



glossary

of legal/insolvency processes

Glossary

The terms used in this glossary are a simple explanation of the legal/insolvency processes detailed on this web site. They are listed alphabetically.

Administration

An Insolvent Administration Order

The Insolvency Act 1986, introduced for the first time, this legal process to protect a struggling company, (but one which has some hope of recovery), from its creditors, whilst a restructuring plan is formulated. The Administration process was significantly changed with the introduction of the Enterprise Act 2002, which allowed easier access to this process, for companies in financial or other difficulties

Company Administration may be sought by:

- the company itself
- its Directors/Partners
- one of its Creditors
- or by the holder of a qualifying fixed and floating charge over the company's assets, like a Bank for example-see Administrative Receivership

An Administration Order is useful when:

- Cash-flow pressures are intense, but there is still an underlying good business to protect and recover
- Creditors are unwilling to agree informal arrangements and some are pursuing the company through legal process
- The company is insolvent (either on a balance sheet, or a cash-flow basis) and the Directors are concerned about wrongful trading

Once an Administrator is appointed, the company is protected from action being taken by creditors. The company cannot be wound up without the court's permission. The Administrator, an Insolvency Practitioner, will firstly act to stabilise the company and then work with the Directors/Management to develop a plan for the future. Meanwhile the company continues to trade and the plan is to achieve one of the following:

- Rescue the company as a going concern, or
- Achieve a better result for the company's creditors, than would be likely if the company were to go through another Insolvency process, such as liquidation (without first being in Administration) or
- Sell company assets in order to make a distribution to the secured/preferential creditors. Experience shows that there is likely to be some form of business continues after the Administration, whether that is within the existing company or a different company. The key cost to an Administration is where the business continues to trade during

Administration, not only incurring its own operating costs but also the costs of the Administrators team

This is one reason why the concept of a pre-packaged (pre-pack or phoenix) sale has developed. The pre-pack sale is where an "off-market" sale is lined up prior to the start of the Administration process and then an Administrator is appointed to conduct the sale. The ethics of pre-pack/phoenix have been questioned, especially where the sale of assets is to a "connected" party, rather than a third party. However it should be noted that such a sale, if conducted following the correct procedure, does not breach any of the legislative rules.

Conclusion?

An Administration will last a maximum of 12 months, exceptionally extended to 15 months. At the end of the Administration Order the company could be:

- Sold
- Enter a Company Voluntary Arrangement. (CVA) and continue trading
- Sell its assets
- Enter into liquidation
- Be struck off (Dissolved)

Administrative Receivership

When a company borrows money, the lender usually has some security over its assets to ensure the money is repaid. If the company does not keep to the terms of the loan, or suffers financial difficulties, the lender may appoint their own Administrative Receiver (an IP) However an Administrative Receiver can now only be appointed in relation to a charge created before September 2003.

The Administrative Receiver's principal aim however, is to get back the money the company owes to the secured creditor. The Administrative Receiver may sell company assets individually, or the company as a going concern, to pay the secured creditor and the costs of the Receivership.

A company in Administrative Receivership is often said to be in Receivership.

AGM

An Annual General Meeting where the shareholders voice any issues and directors give information of the past year and forecasts for the future, they also vote on any changes that are eligible to be made within the meeting, i.e. change of auditors and directors. this MUST be held every year. Does your company do this?

Annulment

Cancellation.

Arrears

A term used when you have not paid invoices or made payments on debts as agreed. If you do not pay the debt holder (creditor) may take action to claim the money back.

Asset

An asset is something which you own that holds value should you come to sell it, i.e. a house or stock etc

Bailiff

A bailiff is someone authorised to collect debt on behalf of a creditor. There are different types of bailiffs, like, County Court bailiffs, certificated bailiffs and private bailiffs who can be used to collect different types of debt. Different bailiffs have different powers to collect debt. See Distraint and Walking Possession

Bankruptcy

What is Bankruptcy?

Bankruptcy is one way of dealing with debts you cannot pay, so that you can make a fresh start. But, depending on your particular situation it might not be your best option, so you should always consider all the other potential processes available to you.

