Glossary of insolvency terms

Most clients, quite naturally, will not have heard of many of the terms associated with business restructuring and insolvency. Our glossary seeks to explain many common technical and financial terms.

Administration
Is a formal insolvency procedure available to a company or a partnership and is instigated with the objective of either, rescuing the company, achieving a better result than on a winding up or to realising funds to pay preferential or secured creditors.

Administrator
Is a licensed insolvency practitioner (IP) who is an officer of the court and acts as an agent to deal with the affairs of a company in administration. An administrator can be appointed by the court, directors, shareholders or a qualifying floating chargeholder (normally a bank).

Administrative receiver
Is an IP appointed by a floating charge creditor (normally a bank) to realise assets on its behalf. The introduction of the Enterprise Act is leading the phasing out of this procedure and it is only available to floating charge creditors where their security pre-dates September 2003.

Annulment
Means cancellation and is often referred to in the context of bankruptcy.

Bankruptcy order
Is an order of the court, based on either 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.

Charge
Security 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 which gives a legal charge on the debtor's interest in his/ her home. This continues even after the debtor is discharged from bankruptcy.

Company Directors Disqualification Act 1986
Sets out the grounds under which the disqualification of a director might be sort

Compulsory liquidation
Winding up of a company after a petition to the court, usually by a creditor such as HMRC.

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 who is owed money by an insolvent company or individual.

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 and interest. The term is often used in relation to loans (usually from banks) secured by charges, including floating charges, over companies' assets.

Discharge
Is a process which frees a bankrupt from the restrictions of bankruptcy and releases him or her from most debts. This takes place automatically after one year but may be sooner.

Dividend / distribution
Any sum distributed to unsecured creditors in an insolvency

Estate
Assets which the debtor's trustee can deal with to pay his /her creditors

Fixed charge
Is 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
Is a charge held over general assets of a company. The assets may change (such as stock) and the company can use the assets without the consent of the secured creditor until the charge 'crystallises' (becomes fixed).

Guarantee
Is an agreement to pay a debt owed by a third party. It must be evidenced in writing for it to be enforceable.

Income payments order (IPO) / agreement (IPA)
A court may order or debtor may agree that part of his / her wages, salary or other income is paid to the trustee if his/her income is more than he/she or his/her family need to live on.

Insolvency
Is defined as having greater liabilities than assets or being unable to pay debts when they fall due or both.

Insolvency Act 1986
Legislation introduced to consolidate insolvency law and procedures. Other major legislation in this area is contained in the Enterprise Act.

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.

Liquidation (winding up)
Applies to companies or 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 Official Receiver or an Insolvency Practitioner appointed to administer the liquidation of a company or partnership.

London Gazette
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
Insolvency Practitioner who carries out the preparatory work for a voluntary arrangement, before its implementation

Officer (of a company)
A director or secretary of a company

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

Petition
A formal application made to a court.

Preferential Creditor
A creditor in insolvency proceedings who is entitled to receive certain payments in priority to other unsecured creditors. These creditors include occupational pension schemes and certain employee claims.

Proof of Debt
Statutory form completed by a creditor in a compulsory liquidation to state how much is claimed. The form is supplied by the trustee or Liquidator.

Provisional Liquidator
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.

Proxy Form
Form which 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.

Release
The process by which the Official Receiver or an Insolvency Practitioner is discharged from the liabilities of office as trustee/liquidator or administrator.

Secured Creditor
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
Document sworn under oath, completed by a bankrupt, company officer or director(s), stating the assets and giving details of debts and creditors.

Supervisor
Insolvency Practitioner appointed to supervise the carrying out of an individual or company voluntary arrangement.

Trustee
The trustee in bankruptcy is either the Official Receiver or an insolvency practitioner who takes control of a debtor’s assets. The trustee s main duties are to sell these assets.

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 Liquidation
Method of liquidation not involving the courts or the Official Receiver. There are two 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.