

## Insolvency - Northern Ireland

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#### 1 Who may insolvency proceedings be brought against?

- Insolvency proceedings may be brought against individuals, partnerships and companies (incorporated or unincorporated).
- Proceedings may be brought against any individual who has a debt of at least £5,000 and who either lives in Northern Ireland, has in the last three years lived or carried on business in Northern Ireland, or is present in Northern Ireland on the day that a bankruptcy petition is presented. There is no minimum age.

#### 2 What are the conditions for opening insolvency proceedings?

- Corporate insolvency in Northern Ireland can be either liquidation (voluntary or by order of the High Court) or reorganisation (company voluntary arrangement or administration). Administration may be used as a precursor to winding-up procedure.

- Any creditors (private or government) can apply to the Court that a company be wound up (compulsory liquidation) or put into administration.
- The debtor company itself can resolve to be wound up (voluntary liquidation, which can be either solvent or insolvent, with solvency judged on the ability to pay all debts within 12 months). The debtor company may also petition the Court that it be wound up.
- The Department for the Economy may apply to the Court that a company be wound up if it is in the public interest to do so. Such companies need not be insolvent.
- At any point after a petition (from any party) has been presented to the Court for compulsory liquidation, the Court may appoint a provisional liquidator. Such appointments are generally made to protect the assets of the company ahead of the winding-up hearing. The powers of the provisional liquidator are as in the Court's order appointing him/her.
- The company or its directors may appoint an administrator as may a floating chargeholder (such appointments being made outside of the Court).
- For a company to enter administration it must be insolvent or likely to become so. Case law has found that 'likely' in this sense means more likely than not.
- In a company voluntary arrangement, a company need not be insolvent.
- Compulsory liquidation may be on grounds that it is unable to pay its debts (insolvency), with that inability proven by an unsatisfied statutory demand for payment or an unsatisfied judgment). The Court may put a company into liquidation on the grounds that it is just and equitable to do so.
- As soon as the proceedings commence (either the company's resolution to wind up; the Court's order for administration or liquidation or the filing of a notice of appointment of an administrator with the Court (for those appointment not made by court order), the office-holder may act.
- A company voluntary arrangement may be proposed by the company. It need not be insolvent for it to do so. A CVA may also be proposed by the office-holder in a liquidation or administration (if either of those procedures has already commenced).
- Individual insolvency proceedings available are individual voluntary arrangements (IVA), debt relief orders (DROs), and bankruptcy orders (whether made on the petition of a creditor or the individual).
- IVAs are proposed by the debtor and agreed by creditors by way of a vote in which 75% by value of debt owed of those voting must approve. No minimum level of debt applies and there is no test of insolvency. The proposal must be made through a nominee, who becomes supervisor if the proposal is approved by creditors. The nominee may act when the proposal is submitted to them by the debtor. An IVA may be proposed at a time that the debtor is subject to bankruptcy proceedings, and the bankruptcy may be annulled if the proposal is accepted by creditors. IVAs that are accepted by the creditors at vote are binding on all of the creditors.
- DRO applications are made electronically to the official receiver by the debtor through an authorised intermediary. There is no court involvement in commencement of the proceedings. The debtor must have debts of no more than £20,000, assets of less than £1,000 (excluding a reasonable motor vehicle), and surplus income of £50 per month or less. The debtor must not be subject to any other insolvency proceedings and must not have entered into any transactions which disadvantaged creditors in the previous two years. The official receiver has a duty to determine the application when it is received, and so can act from that time.
- Bankruptcy orders may be made on the petition of a creditor or the debtor themselves. The official receiver becomes receiver and manager on the making of the order. A trustee may be appointed subsequently and can act immediately on appointment.
- In the case of a creditor's petition, the petition is presented to the Court and is subject to a minimum debt of £5,000 although a joint petition may be presented by two or more creditors in which case the debts owed to each are aggregated. The debt must be unsecured. The petition must demonstrate that the debtor is unable to pay the debt, which must be shown through an unsatisfied statutory demand for payment, or by an unsatisfied judgment.
- Debtor's petitions are also presented to the Court. No minimum debt level applies but the debtor must be unable to pay their debts.
- Where a bankruptcy petition has been presented, the Court may, prior to the hearing of that petition, appoint an interim receiver to protect the assets of the debtor which have been identified as potentially at risk. The court will in most cases give specific instructions as to the remit of an interim receiver, but may also give a more general power to take immediate possession of the debtor's property. Only the official receiver may be appointed as an interim receiver.

