Get Back to Business: A guide to dealing with corporate financial distress

Act early. Seek advice. Get back to business.

R3, the insolvency and restructuring trade body

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Introduction

The COVID-19 pandemic has had a huge impact on the economy. Businesses from across every sector have had to respond to an upheaval in trading, change their staffing and working arrangements, and deal with the sheer uncertainty of operating in the context of a global pandemic.

For many directors and business owners, this set of circumstances has pushed their businesses to the edge of viability – many have already, sadly, reached the end of the road.

For those businesses still operating but facing difficulties, there are two key steps to take to start the process of dealing with those difficulties: **act early** and **seek advice.**

Produced by R3, the trade body for the insolvency and restructuring profession, this resource aims to make it easier for directors to take those steps by:

- Setting out the duties and responsibilities of company directors and the actions that can be taken against directors where these aren't met;
- Providing a one-stop guide to the main options – both informal and statutory – that are available to resolve corporate financial distress;
- Explaining how the insolvency and restructuring framework and profession can help to rescue viable businesses, save jobs, and repay creditors; and
- Helping to point directors to qualified and regulated sources of this advice.

Being a director of a company, or a business owner, comes with a range of duties and responsibilities to many parties, and it is important that anyone running a UK company takes the time to understand what these responsibilities are, and how they can be met. One of the most important is the duty to promote the financial success of the company – you can meet this responsibility by taking the time to gauge your options when facing financial difficulties and seeking advice from qualified and regulated sources.

Understanding your options and seeking advice at an early stage can prevent financial problems from becoming unmanageable and may mean that more options are available to resolve your company's financial situation.

Seeking advice from qualified and regulated sources

While it's important for directors and business owners to understand what options might be available to their businesses, these options require expert advice, guidance, and support to be used effectively.

It's crucial that wherever those in charge of running a company go to seek this advice, they ensure that the individuals providing the advice are suitably qualified and regulated. In the current economic climate, there are many disreputable individuals and groups that will be seeking to take advantage of anyone whose company is in a difficult financial position.

Members of the insolvency and restructuring profession are highly qualified and regulated, and are able to provide the expert advice and guidance required to help viable firms resolve their financial difficulties.

R3 is the trade body for the UK's insolvency and restructuring profession. R3's members have extensive experience of helping people and businesses facing financial problems. Many R3 members offer a free consultation to people who are looking for help with their business finances and who want to explore how they might be able to resolve their situation.

To find an R3 member who may be able to assist, go to **www.r3.org.uk/member-search**.

A number of sources offer free and impartial debt advice, including insolvency practitioners, advice organisations and government departments. When seeking advice, it is important to make sure that it is from an appropriate and impartial source, regulated by either the Financial Conduct Authority (for consumer debt advice) or by an insolvency regulator (for insolvency advice).

Information in this guide is intended to provide an overview only, and relates to statutory procedures in England and Wales. It is not a replacement for seeking advice specific to your circumstances.

There are a number of different options for dealing with financial difficulties, ranging from debt consolidation and informal arrangements with creditors to formal/statutory insolvency[1] procedures. You will find an overview of these options, as well as information on how to seek additional advice, outlined in this guide. This guide also includes a glossary of some of the terms you might come across (see pages 24-26).

Types of options

In this guide, we have divided available solutions into two broad categories:

Informal options: These are solutions which may not affect company assets (the things the company owns), and can be put in place by directors, and/or with the help of an advisor. Informal options usually involve finding a new source of funding, or reaching a negotiated agreement with key creditors (the people and companies the company in distress owes money to). However, creditors cannot be forced into accepting an informal solution and entering one does not prevent dissenting creditors, or other creditors who were not part of the agreement, from taking separate legal action to seek repayment.

Formal options/statutory insolvency arrangements: These procedures are usually required when a company's financial position reaches a point where its liabilities exceeds its assets, or it is unable to pay its debts as they fall due, meaning the company is insolvent. At this stage it may be necessary or desirable to place it into an insolvency process. Some insolvency processes are available even if the company is solvent and some may result in the rescue of the company.

1 Insolvency arises when a company has insufficient assets to cover its liabilities (debts), or is unable to pay its debts when they fall due.

Financial distress and options: an overview

Before looking at the different options available for resolving financial distress, it's important to understand what **financial distress** is and how to spot the key signs.

Financial distress is where a company cannot generate sufficient revenues or income, making it unable to meet its expenses and other financial obligations. Many business owners whose companies are facing financial difficulty may simply not be aware of the fact, or indeed the scale, of their company's issues.

Spotting the signs of financial distress at an early stage can prevent financial problems from becoming unmanageable and may mean that more options are available to resolve your company's financial situation. Members of the insolvency and restructuring profession can help you to do just that.

Common signs of financial distress

A typical sign of financial distress is where a company is lengthening its creditor days (i.e. the number of days it takes to pay suppliers from the date the payment is due). This is often a sign of cashflow issues, and may indicate that the company will become increasingly less able to pay its debts as they fall due.

Other signs that a business doesn't have sufficient cash or working capital to pay debts as they fall due include:

- **Tax debts:** Failure to pay tax liabilities such as National Insurance, PAYE, and/or VAT can often be a key element in losing control of company finances. HMRC can sometimes end up being a large creditor in failing businesses with numerous debts to recoup.
- **Pension deductions**: Failure to pay pension deductions from employee wages to a pension provider.
- **Cancelling staff bonuses**: Failure to pay bonuses may be a sign that finances are on the decline.
- **Lack of investment:** Failure to invest in new technology, people or marketing, or essential repairs not being undertaken to buildings or machinery.
- **Directors' remuneration**: The directors not being able to draw an income from the business can be a sign of financial distress.
- **Stock levels**: An increase in stock levels may be an early indication that incoming orders are reducing. This can be a clear sign that a company's financial position is deteriorating.
- **An increase in stress:** A company in distress usually results in increased stress for its directors and management.

Where to spot the signs

Looking at the company's accounts will give a good indication of how it is performing. Falling margins suggest that costs may be too high and prices or income too low. There are a number of red flags that can be spotted in financial statements: these can be explored in more detail with a professional advisor.

