THE INSOLVENCY SERVICE

A Guide for Directors

When - Where - How - What

A BIS SERVICE

Contents

1. About this guide

This guide is for directors of any company involved in compulsory liquidation (winding up by the court) in England and Wales. It includes some information about the disqualification of company directors and criminal offences in relation to a company. It also summarises the other insolvency procedures that can apply to companies and explains some common insolvency terms.

The insolvency procedures apply to companies and partnerships in England and Wales only. Under the law, the term "director" applies to anyone occupying the position of a director of a company, whether they are called a director or not. The law applies equally to, for example, "executive" and "non-executive" directors.

What is insolvency?

The most common descriptions of insolvency are that the company cannot pay its debts when they become due, or that its liabilities exceed the value of its assets, or both. "Insolvency" is also used to describe the various formal procedures that may apply to an individual or business.

The Act of Parliament under which most formal procedures are administered is the Insolvency Act 1986. Insolvency law provides a system for dealing fairly with the assets of the insolvent individual or company and the claims of creditors. The law also deals with what happens to the individual or company following the insolvency.

What is The Insolvency Service?

The Insolvency Service is an executive agency within the Department for Business, Innovation and Skills (BIS). The Insolvency Service, through its official receivers:

- administers and investigates the affairs of bankrupts and companies in compulsory liquidation
- establishes the reasons for the insolvency
- reports on misconduct on the part of bankrupts and directors.

The Insolvency Service is not involved in the day-to-day handling of administrations, administrative receiverships, voluntary liquidations or most voluntary arrangements.

What is compulsory liquidation (winding up by the court)?

This is an insolvency procedure that applies to companies (and partnerships) and is started by a court order - a winding-up order. A petition is presented to the court, normally by a creditor, stating that the company owes a sum of money and cannot pay it. The petition may also be presented by the company itself, its directors or its shareholders.

A winding-up order can still be made even if the company has no assets or disputes the amount claimed. Any disputes over debts should be resolved with the creditor(s) before a winding-up order is made, because the effects of the order are severe.

There are alternatives to company liquidation. If your company is facing financial problems, even temporarily, you should consider seeking advice from your professional adviser, a solicitor, a qualified accountant or an authorised insolvency practitioner; not doing so can have serious consequences.

Other organisations also offer insolvency advice and debt counselling. Some of them are entirely reputable and offer a professional service. However, others are controlled by individuals with no obvious qualifications who appear to be motivated principally by a desire to exploit an already difficult situation. Beware particularly of unsolicited approaches through the post or by telephone.

Who handles a compulsory liquidation?

Official receivers (ORs) handle the early stages of a compulsory liquidation. The OR will tell the company's creditors and contributories (mainly shareholders) that the company is being wound up. If there are significant assets, an insolvency practitioner (IP) may be appointed as liquidator in place of the OR, either by the Secretary of State or at the first meeting of creditors or contributories (shareholders).

The liquidator's role is to realise the company's assets, pay the fees and charges arising from the liquidation and share out any remaining funds to the creditors. In very rare instances a surplus may be available for distribution to shareholders.

Who are official receivers (ORs) and insolvency practitioners (IPs)?

ORs are appointed by the Secretary of State and are officers of the courts to which they are attached.

As well as administering cases, ORs have a duty to investigate the affairs of individuals in bankruptcy and companies in compulsory liquidation. They report to The Insolvency Service's Corporate and Business Services any evidence of criminal offences and conduct which makes an individual unfit to be a company director.

IPs work in the private sector. They are usually accountants or solicitors. They must be authorised by the Secretary of State or by one of the Recognised Professional Bodies (RPBs) before they can act as IPs. The majority of IPs are authorised by RPBs.

Where IPs act as administrative receivers, administrators or liquidators in creditors' voluntary liquidations, they report evidence of unfit conduct by directors in those proceedings to The Insolvency Service's Corporate and Business Services.

2. Compulsory liquidation (winding up by the court) – the procedure

Please see the flow charts on ‘Procedure in most compulsory liquidations’ and ‘Payments to creditors in compulsory liquidations’.

Will I be notified when a winding-up order is made?

As a director of the company you should know its financial position and whether any creditors are pressing for payment by letters, statutory demands and court proceedings. These may lead to a petition to wind up the company.

When a winding-up order is made, the court will notify the OR, who will then send notice of the order to the directors. In some cases the OR will need to interview you at once. This can happen if there are urgent matters to deal with relating to the company's business, employees or assets.

Can the winding up be stopped once the order has been made?

The process can only be stopped by the court. If you wish the court to cancel a winding-up order (a process called rescission) you should apply to the court within 7 days of the order. You can also ask the court to review or vary the order or you may appeal to a higher court. If you intend to take any action, you should seek professional advice at a very early stage from a solicitor, a qualified accountant or an authorised IP. You must also tell the OR and you must continue to co-operate with the OR in the meantime.

