

Standard Insolvency and Related Terms

Adequate Protection	This term is not used in the United Kingdom.
Administration	<p>A company may be placed into administration by court order or by an out-of-court procedure available to the company itself, its directors, or by a qualifying floating charge holder ("QFCH"). Any creditor (including QFCH), the company or its directors may apply to court for an administration order. When a company is placed into administration, an insolvency practitioner ("the Administrator") takes control of the company's affairs, in place of the directors.</p> <p>The Administrator has to perform his duties with the objective of achieving the statutory purposes in the order of priority as below:</p> <ol style="list-style-type: none">1. Rescuing the company as a going concern;2. Achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in Administration);3. Realising property in order to make a distribution to one or more secured or preferential creditors. <p>A company in Administration will have the benefit of a statutory moratorium protecting a company from legal actions whilst one of the aforementioned objectives is being pursued.</p>
Administrator	An IP appointed by the court under an administration order or by a floating charge holder or by the company or its directors filing the requisite notice at court.
Antecedent Transactions	A type of transaction which can be reversed in insolvency proceedings (both corporate and personal) to allow more assets to be available to creditors. The main antecedent transactions are: (1) transactions at an undervalue; (2) preferences and (3) the avoidance of certain floating charges.
Automatic Discharge	In personal bankruptcy, 12 months after the date of the bankruptcy order an automatic discharge occurs having the effect of releasing the individual from all debts provable in the bankruptcy proceedings. Upon discharge, the assets in the bankruptcy estate remain vested in the trustee in bankruptcy.
Automatic Moratorium	<p>A moratorium arises upon the filing of a Notice of intention to appoint an Administrator and/or upon the filing of Notice of Appointment of Administrator, or upon the appointment of an administrator by the court.</p> <p>The directors of an "eligible company" may file for a restructuring moratorium which last for 20 business days (which can be extended by a further 20 business days by the directors and by up to 12 months with the consent of creditors).</p> <p>A "small Company" may obtain a temporary optional moratorium where a proposal for that company to enter into a Company Voluntary Arrangement is made.</p> <p>A moratorium also arises where a winding-up order has been made or a provisional liquidator has been appointed.</p>
Bankruptcy	A formal insolvency procedure for individuals in England and Wales. Bankruptcy commences with a bankruptcy order, made against an insolvent individual (either on their own application or following the presentation of a creditor's petition to the court).
Classification of Creditors	In a scheme of arrangement, creditors will be separated into different classes. The classification of creditors is based upon the similarity of their legal rights in considering whether they can sensibly consult with one another to form a view as to their common interest.
Company	A company is a legal entity incorporated pursuant to the Companies Act 2006. It has a separate legal personality from the owners and provides limited liability.
Compulsory Liquidation	Winding up of a company after a petition to the court, usually by a creditor.
Creditors' Voluntary Arrangement	A compromise or other arrangement that a company reaches with creditors. The arrangement is implemented under the supervision of an insolvency practitioner (known as the nominee before the proposals are implemented, who then becomes known as the supervisor). The arrangement will be binding on creditors if the relevant majorities vote in favour of the proposals at properly convened meetings of creditors and shareholders of the company. The arrangement does not affect the rights of secured or preferential creditors, unless they agree to the proposals.
Creditors' Meeting	A meeting of creditors during which they will vote on resolutions concerning particular issue(s).