### **3 Which assets form part of the insolvency estate? How are the assets treated which are acquired by or which devolve on the debtor after the opening of the insolvency proceedings?**

- In corporate insolvency, all property owned by the company, anywhere in the world is subject to the insolvency procedure. 'Property' is very widely defined in law.
- In IVAs the debtor's proposal will set out how assets are to be dealt with, and the creditors have the opportunity to consider this before voting on whether to accept the proposal.
- In DROs the value of assets is £1,000 or less (not including a reasonable vehicle) and these remain vested in the debtor.
- In bankruptcy, all property owned by the bankrupt individual anywhere in the world vests in the trustee, with some exceptions. Any property which is needed to meet the individual's domestic needs or to allow them to carry out their employment or trade, does not form part of the bankruptcy estate. This may include a motor vehicle. If such property is deemed by the trustee to be worth more than the cost of a reasonable replacement, then the trustee may realise the property and provide such a replacement. Also any property which the bankrupt individual holds in trust for somebody else is not included in the bankruptcy estate.
- The bankrupt individual's income does not form part of the estate, but the trustee may come to an agreement with the individual that a proportion of any surplus income they have after taking account of their reasonable domestic requirements be paid to the bankruptcy estate for the benefit of creditors. The trustee may make an application to the Court for an order that this happen if agreement with the individual cannot be reached.
- Any property which comes into the individual's possession whilst undischarged from the bankruptcy proceedings may be claimed by the trustee for the bankruptcy estate.
- It is a criminal offence for a bankrupt individual to borrow money or otherwise obtain credit of more than £500 without disclosure of the bankruptcy proceedings to the lender.

### **4 What powers do the debtor and the insolvency practitioner have, respectively?**

- Other than in the case of the official receiver, office-holders must be licensed insolvency practitioners. Licences can only be issued by a professional body authorised by the Department to do so. Someone who acts as an insolvency practitioner when not licensed to do so commits a criminal offence and is liable to a fine or imprisonment.
- To obtain a license, the applicant has to pass exams and must have a certain number of hours of practical insolvency experience.
- An insolvency practitioner must be a natural person.
- The remuneration of an insolvency practitioner acting as an office-holder is set by creditors. The IP can apply to the Court if he/she thinks the remuneration basis set by creditors is insufficient. Creditors may apply to the Court if they consider remuneration is excessive.
- All insolvency cases are under the general control of the Court and affected parties (including the insolvency office-holder) may apply to the Court for directions.
- In an IVA, a debtor is free to deal with their assets, provided that this does not lead to them breaching the terms of their agreement with the creditors.
- In a DRO assets do not vest in an office-holder.
- Assets in a bankruptcy vest in the trustee and may not be dealt with by the bankrupt individual. This does not apply to assets which are excluded from the bankruptcy estate or assets which come into the possession of the individual after the commencement of the proceedings, unless those assets come into the individual's possession prior to their discharge from the bankruptcy proceedings and are claimed by the trustee. Other than the ability of the trustee to claim acquired assets, this situation is not affected by the individual's discharge from the bankruptcy proceedings.
- An official receiver is a statutory office-holder appointed by the Department. He may act as an office-holder in a compulsory liquidation or a bankruptcy. OR remuneration is not set by creditors; he is funded via a statutory formula as a percentage of assets realised/distributed

### **5 Under which conditions may set-offs be invoked?**

- Northern Ireland law provides that set-off occurs in liquidation, administration and bankruptcy.
- The set-off account includes mutual dealing as at the date of the insolvency.

- The net amount is either an asset (a book debt) of the insolvency, or a liability.
- The parties cannot contract out of the application of set-off.

## **6 What effect do insolvency proceedings have on current contracts the debtor is a party to?**

- A liquidator or trustee may disclaim an unprofitable contract, ending the insolvent's interest/liability in it (the counterparty may claim in the insolvency for losses/damages as a result of the insolvency)
- In corporate insolvency an insolvency office-holder is under no obligation to perform contracts entered into by the insolvent.
- In corporate insolvency and bankruptcy, the continued provision of certain supplies (utilities and communication considered 'essential', can be continued in the insolvency without the need to pay any arrears outstanding at the entry to insolvency.
- Other than essential supplies (see above), suppliers can terminate contracts upon insolvency (if their contract allows for it). Any unpaid goods/services would be a claim in the insolvency.
- Ongoing contracts would not be directly affected by IVA or DRO proceedings, although they would need to be considered as part of an IVA proposal and may mean that an individual did not fit the criteria for a DRO.
- In bankruptcy, unprofitable contracts may be disclaimed by the trustee. Otherwise, where the contract does not terminate on insolvency, the court may make an order discharging the obligations of the contract.

