

ICAEW



ABOUT INSOLVENCY

INFORMATION FOR INDIVIDUALS AND COMPANIES



BUSINESS WITH CONFIDENCE

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This booklet is for anyone who wants to find out more about insolvency and what an insolvency practitioner (IP) does.

It covers the basic principles but doesn't explain insolvency law in depth or everything about an IP's role. It tells you how to avoid common misunderstandings. At the end of the booklet you'll find details of where you can get more information.

The information applies only to insolvency cases in England and Wales.

WHAT IS INSOLVENCY?

Insolvency describes a situation when someone (an individual or a company) can't pay what they owe on time; or the value of their assets is less than the money they owe.

The law (mainly the Insolvency Act 1986) sets out a number of formal legal processes for people and companies if they are insolvent. Not everyone who has a debt problem will end up needing a formal solution, but some will.

An **insolvency practitioner (IP)** is someone who's appointed under the law to perform a specific role in many formal insolvency procedures.

There are different types of formal insolvency procedure for individuals (**personal insolvency**) and companies (**corporate insolvency**) and these are described later.

In insolvency, the person who owes money is often referred to as the debtor; those who are owed money are referred to as **creditors**.

The **official receiver** is a civil servant working for the Insolvency Service who deals with all bankruptcies and compulsory liquidations (see pages 03 and 04). In these case types, the official receiver is responsible for investigating the insolvency, not an IP. However, an IP may be appointed to deal with the assets (if any) and creditors' claims.

WHAT DOES AN INSOLVENCY PRACTITIONER DO?

IPs are asked to sort out difficult situations for individuals, sole trader businesses, partnerships, limited liability partnerships and limited companies. They can offer guidance to try and rescue a business or to sort out someone's personal finances. If that's not possible, an IP may be appointed in a formal role. You'll find more information about the different types of insolvency and the role an IP has on pages 03 and 04. In formal insolvencies, the IP aims to:

- sell the assets of the person or company who owes money (the debtor);
- collect money due to the debtor;
- agree creditors' claims (if there's enough money to go round); and
- distribute the money collected after paying costs.

The IP's work involves dealing with many competing interests, but usually their main duty is to look after the interests of creditors. Although creditors can give details of their claims, IPs will not agree the claims until they are sure that funds will be available. There's more information about the process of submitting a claim for money owed on page 06.

The IP (or their firm) doesn't have to pay money owed to creditors from their own money. In most cases, this also applies to money owed to creditors who have traded with a business after the insolvency process has started.

The IP must follow detailed laws on insolvency. The law sets out the powers and duties of the IP. The IP's responsibilities include reporting on the conduct of the directors of a failed company to the Insolvency Service. This report is confidential.

In some cases, the IP will give advice to a company or individual in financial difficulties immediately before a formal insolvency process begins. Sometimes a bank will ask an IP to conduct a review of a business's viability.

Who can be an insolvency practitioner?

In the UK, an IP is someone who is authorised to act in insolvency matters. Only an IP can be appointed in formal insolvency cases. Many IPs are accountants by training, some are lawyers.

Under UK law, anyone who wants to act as an IP must hold a licence and have:

- passed the insolvency examinations;
- gained experience of insolvency work; and
- satisfied an authorising body (also known as a regulator) that they are honest and are able to carry out the role.

PERSONAL INSOLVENCY PROCEDURES

INDIVIDUAL VOLUNTARY ARRANGEMENT (IVA)

An IVA is a procedure that allows someone who owes money to enter into an arrangement with their creditors to repay all, or a percentage of, their debts.

In voluntary arrangements, the IP will first be the 'nominee' (a formal role under insolvency law) for the proposed arrangement. As nominee, the IP has to make sure that creditors receive all the information they need to decide whether to approve the arrangement. They make this decision at a meeting of creditors. Creditors don't need to attend the meeting but can complete a form (known as a proxy) to show how they'd like to vote.

If the arrangement is approved, the IP (now acting as supervisor) makes sure the debtor complies with their obligations under the arrangement.

BANKRUPTCY

You can make yourself bankrupt by presenting your own petition to court. Alternatively, someone you owe money to may petition the court for your bankruptcy. An IP may act as the trustee in the bankruptcy, or the official receiver (see page 01) may be the trustee.

Bankruptcy is a serious step and, if you're thinking about making yourself bankrupt, you should get advice first. In bankruptcy, your property (for example, your house and other valuable belongings) may be sold. The money collected is then shared among your creditors. During their bankruptcy, someone who's been made bankrupt can't act as a company director and, if they trade as an individual, they must trade in their own name.

DEBT RELIEF ORDER (DRO)

A DRO is aimed at individuals with a low level of debt (£15,000 or below) and with a low income and few, if any, personal assets. Someone can only apply for a DRO if they use an approved intermediary who's an experienced debt adviser. Only the official receiver deals with DROs; no IP is appointed. If you're owed money by someone who enters a DRO, you won't receive any payment.

OTHER SOLUTIONS

There are other informal ways of dealing with personal debt. These include a debt management plan (DMP) which is an informal repayment plan. You can set up your own DMP or use a company or a charity to help you. No IP is appointed when someone uses a DMP.