Where financial distress leads: insolvency

Financial distress can ultimately lead to insolvency, which is where a company cannot pay the debts it owes when they are due (i.e. it is 'cash flow insolvent'), or where the company's debts are greater than the value of the assets it owns (i.e. it is 'balance sheet insolvent').

Once a company reaches this stage, the available options are limited, and many companies in this situation will end up in a formal insolvency procedure. However, this is not always the case, and the earlier that directors seek professional advice, the more options there are to resolve the company's financial distress.

There may be times when the company is having cashflow difficulties, when a planned project takes longer than anticipated to return a profit, or a key customer enters insolvency, leaving the company with an unexpected bad debt. A loan may be called in unexpectedly, meaning that the company has to look for refinancing, or the shareholders may be seeking to reorganise the business structure, due to a director or shareholder retiring or becoming ill. With the right professional advice and support, the directors may be able to manage these situations, stabilising the financial position of the company and recovering a profitable trading position.

There will be many reasons why a company is facing financial difficulties, and it is important to understand what is causing the distress, and whether it is likely to be a long- or short-term issue. An insolvency practitioner can assist in identifying these factors and provide a realistic assessment of the alternatives.

Whatever the underlying cause of the financial distress, it can be difficult for those closest to it, who may be under significant stress themselves, to see a path through to a positive outcome. That outcome might be the rescue of the company, or the restructuring of its business, or it may be that the optimal course is simply to limit further losses by ceasing to trade. But in all cases, taking control of the situation by seeking advice is the starting point.

Barriers to seeking advice: facing up to the situation

It can be personally challenging to acknowledge that a company is facing financial difficulties while under your control. It can be a stressful time for all involved – including the management and shareholders of the company, their families, and the individuals and companies who face the possibility of having their debts go unpaid. Members of the insolvency and restructuring profession, including insolvency practitioners, can act as an impartial sounding board for your concerns, give you accurate information about your options, and relieve you of the burden of dealing with the situation alone.

Finally, it is important to remember that not every closure involves a company in financial distress. Sometimes a company simply comes to the end of its life, the project for which it was created ends, the goods it produces become obsolete, or directors and shareholders reach retirement.

Where this is the case, you may still need to take steps to conclude the company's existence in an orderly and tax-efficient way, and an insolvency practitioner can assist you with that process.

Informal options

There are a number of **informal options** for dealing with corporate financial distress:

Informal arrangements with creditors

A simple, early step when encountering issues with a single creditor or even a group of creditors is to reach an informal agreement to repay debt(s) over a period of time.

Informal arrangements can be attractive because they can cost you considerably less in fees to put in place. However, as they are not a formal insolvency process, such arrangements may not be legally binding on your creditors, unless formal documentation has been drawn up. That in turn involves a degree of cost, without which you will be relying on the goodwill of the parties to the non-binding agreement.

As a consequence of these limitations, informal arrangements may not always provide the most cost-effective method of securing a certain outcome. Furthermore, during an informal arrangement, interest and charges are not stopped unless by agreement with individual creditors. So, depending on how much you are able to repay, debt levels may actually continue to increase.

Debt refinancing

Debt refinancing is the replacement of existing debt with new debt under terms and/or conditions that are more favourable. This may be a lower interest rate on a loan or an extension to a repayment period. The ultimate benefit is that the company reduces its outgoings on a month-to-month basis.

While this option may ease short-term cash-flow difficulties, and provide time for your business to reach a more stable position, the total level of debt will remain the same, and may in fact be higher if finance is taken over a longer period. So, while refinancing should not be ruled out where the root cause of the difficulties is an identifiable income shock, particularly where there is an element of certainty that the company's financial position will improve, it does not provide a whole solution where there are longer-term issues around the viability of the business model.

Debt consolidation

Debt consolidation is essentially an extension of debt refinancing and is potentially subject to the same limitations. If your company has more than one loan, consolidating the loans into one single loan may be an option in order to reduce outgoings on a month-to-month basis. But, as with debt refinancing, this will not necessarily address systemic issues within the business model, and may act to delay you taking steps to properly address these, with the benefit of professional assistance.

In both refinancing and consolidation, accessing the most advantageous products and interest rates may not be possible once the company is already in a distressed position, and lenders may require additional security to be given, such as a personal guarantee.

Factoring and invoice discounting

Factoring is when a third party provides you with a cash advance against a proportion of an invoice's value and then collects payment of the invoice from the customer. Then, once the customer has made their payment, the remaining balance is paid to you minus a fee. This can be an attractive option for SMEs, who judge that their resources would be better spent on day-to-day activities.

Invoice discounting is similar to factoring; a key difference is that you remain responsible for collecting the payments from customers. The company still receives an initial cash injection from the invoice discounter, and the use of invoice discounting remains confidential – customers do not know that you are using this type of facility.

Both factoring and invoice discounting can stabilise cashflow through the business, but they will not address any underlying issues of profitability.

Venture capital funding

This is a form of private equity financing and is usually associated with start-ups or emerging companies with high growth potential. Venture capitalists assume the increased risk associated with the start-up phase, in return for a share of the profits of a company's ultimate success, in situations where perhaps more traditional funding sources are not available. This may be by way of a loan or share capital, or some combination of loan and share options, and the precise terms of this type of investment may be fairly complex.

Venture capital is typically more likely to be available where a business has a new or innovative product or service that requires further development investment. It is less likely to be available to refinance existing debt and/or in relation to established trading or more mainstream activities. In all cases, a company seeking venture capital will need to have a strong business case and be able to forecast ultimate success in order to attract speculative investment. That may be difficult where a company is already in a distressed position, although there are some venture capitalists which specialise in this area.

Venture capital funders will have standard forms of funding agreements that they offer, reflecting the level of risk they consider themselves to be assuming. Broadly speaking, the greater the risk, the less favourable the terms will be to the borrower. The directors and shareholders of a company entering a venture capital funding agreement should consider obtaining independent advice.

Personal loan from company directors

Directors can provide a cash injection to their own company from their personal assets. The director may charge interest on these loans until they are repaid in full. These loans are typically only repaid once all other creditors have been repaid first.