If the company is still trading, what will happen?

The OR will usually visit the company's premises to assess the situation. The OR has limited powers to continue a business and will use them in very few circumstances. Any employees will be dismissed and the assets and premises secured. Trading is unlikely to continue.

What will happen to me once my company has been wound up?

You will no longer have control of the company's business, assets and property. Most of your powers as director will cease and, in general, you are no longer entitled to act for or on behalf of the company (although directors still keep some very limited powers, for example to appeal against the order). It follows that you will not be able to manage the affairs of the company on a day-to-day basis.

Your duties and responsibilities as a director do not, however, cease. You may, for instance, have to assist the OR in disposing of assets.

If you are also an employee of the company, your employment will end on the winding-up order. The OR or IP will tell you how to claim for any unpaid wages or other money owed to you as an employee.

You must not use any of the company's assets to make payments to creditors or for your own use and benefit.

What information do I have to supply and when?

If the OR did not interview you immediately when the winding-up order was made, they will write to you to arrange an appointment for you to attend at their office. The letter will give the name of the person dealing with the liquidation and will tell you what you have to bring with you. You will be sent a questionnaire to complete. The form is called PIQ(C)

At the interview, you will have to:

- supply the completed questionnaire
- hand over all the company's books, records and business paperwork in your possession
- give full details of all company assets and liabilities
- tell the OR if somebody else is holding assets or trading records.

You may be asked to:

- provide any further information asked for by the OR or relevant to the company, its business and its failure
- attend at the OR's office more than once, so that the OR can make sure they have all the information they need
- provide a sworn financial statement (called a "statement of affairs") showing all the company's assets and liabilities (plus other financial information that may be required) within 21 days of being asked to do so – the OR will write to ask for this statement.

Do I have to supply information about the company to the OR/IP?

Yes, you have a duty to provide information and co-operate with the OR/IP. Failure to co-operate is a serious matter and can result in your being publicly examined by the OR before the court, when creditors may also ask questions. If you do not attend such an examination without giving the court a good reason, such as serious illness, the court may issue a warrant for your arrest. Your failure to attend or refusal to give information may be treated as a contempt of court, for which the penalties may be a fine or imprisonment or both. It will also be a factor in deciding whether you are fit to be a director.

Will I have to pay any of the company's debts?

You may have to contribute to the company's assets if you have misapplied company funds or if the company has traded wrongfully or fraudulently.

If you are a shareholder of the company, you may be asked to pay for any shares that you have not fully paid up.

If you have guaranteed any of the company's debts, it means that you have agreed to pay the debt if the company cannot. When a creditor becomes aware of the liquidation, you may be asked to make full payment subject to the terms of the guarantee.

When will the company cease to exist?

When the winding up is complete, the OR/IP will apply to be released from the office of liquidator. ORs are released by the Secretary of State. IPs are released following a final meeting of creditors. On release, the OR/IP sends a notice to the Registrar of Companies and the company will usually be dissolved 3 months later. It then ceases to exist.

During this liquidation, can I act as the director of another company?

You can act as the director of another company unless you are subject to a disqualification order, have given a disqualification undertaking, are an undischarged bankrupt or are subject to a bankruptcy restrictions order or undertaking. A disqualified person must obtain the court's permission to act as a director or to take part in promoting, forming or managing a company.

