Glossary of Insolvency Terms

Expert knowledge means success

Contents

Note: This publication has not been updated since it was last published. Some of the hyperlinks may have changed and may need updating. In addition, some of the information in this publication may be out of date.

Introduction

We have compiled this glossary of terms to assist you to understand the "jargon" which is used in business and investment. This glossary is limited to Insolvency Terms but we publish several other glossaries as well – check our website or call us for details.

Insolvency Terms

- Administration Order - an administration order is a Court Order placing a company that is, or is likely to become, insolvent under the control of an administrator following a petition by the company, its directors or a creditor. The purpose of the order is to preserve the company's business, allow a reorganisation or ensure the most advantageous realisation of its assets whilst protecting it from action of its creditors.
- Administrative Receiver - appointed by the holder of a floating charge covering the whole, or substantially the whole, of a company's property. He can carry on the company's business and sell the business and other assets comprised in the charge to repay the secured and preferential creditors. Sometimes, this is abbreviated to "receiver".
- Administrative Receivership - the term applied to the legal state of a company when a person is appointed as an administrative receiver over its assets.
- Administrator - a licensed insolvency practitioner appointed by the Court under an administration order to achieve the purposes set out in the order. The administrator will need to produce a plan, known as his proposals for approval by the creditors to achieve this.
- Agricultural Receivership - a specialist remedy to take control of the assets of a farmer under the Agricultural Credits Act 1928.
- Associates - Associates of an individual include family members, relatives, partners and their relatives, employees, employers, trustees in certain trust relationships, and companies which the individual controls. Associates of companies include other companies under common control (see also connected persons).
- Bankrupt - a bankrupt is an individual against whom a bankruptcy order has been made by the Court. The order signifies that the individual is unable to pay his/her debts and deprives him/her of his/her property, which is then realised for distribution amongst his creditors.
- Bankruptcy - the process of dealing with the estate of a bankrupt. A bankrupt is an individual against whom a bankruptcy order has been made by the Court. The order signifies that the individual is unable to pay his/her debts and deprives him/her of his/her property, which is then realised for distribution amongst his creditors.
- Bond - insurance cover, to protect the uncharged assets of an estate needed by a person who acts as a licensed insolvency practitioner.
- Break-up sale - dismantling of a business. Trading ceases and the assets are sold off piecemeal. Insolvency practitioners prefer to sell as a going concern if possible.
- Charge - a right given to the creditor to have a designated asset of the debtor appropriated to the discharge of the indebtedness, but not involving any transfer either of possession or ownership.
- Charging Order – a Court order placing restrictions on the disposal of certain assets, such as property or securities, and gives priority of payment over other creditors.
- Company Directors Disqualification Act (1986) - the Consolidation Act on the disqualification of persons from being directors or otherwise concerned with a company's affairs.
- Company Voluntary Arrangement (CVA) – this is a voluntary arrangement for a company is a procedure whereby a plan of reorganisation or composition in satisfaction of its debts, is put forward to creditors and shareholders. There is a limited involvement by the Court and the scheme is under the control of a supervisor.
- Composition – this is an agreement between debtor and his creditors whereby the compounding creditors agree with the debtor and between themselves to accept from the debtor payment of less than the amounts due to them in full satisfaction of their claim.
- Compulsory Liquidation - a compulsory liquidation of a company is a liquidation ordered by the Court. This is usually as a result of a petition presented to the Court by a creditor and is the only method by which a

creditor can bring about a liquidation of its debtor company.

