



THE INSTITUTE
OF CHARTERED
ACCOUNTANTS
IN ENGLAND AND WALES

THE ROLE OF THE INSOLVENCY PRACTITIONER...

...PICKING UP THE PIECES



Professional Standards

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Introduction

This booklet is for anyone who wants to find out more about what an insolvency practitioner (IP) does. It explains what insolvency means and describes the work of IPs.

It also explains some common misunderstandings which can lead to complaints. It doesn't explain insolvency law in depth or the full extent of an IP's role, but it does cover some of the basic principles.

At the end of the booklet you will find details of where you can get more information.

What is insolvency?

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

People often confuse the terms **insolvency** and **bankruptcy**. For example, newspapers and other media often misuse the term bankruptcy when talking about company insolvency.

Insolvency describes a situation where a person or a company gets into financial difficulty. A business may owe more than it owns, or it may have run out of cash and be unable to pay bills. The law (mainly the Insolvency Act 1986) sets out a number of procedures which aim to deal with insolvent people and companies.

Bankruptcy refers to a court order against a person (not a company) made under the Insolvency Act 1986. This happens when people are not able to pay their debts. It takes away most of their property (for example, their house and other valuable belongings) and the money collected from selling these is then shared among the people they owe money to (their creditors). As a result of bankruptcy, someone who has been made bankrupt (the debtor) cannot act as a company director and, if they trade as an individual, they must trade in their own name.

There are a number of types of insolvency procedure. Some procedures (such as bankruptcy) are appropriate as a last resort for dealing with someone's financial affairs or closing down a business. Here are the two main examples.

Bankruptcy

Personal insolvency proceedings (as described above) after a petition to the court. An IP may act as the **trustee** in the bankruptcy.

Liquidation

A procedure where the assets (for example, the buildings, equipment and vehicles) of a company are collected by the IP (acting as a **liquidator**), sold and the money is used to pay creditors, in a specific order. See 'General principles' on page 5 for more information on the order creditors are paid in. The courts may make an order for liquidation (sometimes called 'winding up') or the directors of the company may decide to put the company into liquidation.

Some procedures aim to help companies and people with debt problems to recover financially. Here are some examples.

Voluntary arrangement

A procedure which allows someone who owes money to enter into an arrangement with creditors to repay all, or a percentage of, the debts. The IP (acting as a **supervisor**) makes sure the agreed terms of the arrangement are met. Companies can also enter into voluntary arrangements.

Administration

A procedure which allows an IP (acting as the **administrator**) to try to rescue a company or sell its assets to repay all the creditors as much as possible of what they are owed.

Receivership

A procedure to recover money lent to a business and 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).

Certain principles apply to all of these procedures. The next sections describe the role of the IP and explain what these principles are.

What is an insolvency practitioner?

In the UK, an IP is someone who is authorised to act in insolvency matters. Most IPs in the UK are accountants or insolvency specialists working in firms of accountants.

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 organisation (also known as a regulator) that they are honest and are able to carry out the role.

IPs must follow the law, and their work is monitored to make sure that they do. We (The Institute of Chartered Accountants in England and Wales) are the largest regulator of IPs in the UK. We make monitoring visits to our licence holders to make sure that they continue to be fit to carry out insolvency work.

What does an IP's job involve?

IPs are appointed to sort out difficult situations. In some cases, their main task is to try to rescue a business.

If that is not possible, 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 is 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.

The IP is not personally liable for any money owed to creditors. 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. This report is confidential.

Other roles

In some cases, the IP will give advice to a debtor immediately before a formal insolvency process begins. In a voluntary liquidation (one which does not involve a winding-up process through the courts), an IP will help the directors of the company to meet their legal duties – for example, calling meetings of the shareholders and creditors to place the company into liquidation and appoint a liquidator.

In voluntary arrangements, the IP will be the 'nominee' for the proposed arrangement. This means that the debtor has asked the IP to supervise the arrangement. As the nominee, the IP has to make sure that creditors receive all the details they need to make a decision at the meeting held to vote on the proposal for a voluntary arrangement.

In receiverships and administration cases, the IP may advise the directors or a major creditor on the different insolvency options available.

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 is more than one IP, one of them may take the lead.