## **7 What effect does an insolvency proceeding have on proceedings brought by individual creditors (with the exception of pending lawsuits)?**

- Liquidation and administration act to create a moratorium. Legal action cannot be taken against the company post commencement without the consent of the office-holder or permission of the Court.
- In a company voluntary arrangement, any creditor bound by the agreement could not take legal action to pursue the debt (as they are bound by the accepted agreement). A post-approval creditor could take such action if they were not paid.
- If a bankruptcy petition has been presented, the Court may stay any legal proceedings ongoing against the debtor's person or property or allow it to continue under such terms as the court thinks fit. No creditor of the bankrupt individual may commence any action against their person or property without the leave of the Court whilst the individual is undischarged from bankruptcy proceedings.
- Where a debtor intends to make a proposal to their creditors for an IVA, they (or if they are subject to bankruptcy proceedings, the trustee or the official receiver) may make an application to the Court for an interim order. This has the effect of allowing the court to stay any proceedings against the debtor's person or property and preventing such proceedings from being commenced. The interim order also prevents presentation of a bankruptcy order against a debtor. The IVA proposal would include how the ongoing proceedings are to be disposed of, and if accepted all creditors would be bound by it.
- The making of a DRO prevents creditors from taking action against the debtor in respect of their debt.

## **8 What effect does an insolvency proceeding have on the continuation of lawsuits pending at the moment of the opening of the insolvency proceeding?**

- Liquidation and administration create a moratorium. Pending actions at the date of the insolvency cannot be continued without the consent of the office-holder or permission of the Court.
- A creditor in a pending action at the approval of a CVA or IVA could not continue such an action, as they would be bound by the terms of the CVA or IVA (whether or not they themselves voted to approve it).
- Creditors participate in insolvency proceedings through creditor meetings and other decision processes. They may also form a committee and elect its members. Office-holders other than the official receiver must update creditors regularly (every 6 or 12 months, depending on the procedure) on the progress of a case.

## **9 What are the main features of the participation of the creditors in the insolvency proceeding?**

- Creditors participate in insolvency proceedings through creditor meetings and other decision processes. They may also form a committee and elect its members. Office-holders other than the official receiver must update creditors regularly (every 6 or 12 months, depending on the procedure) on the progress of a case, and in bankruptcy and liquidation must hold a final meeting of creditors to report on the administration of the insolvency proceedings.
- Decisions may include appointment or removal of the office-holder, agreement of remuneration of the office-holder, formation of a committee, consideration of a voluntary arrangement proposal, or any other decision which the office-holder determines should require input from the creditors.

## **10 In which manner may the insolvency practitioner use or dispose of assets of the estate?**

- The IVA proposal may make provision for the supervisor to deal with the debtor's assets.
- In a DRO, assets are excluded from the proceedings, but the official receiver has power to make enquiries regarding the debtor's conduct and property.
- In a bankruptcy, property vests in the trustee upon appointment without any need for conveyance, assignment, or transfer. It is the duty of the trustee to get in, realise, and distribute the bankrupt's property to creditors.

## **11 Which claims are to be lodged against the debtor's insolvency estate and how are claims arising after the opening of insolvency proceedings treated?**

- In corporate insolvency, all debts/liabilities/torts owed by the company prior to the onset of insolvency can be lodged in the insolvency. Debts payable in the future may also be claimed but discounted to present values.
- Liabilities arising from certain criminal actions (such as drug trafficking) are not provable in administration or liquidation.
- Liabilities incurred after the commencement of proceedings are considered 'expenses'. These are subject to their own hierarchy of payment but all must be paid before money can be distributed to creditors.
- An IVA proposal must make full disclosure of a debtor's liabilities and will set out how creditors are to be paid. Debts incurred by the debtor after agreement of the proposal may not be claimed in the insolvency unless specific provision has been made for this.
- Certain debts are not included in DRO proceedings and must be paid by the debtor. These include fines, unpaid television licence fees, student loans, and secured debts. No creditor claims are made in a DRO because there is no distribution of assets.
- Debts due at the date of the bankruptcy order or that become due in the future as a result of an obligation entered into prior to the bankruptcy may be claimed in bankruptcy proceedings. Fines, student loan debts, arrears of a debt due in family proceedings, and debts due in respect of confiscation orders cannot be claimed in bankruptcy proceedings.

## **12 What are the rules governing the lodging, verification and admission of claims?**

- Creditors may submit a claim (proof of debt) at any point in proceedings. A claim must be submitted to be able to vote in any meeting (or other decision procedure) or to receive a distribution.
- In administration, liquidation or bankruptcy where a distribution is intended, the office-holder will write to all those creditors yet to prove their claims stating that a distribution will be made, inviting them to submit claims and fixing a last date to do so in order to be included in that distribution). An office-holder may deal with claims submitted after this date but is not obliged to do so.
- In winding up by the court and bankruptcy, there is a standard form that must be submitted to prove. No other procedure has a standard form but the legal framework for other procedures states what must be included in a proof for distribution purposes.
- If a creditor does not claim in time, it cannot disturb the distribution.
- In voluntary arrangements, the requirement to submit a proof to the office-holder is satisfied by notification of the claim in writing.