- Connected Persons – these are directors or shadow directors and their associates, and associates of a company.
- Court-appointed Receiver - a person, not necessarily a licensed insolvency practitioner, appointed to take charge of assets usually where they are subject to some legal dispute. Not strictly an insolvency process, the procedure may be used other than for a limited company, e.g. to settle a partnership dispute.
- **Creditors' Committe**e - a creditors' committee is formed to represent the interests of all creditors in supervising the activities of an administrator or trustee in bankruptcy or receiving reports from an administrative receiver (cf Liquidation Committee).
- **Creditors' Voluntary Liquidation** (CVL) - this relates to an insolvent company. It is commenced by resolution of the shareholders, but is under the effective control of creditors, who can choose the liquidator.
- Debenture - this is a document stating the terms of a loan, usually to a company. Debentures may be secured on part or all of a company's assets, or they may be unsecured. Often also referred to as floating charge and the lender is often referred to as a floating charge, and the lender is often referred to as the debenture holder.
- Disqualification of Directors - a director found to have conducted the affairs of an insolvent company in an "unfit" manner will be disqualified, on application to the Court by the DTI, from holding any management position in a company between 2 and 15 years.
- Extortionate Credit Transaction - transaction by which credit is provided on terms that are exorbitant or grossly unfair compared with the risk accepted by the creditor. Such a transaction may be challenged by an administrator, liquidator or trustee in bankruptcy.
- Fixed Charge - form of security granted over specific assets, preventing the debtor dealing with those assets without the consent of the secured creditor. It gives the secured creditor a first claim on the proceeds of sale, and the creditor can usually appoint a receiver to realise the assets in the event of default.
- Floating Charge - a floating charge is a form of security granted to a creditor over general assets of the company which may change from time to time in the normal course of business (e.g. stock). The company can continue to use the assets in its business until an event of default occurs and the charge crystallises. If this happens, the secured creditor can realise the assets to recover his debt, usually by appointing an administrative receiver, and obtain the net proceeds of sale subject to the prior claims of the preferential creditors.
- Fraudulent Trading - where a company has carried on business with intent to defraud creditors, or for any fraudulent purpose. It is a criminal offence and those involved can be made personally liable for the company's liabilities.
- Going Concern Sale – this is the basis on which insolvency practitioners prefer to sell a business. Effectively, it means the business continues, jobs are saved, and a higher price is obtained.
- Guarantee - legal commitment to repay a debt if the original borrower fails to do so. Directors may give guarantees to banks in return for the bank giving finance to their companies.
- Individual Voluntary Arrangement (IVA) - voluntary arrangement for an individual is a procedure whereby a scheme of arrangement of his affairs or composition in satisfaction of his debts is put forward to creditors. Such a scheme requires the approval of the Court and is under the control of a supervisor.
- Insolvency – this is defined as the state of having insufficient assets to meet all debts, or being unable to pay debts as and when they are due. If a creditor can establish either test, he will be able to present a winding-up petition. For a bankruptcy petition, inability to pay is the only available ground.
- Insolvency Act 1986 - this is the primary legislation governing insolvency law and practice. Nevertheless, many other statutes and statutory instruments are also relevant.
- Insolvent Liquidation - a company goes into insolvent liquidation if its goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of liquidation.
- Insolvency Partnership Order 1994 (IPO) - an Order setting out the procedures for dealing with insolvent partnerships. The Order provides for winding up an insolvent partnership as an unregistered

company, with or without concurrent insolvency proceedings against individual partners; for the joint bankruptcy of individual partnerships, without winding up the partnership as an unregistered company; and for the application of the administration and company voluntary arrangement procedures to insolvent partnerships.