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

- an insolvent company from www.companies-house.gov.uk; or
- an insolvent individual from www.insolvency.gov.uk.

To find out who licenses the IP, visit www.insolvency.gov.uk.

Letters from IPs should give their name and licensing organisation. Although they

will often act through a firm, it is the individual IP (not the firm) who is appointed.

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 are owed.

Some creditors are classified as 'preferential' or 'secured' creditors and are paid before ordinary creditors. The government introduced changes which mean that there are now fewer 'preferential' creditors.

'Secured' creditors (often banks) may still be entitled to a large percentage of any funds available (for example, if a creditor lent money to a person or company to buy a building, and the person or company becomes insolvent, the creditor may be entitled to the money raised from selling that building).

Costs (including the IP's fees and expenses) will reduce the money available to creditors. The IP's work is an essential cost, but the amount the IP can claim has to be agreed by the creditors (see the next section).

Creditors often believe that the IP has wide powers, including duties to investigate the insolvent person or company directors. This is not always the case. Usually, the IP only has wide powers when appointed to act in a liquidation. In some cases, the official receiver (see page 6 for more information) may have these powers.

The IP is 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.

The fee usually relates to the time the IPs and their staff spend working on the case. Sometimes, the IP's fee may be a percentage of the amounts they collect and distribute to the creditors. This fee is paid out of the funds the IP collects before any money is paid to the creditors.

Involving creditors

Creditors will usually be invited to a meeting early in the process. In some cases, they meet to appoint the IP. In others, the meeting is held to pass on information to creditors. Sometimes, the IP will have to report to creditors each year. In other cases, such as bankruptcies, this does not apply.

Creditors can help the IP by providing information, for example, to help the IP trace and collect assets. Creditors may also form a committee to work with the IP.

How can I complain about the services of an IP?

Before making a complaint about an IP, you should contact the IP direct. Concerns often arise as a result of misunderstandings about the IP's role and it is always best to try to raise these with the IP. If you are not able to solve your complaint with the IP, you may want to take your complaint further with the IP's regulatory authority. In the UK this will be one of the following:

- The Institute of Chartered Accountants in England and Wales;
- The Institute of Chartered Accountants of Scotland;
- The Chartered Accountants Regulatory Board (for the ICAI);
- The Association of Chartered Certified Accountants;
- The Insolvency Practitioners Association;
- The Secretary of State for Business, Enterprise and Regulatory Reform;
- The Solicitors Regulation Authority of the Law Society; or
- The Law Society of Scotland.

Each regulator handles complaints about its own licence holders. However, this role is limited because some matters can only be decided by a court. You can find useful contact details on page 8.

Other organisations

The official receiver is appointed by the government and deals with all bankruptcy cases and liquidation cases which have been heard in court. In these cases, 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.

The Insolvency Service is part of the Department of Business, Enterprise and Regulatory Reform (BERR) which licenses some IPs and monitors the other organisations which regulate IPs.

The **Insolvency Practices Council** is an independent organisation which works with IPs and the regulatory authorities on general issues of public interest.

Where can I find out more?

If you need more information about an IP's work in a particular case, you should first contact the IP.

Then, if you still have concerns that you cannot solve with the IP or their colleagues, we may be able to help you.

E psocomp@icaew.com

The role of the insolvency practitioner...
...picking up the pieces

More information

The Institute of Chartered Accountants in England and Wales

We are the leading regulator and we license about half the IPs practising in the UK.

Professional Standards
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The Insolvency Service

This is an agency within the Department of Business, Enterprise and Regulatory Reform (BERR) which regulates the insolvency profession. It also produces a number of useful leaflets for people affected by insolvency issues. You can find these at www.insolvency.gov.uk.

PO Box 203, 21 Bloomsbury Street, London, WC1B 3QW

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The Insolvency Practices Council

This is the public interest organisation for the insolvency profession. It is an independent organisation which works with IPs and the regulatory authorities on general issues of public interest. You will find contact details for all the regulators on the council's website.

PO Box 698, Godalming, GU7 9AR

T +44 (0)1778 348 738

E info@insolvencypractices.org.uk

www.insolvencypractices.org.uk

The Association of Business Recovery Professionals

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

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