



**A GUIDE FOR CREDITORS**

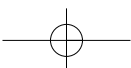
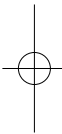
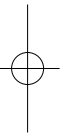
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CUSTOMER SERVICE EXCELLENCE

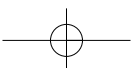
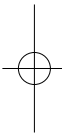
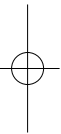


INVESTOR IN PEOPLE



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## 1. About this guide

This guide explains the procedures if you are owed money by an individual in bankruptcy or a company in compulsory liquidation (where a winding-up order was made by the court). The guide is mainly written for small businesses and individual creditors, and for those who lack security for the money they are owed. The guide covers procedures in England and Wales. You will find information on how to start insolvency procedures in our 'Dealing with Debt' publications.

This guide does not give details of procedures if you are owed money by:

- a company that is subject to a company voluntary arrangement;
- a company that is in administration;
- a company that is in voluntary liquidation;
- an individual who is subject to an individual voluntary arrangement or a fast track voluntary arrangement;
- an individual who is subject to a debt relief order.

For more information on those procedures please see our leaflets:

'Alternatives to bankruptcy';

'Dealing with Debt - How to wind up a company that owes you money',

'Guide to Debt Relief Orders'.

### What is The Insolvency Service?

The Insolvency Service is an Executive Agency within the Department for Business, Enterprise and Regulatory Reform. The Insolvency Service administers and investigates the affairs of bankrupts and companies in compulsory liquidation, establishes the reasons for the insolvency and reports evidence of misconduct. The official receiver also acts as trustee in bankruptcy and liquidator of companies in compulsory liquidation, dealing with claims from creditors and the distribution of funds.

The Insolvency Service is not involved in the day-to-day handling of administrative receiverships, administrations, voluntary liquidations and voluntary arrangements. However, the official receiver may be the supervisor in the fast-track voluntary arrangement procedure. The official receiver also makes and processes debt relief orders.

For more information on these procedures please see our leaflets:

Fast-track voluntary arrangements

Guide to Debt Relief Orders

### What is insolvency?

The most commonly used definition of insolvency is the inability of an individual or company to pay debts when they become due. The term insolvency is also used to describe the various formal proceedings that may apply to an individual or company. The Act of Parliament under which these procedures are administered is the Insolvency Act 1986. Insolvency law provides a system of dealing fairly with the assets of the insolvent and the claims of creditors. The law also deals with what happens to the individual or company following the insolvency.

## What are the insolvency procedures?

The procedures that can apply to individuals are:

- bankruptcy
- individual voluntary arrangement
- fast track voluntary arrangement
- debt relief order

The procedures that can apply to companies are:

- compulsory liquidation (winding up by the court)
- administrative receivership
- administration
- company voluntary arrangement
- creditors' voluntary liquidation
- members' voluntary liquidation (applies to solvent companies only but is regulated by the Insolvency Act 1986).

The procedures that can apply to partnerships are:

- bankruptcy of individual members
- individual voluntary arrangement (involving individual members)
- compulsory liquidation (winding up by the court)
- administration
- company voluntary arrangement.

## Who deals with the insolvency procedures?

An official receiver (OR) will normally handle the early stages of a bankruptcy or compulsory liquidation. If there are significant assets, an insolvency practitioner (IP) may be appointed as trustee/liquidator in place of the OR. All other insolvency procedures, apart from fast-track voluntary arrangements and debt relief orders, are handled by IPs.

## 2. Official receivers (ORs) and insolvency practitioners (IPs)

### Who they are and what they do

ORs are civil servants in The Insolvency Service and officers of the court to which they are attached. As well as administering cases, ORs have a duty to investigate the affairs of individuals in bankruptcy and companies in compulsory liquidation. They report evidence of criminal offences to a prosecuting agency. They report unfit conduct to the Secretary of State, who will decide whether to begin court proceedings to disqualify a director.

IPs work in the private sector. They are usually accountants or solicitors. They are required by law (the Insolvency Act 1986) to be authorised to act as IPs.

