

Standard Insolvency and Related Terms

Adequate Protection	This term is not used in Australia.
ADI	Authorised Deposit-taking Institution. A financial institution licenced by APRA to carry on banking business (e.g., a bank).
Administration	See Voluntary Administration .
AFSA	Australian Financial Security Authority. A Federal Government body supervising the bankruptcy of natural persons and personal property securities.
AIIPAAP	All Present and After-Acquired Property. A collateral class registerable as a security interest on the PPSR.
Antecedent Transactions	This term is not used in Australia.
APRA	Australian Prudential Regulation Authority. A Federal Government body supervising institutions across banking, insurance and superannuation.
ARITA	Australian Restructuring Insolvency and Turnaround Association. An industry body for professionals who specialise in restructuring, insolvency and turnaround.
ASIC	Australian Securities and Investments Commission. A federal government body supervising companies and dealings in securities, financial services and credit.
ASX	Australian Stock Exchange. Australia's primary securities exchange owned by ASX Limited, an Australian public company.
ASX Listing Rules	Australian Stock Exchange Listing Rules. Rules governing, among other things, admission, suspension and removal of entities to the official list, quotation of securities, disclosure and listed entities' conduct.
Automatic Moratorium	This term is not used in Australia.
Bankruptcy	An insolvency procedure that applies to natural persons under the Bankruptcy Act 1966 (Cth). Bankruptcy may be voluntary or involuntary. See Voluntary Bankruptcy and Involuntary Bankruptcy .
Bankruptcy Trustee	The trustee of a bankrupt's estate appointed in accordance with the Bankruptcy Act 1966 (Cth).
Circulating Assets	Circulating assets is a technical term defined in the PPSA. The definition is complex, but very generally, it refers to assets that a company has granted security over and is able to deal with in the ordinary course of business without the need for the secured creditor's consent (e.g., accounts, inventory and similar assets).
Circulating Security Interest	A security interest held by a secured creditor in circulating assets of a company. The concept of a circulating security interest is intended to be broadly equivalent to the pre-PPSA concept of a floating charge.
Classification of Creditors	This term is not used in Australia.
Clawback Period	The prescribed period prior to the commencement of formal insolvency in which transactions are potentially at risk of being set aside as voidable transactions in a subsequent liquidation. See Relation Back Day and Voidable Transactions .
Collateral	Assets secured by a security interest which may include personal and/or real property. Collateral is a technical term when used in relation to the PPSA and refers to personal property to which a security interest has attached.
Committee of Inspection	A representative group of creditors, usually appointed by the creditors of a company in external administration to assist and advise the external administrator. The committee of inspection has certain powers including the power to approve certain steps in the external administration, and the power to give directions to the external administrator (which they are typically required to have regard to but are not always required to comply with).
Company	Generally refers to a company registered under the Corporations Act, but may, in certain circumstances, include other bodies such as foreign companies.