Any individual can go bankrupt, including a Sole Trader, an individual member of a Partnership, or a Company Director who has given a "Personal Guarantee" to their suppliers or bankers.

Bankruptcy can be sought, either voluntarily or involuntarily. Voluntarily by the debtor themselves, who have to fill in some forms/questionnaires and take them to their local County Court and pay the bankruptcy filing fee which as of March 2011 is £700.00 per person, or partnership. (some of the court costs can be claimed back by a person filing who is on certain defined benefits).. Involuntarily by the creditor owed money (the debt minimum is £750.00) please note that you can still be made bankrupt by a creditor, even if you refuse to acknowledge the proceedings.

A Bankrupt cannot practice as a Chartered Accountant or a Lawyer, act as a Justice of the Peace (JP) become a Member of Parliament (MP) or a member of a Local Authority or act as a Trustee of a charity or a pension fund. Anyone employed, considering or being threatened with bankruptcy, should carefully check their "Terms & Conditions" of Employment for any restrictions that would/might affect their job.

Filing for Bankruptcy voluntarily is a simple matter and a first time Bankrupt will generally be "discharged" one year after the date of the order. (Sometimes the discharge period can be less than one year) Fewer stigmas are attached to bankruptcy today, but as with all insolvency processes the consequences need to be fully

understood before making a decision.

Positives of the Bankruptcy Process

You can literally get rid of all your unsecured debts immediately the order is made. This does not include secured debts like mortgages or any creditor already holding a "charge" on your home. Any existing court fines, family maintenance orders, benefit overpayments and student loans are also excluded.

A bankruptcy order will not affect any car finance or hire purchase contracts and it is normal to expect the finance company to seize back the products concerned. "After acquired" assets (acquired after discharge) cannot be taken from you.

There is no restriction on the amount you can earn, although you may be asked for some money each month if your income is higher than your reasonable living costs. (this is called an income payment order) The "Trustee" responsible for managing your bankruptcy wants you to work and if possible contribute towards your creditors.

You can operate a new bank account, but on bankruptcy you must advise and stop using your existing bank/building society, credit cards straightaway. Most banks will provide a basic service for bankrupts. Do not make direct payments to any creditors affected by your bankruptcy order.

Negatives of Bankruptcy

Bankruptcy is advertised and normally lasts 12 months, but remains on your credit file for 6 years affecting your ability to get credit.

A Bankrupt cannot apply for credit in excess of £500.00 without notifying the lender of the bankruptcy. A Bankrupt cannot carry on a business (directly or indirectly) in a different name from that in which you were made bankrupt without telling all those you do business with the name in which you were made bankrupt.

A Bankrupt cannot be concerned (directly or indirectly) in promoting, forming or managing a limited company, or act as a company director, without the court's permission.

An Official Receiver or an Insolvency Practitioner will be appointed "Trustee" to manage your bankruptcy. He/she will want to interview you, to understand why you got into debt and to explain in detail the full process. They will take control of all your assets other than those you need to live (including your family) and work.

If you own your own home. Freehold or Leasehold, solely or jointly, mortgaged or not, your interest in the home (50% if married/partnered) will form part of your estate and may have to be sold to pay your debts. As from the 1st January 2011, the Official Receiver, as Trustee of the bankruptcy estate, will no longer dispose of the bankrupt's interest in a family home until 27

months after the bankruptcy order is made, except if an offer is received which is in the creditors interests to accept. You can take steps to protect your home and your wife, husband, partner, relative may be able to purchase your interest from the Trustee.

The Trustee can claim any interest held in a life assurance policy, less 50% if the policy is in joint names. Any pension income will be included.

The Trustee may apply to court for an IPO (an Income Payments Order) but only if your income is in excess to your "reasonable" family living expenses. An IPO or an IPA (an Income Arrangement Order) can last for up to 3 years.

Bankruptcy Restrictions Orders can be introduced if your Trustee decides that you have been dishonest either before or during bankruptcy. The court can make such an order, which last for 2-15 years and you will continue to be subject to the restrictions of bankruptcy.