As a director, this course of action would mean that you would be risking your personal assets on the success of the business. It is unlikely that you would do so unless you are also a shareholder of the company and were confident of its long-term success.

There are restrictions in insolvency legislation which limit the ability of a company to repay the people most closely associated with it (including directors and their family members), in priority to paying other creditors. If you were to endeavour to repay yourself in the period leading up to an insolvency, it is possible that doing so would both breach your duties as a director and cause an insolvency office holder (an administrator or liquidator) to seek to recover the repayment so that it can be shared out evenly among the other creditors.

Injection of funds by a third party in exchange for equity

Not all funding is provided as a loan to be paid back. Third parties can also provide a cash injection in exchange for equity in a company – so rather than a company owing the loan amount to a bank or individual, for example, this type of funding would see the third party owning part of the company (a shareholding).

As one of the company's owners, the third party would have rights to participate in decisions about the company. However, these would depend upon the type of shares they were acquiring, and the terms of any shareholder agreement reached. Structuring such an agreement is likely to involve professional service providers drawing up the agreement, and both parties obtaining independent advice.

Sale of part of the business or assets

A further option is the sale of part of a business or assets to generate a cash injection into the company. This option may take time, and require expert advice and professional valuation of the assets concerned. It is extremely important that assets are sold for their true value to prevent any subsequent criticism of your conduct as a director, and potential legal action against the purchaser if the company then subsequently enters an insolvency procedure (particularly where the purchaser is connected to the company in some way).

Selling the business from within or as part of an insolvency procedure may provide greater protection than using your own initiative. An insolvency practitioner will be happy to explain this option to you in more detail.

Time To Pay arrangements

Time To Pay arrangements are structured plans for the repayment of tax debts over an agreed time period. As such, these arrangements are limited to debts owed to HMRC.

HMRC does not agree to these lightly but equally does recognise that in certain circumstances individual businesses need help. Any proposal for an arrangement should be made in writing, as this allows those submitting it to provide as much supporting detail as necessary to obtain approval.

While these arrangements can be extremely helpful, they will not address broader debt issues within your business, such as debts owed to lenders and suppliers.

For further information, visit: www.gov.uk/difficulties-paying-hmrc

Formal options

Formal options are for when a company's financial position reaches a point where its liabilities exceed its assets, or it is unable to pay its debts as they fall due. These options are known as **insolvency processes** and are covered by the Insolvency Act 1986. Some insolvency processes are available even if the company is solvent, and some may result in the rescue of the company.

More information about these processes can be found at www.r3.org.uk.

Please note that the information below covers how these options work in England and Wales. Options in Scotland and Northern Ireland are similar but not exactly the same.

Rescue options

If advice is sought at an early stage from a professional advisor, the following options may be open to the company, and may ultimately result in the rescue of the company, i.e. the company continues to trade after dealing with its liabilities.

Moratorium

The moratorium is a tool available to distressed companies (both solvent and insolvent), to provide them with a short breathing space, free from creditor action. A 'monitor' – required by law to be a licensed insolvency practitioner – oversees the moratorium in order to ensure that it remains likely that the moratorium will result in the rescue of the company as a going concern. The monitor can require the directors of the company to provide information which will help the monitor arrive at a decision about the company's future viability. The monitor also has a key role to play in overseeing the actions of the company's directors, and ensuring that their actions do not cause harm to creditors.

Although repayments which would normally fall due during a moratorium – such as a mortgage on a property or a regular payment for leased equipment – must continue to be paid, other debts are frozen, and creditors are not able to carry out enforcement actions while the moratorium is in effect. Meanwhile, certain restrictions on the company apply, including that the company may not obtain credit of more than £500 without telling the other party that it is subject to a moratorium.

The moratorium lasts for an initial 20 business days. After that it can be extended in several ways, by up to 12 months, or by even more with the consent of the court.

Administration

Administration is one of the three main types of corporate insolvency procedure in the UK (alongside liquidation and Company Voluntary Arrangements), and is intended to support business rescue. As with any insolvency procedure, the overarching aim is to act in the best interests of creditors.

In an administration, the running of an insolvent company's affairs, business and property are managed by an administrator, who is required by law to be a licensed insolvency practitioner.

A company's directors or its creditors may apply to court to place a company into administration if it is insolvent. A company is insolvent if it cannot pay its debts when they are due, or if its liabilities outweigh its assets.

While a company is in administration, creditors are prevented from taking any actions against it except with the permission of the court.

An administration is only ever a temporary state of affairs: in England and Wales, administrations have a statutory length of 12 months, although this can be extended if necessary with the agreement of creditors, or the permission of the court. They can also last for under 12 months if the administrator judges that there is no need for the administration to last any longer, provided that creditors agree.

Company Voluntary Arrangement

A Company Voluntary Arrangement (CVA) is a binding agreement between a company and its creditors.

CVAs are extremely flexible, and the form which a CVA takes will depend on the terms of the proposal agreed by the company's creditors. For example, a CVA may involve delayed or reduced payments of debt over a set period of time, capital restructuring, or an orderly disposal of assets. In cases where a company has a number of sites, for example a retail chain with multiple shops, a CVA may be used to terminate lease agreements on poorly performing outlets, and/or to reduce rents on remaining sites in order to ensure the ongoing survival of the company.

The most notable features of a CVA are that, unlike in other insolvency procedures, the insolvent company's directors stay in charge of the company, and creditors have a vote on the terms of the procedure before it begins.

As with most other statutory insolvency procedures, CVAs are overseen by a licensed insolvency practitioner.

Unlike other insolvency procedures, in a CVA, the insolvency practitioner does not replace the directors of a company. Instead, the insolvency practitioner will act as a 'nominee' (prior to the CVA's approval) and 'supervisor' (after the CVA's approval). As a nominee, the insolvency practitioner will check to see whether a CVA proposal meets the legal requirements, and as a 'supervisor' they will check whether the terms of the CVA are being met by the company.