Authorisation is by one of the recognised professional bodies (RPBs), although a small number of people are authorised directly by the Secretary of State for Business, Enterprise and Regulatory Reform. RPBs are approved by the Secretary of State to authorise their members. About 90% of IPs are authorised by RPBs. IPs acting as liquidators in creditors' voluntary liquidations, administrative receivers and administrators have a duty to report to the Secretary of State any evidence of unfit conduct by company directors.

## How and when to contact ORs and IPs

### How do I find out who is dealing with a case?

You should be contacted automatically by the OR/IP if they know that you are a creditor. For further details, see sections 3 and 5.

If you believe an individual or company may be subject to insolvency proceedings and you have not heard from an OR/IP - you could take one or more of the following steps:

- if it is a company insolvency, contact Companies House. A search facility is available on their website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)
- if it is a bankruptcy, search the Individual Insolvency Register on our website at [www.insolvency.gov.uk](http://www.insolvency.gov.uk)
- if it is a bankruptcy, or compulsory liquidation, contact the OR's office nearest to the insolvent's business. You should give the full name of the bankrupt or company. Alternatively you can contact the Insolvency Enquiry Line on 0845 602 9848 or by e-mail at [insolvency.enquiryline@insolvency.gsi.gov.uk](mailto:insolvency.enquiryline@insolvency.gsi.gov.uk)
- if a partnership is involved, bankruptcy orders may have been made against individual partners, and you can get details from the Individual Insolvency Register
- look in the public notices section of newspapers.

### How do I make myself known as a creditor?

You should write to the OR/IP dealing with the insolvency. You should give the full name of the individual or company as well as your own details. You should inform the OR/IP if you change your address.

### Should I contact the OR/IP if I have any information about the individual or company?

You should write to the OR/IP if you have any information about the assets of the individual or company or about the conduct of the individual or company directors. This information may help the OR/IP in the recovery of assets or in their duty to report misconduct.

### The OR/IP is not keeping me informed. What should I do?

Do not expect frequent reports from the OR/IP. Once your claim is filed with the OR/IP, you will be sent a report to creditors which will give you information about the assets and liabilities of the individual or company and the circumstances of the insolvency. You will be notified automatically of any distribution of money or that no money is available and that the case is to be closed. It can take weeks, months or years (in some complex cases) to realise (sell) assets. If you are concerned, contact the OR/IP handling the case. Remember to notify the OR/IP if you change your address.

### I want to complain about the handling of my case. What should I do?

#### If the OR is dealing with the insolvency:

- You may be able to resolve the complaint by taking it up immediately with the officer dealing with the case or their immediate manager.
- If not, you can write to the local official receiver. Alternatively you can telephone, although you may be asked to set out the details of your complaint in writing.
- If you are not satisfied with the response to your complaint, you should write to the Regional Director responsible for the official receiver. The official receiver will provide you with details of the Regional Director.

- If matters still cannot be resolved, you may then take up your complaint with The Adjudicator's Office, 8th Floor, Euston Tower, 286 Euston Road, London NW1 3US

#### **If an IP is dealing with the insolvency:**

- You should contact their authorising body to complain about unprofessional conduct. Any insolvency practitioner should give you details of their authorising body on request.

Alternatively you can find this information:

- On our searchable database of insolvency practitioners on The Insolvency Service's website at [www.insolvency.gov.uk](http://www.insolvency.gov.uk).
- By contacting our Insolvency Enquiry Line on 0845 602 9848, or by e-mailing: [insolvency.enquiryline@insolvency.gsi.gov.uk](mailto:insolvency.enquiryline@insolvency.gsi.gov.uk)
- By writing to the Insolvency Practitioner Policy Section, The Insolvency Service, PO Box 203, 21 Bloomsbury Street, London WC1B 3QW, who will also forward complaints to the appropriate authorising body.

It must be stressed that the Secretary of State or the authorising body cannot intervene directly in individual insolvencies; nor can they give directions in relation to the conduct of individual cases, or reverse or modify a decision of an insolvency practitioner. Insolvency, by its very nature, deals with a number of competing interests, most notably between the insolvent person and their creditors. Ultimately, commercial and other disputes may only be resolved by the courts, and the authorising body's disciplinary procedures should not be regarded as an alternative to the powers available to individuals under the Insolvency Act 1986 or otherwise. Before applying to the court to resolve a dispute with an IP you may wish to take legal advice.