Standard Insolvency and Related Terms

Compulsory Liquidation or Court Ordered Liquidation	A liquidation of a company ordered by the court usually on application by a creditor under the Corporations Act 2001 (Cth) on grounds that, for example, the company is insolvent or the court considers it just and equitable that the company be wound up.
Controller	A receiver, a receiver and manager or anyone else who is in possession, or has control, of that property for the purpose of enforcing a security interest.
Cram Down	This term is not used in Australia.
Creditor-Defeating Disposition	A type of voidable transaction. A transaction entered into generally within the 12 month period prior to the relation back day or liquidation involving the disposal of a company's assets for less than market value or the best price reasonably obtainable which has the effect of preventing, hindering or delaying property becoming available for the benefit of creditors in a winding up. Officers of the company also have a statutory duty to prevent creditor-defeating dispositions, and it is an offence to, among other things, procure creditor-defeating dispositions.
Creditors' Meeting	Meetings of creditors in an external administration generally. In the context of voluntary administration, it refers to the first meeting of creditors or second meeting of creditors.
Creditors' Trust	A trust established to hold assets to meet creditor claims, frequently used in conjunction with a DOCA.
Creditors' Voluntary Liquidation	A liquidation for insolvent companies, initiated by the company.
Debenture	This term is not used in Australia.
Debt Repayment Scheme	This term is not used in Australia.
Decision Period	The period being 13 business days from notice of appointment of the administrator within which the holder of security over all or substantially all of the assets of the company may appoint a receiver or take other enforcement action in respect of those assets.
Declaration of Intention or DOI to Present a Debtor's Petition	A declaration of intention to present a debtor's petition. This is a form lodged with AFSA in the context of personal bankruptcy to gain temporary protection from enforcement action by unsecured creditors. The relief allows a person to consider their options including negotiating payment arrangements with creditors or proceeding to bankruptcy.
Declaration of Relevant Relationships or DIRI	A declaration that must be provided by a voluntary administrator or a liquidator in a creditors' voluntary liquidation informing creditors about certain relationships. The declaration provides information to enable creditors to make an informed decision about whether they wish to replace the voluntary administrator or liquidator over concerns about independence.
Deed Administrator	The external administrator appointed to oversee a deed of company arrangement.
Deed of Company Arrangement or DOCA	A DOCA is a form of restructuring plan that is one of the outcomes available to a company after it has entered voluntary administration. It is essentially an agreement that is binding by statutory force between the company and its creditors that sets out how the company's affairs will be dealt with following its exit from administration.
Deregistration	The deregistration of a company by its members or ASIC.
Discharge	The removal of a security interest registered on the PPSR once the underlying obligations secured by the security interest have been satisfied.
Disclosure Orders	This term is not used in Australia.
Disqualification	The disqualification of a person (e.g., a director) from managing a company.
Dissolution	This term is not used in Australia.
Extension of Moratorium	This term is not used in Australia.
External Administration	Any insolvency process applicable to a company and includes voluntary administration, receivership and liquidation.
External Administrator	An external person formally appointed to control the affairs of a company and its property in an external administration of the company. It includes a provisional liquidator, liquidator, voluntary administrator and an administrator under a deed of company arrangement.

Standard Insolvency and Related Terms

FEG	The Fair Entitlements Guarantee. An Australian Government payment scheme administered by the Department of Employment to assist employees who have lost their jobs as a result of their employer's liquidation or bankruptcy and are owed employee entitlements.
Financing Statement	The information entered by a secured party when making a registration on the PPSR. The Financing Statement contains the particulars of the parties to the transaction, the collateral and the security interest.
FIRB	The Foreign Investment Review Board, which is responsible of reviewing certain investments by foreign persons in respect of Australian companies and assets.
First Meeting of Creditors or First Creditors' Meeting	The first meeting of creditors in the voluntary administration of a company where the creditors decide whether the administrator should be replaced and whether a committee of inspection should be appointed (and if so, who are its members).
Fixed Charge	This term is not used in Australia.
Floating Charge	This term is not used in Australia.
Fraudulent Trading	This term is not used in Australia.
General Security Agreement, General Security Deed, GSA or GSD	A general security agreement or deed over all or substantially all of a person's (natural or corporate) assets.
Going Concern	A business that is operational.
Guarantee	An agreement under which a person (natural or corporate) agrees to make a payment or perform an obligation on the occurrence of certain prescribed events (e.g., default or non-performance by another person).
Individual Voluntary Arrangement	This term is not used in Australia.
Insolvency Practitioner	A registered liquidator within the meaning of section 9 of the Corporations Act 2001 (Cth) or a trustee within the meaning of subsection 5(1) of the Bankruptcy Act 1966 (Cth).
Insolvent	The inability of a company to pay its debts as and when they fall due for payment.
Insolvent Trading	The incurrance of debt by a company while the company is insolvent. Directors have a duty to prevent insolvency trading under the Corporations Act 2001 (Cth).
Interim Judicial Manager	This term is not used in Australia.
Involuntary Bankruptcy	Bankruptcy of a natural person commenced by way of a creditor applying to the court to make a person bankrupt.
<i>Ipsa Facto</i> Clauses	A clause in a contract that allows a party to terminate the contract and/or modify rights and/or obligations on the occurrence of certain insolvency-related events on the part of the counterparty. 'Ipsa facto' is not a technical term. Under recent reforms to the Corporations Act 2001 (Cth), the enforcement of ipso facto clauses for certain prescribed reasons relating to insolvency (e.g. because the company is under administration) is stayed during the 'stay period'.
Judicial Management	This term is not used in Australia.
Judicial Management Order	This term is not used in Australia.
Judicial Manager	This term is not used in Australia.
Limited Liability Partnership	A partnership with limited liability registered under the laws of a State or Territory of Australia (e.g. Partnership Act 1892 (NSW)).
Liquidation	The winding up of a company's affairs involving the realisation of the company's assets, the cessation or sale of its operations, the distribution of the proceeds of realisation among its creditors and the distribution of any surplus among its shareholders. There are three types of liquidation: compulsory or court ordered liquidation, creditors' voluntary liquidation and members' voluntary liquidation.
Liquidation General Account	This term is not used in Australia.