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Creditors' Voluntary Liquidation	A liquidation procedure that enables an insolvent company to be wound up by resolution of the members of the company instead of by a court order. The company's creditors will resolve the identity of the liquidator and the terms upon which they are appointed.
Cross Class Cram Down	The act of imposing a restructuring plan on dissenting creditors under a Part 26A Restructuring Plan by the court.
Crystallisation	An event in which a floating charge becomes fixed over a class of assets. Typically, the event of crystallisation for a floating charge will be provided for in the charge instrument.
Debentures	A document in writing, usually under seal, issued as evidence of a debt or the granting of security for a loan of a fixed sum at interest (or both). The term is often used in relation to loans (often from banks) secured by charges, including floating charges, over companies' assets.
Debt Repayment Scheme	This term is not used in the United Kingdom.
Decision Procedure	The process by which an insolvency practitioner asks creditors to make decisions in an insolvency proceeding. A Decision Procedure can be used by the following prescribed methods: (1) by correspondence; (2) electronic voting; (3) a virtual meeting of creditors; (4) a physical meeting of creditors.
Deemed Consent	A process by which an insolvency practitioner can seek a decision by creditors in insolvency proceedings which does not require creditors to vote on the proposed decision. Where an insolvency office-holder gives notice of a decision to be made under the deemed consent procedure, the decision will be deemed to have been made if less than 10% of creditors in value object to the proposed decision. Certain decisions cannot be made using the deemed consent procedure, most notably decisions about an office-holder's remuneration.
Disclosure Orders	Orders made pursuant to applications made to the court under Part 31 of the Civil Procedure Rules (either prior to or following the commencement of legal proceedings). Pursuant to s.234 and s.236 Insolvency Act 1986, an administrator or liquidator may apply to the court for orders compelling third parties to disclose information and documents pertaining to the company's affairs.
Dissolution	The end of the liquidation process, or following administration or strike-off, by which the company will be removed from the Register of Companies and will cease to exist.
Eligible Companies	A company is "eligible" to apply for a restructuring moratorium provided that it is not a certain type of company that is determined to be ineligible (e.g. an insurance company or bank), and/or is not currently or has not in the last 12 months been subject to a moratorium or an insolvency procedure.
Extension of Moratorium	See Automatic Moratorium .
Fixed Charge	A charge held over specific assets. The debtor cannot sell the assets without the consent of the secured creditor or repaying the amount secured by the charge.
Floating Charge	A charge held over general assets of a company. The assets may change (such as stock) and the company can deal with the assets in the ordinary course of business without the consent of the secured creditor until the charge "crystallises" (becomes fixed). Crystallisation usually occurs on the appointment of an administrator, on the presentation of a winding-up petition and/or as otherwise provided for in the document creating the charge.
Fraudulent Trading	Where, during the course of a winding up or administration of a company, it appears that any business of the company has been carried on with the intent to defraud creditors of the company. Fraudulent trading can carry both civil and criminal liability.
Guarantee	An agreement by one party to discharge an obligation owed by a third party. It must be evidenced in writing for it to be enforceable.
Individual Voluntary Arrangement	A statutory (out of court) arrangement with creditors, of an essentially contractual nature, which allows a debtor to: <ul style="list-style-type: none"> • Settle their outstanding unsecured debts by agreeing to a composition in satisfaction; and /or • Agree to a scheme of arrangement for payment of their debts.

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Insolvency Practitioner	An authorised person who specialises in insolvency, usually an accountant or solicitor. They are authorised either by the Secretary of State or by one of a number of recognised professional bodies.
Interim Judicial Manager	This term is not used in the United Kingdom.
<i>Ipsa Facto</i> Clauses	A contractual provision which allows a party to unilaterally terminate or modify existing rights by reference to an event of insolvency on the part of the counterparty. Schedule 12 of the Corporate Insolvency & Governance Act 2020 restricts the operation of ipso facto clauses during insolvency or restructuring proceedings.
Limited Liability Partnership	Like a company, an LLP is a body corporate and therefore a separate legal entity and an LLP member's liability is limited. However, like a partnership, the relationship between the LLP members is governed by private agreement. An LLP does not have shareholders or directors and is taxed like a partnership.
Liquidation	Also known as winding-up. A terminal insolvency procedure under which the assets of a company are realised and distributed to creditors by the liquidator, in the priorities provided for by the Insolvency Act 1986 and the Insolvency (England and Wales) Rules 2016 (SI 2016/1024). There are two modes of liquidation: compulsory liquidation following a court order, and voluntary liquidation instigated voluntarily by the members of the company.
Liquidation General Account	This term is not used in the United Kingdom.
Liquidation Special Account	This term is not used in the United Kingdom.
Liquidator	The Official Receiver or a licenced insolvency practitioner appointed to administer the liquidation of a company or partnership.
Members' Voluntary Liquidation	Liquidation procedure for solvent companies. A members' voluntary liquidation can be commenced if the directors of the company are prepared to swear a statutory declaration of solvency (to the effect that the company will be able to discharge its liabilities in full within 12 months) and at least 75% of the company's members have resolved to place the company into liquidation.
Moratorium	See Automatic Moratorium .
Moratorium Debts	A new debt arising during the restructuring moratorium or a debt which might arise after the moratorium but due to an obligation incurred during the restructuring moratorium.
Officer	A director, or company secretary of a company.
Official Assignee	This term is not used in the United Kingdom.
Official Receiver	An officer of the court and civil servant employed by The Insolvency Service, who deals with bankruptcies and compulsory liquidations of companies.
Part 26A Restructuring Plan	Where a company that is or is likely to encounter financial difficulties that may affect its ability to trade as a going concern, proposes a compromise or arrangement with its creditors or members or any class of them. The plan would require the approval of a minimum of 75% in value in each class of those voting. However, it would be for the court to grant final approval to the plan if it thinks the plan is "fair and equitable" and in the interests of creditors. The Restructuring Plan is modelled on the existing scheme of arrangement procedure but with the addition of the ability to impose the arrangement on dissenting creditors.
Partnership	The relationship which subsists between two or more persons carrying on business in common with a view to profit. Partnerships are governed in the UK by the Partnership Act 1890. A partnership is not a separate legal entity. Partners generally have unlimited liability (to be distinguished from a Limited Liability Partnership).
Pre-Moratorium Debts	Debts that have fallen due before the restructuring moratorium or during the restructuring moratorium. These debts are separated out into two categories, those Pre-Moratorium Debts that attract a payment holiday and those that do not.
Preference Transactions	A type of antecedent transaction in which preference to a particular creditor is shown. The following must be present: (1) a preference was given to a creditor, surety or guarantor; (2) the preference was given or suffered by the debtor/the company; (3) in giving the preference, the company was influenced by the desire to improve the position of the person preferred; (4) the preference was given during the relevant time; and (5) the debtor/company was unable to pay its debts at the time of or in consequence of entering into the transaction.