There's more information on The Insolvency Service's complaints procedure in our publication 'Complaints Procedure' and 'How to make a complaint against an insolvency practitioner'.

### **3. Bankruptcy and compulsory liquidation (winding up by the court)**

#### **Bankruptcy - the procedure**

Bankruptcy can only apply to individuals (including sole traders and individual members of a partnership). Bankruptcy petitions may be presented to the court by the individual, by creditors who are owed £750 or more, or by the supervisor of an individual voluntary arrangement, if the individual has not complied with the terms of the arrangement. A bankruptcy order is made by the court.

The OR normally acts as receiver and manager of the bankrupt's estate and will become trustee unless an IP is appointed. The trustee realises any assets (except for certain assets, including basic domestic items needed by the bankrupt and their family, and items such as vehicles, equipment, tools and books needed for the bankrupt's job). After paying fees and the costs of the proceedings, the trustee distributes the remaining money to the creditors in a strict order of priority.

There is more information on the bankruptcy procedure in our 'Dealing with Debt' publications.

## Compulsory liquidation - the procedure

Compulsory liquidation is the winding up of a company or a partnership by a court order (a winding-up order). A petition is normally presented to the court by a creditor stating that they are owed a sum of money by the company and that the company cannot pay. The OR becomes liquidator when the order is made but an IP will usually be appointed to take over from the OR if the company has significant assets. The liquidator's role is to realise the company's assets, pay all the fees and charges arising from the liquidation, and pay the creditors as far as funds allow in a strict order of priority.

There's more information on the compulsory liquidation procedure in our 'Dealing with Debt' publications.

## Restrictions on a bankrupt or company director

An undischarged bankrupt can trade after the bankruptcy order but there are restrictions. If they trade under a name that is different from the name under which the bankruptcy order was made, they must disclose the name under which they were made bankrupt to everybody with whom they do business. An undischarged bankrupt is not allowed to act as a director of a company or be concerned with its management, without leave (permission) of the court. An undischarged bankrupt can only get a small amount of credit (currently up to £500) without informing those with whom they are dealing about the bankruptcy.

A bankrupt is usually discharged (freed) automatically from the restrictions of bankruptcy after 12 months, or earlier if the OR files notice with the court. A bankrupt may have a court order made against them (called a bankruptcy restrictions order) or give an undertaking to the Secretary of State which will mean that bankruptcy restrictions continue to apply after discharge for between 2 and 15 years. There is more information on bankruptcy restrictions orders and bankruptcy restrictions undertakings in our publication 'Bankruptcy Restrictions Orders'.

A **director** of a failed company can become a director of a new company unless he or she:

- is subject to a disqualification order or undertaking; or
- is personally adjudged bankrupt; or
- is subject to a bankruptcy restrictions order or undertaking.

A disqualified person may obtain permission from the court to be a director. Permission is usually only granted for leave to act in one or more specified companies. There are restrictions placed on a director of a failed company on the further use of the failed company's name or trading name (see our publication 'Re-use of a company name after liquidation'). The court may order a director to make a contribution to the assets of the company if it is proved that they have been involved in fraudulent or wrongful trading whilst they were a director of the company.

## Your role as a creditor

### When will I be notified?

The OR normally notifies all known creditors within 12 weeks of the date of the court order. You will be told whether or not a meeting of creditors will be held. The OR usually decides to hold a meeting to appoint an IP if there are significant assets, otherwise the OR will be the trustee or liquidator.

You will also be sent a report giving estimates of the insolvent's assets and liabilities and what the causes of the failure are considered to be. If you think that a bankrupt or company is withholding

information about the assets, you should write to the OR dealing with the case.

### **How do I make a claim?**

If you have been contacted by the OR/IP they already have a note of your claim. If you contacted the OR/IP your details will have been added to the list of creditors.

If the OR/IP intends to hold a meeting of creditors or to make a payment to creditors you will be sent a proof of debt form. The OR does not automatically send out proof of debt forms. If you receive a proof of debt form you should complete and sign it and return it to the OR/IP.

A creditor who holds a fixed charge or security on an asset (such as a mortgage) has the right to sell the asset to recover their debt. The right of the creditor to do this is not affected by the insolvency of the debtor. The secured creditor is the first to get paid when the asset is sold. Any surplus will be handed over to the trustee/liquidator.

