company for 12 months before the date of the winding up order/commencement of the winding up ("the relevant date") not exceeding £1000

all wages of any labourer or workman not exceeding £1000 for services rendered during 12 months before the relevant date

all amounts payable by the company in respect of compensation under the provisions of the [Contract and Tort Act](#) (not exceeding £500 in any individual case), the liability for which accrued before the relevant date

where any payment on account of wages or salary made to any clerk, servant, workman or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall have right of priority in respect of the money so advanced

Subject to the above, all provable debts are to be paid "pari passu".

#### **6 What are the rules relating to detrimental acts?**

There are limited provisions whereby a liquidator or official trustee can seek to assist creditors in recouping assets subject to "fraudulent" preferences.

#### **Personal Insolvency**

Section 44 of the Bankruptcy Act provides that every conveyance or transfer of property, or charge thereon made, every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or any person in trust for any creditor, with a view to giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void against the official trustee.

#### **Corporate Insolvency**

Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

#### **7 What are the conditions for the lodgement and admission of claims?**

Details as to the presentation of claims, notice and priority of claims are set out above.

#### **8 What are the rules relating to reorganisation proceedings?**

See the answer to Question 1 above.

#### **9 What are the rules relating to winding-up proceedings?**

##### **Personal Insolvency**

These are contained in the Bankruptcy Act together with its Schedules. A number of the relevant rules have been referred to above.

##### **Corporate Insolvency**

These are contained in the Companies Act and where provided, the Bankruptcy Rules also apply. Some of these rules have been referred to above.

#### **10 What are the conditions for the closure of the proceeding?**

##### **Personal Insolvency**

An undischarged bankrupt can apply for his discharge if he satisfies the provisions of Section 25 of the Bankruptcy Act. Meanwhile, a number of offences can be committed by the bankrupt, to include:

an undischarged bankrupt obtaining credit

a bankrupt absconding with property

a bankrupt committing a fraud.

##### **Corporate Insolvency**

Once the liquidators have been released and the affairs of the company have been completely wound up, proceedings end with the dissolution of the company. There are a number of offences that can be committed during the course of the liquidation, such as the non-delivery of property and documents by the officers of the companies, or making a material omission. The Companies Act makes provision for "delinquent" directors, in which cases can be referred to the Attorney General with a view to a possible future prosecution.

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