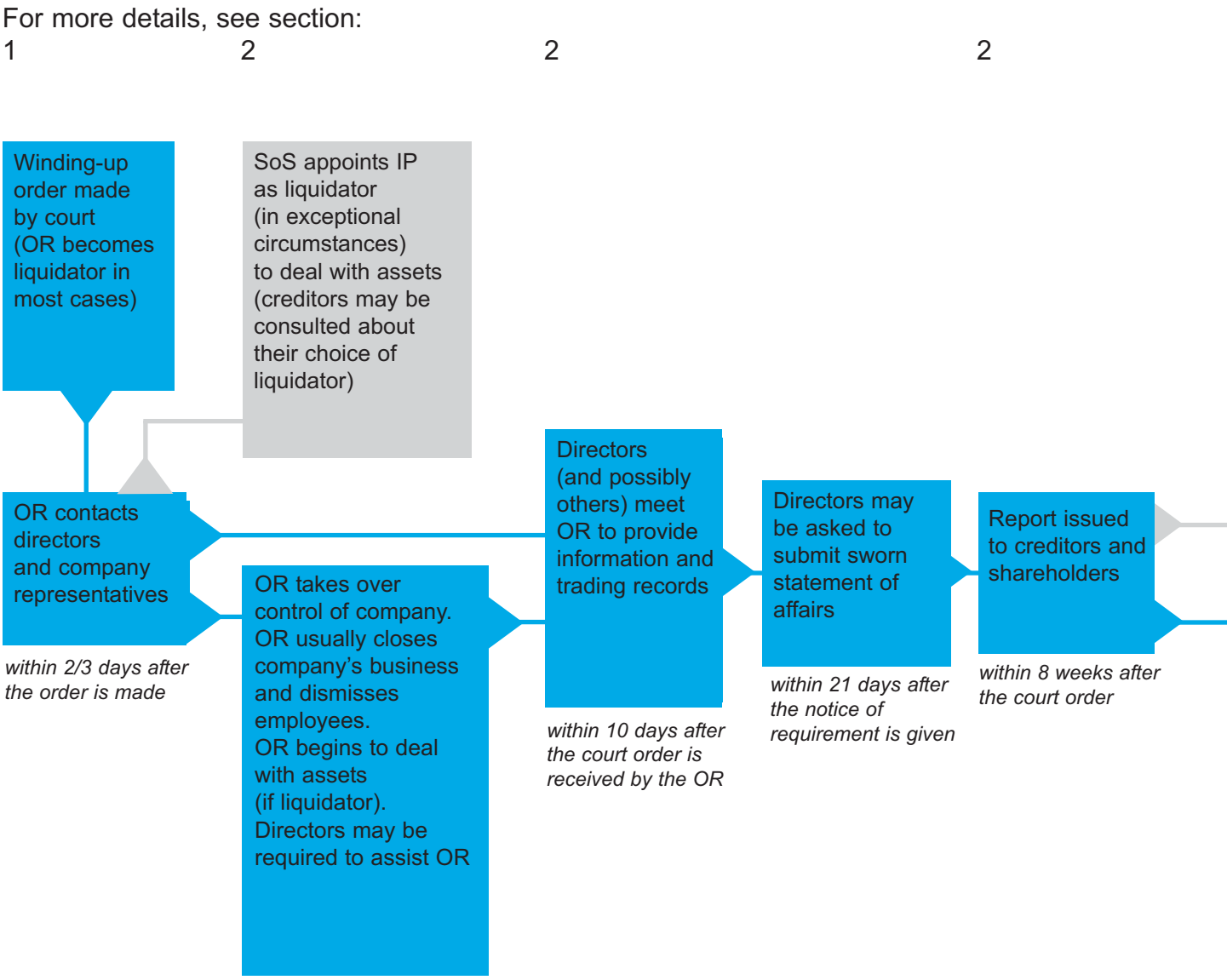
You cannot be involved in another company or business that has or uses a name which is so similar that it suggests that there is an association with the failed company. This restriction lasts for 5 years after the winding up and applies:

- if you were a director or shadow director (a person who gives instructions on which the directors of a company are accustomed to act) of the failed company in the 12 months before the winding-up order, and
- to any name used by the failed company in that 12 months.

This restriction does not apply if the other company had already been known by that name during the whole of the 12-month period and was not dormant in that time.

If you do not comply with this restriction, or if you act as a director without leave of the court while an undischarged bankrupt or while disqualified, you may be held personally liable for the debts of the new or successor company. You may also be committing a criminal offence. If you believe that these restrictions may apply to you, you should seek advice on your own position.
A separate leaflet called ‘Re-use of a company name after liquidation’ is available from your local OR's office or online at The Insolvency Service website at www.insolvency.gov.uk. You should read this leaflet if you think you will be acting as a director of another company, as it gives details of some exceptions to the restrictions on the re-use of a prohibited name.