When all the assets available to unsecured creditors have been realised, the trustee/liquidator will distribute the proceeds in a strict order of priority as follows:

1. The fees and charges of the liquidation/bankruptcy.
2. Debts due to preferential creditors. These debts are set out in the Insolvency Act 1986 and include wages owed in the four months before the date of the insolvency order and contributions to occupational pension schemes.
3. In company cases, any creditor holding a floating charge over an asset, such as a debenture.
4. All unsecured creditors.
5. Any interest payable on debts.
6. In company cases, the shareholders.

Therefore, unsecured creditors will usually only be paid when the fees and charges of the insolvency procedures and the claims of secured and preferential creditors have been paid. Where a company which is being wound up has assets subject to a floating charge, part of the net proceeds from their sale will, in appropriate cases, be set aside for distribution to the unsecured creditors.

If full repayment of claims is not possible, payments are made to creditors by way of a dividend in proportion to the value of each claim.

If a dividend is to be paid, all creditors whose addresses are known will be notified. If you have not already submitted a proof of debt, this may be your last chance to do so. If you submit your proof of debt after the dividend has been declared, you may lose your right to share in the money available at that time.

How much you are paid will depend on the amount of money that can be realised and the number of claims. If there are few assets, you may not receive anything.

You can ask for a full list of creditors from the OR/IP. The OR/IP is allowed to charge a fee for this service. The list will show how much each creditor is owed. You also have a right to inspect the court file unless the court directs otherwise. If a statement of affairs has been submitted, the OR/IP will not send you a list of creditors, instead you will be directed to the court file for details of creditors and their claims.

When paying a dividend, the OR/IP can reject the whole or part of a creditor's claim. The OR/IP must provide reasons for doing so in writing. If you are dissatisfied with the decision on your claim, you may apply to the court for the decision to be reversed or varied. Before applying to court you may wish to take legal advice.

## Meeting of creditors

A first meeting of creditors is held so that the creditors can appoint an IP as trustee or liquidator in place of the OR. This is likely to be the only meeting of creditors before the final meeting is called. If the OR does not believe the assets available are enough to attract an IP, the OR will send notice to all creditors that no first meeting is to be held and as a result the OR will be trustee/liquidator.

The OR must hold a first meeting if it is requested by 25% in value of the creditors. If the creditors request a meeting, they will have to lodge a deposit for any costs of the meeting with the OR. If the creditors do not choose an IP at the meeting, the OR can apply to the Secretary of State to make an appointment or remain as trustee/liquidator. The OR can also apply to the Secretary of State when an appointment of an IP is needed in an emergency, for example to deal with urgent transactions involving assets. When this happens the IP must notify the creditors of their appointment. This may be done by advertisement in accordance with the directions of the court. This might happen where there is a large number of creditors.

Further meetings of creditors (called general meetings) are sometimes held if the trustee/liquidator wants to find out the creditors' wishes in any matter relating to the insolvency proceedings, or if requested by 10% in value of the creditors.

Where an IP is trustee/liquidator, a final meeting of creditors will be called (see details under 'Completion of the Case').

## Conduct and voting at a meeting of creditors

You can normally only vote at a meeting if you have returned your proof of debt to the OR/IP within the time stated in the notice. You can vote at the meeting without attending personally but you must also have submitted a proxy form allowing someone else to vote on your behalf. The proxy form is supplied by the OR/IP at the same time as the notice calling the creditors' meeting and you must return it by the time specified. The proof of debt and proxy form must be signed by the same person. Voting at a meeting of creditors is by value, and is calculated by the amount of the creditor's claim that is admitted (accepted) by the chair of the meeting for voting purposes. The chair will check all the proofs of debt and proxy forms, and confirm the amount admitted for voting purposes.

Briefly, at a first meeting of creditors, the chair will check that everyone present is allowed to be at the meeting; they will explain the purpose of the meeting, and provide details about the insolvent's assets. The meeting then votes on the appointment of an IP as trustee or liquidator. A first meeting of creditors is not an opportunity for you to question the bankrupt/director (it is unlikely they will be at the meeting) or to discuss matters relating to the insolvency.

For an IP to be appointed by the meeting of creditors, there must be a majority in value of those present or represented (by proxy) voting for the IP.