What Is Insolvency?

Put simply, Insolvency means you cannot pay your debts when they fall due and/or you owe more than you own. If that applies to you, you probably also are experiencing creditor pressure including legal threats or action. You should take advice, (which should be free) to understand your options and plan accordingly.

An Iva or Bankruptcy

Which is the best option for you? An IVA (Individual Voluntary Arrangement) or a Bankruptcy?

When dealing with "Individual" insolvency cases, an IVA or Bankruptcy should always be considered, along with other processes that might be appropriate, depending on particular circumstances. For simplicity and ease of comparison, both legal processes are examined here.

Debt Relief Order

A Debt Relief Order (Dro) was introduced in April 2009 especially for people with total debts, which they can't pay, of less than £15,000.00. To apply, your total assets, excluding a car, cannot exceed £300.00 and your disposable income, after living expenses, must be less than £50.00 a month. The filing fee is currently less than £100.00 and applicants must have been living/working in England and Wales for the last 3 years, not used a DRO within the last 6 years and not be involved in any other formal insolvency processes at the time of application.

Other Alternative Processes

Debt Management or Debt Consolidation schemes have a place, but tend to be very expensive, with high set up costs and a higher percentage of the monthly payments going to the management company and not the creditors. These schemes are not legally binding and any creditor can take action at any time against you.

Informal Arrangements are worth considering, where a professional negotiates on your behalf to set up payment plans, payment holidays and settlements. Again these are informal arrangements and not legally binding. (unless willingly agreed by both parties)

Bankruptcy Restriction Order or Undertaking

A procedure, introduced in April 2004 whereby a bankrupt who has been dishonest or in some way to blame for their bankruptcy may have a court order made against them or give an undertaking to the Secretary of State which will mean that bankruptcy restrictions continue to apply after discharge for a period of 2-5 years.

CCJ

A County Court Judgment or court action where a company/person will take you to court because you have not paid a debt. The court will order you to pay the debt within an allotted time and if you don't the company will be able to take further action.

Charge

Security taken over property by a creditor to protect against non-payment of a debt.

Companies House

This is where ALL Ltd and PLCs are registered, they store all information and make this info available to the public i.e. accounts, directors. Companies House also act to incorporate and dissolve companies.

Company Directors Disqualification Act 1986

An Act of Parliament about the disqualification of directors.

Compulsory Liquidation

A Compulsory Liquidation is initiated by a creditor who has taken all reasonable steps to recover an undisputed debt. A winding up petition is served and a liquidator is appointed. by the courts. Either the official receiver or an IP can be the liquidator. Even if the debt is paid at this stage the winding up hearing will still go ahead, damaging the directors reputation further. This process should be avoided if at all possible.

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.

Credit Rating

A tool that banks and financial service providers use

to assess how likely you are to be able to honour your debt, if you have a good rating you will have access to more funds on better terms than if you have a poor rating. Your rating is affected by many facts, like defaulted before or have any court judgements, or been made bankrupt. CREDIT RATINGS apply to individuals and businesses.

Creditors

A company or persons who owe money to another company for services provided. Creditors are classed as liabilities as it is money outstanding

Creditors petition (bankruptcy)

Creditors can petition for a debtor to be made bankrupt if an individual creditor is owed more than £750. Alternatively, creditors can join together to meet the £750 requirement. Proceedings normally take place at the debtor's local county court with bankruptcy jurisdiction. Creditors can only ask for someone to be made bankrupt if: the debt is unsecured; and for a fixed sum which the debtor 'appears unable to pay'.

Company Voluntary Arrangement (CVA)

What is a Company Voluntary Arrangement (CVA)?

A Company Voluntary Arrangement (CVA) is an insolvency procedure that allows a financially troubled company to reach a "binding" agreement with its creditors about payment of all, or part of, its debts over an agreed period of time. A Company Voluntary Arrangement (CVA) can be proposed by the Directors of the company (but not by the shareholders or creditors), the Administrator of a company, or the Liquidator of a company.

