På privaträttens område kommer pågående ärenden och förfaranden som inleddes innan övergångsperioden löpte ut att fortsätta i enlighet med EU-rätten. Relevant information om Storbritannien kommer att finnas kvar på e-juridikportalen till slutet av 2022 enligt en ömsesidig överenskommelse med Storbritannien.

Insolvency/bankruptcy

England och Wales

1 Who may insolvency proceedings be brought against?

Insolvency proceedings may be brought against individuals, companies and various corporate entities, and partnerships.

Proceedings may be brought against any individual who has a debt and who either lives in England & Wales, has in the last three years lived or carried on business in England & Wales, or is present in England & Wales on the day that a bankruptcy petition is presented. There is no minimum age. Other than where a court judgment in respect of the debt has first been obtained, minimum debt levels apply for creditors who wish to wind a company up (£750) or who wish to make a natural person bankrupt (£5,000).

2 What are the conditions for opening insolvency proceedings?

Types of corporate insolvency include be winding up (voluntary or by court order), administration (which could lead to rescue/reorganisation or to winding up), administrative receivership, or voluntary arrangement.

Types of personal insolvency include bankruptcy (whether made on the petition of a creditor or an application of an individual), debt relief orders, or voluntary arrangement.

Any unsecured creditor, including government creditors, can petition 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). A debtor company may also petition the court that it be wound up.

At any point after a winding-up petition has been presented to the court, 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 set out in the court's order appointing them.

The company or its directors may appoint an administrator, as may a floating chargeholder. Such appointments are made outside of court.

For a company to enter administration it must be insolvent or likely to become so.

Compulsory liquidation may be on grounds that the company is unable to pay its debts, proven by an unsatisfied statutory demand for payment or an unsatisfied judgment. The court may also be asked to order that a company be wound up on the grounds that it is just and equitable to do so.

Administrative receivers may be appointed by floating charge holders to recover money owed to them.

Once appointed, the office-holder must notify all creditors of the insolvency. In corporate insolvency, the registrar of companies must be informed, who will update the company's record, which is searchable online for no charge.

A company voluntary arrangement may be proposed by a company, or by the office-holder in a liquidation or administration if either of those procedures has already commenced. Individual voluntary arrangements may be proposed by a natural person, and are permissible both before and after bankruptcy proceedings have commenced.

All voluntary arrangements are agreed by creditors by way of a vote in which 75% of those voting must approve. No minimum level of debt applies and there is no test of insolvency. The proposal to creditors must be made through a nominee, who becomes supervisor if the proposal is approved. The nominee may act when the proposal is submitted to them by the debtor.

Bankruptcy orders are normally made on the petition of a creditor or the debtor themselves. A trustee is appointed by virtue of the making of the order, and may act immediately.

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.

In the case of a debtor's application, the application is presented to an adjudicator, who is a person appointed by the Government. No minimum debt level applies but the debtor must be unable to pay their debts. There is no court involvement in the application, and there must be no other bankruptcy petition pending. The adjudicator must determine the application, and make an order if the conditions are met. A trustee is appointed by virtue of the bankruptcy order being made, and may act immediately.

Where a creditor has presented a bankruptcy petition, 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.

An individual may apply for a debt relief order through an authorised intermediary if they are unable to pay their debts, they owe £20,000 or less to their creditors, have assets valued at no more than £1,000 (not including a reasonable car) and have a surplus income of less than £50 per month. The official receiver determines whether a debt relief order should be made, and if it is then a moratorium period (normally 12 months) is placed on the person's debts, during which time creditors may take no action to enforce or recover them. At the end of the moratorium the debts, with some exceptions, are discharged.

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 administration, any finance raised to fund the procedure has priority as an expense.

In voluntary arrangements, the 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 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 fail to notify their trustee of property which is comprised in the bankruptcy estate, or 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?

Insolvency office-holders must be licensed insolvency practitioners or official receivers (see below). Licenses can only be issued by a professional body that the government authorises 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 must 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 agreement with the creditors. The insolvency practitioner may apply to court if they are unable to agree what they consider to be a reasonable rate of remuneration with the creditors. Creditors may also apply to court if they consider remuneration to be excessive.