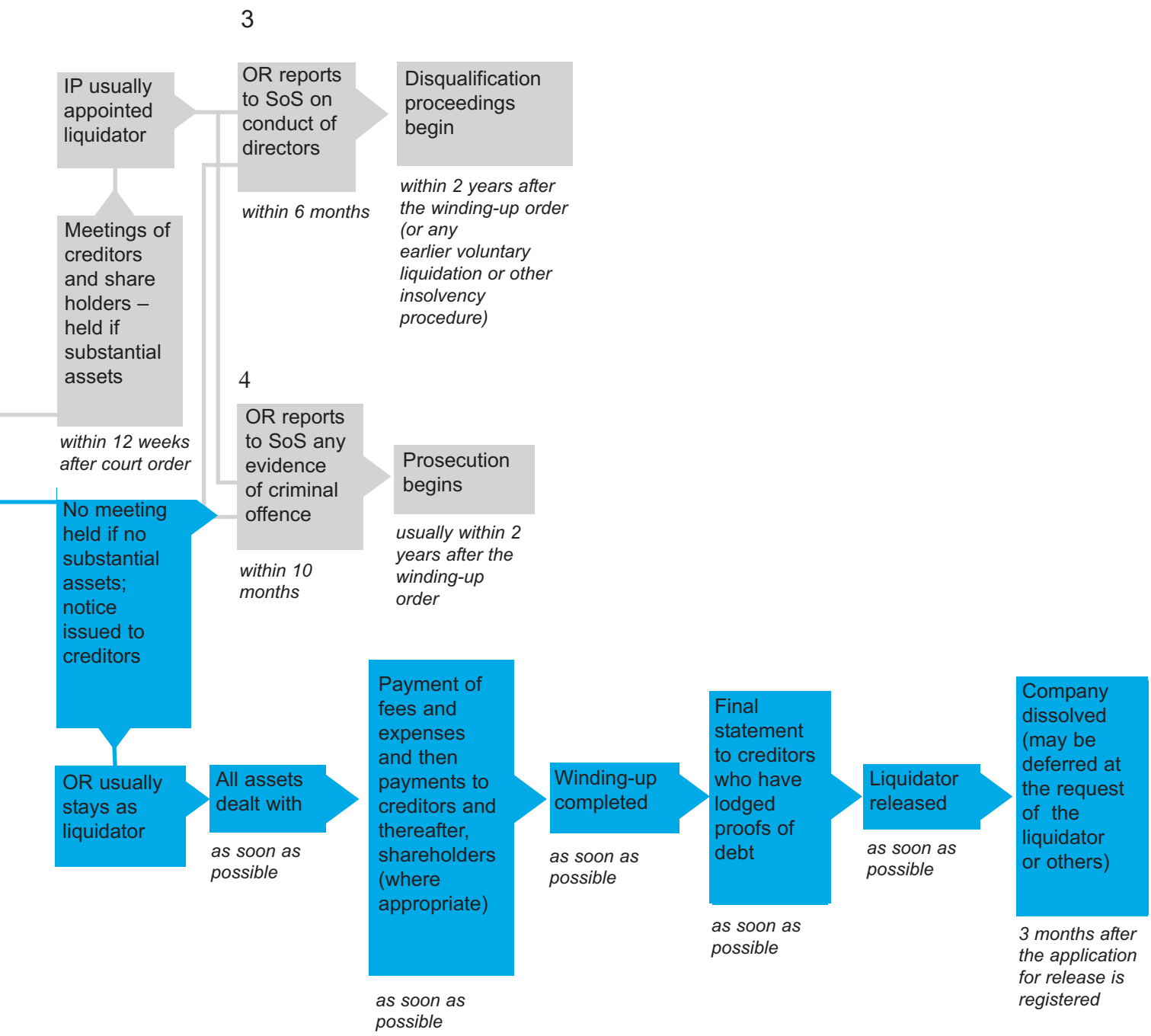
Procedure in most compulsory liquidations



Abbreviations

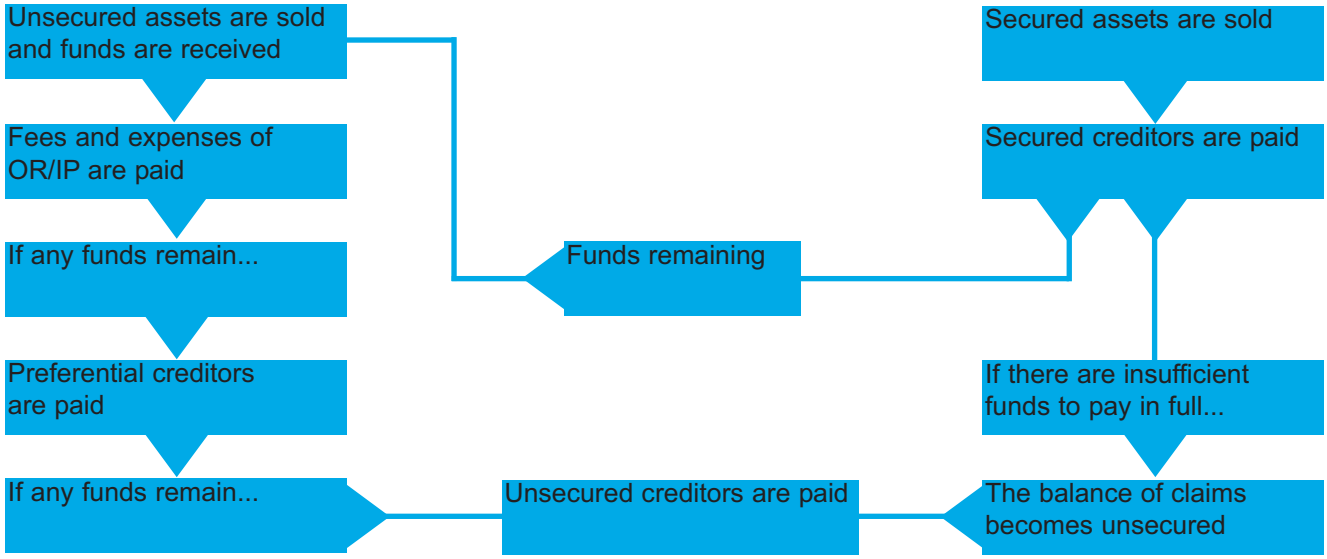
OR	-	Official Receiver
IP	-	Insolvency Practitioner
SoS	-	Secretary of State

Timescale shown in italics



A description of other insolvency proceedings is given at section 6.
A full glossary of insolvency terms is given at section 7.