## Creditors'/liquidation committee

A creditors'/liquidation committee can also be appointed at a meeting of creditors unless the official receiver remains as trustee/liquidator. The committee supervises and assists the trustee/liquidator on behalf of the creditors. In bankruptcies it is called a creditors' committee; in liquidations it is a liquidation committee. The committee consists of at least 3 and not more than 5 elected creditors.

An individual creditor who has been elected can act personally or appoint a representative.

You have a right to nominate yourself or any other creditor as a member of a committee. You can

also vote for yourself.

If certain actions are proposed by the trustee/liquidator, a creditors'/liquidation committee must first give approval for them. Each committee has different powers but they include agreeing to carry on the bankrupt's or company's business and bringing or defending legal actions. A liquidation committee must first approve payments to any class of creditors (for example, preferential creditors) in full and any arrangements made with creditors or in relation to assets.

### **The trustee's/liquidator's remuneration**

The OR's remuneration (payment) as trustee/liquidator is specified under insolvency law. An IP's remuneration as trustee/liquidator is fixed by the creditors'/liquidation committee. If there is no committee, it may be fixed at a meeting of creditors. The remuneration can be fixed as a percentage of the value of the assets realised and distributed or on a time basis. Any creditor, with the support of 25% in value of unsecured creditors, can apply to the court for the remuneration to be reviewed if they consider it too high. If the creditors do not agree a remuneration, the IP will receive the same as would have been paid to an OR, but the IP can apply to the court to agree a higher amount.

### **Completion of the case**

If an OR is dealing with the case and you have sent in a proof of debt, the OR will inform you when they have completed the insolvency and intend to apply to the Secretary of State for release. This means that the OR's role as trustee/liquidator comes to an end. The creditors have a right to object to the OR's release. Please note that the release of the OR as trustee is not relevant to, and does not affect, a bankrupt's discharge. Generally the OR's release can only be withheld if they have failed to realise assets that were available to be realised or has misapplied the proceeds of any assets realised. You will also be sent a summary of the OR's receipts and payments as trustee/liquidator.

If an IP is dealing with the case, you will be sent a notice of the final meeting of creditors. At this meeting the IP will report on their conduct of the case and will give a summary of the receipts and payments. The creditors give the IP their release at this meeting. Creditors have a right to refuse to the IP's release.

### **What legal action can I take against the bankrupt/company or the trustee/liquidator?**

After the date of the court order, unsecured creditors cannot take any action against the bankrupt or company without the court's consent. You must submit your claim to the trustee/liquidator. You can apply to the court if you are dissatisfied with the actions of the OR/IP. Before you apply to the court you may wish to take legal advice.

## 4. Reference table

This is a general introduction to the insolvency procedures handled by IPs (not ORs). Please contact your professional adviser or the IP handling your case for further details. Please refer questions on the procedures involved in a specific insolvency to your professional adviser or to the OR/IP handling the case.