In informal solutions, however, not all creditors may agree to the plan and they may take action to get their money back.

CORPORATE INSOLVENCY PROCEDURES

COMPANY VOLUNTARY ARRANGEMENT (CVA)

A CVA allows a company that owes money to enter into an arrangement with its creditors to repay all, or a percentage of, its debts.

In voluntary arrangements, the IP will first be the 'nominee' (a formal role under insolvency law) for the proposed arrangement. As nominee, the IP has to make sure that creditors receive all the information they need to decide whether to approve the arrangement. They make this decision at a meeting of creditors. Creditors don't need to attend the meeting but can complete a form (known as a proxy) to show how they'd like to vote.

If the arrangement is approved, the IP (now acting as supervisor) makes sure the agreed terms of the arrangement are met.

ADMINISTRATION

An administration allows an IP (acting as administrator) to try to rescue a company or sell its assets to repay the company's creditors as much as possible of what they're owed.

In some administration cases, the IP advises the directors or a major creditor on the different insolvency options available before the administrator is appointed.

A pre-pack administration is an arrangement under which the sale of all or part of the company's business and assets is negotiated with a purchaser before the administrator is appointed. On or shortly after appointment, the administrator completes the sale. If there's been a pre-pack, the administrator will send creditors notification explaining why the pre-pack was the most appropriate course of action.

A pre-pack will only be used if it achieves the purpose of an administration. Not every case will be suitable for a pre-pack. Most pre-packs are achieved through an administration, but it's also possible to do something like a pre-pack in a creditors' voluntary liquidation (see below).

RECEIVERSHIP

A receivership is a procedure both to recover money lent to a business and to put the business into the hands of an IP (acting as either a receiver or an administrative receiver) for a 'secured creditor' (such as a bank). In some receiverships, the IP advises the directors or a major creditor on the different insolvency options available before the receiver is appointed.

LIQUIDATION

In a liquidation, the assets (for example, the buildings, equipment and vehicles) of a company are collected by the IP (acting as a liquidator) and sold. The money is used to pay creditors, in a specific order. See 'General principles' on page 05 for more information on the order creditors are paid in. The courts can make an order for liquidation (sometimes called winding-up or compulsory liquidation) or the directors of the company may decide to put the company into liquidation (voluntary liquidation). In a compulsory liquidation, the official receiver may act as liquidator and not an IP.

Before a voluntary liquidation, an IP may help the directors of the company to meet their legal duties; for example, by calling meetings of the shareholders and creditors to put the company into liquidation and appoint a liquidator.

GENERAL PRINCIPLES

The main principle in any insolvency procedure is that the funds available should be distributed fairly between the creditors. Creditors in the same category receive an equal percentage of what they're owed. The IP must comply with the law and cannot decide who to pay first.

Some creditors are classified as 'secured' or 'preferential' creditors and are paid before ordinary creditors.

Secured creditors are creditors who hold a fixed charge or security (such as a mortgage) on an asset and have the right to sell the asset to recover their debt. The right of the creditor to do this is not affected by insolvency. The secured creditor is the first to get paid when the asset is sold. 'Preferential' creditors are employees with wage arrears, outstanding holiday pay or pension arrears. HMRC used to be a preferential creditor, but isn't any more.

Everyone else will be an ordinary, unsecured creditor.

Costs (including the IP's fees and expenses) will reduce the money available to creditors. The IP's work is an essential cost. The basis of the IP's fees has to be agreed by the creditors (see **Fees and charges**).

SELLING ASSETS

An IP may sell the assets of an insolvent company or individual to raise money to repay the creditors. The IP accepts the best commercial offer available. Sometimes former directors buy back the assets because they're prepared to pay more for the assets than an outsider or because no-one else can pay within a reasonable timescale.

In a bankruptcy, the trustee may have to sell the bankrupt's home to help pay the bankruptcy debts. This applies whether the home is freehold or leasehold and whether it is solely or jointly owned.

AN IP'S POWERS

Creditors often believe that IPs have wide powers, including duties to investigate the insolvent person or company directors. This is not always the case. Usually, IPs only have wide investigatory powers when appointed to act in a liquidation. In some cases, the official receiver (see page 01 for more information) may have these powers.

IPs are usually willing to answer creditors' questions, but they may not be willing to enter into lengthy correspondence if this will cause unnecessary extra costs.

FEES AND CHARGES

In most cases, the creditors or a committee of creditors decide how the IPs will charge for their services.

An IP's fees can be calculated in different ways:

- as a percentage of the value of the property that the IP has to deal with;
- based on the amount of time the IPs and their staff spend working on the case; or
- as a set amount.

Any combination of these methods may be used to fix the fees charged,

and different methods may be used for different things done by the IP. If the fee is calculated as a percentage, different percentages may be used for different things done by the IP.

This fee is usually paid out of the funds the IP collects before any money is distributed to creditors.