Where very aggressive creditors are involved and before the CVA proposals are made, an application can be made to the court for a "Moratorium" which prevents creditors from taking action against the company or its property for up to 28 days. When the CVA has been proposed, a "Nominee" (who must be an Insolvency Practitioner – IP) reports to the court on whether a meeting of creditors and shareholders should be held to consider the proposal.

The meeting decides whether to approve the CVA. If 75% of the unsecured creditors (by £value) agree to the proposal, it is then binding and all the creditors, who had notice of the meeting and were entitled to vote, are bound by the terms of the arrangement.

Once approved, the "Nominee" Insolvency Practitioner becomes the "Supervisor" of the Company Voluntary Arrangement (CVA) for the duration. The company can continue trading during the CVA and once the Arrangement has been completed, is free of any liabilities to its creditors.

The Company Voluntary Arrangement (CVA) Procedure

The CVA proposal is drafted by the Directors with the assistance of an Insolvency Practitioner, known as the "Nominee" The proposals are then sent to the following stakeholders giving them 14 days notice of the CVA creditors meeting:

What makes a successful Company Voluntary Arrangement (CVA)?

The business must be viable for a CVA to work. The Directors must be honest about the company's affairs and show the true financial position. A CVA must offer the Creditors more money than would be received if the company went into liquidation. The company must have sufficient working capital to trade and pay day to day expenses and at least be trading at breakeven. The company should have a full order book or some business in the pipeline.

What are the advantages of a Company Voluntary Arrangement (CVA)

- A CVA is a cost effective method for avoiding outright insolvency for a company with financial problems.
- A CVA is legally binding.
- A CVA allows the Directors time to reorganise and restructure the company without the threat of creditor action.
- A CVA is a private matter and does not appear in the papers, so avoiding negative local publicity.
- A CVA allows structured payment of Crown tax arrears.
- A CVA avoids the need for the Insolvency Practitioner to investigate the affairs of the company and report on the conduct of the Directors.
- A CVA allows the Directors to remain in control of the company.
- A Partnership Voluntary Arrangement-Pva

There are a number of options available to the Partners and/or the Creditors, under the provisions of the Insolvency Act 1896, such as:

- The formal winding up of the partnership as an unregistered company, possibly in conjunction with the bankruptcy of one or more of the partners.
- A Partnership Administration Order-PA-(similar to the standard administration order)
- A PVA, possible in conjunction with "interlocking" IVA's (SIMIVA) of one, some, or all the partners.
- A PVA is similar to a CVA (Company Voluntary Arrangement) in that it is a formal arrangement with the partnership's creditors, for an agreed period and under terms agreed by the creditors. It can also be a useful tool for Recovery of the business interests.

In a PVA, unlike an IVA or CVA, there is no protective Interim" order available, so depending on the pressure from aggressive creditors at the time, an Administration order is first obtained to provide protection to the

partnership.

Once a PVA is approved, the partnership is protected from the actions of its creditors, so that it can:

- Continue its business for the period agreed and Recover
- Make future profits and payments to the creditors
- Realize assets on better terms than via a “forced” sale
- It is important a PVA, or indeed a CVA, is not sought unless the business is viable or is asset rich. Partnership law is complex and protecting partner’s personal assets can be complicated.

NOTE. A PVA or Partnership Voluntary Arrangement follows the same process as a CVA, but is used where the business is a Partnership as the partners are jointly and severally liable. A PVA has the same benefits as a CVA.

CVL

Creditors Voluntary Liquidation: The liquidation of a company means to cease trading, sell all the assets and terminate all contracts. It is initiated by the shareholders of the company and done by an insolvency practitioner (see below).

Debenture

A documents in writing usually under seal issued as evidence of a debt or the granting of security for a loan. The term is often used in relation to loans (usually from banks) secured by charges, including floating charges, over companies assets.

Debt Consolidation

Pay off all your debts (consolidate them) with a single loan.

Debt Management

An informal arrangement with your creditors to repay your debts with lower monthly payments.