Payments to creditors in compulsory liquidations



3. Disqualification of unfit directors of insolvent companies

What is meant by disqualification?

A disqualification order is made by the court under the Company Directors Disqualification Act 1986. The Act applies to a person who has been formally appointed as a director and also to someone who has carried out the functions of a director and to shadow directors.

Unless the court gives specific permission otherwise, the Act disqualifies a person from:

- acting as a director of a company
- taking part, directly or indirectly, in the promotion, formation or management of a company
- being a liquidator or an administrator of a company
- being a receiver or manager of a company's property.

An order for disqualification can be made under various sections of the Company Director Disqualification Act 1986. The order will specify the period of disqualification. For orders made against an unfit director of an insolvent company, the minimum period is 2 years and the maximum is 15 years.

In April 2001 disqualification undertakings were introduced. These are the administrative equivalent of disqualification orders. You give an undertaking to the Secretary of State; it has the same effect as a disqualification order but does not involve court proceedings.

When can disqualification occur?

When a company has failed, the OR (or IP in a creditors' voluntary liquidation, an administrative receivership or an administration) has to send the Secretary of State a report on the conduct of all directors who were in office in the last 3 years of the company's trading. The Secretary of State has to consider whether it is in the public interest to seek a disqualification order. If it is, the Secretary of State will apply to the court for an order, and the court will decide whether to grant it.

Examples of conduct that may lead to disqualification include:

- continuing to trade to the detriment of creditors at a time when the company was insolvent
- failure to keep proper accounting records
- failure to prepare and file accounts or make returns to Companies House
- failure to submit tax returns or pay over to the Crown tax or other money due
- failure to co-operate with the OR/IP.

How will I know if a disqualification order is to be sought against me?

Notification of a decision to apply for a disqualification order will be sent to the last address you provided to Companies House or to the OR/IP. The Secretary of State must apply for disqualification within 2 years of the date of the winding-up order (or any earlier voluntary liquidation, administrative receivership or administration), unless the court extends the time.

What happens after an application for disqualification is made?

The OR will report to the court on the conduct of the directors and send a copy to each of you. You will have the opportunity to give the court explanations or reasons for your actions. You may do so by a statement of truth (a written account of the relevant facts which is sworn on oath or affirmed, usually before a solicitor). Statements of truth from other people (such as the company's bankers, accountants and creditors) may be presented as evidence to support the case for or against you. The court will then decide whether your conduct makes you unfit to act in the management of a company and, if so, for how long you should be disqualified.

Disqualification proceedings are taken under civil law, not criminal law.

At any stage in these proceedings you may give an undertaking to the Secretary of State that has the same effect as a disqualification order and will put a stop to the court proceedings.

4. Criminal proceedings

What criminal proceedings may be taken?

The OR is required to report any evidence of possible criminal offences that they uncover while investigating a company's affairs to The Insolvency Service's Corporate and Business Services. A decision is then taken on whether the matter should be referred to the Business, Enterprise and Regulatory Reform's Solicitors (Prosecutions) or other prosecuting authority to consider proceedings.

Examples of possible offences are:

- Companies Act 1985 – failure to keep proper accounting records or fraudulent trading
- Insolvency Act 1986 – concealing assets or material omissions from a statement of affairs
- Company Directors Disqualification Act 1986 – a disqualified person or bankrupt acting or taking part in the management of a company
- Theft Acts – misappropriating a company's funds or assets for a director's personal benefit.

The court may also make a disqualification order on the conviction of a director for a criminal offence in connection with the management of a company.

5. Where to go for further information

Who to contact:

Questions on the procedures involved in a specific liquidation should be referred to your professional adviser or to the OR/IP handling the case.

Please note that The Insolvency Service and official receivers can only provide information about the administration of a liquidation they are handling. They cannot offer legal or financial advice. Where necessary, you should seek this from a solicitor, a qualified accountant, an authorised IP or a reputable financial adviser.

You can contact The Insolvency Service Enquiry Line for general enquiries on insolvency matters on 0845 602 9848 or email: Insolvency.Enquiryline@insolvency.gsi.gov.uk

What to do if you are dissatisfied with the handling of the liquidation

- If an OR is dealing with the case, you should follow the procedure set out in our publication 'Complaints Procedure – Information on making a complaint'.
- If an insolvency practitioner is dealing with the case, you should follow the procedure set out in our publication 'How to make a complaint against an insolvency practitioner'.

How to get more copies of The Insolvency Service publications

You can get more copies of this publication by email from: publications@bis.gsi.gov.uk

You may also order copies of our publications by telephone by calling the Publications Orderline on 0845 015 0010. You may fax orders to the Orderline on 0845 015 0020. Minicom users should telephone 0845 015 0030.