You'll find further information about fees in the creditors' guides for each type of insolvency proceeding at icaew.com/insolvency

INVOLVING CREDITORS

Creditors may be invited to a meeting early in the insolvency. In some cases, they meet to appoint the IP or approve the IP's actions. If there's voting, votes are counted by the value of the claim, in other words by the amount of money owed. So an organisation owed a large amount of money will have a bigger say in the voting than someone who's owed a lesser amount. In other cases, the meeting is held to pass on information to creditors. Also, the IP usually has to report to creditors at least annually.

If you know you're owed money by an individual or a company subject to a formal insolvency proceeding, and you haven't had any communication from the IP, you should get in touch with the IP to make sure you're listed as a creditor.

Creditors can help the IP by providing information; for example, to help the IP trace and collect assets. The IP may ask you

for information, but there's nothing to stop you getting in touch with the IP to tell them about any concerns you have, even if they haven't asked you directly.

Creditors may also be asked to form a committee to work with the IP. The committee may be asked to approve an IP's fees.

To formally register your claim as a creditor, you may be asked to fill in a form called a proof of debt form. Sometimes, you can just send in a statement showing how much you're owed. If you don't submit a claim, however, you won't receive any money if the IP makes a payment to creditors in the same category as you. These payments are called dividends. Filling in a form, however, doesn't mean you'll get all the money you're owed. You may get a percentage of the amount you are owed – or nothing at all. If there isn't going to be a dividend, you don't have to give the IP details of your claim.

FINDING AN INSOLVENCY PRACTITIONER TO HELP YOU

Getting advice early may help if you or your company are having problems with debts. Many IPs will offer a free initial consultation to discuss the options available to you. Just because you approach an IP for advice, doesn't mean you will end up in a formal insolvency proceeding. Having those discussions early may help to rescue your business or sort out your personal finances. An IP will also be able to help you understand your rights if someone owes you money.

If you have an accountant, they may be able to recommend a local IP. You can also use the Find a practitioner search at r3.org.uk, the website of R3, the trade body for insolvency practitioners.

Some IPs specialise in certain case types or work with larger organisations and may not be best placed to help with individual or small-business queries. If you've found an IP's contact details through a directory, it's worth checking first that they'll be able to help you.

How can I find out the name of the insolvency practitioner handling a case?

The IP appointed to deal with an insolvency case will be either an individual, or two or more individuals acting together. If there's more than one IP, one of them may take the lead but they're all responsible for the case.

You can find out the names of the IPs appointed to deal with:

- an insolvent company from companies-house.gov.uk; or
- an insolvent individual from www.insolvencydirect.bis.gov.uk/eiir/ if you search on the individual's name.

There are other regulators as well as ICAEW. To find out who licenses the IP, visit www.insolvencydirect.bis.gov.uk/fip1/

Letters from IPs should give their name and regulator. Although they will often work in a firm, it's the individual IP (not the firm) who is appointed.

WHAT SHOULD I DO IF I'M UNHAPPY WITH THE ACTIONS OF AN INSOLVENCY PRACTITIONER?

The first thing you should do is contact the IP or their staff to discuss the issue. Concerns often arise as a result of misunderstandings about the IP's role or the insolvency process generally, so it's always best to try to raise these matters with the IP first. If you're still unhappy, you can complain formally to the IP. If you want to take your complaint further, you can complain to the IP's regulator using the insolvency complaints gateway, bis.gov.uk/insolvency/contact-us/IP-Complaints-Gateway

If the case is being administered under GB law (England, Wales, Scotland), the gateway deals with complaints about IPs regulated by:

- The Institute of Chartered Accountants in England and Wales;
- The Institute of Chartered Accountants of Scotland;
- The Chartered Accountants Regulatory Board (for CAI);
- The Association of Chartered Certified Accountants;
- The Insolvency Practitioners Association; and
- The Insolvency Service.

If you make your complaint through the gateway, you don't need to know who regulates the IP, but it may make things easier if you do. Details of an IP's licensing body are usually included on their notepaper or on their website.

If your complaint is about a case under Northern Ireland law, you'll need to complain directly to the IP's regulator. The formal case papers will state whether the case is being dealt with under GB or Northern Ireland law.

WHERE CAN I FIND OUT MORE?

ICAEW

ICAEW is a recognised professional body under the Insolvency Act 1986 and the largest single regulator of insolvency practitioners in the UK.

ICAEW

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The Insolvency Service

This is an agency within the Department of Business, Innovation and Skills (BIS) which oversees the insolvency profession and deals with some insolvencies through its official receiver offices. The Insolvency Service also authorises a small number of IPs. It produces a series of useful leaflets for people affected by insolvency issues. You can find these at bis.gov.uk/insolvency

For general enquiries, you can also email the Insolvency Service's insolvency enquiry line

T 0845 602 9848

E insolvency.enquiryline@insolvency.gsi.gov.uk

bis.gov.uk/insolvency

ICAEW Business Advice Service

The ICAEW Business Advice Service (BAS) offers small businesses a free advice session with a qualified ICAEW Chartered Accountant. Businesses can use the BAS website, businessadvice.service.com, to find their nearest office.

The Association of Business Recovery Professionals

This is the trade association for IPs, known as R3.

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