Scheme of Arrangement[2]

A Scheme of Arrangement is a court-sanctioned agreement between a company and other parties. Schemes are a flexible and long-established Companies Act procedure. A Scheme can be used in a wide range of circumstances including restructurings, takeovers, and mergers.

A Scheme is usually proposed by a company, although administrators may propose a Scheme. A Scheme is a compromise or arrangement between a company and its members or creditors (or any class of them – classes are groups of creditors with similar characteristics). Schemes need to be implemented in accordance with the Companies Act 2006 and involve two court applications: one to convene meetings to approve the Scheme, and one to sanction the Scheme. If approved, the Scheme will be binding on all creditors and shareholders, including those within each class voting against the Scheme.

Restructuring Plan[2]

A Restructuring Plan is similar to a Scheme of Arrangement in that it is a compromise or agreement between a company and its members or creditors, overseen by a court. However, the key difference is that the Restructuring Plan is only available to those companies that have experienced, or are likely to experience, financial difficulties.

2 These solutions are normally considered before an insolvency option mentioned above and unlike the above, these solutions are covered by the Companies Act 2006.

Closure options

Closure options are usually required when a company's financial position reaches a point where its liabilities exceed its assets, or it is unable to pay its debts as they fall due, and rescue is not a viable option. These options tend to be linked with the lack of professional advice being sought at the earliest signs of financial difficulty. Alternatively, they can be used to close down a company's business in an orderly manner due to the director/business owner seeking retirement.

Liquidation

Liquidation is the process by which insolvent companies are closed down and debts repaid to creditors out of the available assets. This happens when there is no prospect of rescuing the company. Depending on the type of liquidation, the process is overseen by either a **licensed insolvency practitioner** (acting as a liquidator) or by the **Official Receiver**.

Liquidations can be standalone, or they may follow other insolvency procedures. For example, an insolvent company may enter administration and have its business and assets sold to a new company. Once the sale is completed, the old company may then be placed into liquidation so that the proceeds of the sale can be distributed to all creditors, further investigations can be undertaken, and the company can be properly wound-up.

There are different types of liquidation:

1. A **Creditors' Voluntary Liquidation (CVL)** is initiated by the directors of an insolvent company via a company resolution. CVLs are overseen by insolvency practitioners, whose appointment is ratified by creditors.

2. A **Compulsory Liquidation** is initiated by the court following a petition for winding-up (this petition can be made by creditors or company directors). Compulsory liquidations are handled by the Official Receiver in the first instance, but creditors may request that an insolvency practitioner takes over (the Official Receiver may also choose to pass the case to an insolvency practitioner where they consider the specialist skills of an insolvency practitioner are required). Sometimes, the Official Receiver may be supported by an insolvency practitioner acting as a 'Special Manager'.

3. A **Members' Voluntary Liquidation (MVL)** is initiated by the directors of a solvent company. This process can be used where creditors will be paid in full. Directors may wish to use an MVL to close their company as a means of demonstrating that all of the company's loose ends have been tied up. Alternatively, a director may dissolve their company, but this process will not be overseen by an insolvency practitioner.

Liquidation has a number of unique features which mean it is more useful for closing companies down than for rescuing them. In liquidation, the liquidator can 'disclaim' onerous assets: this means they can bring some contracts, to which the insolvent company is party, to an early end as they aren't needed anymore. It is not uncommon for contracts to be automatically brought to an end when a company enters liquidation: this would make it difficult for a company to continue to trade as normal in liquidation.

Receivership

There are several different forms of receivership, although just one is a statutory insolvency procedure which must be overseen by a licensed insolvency practitioner.

Typically, a receivership involves the appointment of a receiver by a secured creditor, to realise a specific asset or assets of a company for the secured creditor's benefit. This is a contractual remedy.

Types of receivership include 'fixed charge receivership', 'Law of Property Act receivership', or 'administrative receivership'.

Administrative receiverships must be overseen by a licensed insolvency practitioner, although this procedure is now extremely rare: there were just three administrative receiverships in 2020 in England and Wales, out of over 12,600 corporate insolvencies.

Seeking Advice

When your company is struggling financially, the most important starting point is to get suitable advice as soon as possible on the options which are best for your company.

You may have already been approached by a number of organisations offering you help with your company's financial situation. It can be difficult to know where to turn for the advice you need. Sadly, some of these organisations may not be reputable or regulated, even though their websites may make them seem to be legitimate and trustworthy. You therefore need to consider carefully which organisations or advisers you take advice from.

Licensed insolvency practitioners: qualified and regulated sources of advice

Insolvency practitioners are experienced in rescuing businesses and are trained to help directors to look for ways to restructure and save their business before considering any form of insolvency process. To act as an insolvency practitioner, individuals need an insolvency licence. These are issued, on an annual basis, by a regulator - known in insolvency as a Recognised Professional Body, or RPB for short. These RPBs monitor an insolvency practitioner's work, and ensure that they are complying with their statutory duties and that they are reaching the high professional standards expected of them. This monitoring involves regular visits to practices, and a requirement that regular reports are filed with the RPB. Insolvency practitioners face a number of sanctions for regulatory failures, including reprimands, fines, and the revocation of their licence (and therefore their ability to practice). They are also responsible for the staff working for them within their firm, who must work to the same standards expected from the license holder themselves.

Many insolvency practitioners offer a free initial consultation to people who are looking for help with their business finances and want to explore their options, or understand how they might be able to resolve their situation. R3's member search facility can help you to find a licensed insolvency practitioner in your area.

Following the initial meeting, it will then be for you to decide whether you can work with them to find a solution for your company.

First steps are likely to include:

- A review of the assets and liabilities of the company and preparing an up-to-date balance sheet;
- A review of the cash flow forecast and discussion and testing of the assumptions in the cash flow in light of the current trading conditions;
- Helping you with conversations with suppliers and landlords about extending payment dates;
- Considering whether the company's business needs re-sizing and, if so, how that should be done;
- Advise on conversations with your bank and with HMRC;
- Preparing a business plan.

The time available to put a rescue plan together will depend on the cash requirements of the company. If cash is running out and agreements with creditors cannot be reached it may be necessary to consider putting the company into a rescue procedure such as a Company Voluntary Arrangement or a Restructuring Plan.