All our publications are available on our website www.insolvency.gov.uk.
Some of them are also available in Welsh, Urdu Sylheti, Traditional Chinese and in MP3

Specific publications that may be of use to you are:
- Company Directors Disqualification Act 1986 and Failed Companies
- Company Directors Disqualification Act 1986 and Disqualified Directors
- The Disqualified Directors Hotline.

6. Other insolvency procedures

The following is a general outline of the insolvency procedures handled by IPs only (not ORs). Please contact your solicitor, accountant/auditor, an IP or your professional adviser for further information. Alternatively, contact your local Business Link Office (see local telephone book or telephone 0845 600 9 006). They also have a website www.businesslink.gov.uk. They will be able to provide help or direct you to someone who can advise you.

If your company is in financial difficulty and a rescue is to be attempted, the earlier you seek advice the greater the prospect of success.

Warning: There are now several organisations offering insolvency advice. Some are entirely reputable and offer a professional service, but others are controlled by individuals with no obvious qualifications, who appear to be motivated principally by a desire to exploit an already difficult situation. Beware particularly of unsolicited approaches through the post or by telephone.

Administration

This procedure starts with the appointment of an administrator and can be used to:

- rescue as a going concern a company having financial problems
- achieve a better result for the creditors of the company as a whole than would be achieved in an immediate winding up
- or, if neither are possible, realise property for the benefit of secured or preferential creditors.

How is an administrator appointed?

An administrator may be appointed:

- by court order, or
- by the holder of a floating charge, the company or its directors filing the requisite notice at court, or
- by appointment "without court order", as follows.

As an alternative to the court-order route to the the appointment of an administrator, the Enterprise Act 2002 introduced a "without court order" route for holders of qualifying floating charges and companies or directors. These routes are quick and do not need a court application or hearing. The administrator is still an officer of the court and the relevant documents will be filed with the court, but the appointment takes effect from the date and time that a company, director or floating-charge holder files a notice of appointment with the court.

Companies and directors can appoint an administrator through the relevant "without court order" route only if the company has not had a moratorium (or interim moratorium) within the previous 12 months.

You can file a notice of appointment even when the court is closed. You should fax the notice of appointment (form 2.7B) to a designated number at the High Court, from where it is forwarded to the court that will deal with the administration. Here it is placed on the court file. The administrator's appointment is effective from the time you fax this notice to the High Court. Although you don't need to fax all the accompanying documents with the notice, you must hand in the original notice and all necessary supporting documents on the first day that the appropriate court is open for business after the notice has been filed. The court will then endorse the notice and the administration will continue to be effective. If you have not complied with this requirement by delivering the notice and documents to court by the close of business on that day, the administrator's appointment will cease to have effect and the administration will, therefore, end.

When is a court order necessary?

The holder of a qualifying floating charge or the company or the directors can apply for an administration order to be made if they choose not to use the 'without court order' route'. And a court order remains the only way in which a creditor, acting alone or on behalf of additional creditors, or the supervisor of a Company Voluntary Arrangement, can initiate the appointment of an administrator to a company.

A court order is also necessary for all administrator appointments if:

- the company is in liquidation (where the court can end the liquidation and make an administration order instead), or
- there is an administrative receiver in office, or
- a provisional liquidator has been appointed, or
- there is an outstanding winding-up petition against the company (in the case of the company or its directors).

What does the administrator do?

The administrator (an IP) puts forward proposals for consideration by the creditors to:

- restore the company's viability
- come to an arrangement with the creditors
- sell the business as a going concern or realise more from the assets than in a liquidation, or
- realise assets to pay a preferential or secured creditor.

How long does administration last?

Administration will automatically finish after one year unless:

- the administrator applies to the court for their term of office to be extended for a specified period or
- the creditors agree for the administrator’s term of office to be extended for up to 6 months only.

Administrative receivership

This is the result of a holder of a floating charge (usually a bank) appointing an administrative receiver (an IP) to recover money owed to it. The court is not usually involved. A company in administrative receivership is also said to be "in receivership". The administrative receiver's task is to recover enough money to pay:

- their costs
- the preferential creditors, and
- the floating charge holder's debt.

An administrative receiver does not make payments to unsecured creditors.

Under the Enterprise Act 2002, the holders of a floating charge created after 15 September 2003 can appoint an administrative receiver only in connection with floating charges granted in relation to:

- certain transactions in capital markets
- public/private partnerships
- utility projects
- finance projects
- financial markets, and
- registered social landlords.

Company voluntary arrangement (CVA)

This procedure 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. A CVA can be proposed by:

- the administrator, where the company is in administration, or
- the liquidator, when the company is being wound up, or
- the directors, in other circumstances.

A CVA cannot be proposed by creditors or shareholders.