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Preferential Creditor	A creditor who is entitled to receive certain payments in priority to floating charge holders and other unsecured creditors. These creditors include certain sums due to former employees (subject to statutory caps). Her Majesty's Revenue & Customs' status as a preferential creditor in respect of certain tax liabilities will be reinstated in December 2020.
Proof of Debt	A proof of debt is the document on which a creditor submits details of its claim against an insolvent company or individual together with supporting documentation.
Provisional Liquidation	OR/IP appointed to preserve a company's assets pending the hearing of a winding-up petition. Provisional liquidation may be appropriate where there is a real concern that between the presentation of the winding-up petition and the making of a winding-up order by the court, the company's affairs will not be properly conducted or its assets will be dissipated. The main reason for appointing a provisional liquidator is to hold the ring and preserve the company's assets.
Provisional Liquidation in Compulsory Liquidation	See Provisional Liquidation .
Provisional Liquidation in Voluntary Liquidation	This term is not used in the United Kingdom.
Receiver	A person appointed by the court or pursuant to a power contained in a charge instrument or under the Law of Property Act 1925, often with the powers to receive the rents and profits of property, manage charged assets and realise them for the benefit of their appointor.
Receiver and Manager	A person appointed by a secured creditor under a security document to receive the income and manage the business of a company.
Receiver Appointed Under a Court Order	A receiver appointed by the court during legal proceedings in order to protect the assets that form the basis of the dispute.
Receiver in aid of Mareva Injunction	A receiver appointed by the court in conjunction with a freezing order in order to protect the assets that form the basis of the freezing order. Mareva relief is referred to as a "freezing order" in English litigation.
Receivership	A generic term to describe the situation where an individual (receiver) is appointed to take control of a debtor's property whether pursuant to the terms of a security instrument, the Law of Property Act 1925 or by the court. The purpose of receivership will likely include the preservation, management, sale and/or receipt of income derived from the secured asset.
Registration of Charges	Certain charges have to be registered within 21 days of the creation otherwise they shall be void against any liquidator and any creditor of the company. Relevant charges include a charge to secure liabilities in a debenture, a floating charge and a charge on land.
Relevant Time	The periods (as set out in section 240 Insolvency Act 1986) prior to insolvency proceedings being commenced in which antecedent transactions that take place during this period can be avoided by the court. Also commonly known as the 'clawback' or 'look back' period.
Rescue Financing	This term is not used in the United Kingdom.
Scheme of Arrangement	A compromise or arrangement between a company and its members or creditors (or any class of them). A scheme requires approval by at least 75% in value of each class of the members or creditors who vote on the scheme, being also at least a majority in number of each class. If the scheme is approved, the court will then decide whether to sanction it. If an entire class votes down the scheme, there is no court power to approve it over the wishes of that class.
Secured Creditor	A creditor who holds security, such as a mortgage or debenture containing fixed and floating charges, over a person's or company's assets for money owed.
Security Interest	Security means a proprietary interest over a particular asset. The strength of the security interest depends on the type of security provided.
Shadow Director	A person who, without being formally appointed, gives instructions on which the directors of a company are accustomed to act.