If a rescue is not deemed suitable, it is likely an insolvency practitioner will propose the company be placed into an insolvency procedure.

How are insolvency practitioners paid?

As noted above, most insolvency practitioners will offer a free initial consultation. If you want to proceed with the advice, the insolvency practitioner will then provide an estimate of their charges and send an engagement letter to agree the terms of their involvement with the company.

If a formal insolvency procedure is required, the fees will be paid from the assets of the company, and the method for charging fees is set out in legislation and regulation. Where there are no assets to pay the insolvency practitioner, they may ask the directors if they are willing to pay for their services from their personal resources, but this can only happen with the directors' agreement.

The fees charged by insolvency practitioners depend on the size of their firm, their location, their level of expertise, and the nature of the job at hand. In all cases, their rates and charges must be transparent and disclosed to you.

An insolvency practitioner will make a proposal to the creditors that sets out how they are to be paid for their work from the assets of the company.

Beware of rogue advisors

While many advisory and financial services activities in the UK require some form of prior authorisation or licensing, giving general advice to a business about its rescue and restructuring options is not currently one of them.

This means that if you search the internet for business advice, some of the advisors offering these services may not be subject to the same rigorous regulatory regime that insolvency practitioners work under.
This has meant that there have been cases where unlicensed advisors have marketed their services to company directors, some of whom had already commenced an insolvency process with a reputable and licensed practitioner, seeking to lure them away into seemingly more attractive, unregulated tactics that will supposedly address their company's difficulties.

Following advice of this nature can have a number of undesirable and potentially serious outcomes, including:

- Receiving poor quality advice which fails to adequately take into account the circumstances of the case and neglects the alternatives available;
- Missing out on legitimate mechanisms for a successful restructuring;
- Breaches of directors' fiduciary duties, leaving directors exposed to disqualification proceedings or financial claims;
- Inadvertent commission of criminal offences;
- Increases in personal guarantee liabilities;
- Worsening of the outcome for stakeholders;
- Reputational damage to parties who are seen as seeking to avoid their debts;
- Undisclosed and unregulated costs being incurred by the party seeking the advice; and
- Inability to seek redress from uninsured advisers who have provided poor advice.

Warning signs

As a rule of thumb, if something looks or sounds too good to be true, then it probably is.

Be extremely cautious of statements such as:

- *We work for you and not your creditors/Insolvency practitioners don't work for you*
- *Insolvency will stay with you forever/You will never be able to start again*
- *Close down your company and be debt-free*
- *Continue trading and keep your assets, debt-free*
- *Dump your debts and walk away*

All such statements are at best gross simplifications of a complex area of law that requires years of training and experience in order to secure the best all-round outcomes, and in many instances, are simply false and misleading. Well-meaning directors can end up bearing the consequences.

A number of companies operating in this disreputable manner have been forced into liquidation themselves by the Insolvency Service on public interest grounds. While that will have stopped those firms in their tracks, their former clients will have been left high and dry, and needing to pursue a legitimate path that they would have been better off following in the first place.

Always check that your source of business advice is qualified, insured and regulated in undertaking the service you require from them.

Dispelling some of the myths about insolvency practitioners

"Insolvency practitioners only act for your creditors"

When appointed under an insolvency process, insolvency practitioners do owe a duty under law to act in the best interests of all your company's creditors. However, this does not mean that an insolvency practitioner can't also provide advice about the solutions for your company's financial situation. On the contrary, insolvency practitioners are best placed to provide full, objective advice on your options and the positives and negatives of each solution due to the breadth of their experience in assisting financially distressed companies on a daily basis.

"You don't need an insolvency practitioner to sort out an insolvency process for you or your company"

Licensed insolvency practitioners are the only professionals who are able to take formal insolvency appointments. While unlicensed advisers may promise a great deal and charge you a fee for providing advice, they are often unable to provide a solution from start to finish, or in many cases, are providing advice which is simply incorrect or potentially against the law.

"Insolvency practitioners will charge you huge fees to provide a solution"

Insolvency practitioners are professionals and do charge fees for their work. They have significant skills and expertise in saving businesses and preserving jobs wherever possible, while achieving the best available outcome in situations where insolvency is unavoidable.

Insolvency practitioners' fees will vary from one practitioner to another and can depend on where they are based and the kinds of firms they work for. Ultimately, in all types of cases, if enough creditors believe that the fees charged are too high, they can apply to court for the fees to be reduced. There are, therefore, safeguards in place to ensure that creditors have a say in the fees charged by an insolvency practitioner.

What activities are regulated in UK law?

Not all business advisers who work outside of the insolvency and restructuring profession. There are very many regulated professionals out there who can legitimately assist with aspects of a company's affairs. Here is a non-exhaustive list of examples of regulated services and the regulatory bodies that oversee the activity involved:

<table>
<tr><th>Activity</th><th>Regulator(s)</th></tr>
<tr><td>Acting as an insolvency practitioner</td><td>Authorised and regulated by 4 Recognised Professional Bodies: ICAEW/IPA/CAI/ICAS, under the oversight regulation of the Insolvency Service</td></tr>
<tr><td>Legal services</td><td>Authorised and regulated by the SRA (solicitors) and Bar Council (barristers)</td></tr>
<tr><td>Accountancy services</td><td>May be a member of a professional body: ACA, FCA, ACCA, FCCA, MAAT, ACMA

Regulated by the Financial Reporting Council (FRC)</td></tr>
<tr><td>Company formation agents</td><td>Regulated for Anti-Money Laundering purposes only (not for service provision)</td></tr>
<tr><td>Lending money</td><td rowspan="2">Authorised and regulated by the Financial Conduct Authority (FCA)</td></tr>
<tr><td>Consumer credit activities: Debt counselling; debt adjusting; credit broking; debt collection; credit reference services; selling goods or services on credit</td></tr>
</table>

Always check that the firm you are using is appropriately authorised for the activity for which you wish to instruct them. For insolvency and business restructuring advice, the best choice will always be a professional regulated for that purpose, i.e. a licensed insolvency practitioner.