	Administrative receivership	Administration	Company (CVA) Individual (IVA) voluntary arrangement	Creditors' voluntary liquidation	Members' voluntary liquidation
<b>Purpose:</b>	To recover money owed to a secured creditor	To rescue as a going concern a company or partnership facing financial problems; to achieve a better result for the creditors of the company as a whole than would be achieved in an immediate winding up; or to realise property for the secured or preferential creditors	To allow a company, partnership or individual with financial problems to reach a binding agreement with creditors	To allow an insolvent company to put itself into liquidation and wind up the affairs of the company without the need for a court order	To allow a solvent company to put itself into liquidation and wind up the affairs of the company (for example if there is no-one left to run a family business)
<b>Proposed/ begun by:</b>	A floating charge holder. (Rights to appoint an administrative receiver have been restricted by the Enterprise Act 2002)	The appointment of an administrator by court order or where a floating-charge holder, the company or its directors file the necessary notice at court	The directors, partners, liquidator, administrator, or the individual debtor (not creditors)	The shareholders (not creditors)	The shareholders
<b>Handled by:</b>	Administrative receiver	Administrator	Nominee who becomes the supervisor	Liquidator	Liquidator
<b>Creditors notified:</b>	Within 28 days of the appointment of an administrative receiver (unless the court otherwise directs)	As soon as is reasonably practicable after the appointment of the administrator	When the notice of creditors' meeting is issued	Within 14 days of the members' meeting	No requirements to notify creditors
<b>Meeting of creditors/ voting rights:</b>	Held within 3 months of appointment or longer period if the court allows (unless the company goes into liquidation). To vote, written notice of claim is needed	Held within 10 weeks (unless the court otherwise directs). To vote, written notice of claim is needed. Instead of holding a creditors meeting, the business may be conducted by correspondence between the administrator and the creditors	Timing is specified in the nominee's proposal or by the liquidator or administrator. To vote, written notice of claim is needed	Within 14 days of the members' meeting. To vote, written notice of claim is needed	The debts must be paid within 12 months. If the liquidator considers that the company will not be able to pay its debts in full within 12 months, a meeting of creditors must be held and the liquidation becomes a creditors' voluntary liquidation
<b>Committees:</b>	A creditors' committee may be appointed. It can only request information from the administrative receiver	A creditors' committee may be appointed	A committee is not appointed	Liquidation committee may be appointed	
<b>IP's remuneration fixed by:</b>	Floating charge holder or the court	Creditors' committee, creditors or the court	Agreed in the terms of the arrangement	Liquidation committee, creditors or the court	
<b>Progress/ completion of the case:</b>	Account of receipts and payments is sent on completion to the creditors' committee if there is one	After approval of administrator's proposals, creditors receive progress reports every 6 months. The administrator's appointment ceases after 12 months, but may be extended by the court or by consent of the creditors	Creditors receive reports annually and within 28 days of completion	Meetings of creditors held annually and on completion	
<b>Legal action against the company/ individual:</b>	All creditors retain the right to take legal action	Creditors cannot take legal action without leave of the court	All creditors who had notice or were entitled to receive notice of the meeting to consider the proposal are bound by the meeting's decision. In an IVA, the interim order prevents any creditor from taking action.	Creditors can petition for compulsory winding up	

## 5. Where to go for more information

The Insolvency Service and official receivers can only provide information about the administration of your case. They cannot offer legal advice. You should always seek professional advice from a solicitor, accountant or IP. If you do not have a professional adviser you can contact your local Citizens Advice Bureau. You can contact The Insolvency Enquiry Line for general enquiries on insolvency matters on 0845 602 9848 or email: [Insolvency.Enquiryline@insolvency.gsi.gov.uk](mailto:Insolvency.Enquiryline@insolvency.gsi.gov.uk)

### To contact Companies House

Companies House holds the records of all limited companies incorporated in England and Wales at its head office at:

Companies House  
Crown Way  
Cardiff  
CF4 3UZ

You can search company records through the website of Companies House at:

[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

You can also examine company records at the Companies House information centres in London and Edinburgh. You can get company records by post if you cannot visit one of the offices. Telephone orders can be accepted if you pay by credit card (Access, Visa and MasterCard only).

For more information, telephone Companies House helpline on 0303 1234 500

### To search the Individual Insolvency Register

You can search the register or our website: <http://www.insolvency.gov.uk/eiir/>, or by visiting your local official receiver's office. All searches are free of charge.

There's more information in our leaflet 'Individual Insolvency Register'.

## Information on debt recovery

Please note that The Insolvency Service cannot give advice on debt recovery or on how to begin insolvency proceedings.

However, the following information leaflets are available about debt recovery procedures:

- 'Dealing with Debt: How to petition for your own bankruptcy'
- 'Dealing with Debt: How to make someone bankrupt'
- 'Dealing with Debt: How to wind up your own company'
- 'Dealing with Debt: How to wind up a company that owes you money'
- 'Dealing with Debt: How to wind up a partnership'.

A guide to credit management for buyers and suppliers, 'Better Payment Practice', is available from the Publications Orderline on 0845 015 0010.

You can get guidance on county court procedures, including information about the small claims procedure and enforcing judgments from any county court office (see under 'Courts' in the telephone book or online at [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk)). Information for small businesses about using the county courts for debt recovery is also available from court offices. Individuals who have ordered goods and services and arranged for payment by credit, including credit cards, may be able to claim against the provider of credit. The Consumer Credit Act 1974 (s75) provides for this in limited situations. You can get advice from your local Citizens Advice Bureau.