Before the proposal is made, the liquidator or directors can apply to court for a moratorium that prevents creditors taking action against the company or its property for up to 28 days. If an administrator is in office, the company will already be covered by the moratorium arising from the administration.

When the CVA has been proposed, a nominee (who must be an IP) reports to court on whether a meeting of creditors and shareholders should be held to consider the proposal.

The meeting decides whether to approve the voluntary arrangement. If 75% in value of the creditors, present in person or by proxy, agree to the proposal, it is then binding on all creditors who were entitled to vote at the meeting or who would have been entitled to vote if they had been notified.

If the meeting of creditors and shareholders approves a voluntary arrangement, the nominee (or other IP) becomes the supervisor of the arrangement.

Once the CVA has been carried out, the company's liability to its creditors is cleared. The company can continue trading during the CVA and afterwards. A CVA can be set up when a company is in liquidation or in an administration, as well as at any other time.

Creditors' voluntary liquidation

This procedure allows an insolvent company to put itself into liquidation. It is started by the directors (not the creditors) calling a meeting of shareholders who agree to wind up the company. The shareholders may nominate an IP to act as liquidator, but the final choice is made by the creditors at their meeting. The procedure does not usually involve the court.

Members' voluntary liquidation

This procedure allows a solvent company to put itself into liquidation where, for example, a family business is sold off or the purposes of the company have come to an end. The members (shareholders) appoint their own choice of IP as liquidator. Creditors do not have to be notified. The company must be able to pay its debts in full within 12 months. If the liquidator considers that this will not be possible, a meeting of creditors must be held and the liquidation becomes a creditors' voluntary liquidation.

7. Insolvency terms

This is a brief explanation of some of the terms you may come across in insolvency proceedings. Please note that this glossary is for general guidance only. Many of the terms have a specific technical meaning in certain contexts that may not be covered here.

Administration order
An order made in a county court to arrange and administer the payment of debts by an individual; or an order made by a court in respect of a company that appoints an administrator to take control of the company. A company can also be put into administration if a floating charge holder or the directors or the company itself file the requisite notice at court.

Administrative receiver
An IP appointed by a lender (debenture holder) whose debt is secured by a floating charge that covers the whole or almost all of the company's assets. The IP's task is to realise those assets on behalf of the debenture holder.

Administrative receivership
Where a debenture holder (lender) appoints an insolvency practitioner to realise a company's assets and pay preferential creditors and the lender's debt. The right of a debenture holder (lender) to appoint an administrative receiver has been restricted by the Enterprise Act 2002.

Administrator
An IP appointed by the court under an administration order or by a floating charge holder or by the company or its directors filing the requisite notice at court.

Annulment
Cancellation.

Assets
Anything that belongs to the debtor that may be used to pay their debts.

Bankruptcy restrictions order or undertaking (BRO/BRU)
A procedure whereby a bankrupt who has been dishonest or in some other way to blame for their bankruptcy may have a court order made against them or give an undertaking to the Secretary of State; the order or undertaking will mean that bankruptcy restrictions continue to apply after discharge for between 2 and 15 years.

Charge
Security interest taken over property by a creditor to protect against non-payment of a debt (such as a mortgage). If the debtor does not pay the debt, the creditor has the right to take the property.

Company Directors Disqualification Act 1986
An Act of Parliament about the disqualification of directors.

Compulsory liquidation
Winding up of a company after a petition to the court, usually by a creditor.

Contributory
Each person liable to contribute to the assets of a company if it is wound up. In most cases this means a shareholder who has not paid for their shares in full.

Creditor
Someone owed money by an individual or company.

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

Director
A person who conducts the affairs of a company.

Disqualification
A procedure whereby a person has a court order made against them or gives an undertaking to the Secretary of State which makes it an offence for that person to be involved in the management or directorship of a company for the period specified in the order (unless the court grants leave).

Dividend
Any sum distributed to unsecured creditors in an insolvency.

Fixed charge
A charge held over specific assets. The debtor can only sell the assets if the secured creditor agrees, or if the debtor repays the amount secured by the charge.

Floating charge
A charge held over the general assets of a company. The assets may change (such as stock) and the company can use the assets without the consent of the secured creditor until the charge "crystallises" (becomes fixed). Crystallisation occurs on the appointment of an administrative receiver, on the presentation of a winding-up petition or as otherwise specified in the document creating the charge.

Guarantee
An agreement to pay a debt owed by a third party. To be enforceable it must be in writing.

Insolvency practitioner (IP)
An authorised person who specialises in insolvency, usually an accountant or solicitor. They are authorised either by the Secretary of State or by one of a number of recognised professional bodies.

Liquidation (winding up)
Applies to companies or partnerships. It involves realising and distributing the assets and usually closing down the business. There are three types of liquidation: compulsory, creditors' voluntary and members' voluntary.

Liquidator
The official receiver or an insolvency practitioner (IP) appointed to administer the liquidation of a company or partnership.