- Insolvency Practitioner (IP) - see Licensed Insolvency Practitioner.
- Insolvency Rules - The Insolvency Rules 1986, as amended, provide the detailed working procedures for the provisions of the Insolvency Act 1986.
- Insolvency Services Account An account maintained at the Bank of England by the Department of Trade and Industry, through which funds must be passed in liquidations and bankruptcies.
- Insolvent Liquidation -a liquidation in which the company is unable to pay all it creditors.
- Interim Order - an individual who intends to propose a voluntary arrangement to his creditors may apply to the Court for an interim order which, if granted, precludes bankruptcy and other legal proceedings whilst the order is in force.
- Judgement – this is: (1) Recognition of a debt by a Court or (2) Decision given by a Court at the conclusion of a trial
- Law of Property Act 1925 – this governs transactions in law and property. Contains statutory powers of receivers appointed under a fixed charge.
- LPA Receiver - Law of Property Act 1925 receiver: a person (not necessarily an insolvency practitioner) appointed to take charge of a mortgaged property by a lender whose loan is in default, usually with a view to sale or to collect rental income for the lender. This is common in the case of the failure of a property developer, whose borrowings will largely be secured on specific properties.
- Licensed Insolvency Practitioner (IP) - a person licensed by one of the Chartered Accountancy bodies, the Law Societies, the Insolvency Practitioners' Association or the Department of Trade. An IP is the only person who may act as an office holder in an insolvency.
- Lien – the legal right to retain possession of assets or documents in settlement of a debt.
- Liquidation - liquidation is a process whereby a company has its assets realised and distributed to satisfy, insofar as it is able, its liabilities and to repay its shareholders. The term winding-up is also used. Liquidation is a terminal process and is followed by the dissolution of the company.
- Liquidation Committee – a committee of creditors who receive information from the liquidator and sanction some of his actions (c.f. Creditors' Committee).
- Liquidator - a licensed insolvency practitioner appointed to wind-up a company.
- Mareva injunction - a Court order preventing the disposal of assets.
- **Members' Voluntary Liquidation** (MVL) - a solvent liquidation where the shareholders appoint the liquidator to realise assets and settle all the company's debts, plus interest, in full within 12 months.
- Misfeasance - breach of duty in relation to the funds or property of a company by its directors or managers.
- Mortgage - a transfer of an interest in land or other property by way of security redeemable upon performing the condition of paying a given sum of money.
- Nominee - an insolvency practitioner appointed to consider proposals of a debtor in an individual, company or partnership voluntary arrangement.
- Office Holder – a liquidator, provisional liquidator, administrator, administrative receiver, supervisor of a voluntary arrangement, or trustee in bankruptcy.
- Official Receiver (OR) - an Officer of the Court, civil servant, member of the Department of Trade Insolvency Service, deals with bankruptcies and compulsory liquidations.
- Onerous Property The term onerous property in the content of a liquidation or bankruptcy applies to unprofitable contracts and to property that is unsaleable or not easily saleable or that might give rise to a continuing liability. Such property can be disclaimed by a liquidator or a trustee in bankruptcy.
- Partnership Voluntary Arrangement - a voluntary arrangement (under the provision of The Insolvent Partnerships Order 1994) for a partnership (PVA) is a procedure whereby a proposal is put forward to creditors for a composition in satisfaction of its debts or a scheme of arrangement. Such a scheme requires the approval of the court and may be proposed in conjunction with individual voluntary arrangements in respect of each of the partners.

- Petition - a written application to Court for relief or remedy.
- Preference - payment or other transaction made by an insolvent company or individual which places a creditor in a better position than they would have been otherwise. A liquidator, administrator or trustee in bankruptcy may recover sums which are found to be preferences. If the transactions took place within a period of either two years (where the creditor is a connected person) or six months (in other cases) of the insolvency.
- Preferential Creditor - defined in Schedule 6 of The Insolvency Act 1986. Has priority over creditors whose debts are secured by a floating charge and unsecured creditors, when funds are distributed by a liquidator, administrative receiver or trustee in bankruptcy.
- Pre-Pack –a technique devised by insolvency practitioners to rescue a company in distress. It is used where a company is placed into administration (or a company voluntary arrangement (CVA)) and then immediately sold pursuant to a sale arranged before the administrator (or the supervisor of a company subject to a company voluntary arrangement) was appointed.
- Proof of Debt - the document submitted by a creditor to the licensed insolvency practitioner giving evidence of the amount of the debt. Only used in compulsory liquidations.
- Provisional Liquidator - the name usually given to a licensed insolvency practitioner appointed to safeguard a company's assets after presentation of a winding-up petition but before a winding-up order is made.
- Proxy – the document whereby a creditor authorises another person to represent him at a meeting of creditors. The proxy may be a general proxy, giving the proxy holder discretion as to how he votes, or a special proxy requiring him to vote as directed by the creditor. A body corporate can only be represented by a proxy.
- Proxy holder – the person who attends a meeting on behalf of someone else.
- Public examination - when a company is being wound up or in bankruptcy proceedings, the Official Receiver may at any time apply to the court to question the company's director(s) or any other person who has taken part in the promotion, formation or management of the company or the bankrupt.
- Receiver- this term is often used to describe an administrative receiver, who may be appointed by a secured creditor holding a floating charge over a company's assets. More accurately, a receiver is the person appointed by a secured creditor holding a fixed charge over specific assets of a company in order to take control of those assets for the benefit of the secured creditor.
- Receivership - the general term applied when a person is appointed as a receiver or administrative receiver.
- Recognised Professional Body - an organisation approved by the Secretary of State as being able to authorise its members to act as insolvency practitioners.
- Reservation of Title (or Retention of Title) – a provision under a contract for the supply of goods which purports to reserve ownership of the goods with the supplier until the goods have been paid for. This is a complex and continually evolving area of law.
- Scheme of Arrangement – this is a term normally used to describe a compromise or arrangement between a company and its creditors or members or any class of them under section 425 of the Companies Act 1985, which may involve a scheme for the reconstruction of the company. If a majority in number representing three-fourths in value of the creditors or members or any class of them agree to compromise or arrangement it is binding if sanctioned by the court. Section 425 may be invoked where there is an administration order in force in relation to the company where there is a liquidator or provisional liquidator in office, or where the company is not subject to any insolvency proceedings. The term is also used in section 1 of the Insolvency Act 1986 in relation to company voluntary arrangements.
- Secured Creditor – a creditor with specific rights over some or all of the debtor's assets. A secured creditor gets paid first out of the proceeds of sale of the security.
- Security - charge or mortgage over assets taken to secure payments of a debt. If the debt is not paid, the lender has a right to sell the charged assets. Security documents can be very complex. The commonest example is a mortgage over a property.
- Shadow Director – a person who is not formally appointed as a director, but in accordance with whose directions or instructions the directors of a company are accustomed to act.