## How to get more copies of our publications

You can obtain further copies of this publication from our website [www.insolvency.gov.uk](http://www.insolvency.gov.uk)  
You may also order copies of our publications by telephone by calling the Publications Orderline on 0845 015 0010. You may also fax orders to the Orderline on 0845 015 0020. Minicom users should telephone 0845 015 0030.

All our publications are available on our website [www.insolvency.gov.uk](http://www.insolvency.gov.uk)

## 6. Insolvency terms

### What do they mean?

This section briefly explains some of the terms you may come across. It is for general guidance only: many of the terms have a specific technical meaning in certain contexts that may not be covered here.

#### **Administration order**

An order made in a county court to arrange and administer the payment of debts by an individual; or an order made by a court in respect of a company which appoints an administrator to take control of the company. A company can also be put into administration if a floating-charge holder or the directors or the company itself, file the necessary notice at court.

#### **Administrative receiver**

An IP appointed by the holder of a debenture that is secured by a floating charge which covers the whole or substantially the whole of the company's assets. The IP's task is to realise those assets on behalf of the debenture holder.

#### **Administrative receivership**

The process where an insolvency practitioner is appointed by a debenture holder (lender) to realise a company's assets and pay preferential creditors and the debenture holder's debt. The right of a debenture holder to appoint an administrative receiver has been restricted by the Enterprise Act 2002.

#### **Administrator**

An IP appointed by the court under an administration order or by a floating-charge holder or the company or its directors filing the necessary notice at court.

#### **Annulment**

Cancellation.

#### **Assets**

Anything that belongs to the debtor that may be used to pay his/her debts.

#### **Bankruptcy**

Personal insolvency proceedings.

#### **Bankruptcy order**

An order of the court, based on a creditor's or debtor's petition, which makes an individual bankrupt.

#### **Bankruptcy petition**

A request made (by the debtor or by a creditor) to the court for the debtor to be made bankrupt and giving the reasons why.

#### **Bankruptcy restrictions order or undertaking**

These apply from 1 April 2004. A bankrupt who has been dishonest or is in some way to blame for his or her bankruptcy may have a court order made against them or give an undertaking to the Secretary of State which will mean that bankruptcy restrictions will continue to apply after discharge for a period of between 2 and 15 years.

#### **Charge**

A security interest taken over property by a creditor to protect against non-payment of a debt (such as a mortgage).

### **Charging order**

An order made by the court that gives the trustee a legal charge on the debtor's interest in his or her home. This continues even after the debtor is discharged from bankruptcy.

### **Company Directors Disqualification Act 1986**

An Act of Parliament about the disqualification of directors.

### **Compulsory liquidation**

Winding up of a company after a petition to the court, usually by a creditor.

### **Contributory**

Every person liable to contribute to the assets of a company if it is wound up. In most cases this means shareholders who have not paid for their shares in full.

### **Creditor**

Someone owed money by a bankrupt or company.

### **Debenture**

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 (usually from banks) secured by charges, including floating charges, over companies' assets.

### **Debtor**

A person who owes money.

### **Debts**

Money owed by a debtor.

### **Deed of Arrangement**

An arrangement (governed by the Deeds of Arrangement Act 1914) proposed by the debtor for payments to his or her creditors. It is occasionally used instead of an individual voluntary arrangement, particularly where creditors already agree to the terms of the arrangement and are not likely to take other action to recover their debt.

### **Director**

A person who conducts the affairs of a company.

### **Discharge**

A process that frees a bankrupt from the restrictions of bankruptcy and releases him or her from most bankruptcy debts.

### **Insolvency Services Account (ISA)**

The account at the Bank of England into which money realised from the assets in bankruptcies and compulsory liquidations is paid.

### **Interest**

A right to, or share in, a property.

### **Interim receiver**

The court may appoint the OR to act as interim receiver of an individual's property (usually to protect and secure it), after the presentation of the bankruptcy petition but before a bankruptcy order is made.

### **Legal charge**

A form of security (such as a mortgage) to ensure payment of a debt.

### **Liquidation (winding up)**

This applies to companies and partnerships. It involves the realisation and distribution of the assets and usually the closing down of the business. There are three types of liquidation - compulsory, creditors' voluntary and members' voluntary.