Member (of a company)
A person who has agreed to be, and is registered as, a member, such as a shareholder of a limited company.

Moratorium
Stopping an activity for an agreed period.

Nominee
An IP who carries out the preparatory work for a voluntary arrangement, before its implementation.

Officer (of a company)
A director, manager or secretary of a company.

Official receiver (OR)
An officer of the court and civil servant employed by The Insolvency Service, who deals with bankruptcies and compulsory company liquidations.

Person
An individual or corporation.

Petition
A formal application made to a court.

Preferential creditor
A creditor who is entitled to receive certain payments in priority to floating charge holders and other unsecured creditors. Preferential creditors include occupational pension schemes and employees.

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.

Provisional liquidator
An OR or IP appointed to preserve a company's assets pending the hearing of a winding-up petition.

Proxy
Instead of attending a meeting, a person can appoint someone to go and vote on his or her behalf – a 'proxy'.

Proxy form
A form that must be completed if a creditor wishes someone else to represent them at a creditors' meeting and vote on their behalf.

Public examination
When a company is being wound up or someone has been made bankrupt, the official receiver may at any time apply to the court to question the bankrupt person or the company's director(s) or any other person who has taken part in the promotion, formation or management of the company.

Realise
Realising an asset means selling it or disposing of it to raise money, for example to sell an insolvent's assets and obtain the proceeds.

Receiver
The commonly used name for an administrative receiver. The term can also mean a person appointed by the court or with the power to receive the rents and profits of property. Receivers who are not administrative receivers do not need to be insolvency practitioners.

Receivership
A company in administrative receivership is often said to be "in receivership".

Release
When the OR or IP is discharged from the liabilities of office as trustee/liquidator or administrator.

Rescission
A procedure that cancels a winding-up order.

Secretary of State
The Secretary of State for the Department for Business, Enterprise and Regulatory Reform (BERR).

Secured creditor
A creditor who holds security, such as a mortgage, over a person's assets for money owed.

Shadow director
A person who, without being formally appointed, gives instructions on which the directors of a company are accustomed to act.

Statement of affairs
A document sworn under oath, and completed by a bankrupt, company officer or director(s), stating the assets and giving details of debts and creditors.

Supervisor
An IP appointed to supervise the carrying out of a company or individual voluntary arrangement.

UNCITRAL
United Nations Commission on International Trade Law.

Unsecured creditor
A creditor who does not hold security (such as a mortgage) for money owed. Some unsecured creditors may also be preferential creditors.

Voluntary liquidation
A method of liquidation not involving the courts or the OR. There are 2 types of voluntary liquidation: members' voluntary liquidation for solvent companies and creditors' voluntary liquidation for insolvent companies.

Winding-up order
Order of a court, usually based on a creditor's petition, for the compulsory winding up or liquidation of a company or partnership.

8. Data Protection Act 1998 – How we collect and use information

The official receiver is the data controller for the purposes of the above Act.

The OR collects information about you for the purposes of discharging their statutory functions in relation to the liquidation of a company of which you are or have been a director. The OR may check information provided by you, or information about you provided by a third party, with other information they hold. They may also get information about you from certain third parties, or give information to them, to check the accuracy of information, to prevent or detect crime or to carry out their statutory duties.

The OR will not disclose information about you to anyone outside The Insolvency Service unless the law permits them to do so.

Individuals are entitled to know what information the official receiver/Insolvency Service holds about them on computer and in paper files which are part of a relevant filing system.The Insolvency Service is not, however, required to disclose information to you that would be likely to prevent the OR from properly carrying out their functions; these functions are designed to protect members of the public against financial loss due to dishonesty, malpractice or similar improper conduct by, or the unfitness or incompetence of, people involved in managing companies.
Most of the information about you held by the OR will have come from the questionnaire that you completed and statements you made to the OR about the liquidation, or from information held by the Registrar of Companies. You will, of course, know this information already but you will be able to check its accuracy if you wish to do so.

If you want to know more about what information is held about you, or the purposes for which it is held, you should contact the Data Protection Liaison Officer (DPLO) at the OR's office which dealt with the liquidation. The DPLO will write to you with full details of the type of information that they can give you. They will also give you a standard data request form to complete and return with appropriate forms of identification. On receiving the completed request form, the DPLO has 40 days to deal with your request. When you get the information, if you discover that it is inaccurate or incorrect you should, in the first instance, write to the DPLO with full details.

You can get more information about the Data Protection Act 1998 from the Information Commissioner at Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF (Tel: 08456 306060) Internet: www.ico.gov.uk.

You can get more copies of this booklet from the following website: www.bis.gov.uk/publications.

You can also order copies of our publications by calling the Publications Orderline on 0845 015 0010.

You can also fax orders to the Orderline on 0845 015 0020. Minicom users should telephone 0845 015 0030.

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www.insolvency.gov.uk

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