Being a company director

Becoming a director gives you a position of authority over your company's management and a direct responsibility for its ultimate performance.

As a company director, it is vital that you understand your duties and responsibilities; whether these are general duties detailed in the Companies Act 2006 or more specific duties included in your company's Articles of Association.

If you are a director and an employee, other duties may be contained in your service contract with the company.

As set out at pages 18-20, where these duties and responsibilities aren't met, insolvency office holders (e.g. administrators and liquidators) have a legal duty to pursue offending directors for certain claims with a view to recovering monies for the benefit of the insolvent company's creditors.

Remember: Directors owe legal duties to the company and its shareholders, and – where a company is insolvent – to its creditors.

Statutory duties

There are seven main statutory duties that directors must adhere to:

1. *Act within powers*

A director must act within the powers assigned in accordance with the company's Articles of Association, and only exercise these powers for their proper purpose.

2. *Promote the success of the company*

A director must act in a way they consider, in good faith, would be most likely to promote the success of the company for the benefit of its shareholders as a whole.

A director must consider the:

- consequences of decisions, including in the long term;
- interests of its employees;
- need to support business relationships with suppliers, customers and others;
- impact of its operations on the community and environment;
- company's reputation for high standards of business conduct; and
- need to act fairly to all members of the company.

3. *Exercise independent judgement*

A director must exercise independent judgement. There will be instances where a director may delegate certain matters to others with specialist expertise, but the director must exercise independent judgement in deciding to delegate and in whether or not to follow that advice.

4. *Exercise reasonable care, skill and diligence*

A director owes a duty of skill and care to the company. A director must exercise the care, skill, and diligence which would be exercised by a reasonably diligent person with both:

- the general knowledge, skill and experience that may reasonably be expected of a person performing the functions carried out by the director in relation to the company; and
- the general knowledge, skill and experience that the director actually has.

5. *Avoid conflicts of interest*

A director must avoid situations where there is a direct or indirect interest of theirs that conflicts with the interests of the company.

6. *Not accept benefits from third parties*

A director must not accept any benefit (e.g. a bribe) from a third party. This prohibits the exploitation of the position of a director for personal benefit.

7. *Declare interests in proposed transactions or arrangements*

A director must declare any direct or indirect interest in a proposed transaction or arrangement with the company to the other directors.

Other statutory duties

In addition to the seven main duties listed above, directors have other duties they are required to adhere to by law. These duties generally relate to the keeping and submission of records and legal documents, but also include ensuring that the company complies with its obligations relating to the health, safety, and welfare of its workers while at work, under health and safety legislation.

Accounting records

A director has a duty to keep proper books and records. By keeping proper accounting records, a director will be able to determine with reasonable accuracy the financial position of the company.

Directors must prepare annual accounts, normally with the assistance of a qualified accountant. The accounts usually consist of a balance sheet, a profit and loss account, and a directors' report showing a true and fair view of the company's state of affairs at the end of the financial year. The accounts must be filed with the Registrar of Companies within nine months of the end of each financial year.

Minutes of Board meetings

When a company has more than one director, they are collectively known as the Board. When the Board has meetings to make decisions about the company, there is a requirement for a written record to be made (minutes) and for those records to be retained for 10 years from the date of the meeting.

The company's Articles of Association (its constitution) may also require this to be done. This is the case where the standard "Model articles of association for limited companies" are used, or any of its predecessors (sometimes known as "Table A Articles").

But even if you are a sole director, records of decisions can be very useful. By keeping a record of the decisions made, at the time they were made, a director will be in a better position to justify those decisions as being reasonable, should they be called upon to do so at a later date (for example, should the business enter insolvency).

Records held by Companies House

Companies House incorporates and dissolves limited companies, and registers company information, making it available to the public. As a director, you are legally responsible for running the company and making sure information is sent to Companies House on time. This includes:

- the confirmation statement;
- the annual accounts;
- any **change in your company's officers** or their personal details;
- a change to your company's registered office;
- allotment of shares;
- registration of charges (mortgage);
- any change in your company's **people with significant control** (PSC) details.

You can hire other people to manage some of these things day-to-day (for example, an accountant) but you are still legally responsible for your company's records, accounts and performance.

Non-statutory duties

In addition to those listed above, directors have other duties that are not set out in legislation but are still highly important to fulfil. For example, a director owes a duty of confidentiality to their company and must use or disclose the company's confidential information only for the benefit of the company.

Resigned as a director?

It is important to remember that certain duties continue even if you have resigned as a director some time ago. Directors must continue to uphold their duties in relation to avoiding conflicts of interest and not accepting benefits from third parties, even after their resignation.

Given a 'Personal Guarantee' to a lender?

When a company borrows money from a lender there may be circumstances where the lender will request a personal guarantee (PG) – usually from the director of the company – in order to ensure that if the company becomes unable to repay the loan, the director will then personally take on this debt.

It's obviously very important to consider the risks before agreeing to a PG, but it's also important, if your company does face financial difficulty, to avoid forcing the company to pay certain debts in order to reduce your personal liability. By doing so, you may be reducing your own liability at the expense of your creditors, which may mean you have breached your duties as a director.

Remember: A director's duties continue when a company enters into an insolvency process. Resigning as a director shortly before or during an insolvency process does not relieve you from the duties and responsibilities noted above.

Company director disqualification

Failure to meet your duties and responsibilities as a company director, as set out at page 15-17, may lead to you being disqualified (banned) from acting as a company director.

When a director is deemed to have failed in meeting their duties and responsibilities, they are commonly referred to as being 'unfit'. Unfit conduct can include the following:

- allowing a company to continue trading when it can't pay its debts;
- not keeping proper company accounting records;
- not sending accounts and returns to Companies House;
- not paying tax owed by the company; and/or
- using company money or assets for personal benefit.

Disqualification

When a company enters an insolvency procedure (insolvent liquidation or administration), the appointed liquidator or administrator is obliged to carry out investigations into the conduct of company directors. A report is then submitted to the Insolvency Service to consider issuing disqualification proceedings against the director(s) or shadow directors.