### **Liquidator**

The OR or an IP appointed to administer the liquidation of a company or partnership.

### **Local Office Ledger Accounting system (LOLA)**

The computerised estate accounting system used by official receivers to record financial transactions on estates administered by them.

### **London Gazette**

An official publication of the Government, which contains legal notices.

### **Member (of a company)**

A person who has agreed to be, and is registered as, a member, such as a shareholder of a limited company.

### **Nominee**

An IP who carries out the preparatory work for a voluntary arrangement, before its implementation. The OR may be the nominee in fast-track voluntary arrangements.

### **Officer (of a company)**

A director, manager or secretary of a company.

### **Official receiver (OR)**

An officer of the court and civil servant employed by The Insolvency Service, who deals with bankruptcies and compulsory company liquidations.

### **Person**

An individual or corporation.

### **Petition**

A formal application made to a court. (Also see Bankruptcy petition)

### **Preferential creditor**

A creditor in bankruptcy proceedings who is entitled to receive certain payments in priority to other unsecured creditors. These creditors include occupational pension schemes and employees.

### **Proof of debt**

A statutory form completed by a creditor in a bankruptcy or compulsory liquidation to state how much is claimed. The form is supplied by the trustee or liquidator.

### **Provisional liquidator**

An OR/IP appointed to preserve a company's assets pending the hearing of a winding-up petition.

### **Proxy**

Instead of attending a meeting, a person can appoint someone to go and vote in their place - a 'proxy'.

### **Proxy form**

A form that must be completed if a creditor wishes someone else to represent him or her at a creditors' meeting and vote on his or her behalf.

### **Public examination**

In bankruptcy proceedings or when a company is being wound up, the OR may at any time apply to the court to question the bankrupt, the company's director(s) or any other person who has been involved in the promotion, formation or management of the company.

### **Realise**

Realising an asset means selling it or disposing of it to raise money; for example, to sell an insolvent's assets and obtain the proceeds.

### **Receiver**

The commonly used name for an administrative receiver. However, "receiver" can also mean a person appointed by the court or with the power to receive the rents and profits of property; this kind of receiver does not need to be an insolvency practitioner.

### **Receiver and manager**

When a bankruptcy order is made, the OR becomes receiver and manager to protect the bankrupt's estate. This happens before the OR becomes trustee or before an insolvency practitioner is appointed in his or her place.

### **Receivership**

A company in administrative receivership is often said to be "in receivership".

### **Rescission**

A procedure that cancels a winding-up order.

### **Release**

The process of freeing the OR/IP from the responsibilities and liabilities of office as trustee/liquidator or administrator.

### **Secretary of State**

The Secretary of State for the Department for Business, Enterprise and Regulatory Reform

### **Secured creditor**

A creditor who holds security, such as a mortgage, over a person's assets for money owed.

### **Shadow director**

A person who, without being formally appointed, gives instructions on which the directors of a company are accustomed to act.

### **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.

### **Supervisor**

An IP appointed to supervise the carrying out of an individual or company voluntary arrangement. The OR may act as supervisor in fast-track voluntary arrangements.

### **Trustee**

The trustee in bankruptcy is either the OR or an IP who takes control of the assets. The trustee's main duties are to sell these assets and share out the money among the creditors.

### **UNCITRAL**

United Nations Commission on International Trade Law.

### **Unsecured creditor**

A creditor who does not hold security (such as a mortgage) for money owed. Some unsecured creditors may also be preferential creditors.

### **Voluntary arrangement**

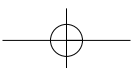
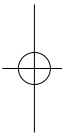
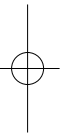
A procedure that allows an individual or a company to reach a binding agreement with creditors about payment of all, or part of, their debts over a period of time.

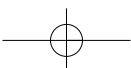
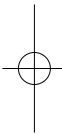
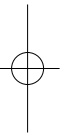
### **Voluntary liquidation**

A method of liquidation not involving the courts or the OR. There are 2 types of voluntary liquidation - members' voluntary liquidation for solvent companies and creditors' voluntary liquidation for insolvent companies.

### **Winding-up order**

A court order usually based on a creditor's petition, for the compulsory winding up or liquidation of a company or partnership.





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