## **13 What are the rules governing the distribution of proceeds? How are claims and the rights of creditors ranked?**

- Some claims arising from employment are treated as preferential, and payable after the expenses of the procedure are met but before the claims of floating charge holders and unsecured creditors.
- No claims are subordinated by law other than in bankruptcy proceedings where a debt due to a person who was the bankrupt individual's spouse or civil partner at the date of the bankruptcy ranks behind debts due to other creditors along with interest on those debts.
- If a third party satisfies a debt of the debtor, that third party has a subrogated claim in the insolvency.

## **14 What are the conditions for, and the effects of closure of insolvency proceedings (in particular by composition)?**

- Creditors agree proposals made by the debtor (in a company voluntary arrangement – >75% approval, by value ) or insolvency office-holder (administration, simple majority, or approval of all secured and a majority preferential creditors in cases where no return to unsecured creditors is thought likely).

- In a CVA, once approved all unsecured creditors at the point of the proposals are bound by the arrangement.
- Court approval is not needed for reorganisation plans, but an aggrieved party may apply to the court if they feel their interests have been unnecessarily harmed.
- There are detailed procedural rules on the exit/closure of all corporate insolvency proceedings, both liquidation and reorganisation.
- Once an IVA proposal has been agreed by creditors, it is implemented with an insolvency practitioner as supervisor. This does not require court approval, though the supervisor must report the result of the meeting held to approve the proposal to the court. A party may apply to the court for review of the decision of creditors on whether to accept the proposal on the grounds of material irregularity.
- If after approval the terms of the IVA are not met by the debtor then the supervisor may present a petition for their bankruptcy.
- In a DRO, debts are extinguished 12 months after the making of the order. There is no court involvement in this process.
- In bankruptcy the trustee must send a final report to creditors before obtaining their release. If the trustee is not the official receiver then they must call a final meeting of creditors, where creditors may object to release. If this occurs then the trustee must apply for their release to the Department, otherwise the trustee obtains their release when they notify the registrar of companies that the final meeting has taken place.

#### **15 What are the creditors' rights after the closure of insolvency proceedings?**

- Creditors may claim funds distributed to them (but not banked by them) after the closure of the proceedings (such funds being held by the Department).
- Northern Ireland law provides when the proceedings close when the office-holder is released.
- In IVAs the proposal will offer creditors a certain amount of repayment per £ of debt. The creditors are bound to accept this as payment in full if the proposal is accepted, so have no recourse for any part of that debt after the proceedings have been concluded.
- In bankruptcy and DRO proceedings, debts are extinguished when proceedings are closed, other than those debts which do not form part of the proceedings.

#### **16 Who is to bear the costs and expenses incurred in the insolvency proceedings?**

- Northern Ireland law provides a clear hierarchy of payment from funds realised from assets. Costs and expenses must be paid (from the realisations) before funds are returned to creditors.

#### **17 What are the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors?**

- If the insolvent has preferred a particular creditor in the approach to formal insolvency (i.e. paid them in preference to paying other creditors), or they had entered a transaction at an undervalue (i.e. sold something for less than its value or less than its worth), an office-holder may pursue the recipient.
- On application of the office-holder in a bankruptcy, liquidation or administration, a court may reverse either type of transaction and order that the recipient restore the position to what it would have been if the transaction had not taken place.
- Claims to reverse preference payments must relate to transactions which occurred in the six months prior to appointment of the administrator, commencement of the winding-up, or presentation of the bankruptcy petition, or two years in the case of a preference payment made to an associate.
- Claims to reverse transactions at undervalue must relate to transactions made in the two years prior to those events, or in bankruptcy proceedings in the period of five years, provided that the individual was insolvent at the time, or became insolvent as a result of the transaction.
- An office-holder in administration, liquidation, bankruptcy, or voluntary arrangement proceedings may apply to the court for an order reversing a transaction which defrauded creditors. Such an application may also be made by a victim of the transaction, with the leave of the Court.
- In administration and liquidation proceedings the office-holder may also take reparation action against any director of the company involved in trading with knowledge of insolvency which caused further losses to creditors, fraudulent trading, or misfeasance.

- In a case where a petition for winding-up or bankruptcy is presented to the court, any dispositions of property made after presentation of the petition are void unless the Court orders otherwise.
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