Standard Insolvency and Related Terms

Liquidation Special Account	This term is not used in Australia.
Liquidator	A natural person appointed to administer the liquidation of a company.
Members' Voluntary Liquidation	A liquidation for solvent companies, initiated by the company.
Moratorium	A stay on creditors from taking certain actions in respect of a company. The main context in which a moratorium arises is in the voluntary administration of a company. Upon appointment of an administrator, an automatic stay applies throughout the administration period which prevents the winding up of the company, secured parties enforcing security interests, lessors or third parties taking possession of leased property or property owned by the third party, court or enforcement proceedings against the company or its property, and enforcement of guarantees given by a director (or their spouse or relative) in respect of the company.
Mortgagee in Possession	A secured creditor who has exercised its right to take control of mortgaged property due to the company's default on the mortgage.
Non-Circulating Assets	This is not a technical term but in common usage refers to assets that are not circulating assets.
Non-Circulating Security Interest	This is not a technical term but in common usage refers to a security interest held by a secured creditor in non-circulating assets of a company.
Officer	A director, secretary or external administrator of a company or a person (natural or corporate) who exerts significant influence over the affairs of a company.
Official Assignee	This term is not used in Australia.
Official Receiver	This term is not used in Australia.
Part IX Debt Agreement	A binding agreement between a natural person in financial distress and their unsecured creditors under which unsecured creditors generally agree to a discount and repayment terms based on the debtor's capacity to pay having regard to their income and expenses.
Partnership	A relationship between two or more persons (natural or corporate) who carry on a business in common.
Perfection	The process of conferring on a PPSA security interest the best priority and effectiveness, and enabling it to be enforceable against third parties, by attaching the security interest to the collateral and (most commonly) registering it on the PPSR. Perfection can also be conferred by possession or control over particular types of personal property.
Personal Insolvency Agreement or PIA	A personal insolvency agreement is an agreement between a natural person in financial distress and their unsecured creditors under which they generally agree to a discounted lump sum payment, a transfer of assets (with sale proceeds to be distributed to unsecured creditors) and/or new repayment terms.
Personal Property	Personal property is a technical term under the PPSA. For most purposes, it means property (including a licence) other than land.
Petition	An application by a creditor to make a person bankrupt under the Bankruptcy Act 1966 (Cth).
PMSI	Purchase Money Security Interest. A type of security interest that secures the debt incurred in acquiring the collateral. PMSIs are generally given higher priority than other types of security interests under the PPSA.
Pooling	The practice of treating the affairs of a group of companies as if it were a single external administration.
PPSA	Personal Property Securities Act 2009 (Cth).
PPSR	Personal Property Security Register. A register of security interests in personal property registered under the PPSA.
Preferential Creditor	This term is not used in Australia.
Priority Creditor	An unsecured creditor entitled to be paid ahead of other unsecured creditors and secured creditors with security interests over circulating assets (e.g., employees).