However, a person is not a shadow director merely because the directors act on advice given by him in a professional capacity.

- Special Manager - a special manager is a person appointed by the Court in a compulsory liquidation or bankruptcy to assist the liquidator, official receiver or trustee in managing the insolvent's business. He does not need to be an insolvency practitioner.
- Statutory Demand - a formal notice requiring payment of a debt exceeding £750 within 21 days, in default of which bankruptcy or liquidation proceedings may be commenced without further notice. A statutory demand cannot be used where the debt is disputed.
- Supervisor - the licensed insolvency practitioner appointed by creditors to supervise the way in which an approved voluntary arrangement is put into effect.
- Transaction at an Undervalue - a transaction at an undervalue can describe either a gift or a transaction in which the consideration received is significantly less than that given. In certain circumstances such a transaction can be challenged by an administrator, a liquidator or a trustee in bankruptcy.
- Trustee - quite apart from its common usage (e.g. under the Trustee Act 1925) this is a term used for a variety of insolvency appointments, including the licensed insolvency practitioner appointed in an English bankruptcy; a Scottish sequestration; a deed of arrangement; a Scottish trust deed and an administration order (of the affairs of a deceased director).
- Unsecured Creditor - strictly, this is any creditor who does not hold security. More commonly used to refer to any ordinary creditor who has no preferential rights, although, in fact preferential creditors will almost always also be unsecured.
- VAT Bad Debt Relief - the relief obtained in respect of the VAT element of an unpaid debt. Previously available only when the debtor became insolvent, relief is now available where debt is 6 months old at the relevant date.
- Voluntary Arrangement - see Individual Voluntary Arrangement (IVA), Company Voluntary Arrangement (CVA) and Partnership Voluntary Arrangement (PVA).
- Voluntary Liquidation - see creditors' voluntary liquidation and members' voluntary liquidation.
- Winding-up - see liquidation.
- Winding-up Order – the order made by the Court for a company to be placed in compulsory liquidation.
- Winding-up Petition - a petition presented to the Court seeking an order that a company be put into compulsory liquidation.
- Wrongful Trading - applied to companies in liquidation where a director allowed the company to continue trading in circumstances where he should have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation. The directors involved may be made personally liable to make a contribution to the company's assets.

Further Information

This guide is for general interest - it is always essential to take advice on specific issues. We believe that the facts are correct as at the date of publication, but there may be certain errors and omissions for which we cannot be responsible.

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