Debt Relief Orders (DRO)

Introduced in April 2009 as a simple alternative to bankruptcy and available to individuals with relatively low liabilities, little surplus income, few assets and who are unable to pay off their debts in a reasonable time. The individual must take advice from a licensed debt advisor and an approved intermediary must assist the application, which costs less than £100.00 and which has to be approved by the Official Receiver. Debtors – A company or persons who owe you money for services you have provided, but not yet paid for. Classed as a current asset.

Debtors petition (bankruptcy)

Where a debtor decides they want to make themselves bankrupt, in order to do this the debtor must personally petition to the county court. See bankruptcy.

Directors

The decision makers of the company. The directors control the business and are responsible for its successful running and management. They’re protected from personal risk by limited liability, but generally only if they act correctly!

Directors Disqualification

If a person is declared bankrupt or has committed certain insolvency offences then he or she can be barred from acting as a director by the DTI. It becomes illegal for that person to be a director or manager of a company for the period of disqualification.

Dissolution

A process that legally breaks up a company that no longer wishes to trade. In order to start the dissolution process the company must have ceased trading for 3 months.

Distrain

A popular tool for landlords where rent or other payments are not made. If the landlord has agreed a payment deal and the company is not keeping to it the landlord has various powers.

Distrain

An agent of the landlord can effect entry to remove goods or assets for sale to pay for the debt due. He / she does not need to wait for a long period for this to happen. In theory 1 week after a rent payment is due they can distrain. Nor does he/she need a judgment.

Dividend

Any sum distributed to unsecured creditors in an insolvency.

Domino Effect

If a partner as an individual has an insolvency problem (perhaps from overspending/borrowing, gambling or drinking (or all of these)) and is being pursued by a creditor(s) this can lead to problems. It is even possible for the spouse of a partner to become insolvent, thus leading to the loss of the matrimonial home which, for example, may underpin security granted to a bank.

DTI

Department of Trade and Industry: A Government

agency which acts in the interests of all and aspire for higher productivity in all industries by promoting enterprise innovation and creativity. The DTI also aid in employment issues such as redundancy. The DTI runs the Insolvency Service in England & Wales.

Factoring

A service provided by financial institutions such as banks and lenders who pay the company for unpaid invoices and help collect the remaining funds for a fee and they charge for lending the company money for a period until the debt is repaid.

Fixed and Floating Charge

A mortgage, debenture or other security documentation, is likely to create charges over particular assets as security for borrowings or other indebtedness. There are essentially two types of charge, floating and fixed. A floating charge is appropriate to assets and material which is subject to change on a day to day basis, such as stock. Individual items move into and out of the charge as they are bought and sold in the ordinary course of events. The floating charge crystallises if there is a default or similar event. A floating charge is not as effective as a fixed charge but is more flexible.

Fraudulent Trading

This is the continuation of trading with no reasonable prospect of repaying debts and with the intentions of defrauding creditors.

Going Concern

Where the company is continuing to trade for the current period and can cover its costs and make some money.

Guarantee

An agreement, in writing, to pay a debt owed by a third party.

HMRC

Her Majesty's Revenue and Customs: the government body which collects and regulates PAYE, NIC VAT etc.

Informal and Formal Arrangements

An informal arrangement is an agreement reached with one or more creditors, to repay debt, that is negotiated personally or on your behalf, but is not court ordered, like Formal Arrangements.

Insolvency practitioner

A professional who specialises in insolvency and is licensed by the DTI. Insolvency practitioners often act to close a company in the best possible way for all parties involved. Only IP's can be a liquidator or Administrator.

Insolvent

A term that is used when a company/person cannot pay or cover their debts with the assets or funds they have as liabilities exceed assets.

Insolvent Company

A company that cannot pay its debts as and when they fall due. The company will suffer from major cash flow problems and cannot pay what it owes thus it is insolvent.

Interim Management

Interim Management is the temporary provision of management and skills. Interim Management can be seen as the short-term assignment of an interim executive manager to manage a period of transition, crisis or change within an organisation. Additionally, there may be nobody internally who is suitable, or available to take up the position in question.

