

An Introduction to Insolvency

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Introduction to Bankruptcy

- ▶ The bankruptcy procedure is governed by the Insolvency Act 1986 and the Insolvency Rules 2016
- ▶ Vast majority of work concerns petitions presented by creditors. Other forms of insolvency procedures include:
 - ▶ Individual Voluntary Arrangements ('IVAs'); and
 - ▶ Debt Relief Orders ('DROs')
- ▶ A temporary insolvency practice direction has been introduced with the intention to
 - ▶ Avoid, so far as possible, the need for parties to attend court;
 - ▶ To provide users with guidance as to the type of hearings which the Insolvency and Companies Court list will endeavor to provide; and
 - ▶ Explain changes to the way in which certain documents are to be filed

<https://www.judiciary.uk/wp-content/uploads/2020/04/Temporary-IPD-April-2020.pdf>

The Bankruptcy Procedure

- ▶ Proceedings start when the creditor presents the bankruptcy petition
- ▶ The bankruptcy of the insolvent individual commences only on the day on which the bankruptcy order is made and continues until the individual is discharged (s278 IA 1986)
- ▶ The individual is automatically discharged from bankruptcy one year after the bankruptcy order is made (s279 IA 1986).
- ▶ The requirements are strict, and the procedure follows a well-defined path, as set out in both the IA 1986 and the IR 2016.

Requirements for Bankruptcy

- ▶ The courts of England and Wales have bankruptcy jurisdiction for the debtor
- ▶ The amount of the petition debt is equal to or greater than the bankruptcy level (section 267(4) IA 1985; £5,000 since 1 October 2015)
- ▶ The debt is for a liquidated sum, payable either immediately or at a certain future time (section 382 IA 1986)
- ▶ The debtor appears to be unable to pay the petition debt, or appears to have no reasonable prospect of being able to pay it
- ▶ The petition debt is unsecured (in most circumstances)
- ▶ There is no outstanding application to set aside a statutory demand that was served for the petition debt

Statutory Demands

- ▶ If the terms of the statutory demand have not been complied with within 21 days if it being served, the debtor shall be considered unable to pay the debt
- ▶ Generally, a creditor must wait until the 21 days have elapsed before presenting a petition
- ▶ In any event, a Court shall not make a bankruptcy order unless the 21 days have elapsed (s271 (2))
- ▶ Statutory demands should only be used for undisputed debts

Presenting the Petition

- ▶ A creditor must determine which court to present the petition presented (i.e. whether within the ILD (the areas set out in Article 3, The London Insolvency District (County Court at Central London) Order 2014 (SI 2014/818 and, if so, whether the High Court, or alternatively the Central London County Court, has jurisdiction
- ▶ The prescribed content of the petition is governed by Chapter 2 of Part 10 of the IR
- ▶ **Documents to be filed along with the petition include:** the original petition and two copies; original statement of truth verifying the contents of the petition; if the debtor is subject to an IVA, and additional copy of the petition must be filed; the court fee; a deposit of £990; a certificate of service of the state demand; a statement of truth verifying the petition unless the petition itself contains a statement of truth.
- ▶ **Documents required for the hearing include:** the certificate of service of the petition; notice of persons intending to appear; certificate of continuing debt; court bundle; and a statement of costs.

How to avoid a bankruptcy order

- ▶ Setting aside the statutory demand (section 267(2)(d) IA 1986; *Ariyo v Sovereign Leasing plc* [1998] BPIR 177)
- ▶ Disputing the debt at the petition hearing (see: *CFL Finance Ltd v Bass, Khalastchi and Gertner* [2019] BPIR 1327). Any opposition should be filed and served no less than 5 business days before the hearing (rule 10.18). If cross-examination is required, the matter may need to be heard by way of the Part 7 procedure. Any opposition disputing the underlying debt should be filed and served not less than 5 business days before the hearing (r10.18)
- ▶ Requesting an adjournment of the hearing to enable the debtor time in which to satisfy the debt
- ▶ Where debt is based on a judgment of the court which is pending appeal (not merely permission to appeal), requesting that the court dismiss the petition (r10.24(2))
- ▶ Requesting that the court dismiss the petition in circumstances where the creditor has unreasonably rejected an offer of security (s27 IA 1986)

After the bankruptcy order: dispositions of property and reviewable transactions

- ▶ The trustee may apply to court to:
 - ▶ Challenge any disposition of assets by the debtor at an undervalue in the five years before the presentation of the petition (s339)
 - ▶ Challenge any preference given by the debtor to any creditor in the six months before the presentation of the petition or, if the preference was given to a connected party, within two years beforehand (sections 340 and 341 IS 1986)
 - ▶ Challenge any agreement made in the three years before the bankruptcy order under which the debtor was given credit on extortionate terms (section 343 IA 1986)
 - ▶ Disclaim any onerous property, including any leasehold property of the debtor (sections 318 – 320 IA 1986)
 - ▶ Claw back excessive contributions made by the debtor to their pension scheme, to the extent that the making of such excessive contributions unfairly prejudiced the debtor's creditors (sections 342A-342F IA 1986)

After the bankruptcy order: discharge and annulment

- ▶ The debtor is discharged from their liability to repay their bankruptcy debts on the anniversary of their bankruptcy order (s.279 IA 1986)
- ▶ The court may annul a bankruptcy order if either (section 282 IA 1986):
 - ▶ The grounds for making the order were not made out at the date it was made; or
 - ▶ The debts and expenses of the bankruptcy have been paid or secured to the court's satisfaction

Contact Details

- ▶ Any Questions?
- ▶ THANK YOU

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