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Sole Trader	A simple form of business structure where the business is owned and operated by a single individual, and there is no legal distinction between the owner and the business. Small businesses often operate as sole traders because of the lack of legal formality and the low administration costs involved in setting up and running the business. Sole traders have unlimited personal liability for the business's liabilities.
Statement of Affairs	A document sworn under oath, completed by a bankrupt, company officer or director(s), stating the assets and giving details of debts and creditors.
Statutory Demand	A formal written demand for payment of a debt within 21 days. If the debtor does not pay within the 21 days and either fails to apply to have it set aside (where the debtor is an individual), or fails to apply to restrain the creditor from presenting a winding-up petition (where the debtor is a company), the creditor can use the statutory demand as evidence of the debtor's inability to pay its debts in support of a petition to the court for a bankruptcy order or winding-up order.
The Monitor	An insolvency practitioner who ensures that the eligible company complies with the requirements of the restructuring moratorium.
Transactions at an Undervalue	A type of antecedent transaction in which the debtor did not obtain fair value in the transaction. The following must be present: (1) there must be a transaction; (2) the transaction must be at an undervalue; (3) the transaction must have taken place during the relevant time; and (4) the debtor was unable to pay its debts at the time of or in consequence of entering into the transaction.
Trustee in Bankruptcy	Either the Official Receiver (OR) or a licensed insolvency practitioner who is appointed trustee of a bankrupt's estate, and in whom the bankruptcy estate vests, following the making of a bankruptcy order against an insolvent individual.
Unsecured Creditor	A creditor who does not hold security (such as a mortgage) for money owed. Certain unsecured creditors may also be Preferential Creditors.
Voluntary Liquidation	A method of liquidation not involving the courts or the Official Receiver. There are 2 types of voluntary liquidation – members' voluntary liquidation for solvent companies and creditors' voluntary liquidation for insolvent companies.
Winding Up Order	Order of a court, usually based on a creditor's petition, for the compulsory winding up or liquidation of a company or partnership.
Worldwide Moratorium	This term is not used in the United Kingdom.
Wrongful Trading	Once a director or directors of a company conclude (or should have concluded) that there is no reasonable prospect of the company avoiding an insolvent liquidation, they have a duty to take every step which a reasonably diligent person would take to minimise potential loss to the company's creditors. If, after the company has gone into insolvent liquidation, it appears to the court that a director has failed to comply with this duty, the court can order the director to make such contribution to the company's assets as it thinks proper.

Frequently Used Terms

Ambulance chaser	Winding-up petitions are advertised in the London Gazette and County Court judgments in specialist trade publications such as Stubbs Gazette. From these, it is easy to identify a company or individual in financial difficulty. These publications are scrutinised by 'ambulance chasers', who are often unqualified professionals. They offer various escape routes before the client is aware of the Court action, at a time when they may be particularly vulnerable. Such practice is frowned upon by the insolvency and turnaround profession. At such times, it is imperative that proper advice is obtained from suitably qualified, regulated and insured individuals.
Charging order	Court Order placing restrictions on the disposal of certain assets such as property or securities, given after judgment, which gives priority of payment over other creditors.
Going concern	The business carries on trading.
Hive down	Transfer of a company's business to a wholly owned subsidiary to facilitate its sale as a going concern.

Frequently Used Terms

<i>Parri Passu</i>	Meaning “equal in right of payment”. The pari passu principle means that all unsecured creditors in insolvency processes, such as administration, liquidation and bankruptcy must share equally any available assets of the company or individual, or any proceeds from the sale of any of those assets, in proportion to the debts due to each creditor. It is one of the most fundamental principles of insolvency law, although it can be varied by agreement.
Petition	The act of applying to court for various insolvency related procedures.
Phoenix	A new company taking on the business and assets of one that is insolvent, often with the same directors, leaving the creditors unpaid. Anybody wanting to take on the profitable parts of an insolvent company’s business should seek proper advice to avoid the various penalties which might apply in such circumstances.

Insolvency and Related Legislation

Companies Act 2006	http://www.legislation.gov.uk/ukpga/2006/46/contents
Company Directors Disqualification Act 1986	http://www.legislation.gov.uk/ukpga/1986/46/contents
Corporate Insolvency & Governance Act 2020	https://www.legislation.gov.uk/ukpga/2020/12/contents/enacted
Financial Services & Markets Act 2000	http://www.legislation.gov.uk/ukpga/2000/8/contents
Insolvency (England & Wales) Rules 2016	http://www.legislation.gov.uk/uksi/2016/1024/contents/made
Insolvency Act 1986	http://www.legislation.gov.uk/ukpga/1986/45/contents

Guidance

Practice Direction on Insolvency Proceedings	https://www.justice.gov.uk/courts/procedure-rules/civil/rules/insolvency_pd
Statements of Insolvency Practice (SIPs) England & Wales	https://www.icaew.com/technical/insolvency/sips-regulations-and-guidance/statements-of-insolvency-practice/statements-of-insolvency-practice-sips-england

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