Interim Order

When someone is applying for an IVA (see below) they can ask the court to protect them from legal or bankruptcy actions by someone they owe money to.

Investigating Accountants

Accountants who look at the business you run for the bank that is lending it money, they check accounts, forecasts, marketplace and management. The real reason the banks appoints them is to find out how secure debt is that the company holds!

IVA Personal or Individual (Sole Trader) Solutions

What is an Individual Voluntary Arrangement (IVA)?

Is a formal agreement between you and your creditors, where you formally agree with your creditors to make payments towards your total debt. Due to its formal nature an IVA has to be set up by an Insolvency Practitioner. The agreement is legally binding between you and all your creditors and runs for 1, 3 or 5 years. Monthly payments are based on an affordable disposable income and subject to your circumstances the arrangement can write off a percentage of your debts. Once set up, all interest and other debt charges are frozen and creditors are prohibited from taking any further action against you.

Positives of an IVA

An IVA lasts for a fixed period of time, normally 5 years. IVA's are not publicised in Newspapers but details can be found on The Insolvency Register, which is publicly available.

Once an IVA is in place, your creditors are not allowed

to take further legal action against you as long as you stick to the terms of the arrangement. All interest and further charges stop, as does all direct contact from your creditors. All contact then is via your Insolvency Practitioner.

Regardless of your professional position, you can continue to work with an IVA in place. (subject to your individual "Employment Contract" & Conditions).

A part of your overall debt can be written off at the end of the arrangement.

If you are running a business you can continue to operate and also act as a Director.

Negatives of an IVA

An IVA will damage your credit rating and you will not be able to use your credit/store cards. However you can still use prepaid cards.

If you have any equity in your property or any other significant asset of value, you may be required to release some, or all of this, as part of the IVA agreement.

Failure to keep up your IVA monthly payments will mean you will be bankrupted. A high proportion of IVA's are not sustained and end in failure and bankruptcy.

You will pay back more than you will in a bankruptcy. Many people applying for an IVA will not succeed, yet you will have already funded the investigation and application. You will then need 75% of the total debt value voting in favour to begin (or put another way, just 1 or 2 creditors holding 26% of the total debt can stop the proposal). All your creditors must be involved. Any creditors with a personal guarantee from you would normally vote against.

The Insolvency Practitioner has to be paid to set the arrangement up and then monthly for the period (normally out of money that would otherwise go to the creditors.)

An IVA will cost substantially more than a Bankruptcy and generally lasts a lot longer.

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Informal Arrangements are worth considering, where a professional negotiates on your behalf to set up payment plans, payment holidays and settlements. Again these are informal arrangements and not legally binding. (unless willingly agreed by both parties).

Joint Several Liability

Joint and Several Liability implies that all members are liable for the partnership debts in full or in part individually, dependent usually on their ability to pay. Thus a creditor(s) /liquidator can "go after" the member with the most assets to satisfy debts then the next and so on until all debts are satisfied or until all partners are made bankrupt.

Legal

If you are threatened with legal action or have received legal notices, do not ignore them. The problem will not go away. It will get worse. Handled quickly and professionally, legal action can be stopped, giving time to discuss and plan a solution.

Liability

A Liability is something that you owe to somebody, i.e. a mortgage, loan payment credit/store cards.

Limited Company

A business that legally sets itself as a separate person so that its directors and shareholders are not liable for any of it's (proper) actions. The businesses are usually privately owned.

Limited Liability

A mechanism that allows Limited company and PLC shareholders to limit their responsibilities if the business falls into difficulties, where shareholders will lose no more than their investment in the business should it default.

Liquidation

Liquidation involves selling off all the company assets to raise money to repay creditors and then closing the company down. Before liquidation all "Recovery" options should have been considered, as this is the final process for an insolvent company. Liquidation can be voluntary or compulsory.

Liquidator

A liquidator is a person responsible for dealing with the winding up of a company and he/she must be an insolvency practitioner.

Moratorium

A period of time during which a certain activity is not allowed or required. Usually a moratorium is put in place to protect a person, business or company.