If the Insolvency Service thinks you haven't followed your legal responsibilities as a director, it will tell you in writing:

- what it thinks you have done that makes you unfit to be a director;
- that it intends to start the disqualification process; and
- how you can respond.

You can either:

- wait for the Insolvency Service to take you to court to disqualify you - you can defend the case in court if you disagree with the Insolvency Service, or
- give the Insolvency Service a 'disqualification undertaking' - this means you voluntarily disqualify yourself, ending court action against you.

You should consider taking independent legal advice if you get a letter about disqualification from the Insolvency Service. The insolvency practitioner dealing with the case will not be able to advise you personally, as this would be a conflict of interest with their duties to the creditors of the company.

Apart from the Insolvency Service, other bodies can apply to have you disqualified under certain circumstances, e.g.:

- Companies House;
- the Competition and Markets Authority (CMA);
- the courts;
- a company insolvency practitioner.

If you're disqualified

Directors can be disqualified for up to 15 years depending on the severity of the breaches of their duties and responsibilities.

As a disqualified director you cannot:

- be a director of any company registered in the UK, or any overseas company that has connections with the UK;
- be involved in forming, marketing, or running a company.

Directors who break the terms of their disqualification could be fined or sent to prison for up to two years.

The details of your disqualification will be published online in:

- **the Companies House database of disqualified directors** - your details will automatically be removed from the database when your disqualification ends; and
- **the Insolvency Service's register of directors who were disqualified** in the last 3 months, including details of why you were banned.

You must ask a court for permission if you want to be a company director while you are disqualified.

There are other restrictions if you are disqualified. For example, you might not be able to:

- sit on the board of a charity, school or police authority;
- be a pension trustee;
- be a registered social landlord;
- sit on a health board or social care body; and/or
- be a solicitor, barrister, or accountant.

Actions against offending directors

Irrespective of whether or not you are disqualified from acting as a director, it is important to note that a liquidator or administrator may still pursue you for certain claims with a view to recovering monies for the benefit of the insolvent company's creditors, if appropriate. Some of these claims can include:

Misfeasance

A misfeasance claim can be brought against a director where they have done any one or more of the following:

- misapplied, retained or become accountable for any money or other property of the company;
- been guilty of any misfeasance (such as breaching the insolvency duties); or
- breached any fiduciary or other duty owed to the company.

In instances where the court finds a director has done any of the above, it can compel the director to:

- repay, restore or account for the money or property misapplied or retained or any part of it with interest at such rate as the court thinks just; or
- contribute such sum as the court thinks just to the company's assets by way of compensation in respect of the misfeasance or breach of fiduciary or other duty.

Void transactions

Where a company is subject to a winding-up petition that has been presented to court but not yet determined, any disposal (sale) of that company's property – and any transfer of shares or alteration in the status of the company's members – is void unless the court orders otherwise.

Antecedent transactions

Simply put, antecedent means 'before the event', so in this case, before the insolvency commenced. These types of transactions are those entered into to the detriment of the company's creditors during the months or years leading up to the insolvency. The liquidator or administrator may seek to have those transactions reversed or the position otherwise restored to what it would have been had those transactions not taken place.

Antecedent transactions include 'transactions at an undervalue', 'preferences', 'extortionate credit transactions', 'voidable floating charges', and 'transactions defrauding creditors'.

Wrongful trading

The wrongful trading provisions in the Insolvency Act 1986 make directors liable for a contribution to an insolvent company's estate if it can be shown they continued to trade but knew, or ought to have known, that there was no reasonable prospect of avoiding insolvency.

However, directors are not liable if they can establish that they did everything they practically could to reduce the potential loss to the company's creditors while continuing to trade. It is up to the insolvency office holder (i.e. the administrator or liquidator) to decide whether or not to bring a claim, but it may help your defence to such a claim if you have taken early advice and acted upon it.

Fraudulent trading

Fraudulent trading is a claim which arises under the Insolvency Act 1986 and seeks to recover property to the company's assets where the company has been wound up or entered administration, and where the business of the company was carried on with the intent:

- to defraud its creditors;
- to defraud creditors of any other person(s)/business; and/or
- for any other fraudulent purpose.

Failure of duties under the Companies Act 2006

Claims may be brought against a director or directors for failures in duties held under the Companies Act 2006, as set out at pages 15-17.

Remember: A director's duties continue when a company enters into an insolvency process. Resigning as a director shortly before or during an insolvency process does not relieve you from your duties and responsibilities.

Creditors in an insolvency context

The ultimate aim of an insolvency procedure is to return as much money as possible to an insolvent company or individual's creditors. Unfortunately, because of the nature of insolvency, there is usually not enough money available to repay everyone what they are owed. To help manage competing creditors' claims, creditors are repaid in a strict hierarchy set out by legislation. Each tier of creditors must be paid in full before repayments can be made to the next tier.

1. **Fixed charge creditors:** Creditors whose lending to a company or individual is secured against a definable object (e.g. a mortgage on a building/warehouse, or a fixed piece of equipment).

2. **Insolvency process costs:** Including wages or rent due during the process, professional and legal fees incurred, and the fees and expenses of the office holder (a licensed insolvency practitioner or the Official Receiver).

3. **Preferential creditors**: This currently covers some payments due to employees, and money owed as part of the Financial Services Compensation Scheme. As of 1 December 2020, certain HMRC tax debts owed by a company or individual on behalf of others (e.g. VAT or PAYE debts owed by a company, or VAT owed by an individual in relation to business activities) now fall within the category of preferential debts. However, all other preferential debts must be paid in full before HMRC can receive a distribution. (Read more here.)

4. **Floating charge creditors:** Creditors whose lending is secured against a class of asset (e.g. 'stock' in a warehouse, but not specific items of stock).

   a. **The Prescribed Part**: In order to increase the chances of returns to unsecured creditors, the Enterprise Act 2002 created the 'Prescribed Part'. This is a pot of money set aside from what would have been paid to floating charge creditors so that a repayment can be made to unsecured creditors instead. The Prescribed Part is calculated as 50% of the first £10,000 due to be repaid to floating charge creditors, and then 20% of floating charge creditor returns up to a total cap of £800,000.