Assets in a liquidation or administration are under the control of the insolvency office-holder.

All insolvency cases are under the general control of the court and affected parties, including the insolvency office-holder, may apply to the court if they think that their interests have been unfairly harmed.

In a voluntary arrangement, 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.

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, the trustee's administration of the estate is not affected by the individual's discharge from the bankruptcy proceedings.

An official receiver is a statutory office-holder appointed by the Secretary of State. He or she may act as an office-holder in a compulsory liquidation or a bankruptcy. Official receivers' remuneration is not set by creditors but by statute.

5 Under which conditions may set-offs be invoked?

Set-off may occur 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 of the insolvency, or a debt owed to the creditor, as the case may be.

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 in or liability for it (the counterparty may claim in the insolvency for losses/damages as a result of the insolvency). Otherwise, where the contract does not terminate on insolvency, the court may make an order discharging the obligations of the contract.

The continued provision of certain supplies such as utilities and communication and IT services considered 'essential', can be continued in the insolvency without the need to pay any arrears outstanding at the entry to insolvency.

Other than those essential supplies, suppliers can terminate contracts upon insolvency if their contract allows for it. Any goods or services unpaid for would give rise to a claim in the insolvency.

Ongoing contracts would not be directly affected by a voluntary arrangement although they would need to be considered as part of the proposal.

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

Liquidation and administration 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 voluntary arrangement, any creditor bound by the agreement could not take legal action to pursue the debt because they are bound by the accepted agreement. A post-approval creditor could take such action if it was not paid.

Secured creditors are not automatically bound by voluntary arrangements.

If a bankruptcy petition has been presented or a bankruptcy application made by the debtor themselves, 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 individual voluntary arrangement, 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.

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.

An unsecured creditor in a pending action at the approval of a voluntary arrangement could not continue such an action, as they would be bound by the terms of the voluntary arrangement, whether or not they themselves voted to approve it. Secured creditors are not bound by the terms of a voluntary arrangement unless they choose to be.

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

Creditors participate in insolvency proceedings though creditor meetings and other decision processes. They may also form a committee and elect its members. Office-holders other than official receivers must update creditors on the progress of cases every 6 or 12 months, depending on the procedure.

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 voluntary arrangement proposal may make provision for the supervisor to deal with the debtor's assets.

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.

Assets in a liquidation or administration are under the control of the insolvency office-holder.

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, or torts owed by the company prior to the onset of insolvency, including contingent debts can be claimed 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.

A voluntary arrangement proposal must make full disclosure of a debtor's or company's liabilities and will set out how creditors are to be paid. Debts incurred by the debtor or company after agreement of the proposal may not be claimed in the insolvency unless specific provision has been made for this.

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 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.

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.

https://www.gov.uk/government/publications/proof-of-debt-insolvency-form-425

https://www.gov.uk/government/publications/proof-of-debt-insolvency-form-637

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

The priority of distribution is

fixed chargeholders (from fixed charge assets)

expenses of the insolvency procedure

preferential debts (see below)

the prescribed part (corporate insolvency only)

floating charge-holders

unsecured creditors

shareholders (corporate insolvency only).

Some claims arising from employment are treated as preferential, including certain pension scheme debt.

The prescribed part is a ring-fenced fund drawn from floating charge assets and made available to unsecured creditors (maximum £600,000).

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)?

In a voluntary arrangement. creditors agree proposals made by the debtor or company if 75% by value vote in favour. Once the 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 to the court if an interim order has been made. 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. All unsecured creditors are bound by the arrangement.

If after approval the terms of the voluntary arrangement are not met by the debtor or company then the supervisor may present a petition to the court for bankruptcy or winding up.

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 and closure of all insolvency proceedings.

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

Detailed rules on the closing of a case apply in all proceedings.

Creditors may claim funds distributed to them but not banked after the closure of the proceedings (such funds being held by the Government).

In voluntary arrangements 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 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?

There is 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 an 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 for recovery of funds lost to the insolvency estate.

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 the bankruptcy application, 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 (misfeasance actions may also be brought by an official receiver or a creditor or contributory).

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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