No fault bankruptcy

Under the Enterprise Act 2002 the UK Government significantly relaxed the rules regarding bankruptcy. From April 2004 the sole trader or partner in a partnership, who has a failed business (where there are no issues of fraud, misfeasance, recklessness etc) is able to file for bankruptcy (see process above) and be discharged from that bankruptcy within say 12 months.

Nominee

A nominee is a licensed insolvency practitioner who helps propose a deal with their creditors under a proposal of a CVA/IVA and deals with legal issues and compliance such as chairing the creditors meetings, checking management accounts and forecasts.

Officer

A director, manager or secretary of a company.

Official Receiver

The Official Receiver is a civil servant in The Insolvency Service and an officer of the court. He (or she) will be notified by the court of the bankruptcy or winding-up order. He will then be responsible through his staff for administering the initial stage. This stage includes collecting and protecting any assets and investigating the causes of the bankruptcy or winding up.

Partnership

Similar to a sole trader, however there is more than one owner and there can be several different people that own different amounts of the business.

PAYE

Pay As You Earn: A government scheme where your tax is deducted from your monthly wage and paid for you by your employer so that you do not have to calculate your own tax and National Insurance payments. The employer is responsible for collecting this tax and paying to the government. Failure to do so on time is a sign of insolvency.

Personal Guarantee

A personal guarantee is a tool which financial service providers can use to guarantee their debt by requesting the director or partner in a business to personally guarantee the debt regardless of whether the debt is used by the company or not. Should the debt default, then the bank will call on this personal guarantee and the guarantor may/will have to pay the remaining debt.

Petition

If a company or an individual owes you money and has refused or neglected to pay the debt, you may apply to "Wind it up" (for a company) or for "Bankruptcy" (for an individual) by presenting a "Petition" to court for that purpose. See a Statutory Demand.

Phoenixing

Phoenixing is a process whereby the Directors of an Insolvent company, start a new business that then buys the assets of the failing company. The viable parts of the old business are transferred into the new company, allowing it to trade successfully without the weight of debt and liabilities from the failing business. "Rising from the Ashes" Phoenixing is also referred to as "Pre-Packaging" and is a process linked to Administration.

PLC

A Public Limited Company whose shares may be purchased by the public and whose share capital is not less than the statutory minimum. Not all PLCs are listed companies.

Prefential Creditor

A creditor who is entitled to receive certain payments in priority to floating charge holders and other unsecured creditors.

Proof Of Debt

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

Proxy

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

Proxt Form

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

Public Examination

When a company is wound up or in bankruptcy proceedings, the Official Receiver may at any time apply to the court to question the company directors or anyone else involved in the management of the company or the bankrupt.

PVA

A Partnership Voluntary Arrangement: The same process as a CVA however this is used for a company that is a partnership as the proprietors are joint and severally liable. The PVA has the same benefits as the CVA.

Realise

Realising an asset means selling it or disposing of it to raise money.

Receiver

A receiver is appointed by a bank normally to collect and administer a company's assets. The receiver then has a duty to collect the bank's debts only by selling the assets; he/she is not generally concerned with the other unsecured creditors or shareholders exposure.

Receivership

When a company defaults on a loan or payment the debt holder can call on a receiver to go into the company to sell the companies assets in order to pay back some or all of the debt. The company in receivership will lose control of the business while the receivers sell the assets and the company will usually be liquidated, the business may be sold and there is usually a loss of jobs.

Redundancy

A reason for dismissal, redundancy involves the closure (either temporary or permanent) of the business as a whole or closure of a particular department this could suggest that the business has no further use for the department you are working in, are downsizing or could be facing difficulties.

Release

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

Rescission

A procedure that cancels a winding up order.

Secured Creditor

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

SFLGS

Small Firms Loan Guarantee Scheme: By providing a government guarantee against default by borrowers, the Scheme enables high street banks and other financial bodies to lend between £5,000 and £250,000 to new and existing businesses. The DTI underwrites 75% of the loan. So if the company failed the bank will be able to claim up to 75% back from the DTI.