Standard Insolvency and Related Terms

Proof of Debt	A prescribed form to be completed by creditors at an external administrator's request, setting out details of their claim against the company, including how the debt arose and the amount claimed.
Provisional Liquidation	A temporary process ordered by the court at any time after the filing of a winding-up application and before the making of a winding-up order whereby a liquidator is appointed on a provisional basis to preserve the company's assets.
Provisional Liquidation in Compulsory Liquidation	This term is not used in Australia.
Provisional Liquidation in Voluntary Liquidation	This term is not used in Australia.
Provisional Liquidator	A liquidator appointed by the court in a provisional liquidation.
Proxy	A person appointed by another person to represent them at a meeting (including at creditors' meetings).
Proxy Form	A form that creditors or shareholders must complete to appoint a proxy for a creditors' or shareholders' meeting.
Public Examination	A formal examination ordered by, and conducted in, open court of an officer of an externally administered company, or other persons who may be able to give information about the affairs of the company. Application for a public examination may be made to the court by a liquidator, voluntary administrator, deed administrator, ASIC or a person authorised by ASIC to do so.
Receiver	A natural person (who is required to be a registered liquidator) appointed by a secured creditor to realise assets subject to the secured creditor's security interest to repay the secured debt. A receiver may also be appointed by the court to protect the company's assets or to carry out specific tasks but this is less common.
Receiver and Manager	A receiver who has, under the terms of their appointment, the power to manage the company's affairs.
Receiver Appointed Under a Court Order	This term is not used in Australia.
Receiver in Aid of Mareva Injunction	This term is not used in Australia.
Receivership	An insolvency procedure where a receiver, or receiver and manager, is appointed over some or all of the company's assets.
Recognition of Foreign Insolvency Proceedings	The recognition of foreign insolvency proceedings under the Cross-Border Insolvency Act 2008 (Cth).
Registered Business Trust	This term is not used in Australia.
Registration of Charges	This term is not used in Australia.
Relation Back Day	The day that is relevant for determining the period within which a transaction entered into by a company in liquidation may be set aside as a voidable transaction. It is determined by reference to the type(s) and timing of external administration processes the company was subject to prior to being placed into liquidation.
Release	The release of a security interest in property.
Rescue Financing	This term is not used in Australia.
Retention of Title or ROT	A retention of title clause in a sale of goods contract under which title to the goods does not pass to the buyer until the buyer has paid for them. ROT clauses are usually considered security interests (and potentially PMSIs) under the PPSA.
Safe Harbour	A statutory regime under the Corporations Act 2001 (Cth) which protects directors from personal liability for insolvent trading if, among other things, the director takes a course of action that is reasonably likely to lead to a better outcome for the company and its creditors.
Scheme of Arrangement	Schemes of arrangement in Australia may be: (i) creditors' schemes (i.e., schemes affecting the rights of creditors of a company) or (ii) members' schemes (i.e., schemes affecting the rights of members (shareholders) of a company). A creditors' scheme of arrangement is the most common in an insolvency context. It is a court approved compromise or arrangement between a company and its creditors (or any class of creditors).

Standard Insolvency and Related Terms

Second Meeting of Creditors or Second Creditors' Meeting	The second meeting of creditors in the voluntary administration of a company at which the creditors decide the company's future. The possible outcomes for the company are entering into a deed of company arrangement, entering into liquidation or returning control to the directors.
Secured Creditor	A creditor who holds a security interest in some or all of a company's property.
Security Interest	A security interest is security taken by a creditor over assets of a person, including personal property and real property. A security interest is a technical term when used in relation to the PPSA, and security interests under the PPSA relate only to personal property.
Shadow Director	A natural or corporate person not on the public register as an officer of a company but who exerts significant influence over the affairs of a company and is deemed by the Corporations Act 2001 (Cth) to be an officer.
Sole Proprietor	A natural person who carries on a business in their personal capacity.
Specific Security Agreement, Specific Security Deed, SSA or SSD	A specific security agreement or deed over specific assets or classes of assets of a person (natural or corporate).
Statement of Affairs	A statement provided as part of a personal bankruptcy application under which the applicant sets out their personal details and details about their employment, income, debts and assets.
Statutory Demand	A demand for payment of an uncontested debt made by a creditor to a company in accordance with s 459E of the Corporations Act 2001 (Cth). An unsatisfied statutory demand may form the basis seeking the compulsory winding up of the company.
Transactions at an Undervalue	This term is not used in Australia.
Trustee	When used in the context of personal bankruptcy, a trustee of the estate of the bankrupt.
Uncommercial Transaction	A type of voidable transaction. A transaction is an uncommercial transaction if the company was insolvent at the time it was entered into, and it may be expected that a reasonable person in the company's circumstances would not have entered into the transaction, having regard to, among other things, the benefit (if any) to the company, the detriment to the company, and the benefit to other parties of the transaction. An uncommercial transaction may be set aside by a liquidator if it occurred within up to 4 years prior to the relation back day.
Unfair Loan	A type of voidable transaction. An unfair loan is a loan where the interest or charges are extortionate. A liquidator may set aside an unfair loan any time prior to the commencement of the liquidation of the company.
Unfair Preference	A type of voidable transaction. A transaction is an unfair preference if the company was insolvent at the time it was entered into, the company and the creditor are party to the transaction and the transaction results in the creditor receiving from the company more than the creditor would receive from the company in respect of the debt if the transaction were set aside and the creditor were to prove for the debt in a winding up of the company. An unfair preference may be set aside by the liquidator if it occurred within up to 4 years prior to the relation back day.
Unfair Preference Transactions	This term is not used in Australia.
Unreasonable Director-Related Transactions	A type of voidable transaction. An unreasonable director-related transaction is a transaction where a director (or his or her close associate) has/have received a benefit from the company where, having regard to the benefits and detriments of the transaction (and any other relevant matter), a reasonable person in the company's circumstances would not have entered into the transaction. A liquidator may set aside such a transaction if it occurred within 4 years prior to the relation back day.
Unsecured Creditor	A creditor who does not hold a security interest over any of the company's assets.
Variable Capital Company	This term is not used in Australia.
Vesting	The vesting of an unperfected security interest in the grantor (rather than the secured party) on the occurrence of certain insolvency-related events.
Voidable Transactions	Types of transactions entered into by a company in liquidation that may be voided by a liquidator within the relevant clawback period. Voidable transactions include uncommercial transactions, unfair preferences, unfair loans and unreasonable director-related transactions and creditor defeating transactions).

Standard Insolvency and Related Terms

Voluntary Administration	Administration is the main form of corporate reorganisation procedure in Australia. It involves the appointment of one or more insolvency professionals as administrators of a company, who effectively displace the company's board of directors. The administration process is governed by Part 5.3A of the Corporations Act 2001 (Cth). Its objective is to provide for the business, property and affairs of an insolvent company to be administered in a way that maximises the chances of the company continuing in existence or, if it is not possible, results in a better return for the company's creditors and members than would result from an immediate winding up of the company.
Voluntary Administrator	An external administrator appointed to carry out the voluntary administration of a company.
Voluntary Bankruptcy	Bankruptcy of a natural person commenced by way of a person presenting a debtor's petition.
Voluntary Liquidation	A creditors' voluntary liquidation or a members' voluntary liquidation.
Winding Up	See Liquidation.
Winding Up Application	An application to the court for an order to wind up a company.
Winding Up Order	An order granted by a court to wind up a company. This is the first step in a court ordered liquidation, and it is generally granted in response to an application made by a creditor.
Worldwide Moratorium	This term is not used in Australia.
Wrongful Trading	This term is not used in Australia.

Insolvency and Related Legislation

Australian Prudential Regulation Authority Act 1998 (Cth)	Available at https://www.legislation.gov.au/Details/C2019C00177
Bankruptcy Act 1966 (Cth)	Available at https://www.legislation.gov.au/Details/C2020C00130
Bankruptcy (Estate Charges) Act 1997 (Cth)	Available at https://www.legislation.gov.au/Series/C2004A05113
Bankruptcy Regulations 1996 (Cth)	Available at https://www.legislation.gov.au/Details/F2020C00263
Corporations Act 2001 (Cth)	Available at https://www.legislation.gov.au/Details/C2020C00137
Corporations Regulations 2001 (Cth)	Available at https://www.legislation.gov.au/Details/F2020C00344
Corporations (Stay on Enforcing Certain Rights) Declaration 2018 (Cth)	Available at https://www.legislation.gov.au/Details/F2018L00919
Cross-Border Insolvency Act 2008 (Cth)	Available at https://www.legislation.gov.au/Details/C2017C00063
Foreign Acquisitions and Takeovers Act 1975 (Cth)	Available at https://www.legislation.gov.au/Details/C2020C00023
Foreign Acquisitions and Takeovers Regulation 2015 (Cth)	Available at https://www.legislation.gov.au/Details/F2020C00360
Insolvency Practice Rules (Corporations) 2016 (Cth)	Available at https://www.legislation.gov.au/Details/F2018C00902
Personal Property Securities Act 2008 (Cth)	Available at https://www.legislation.gov.au/Details/C2018C00093
Personal Property Securities Regulations 2010 (Cth)	Available at https://www.legislation.gov.au/Details/F2019C00247

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