Shareholders

'Owners' of the business, someone who has bought shares on the open market if it is a quoted PLC. Or owns a stake in a limited company. They have a say in how the business is run and earn a share of the profits as a dividend.

Simultaneous Voluntary Arrangements

Basically as the title suggest the mechanism is to link together a number of simultaneous individual voluntary arrangements to protect the partnership and the individual debtors. It allows the partnership arrangement to deal with partnership debts and individual arrangements to deal with any individual debts. It also protects the individual partners from the "fallout" of the partnership debts to the individual.

SME

Small to medium size enterprises (businesses)

SOFA

Statement Of Affairs: A statement of what you own, what assets you have and your liabilities and cost of living to summarise your financial affairs

Sole Trader

An owner of a business who is wholly responsible for the day to day running of the business and its debts. They are generally small firms with few employees.

Statutory Demand

Usually this action is taken after a creditor has obtained a Judgment. It is a formal demand for payment of an undisputed debt (over £750) – the debt must be paid within 21 days of the demand being issued. Failure to pay a statutory demand can lead to a winding up petition or bankruptcy being issued. In any event, the creditor has to pay to issue this document/action and therefore he/she/it is now becoming much more serious.

Supervisor

The Supervisor collects payment of CVA/IVA contributions and ensures that contributions are kept up to date; failure to keep up to date can cause the supervisor to default and abort the CVA/IVA leading to liquidation/bankruptcy.

Trading Out

Working through problems, this phrase is used where you continue to trade through tough times in order to rectify your problems and improve your company's health.

Trustee in bankruptcy

A Person who holds property in trust for another. In bankruptcies the IP holds the property of the bankrupt in trust for creditors and is referred to as the trustee.

Turnaround practitioner

An advisor who specialises in helping ailing companies solve their problems and get back on their feet, a simple analogy of this would be to describe a turnaround practitioner as a company doctor.

Turnover

The money that a business takes in over a period of time through its activities is known as turnover.

Unsecured Creditor

A creditor who holds no security for money owed.

VAT

Value Added Tax: A duty that is paid on qualifying goods of 15.0% above the company's selling price less any VAT paid for goods the company has bought in the same period. . This is collected by companies for the HM Revenue & Customs.

Voluntary Liquidation

A Creditors Voluntary Liquidation (CVL) is initiated by the Directors and Shareholders who nominate a Liquidator (who is an Insolvency Practitioner) to wind up the insolvent company. The IP will sell all the assets

and share the proceeds with the creditors in accordance with their proven claims and priorities. The IP will also report on the conduct of the Directors, which in this case should show they behaved responsibly and no wrongful trading took place.

Walking Possession

A bailiff (for the County Court) or Sheriff (for the High Court) has visited your premises and obtained entry. He /she has asked for payment of the proven debt. If you have not paid this plus the court and his costs he can "take possession" of the goods, equipment, fixtures, stock etc on the premises. Effectively if you do not reach a deal or pay in full he can remove and sell the assets in 5 days. To sell the assets after they are covered in this way is a criminal offence. If the bailiff has obtained a walking possession he can force entry to recover the goods after the 5 day period.

Warrants

In law, a warrant can mean any authorisation. Often in statute the warrant of a particular person is required before certain administrative actions can take place. As the creditor has not been paid under the judgment the creditor can apply to the court for a warrant of execution. If the debtor is in another area the court can forward this to the local court. A notice of warrant will be issued to the debtor. If payment is not made a bailiff of the court can be sent to collect payment or seize goods.

Wrongful Trading

A Director may be held liable for wrongful trading if they allowed the company to continue in business when they knew or ought to have known that there was no prospect of meeting the company liabilities as they fell due. Put simply lying about the current state of the company and hiding from reality.

Winding Up Petition (WUP)

A tool that can be used should a debtor continuously refuses to pay its debts so the company presents its petition to the court to have the company closed down.

Legal Advice

Clearly the descriptions are designed for general understanding, they may or may not be absolutely correct in every circumstance, we disclaim any potential or actual liability arising from any reliance upon any description in this glossary or any guide on this site.