5. **Unsecured creditors**: This category covers almost all other creditors, including pension schemes, customers and trade creditors. Tax debts owed by an insolvent company or individual themselves (such as Corporation Tax or Self-Assessed Income Tax) fall into this category.

6. **Shareholders.**

There are also detailed rules around what creditors may or may not claim, and how costs and expenses must be prioritised when there are insufficient funds to meet them, alongside regulations that insolvency practitioners must apply to the approval of their own fees and costs, the way they handle the funds under their control, and the financial information that they must produce to explain how funds have been applied.

In addition to their rights in relation to the order of priority in an insolvency procedure, creditors have a number of other rights including: to form a committee; to be kept informed or opt out of being kept informed; to participate in decision procedures; and to ask for further information about or to challenge an insolvency practitioner's fees, where they believe them to be excessive.

Statistical insolvency procedures – a quick guide

Important: this table only provides an overview of statutory insolvency procedures. For more information, please refer to pages 8-10.

	Moratorium	Company Voluntary Arrangement (CVA)	Administration	Liquidation
Who appoints the insolvency practitioner?	Director(s)	Creditors	Director(s)/Company/ Qualifying Floating Charge Holder (lender with security)/ Court	**CVL:** Creditors **MVL:** Shareholders **Compulsory**: Creditors/Court/ Insolvency Service
What is the insolvency practitioner's role in overseeing the process?	Monitor	Nominee (pre-approval) or Supervisor (post-approval)	Administrator	Liquidator
To whom is the appointed insolvency practitioner accountable?	The monitor must oversee the company's affairs for the purpose of forming a view as to whether it remains likely that the moratorium will result in the rescue of the company as a going concern	The supervisor must act in accordance with the terms of the proposal, which is usually to the general body of creditors	General body of creditors	General body of creditors **MVL:** Shareholders
Does the insolvency practitioner have control over assets?	No control over assets	No control over assets unless specified in the proposal	Control over all assets	Control over all assets
Do directors' powers cease?	No. Directors remain in control	No. Directors remain in control	Yes. However, a director is obliged to co-operate with the administrator	Yes. However, a director is obliged to co-operate with the liquidator
What debts and creditors will be affected?	During the moratorium, the company must continue to pay on-going costs of running the business. In addition, the company must meet some pre-moratorium debts which do not benefit from a payment holiday during the moratorium, including rent in respect of a period during the moratorium, goods/services supplied during the moratorium, and wages or salary arising under a contract of employment	Dependent on the terms of the proposal. Ongoing liabilities will generally need to be met whilst historic liabilities are compromised. There are legal complexities around the treatment and claims of landlords	All debts will be affected and dealt with by the process	

<table>
<tr><th></th><th>Moratorium</th><th>Company Voluntary Arrangement (CVA)</th><th>Administration</th><th>Liquidation</th></tr>
<tr><td>How else will a director be affected?</td><td>A moratorium can only be used when it is likely that it would result in the rescue of the company as a going concern.

No investigations are undertaken by the monitor into the conduct of director(s)</td><td>A proposal usually makes a declaration that, "to the best of the directors' knowledge, there are no circumstances giving rise to actual or potential claims under the Insolvency Act 1986*", in the event of the company subsequently entering liquidation.

*See page 19-20 for further details about potential claims</td><td colspan="2">An administrator or liquidator of an insolvent entity has a duty to investigate what assets there are (including potential claims against third parties including the directors) and what recoveries can be made.

A directors' conduct report is then filed with the Secretary of State.

An administrator or liquidator has powers to take action against directors for misconduct including misfeasance, wrongful trading, failure to comply with duties under the Companies Act, preference payments, and many more actions deemed inappropriate</td></tr>
<tr><td>How long does the process last?</td><td>Initial period is 20 business days unless extended by directors, creditors, or the court</td><td>Dependent on a case-by-case basis. A CVA is normally proposed to last between 2 to 5 years</td><td>12 months unless extended by the administrator with the consent of creditors or the court</td><td>Dependent on complexity of case. No fixed time period</td></tr>
<tr><td>End of the process</td><td>The company continues unless the moratorium is ended as the company is no longer viable, at which point the company is likely to enter an insolvency process</td><td>The company continues to operate following completion of the voluntary arrangement</td><td>If the company is rescued as a going concern, it will continue to operate as normal after administration.

If no rescue is achieved, the company is dissolved at Companies House</td><td>The company is dissolved at Companies House</td></tr>
<tr><td>Who agrees the fees of the insolvency practitioner?[3]</td><td>An agreement is reached between the company and the insolvency practitioner</td><td>In most circumstances, fees and expenses in relation to the services of the nominee and supervisor are agreed with the company. It is for the creditors to decide whether to agree the terms relating to fees along with the other provisions of the proposal</td><td colspan="2">It is for the creditors' committee to approve. If there is no creditors' committee, fees may be fixed by a decision of the creditors. As a last resort, the court can approve fees</td></tr>
<tr><td>How are creditors paid?</td><td>By the company</td><td>In most circumstances, creditors are paid from contributions as detailed in the proposal</td><td colspan="2">Where possible, creditors are paid dividends from the sale of the company's assets. See page 21 for further details</td></tr>
</table>

3 For further information on fees, R3 has published a range of fee guides, which are available here.

Key terms explained

Administration

Administration is one of the three main forms of corporate insolvency in England and Wales. It is intended to be used as a way to rescue businesses, where possible. Read R3's page on administration for more information.

Assets

Anything that belongs to an insolvent company or individual that may be used to repay their debts, from items such as equipment and personal belongings, to property, to money in the bank, to intangible assets such as intellectual property rights.

Chartered Accountant

A **Chartered Accountant (CA)** is a professionally qualified and regulated person who provides advice and financial expertise to the management of businesses.

Companies Act 2006

The Companies Act is the legislation which governs company law in the UK.

Company secretary

A **company secretary** is responsible for ensuring compliance with the Companies Act 2006, and carries out a number of administrative tasks, including filing statutory documents at Companies House.

Company Voluntary Arrangement (CVA)

A **Company Voluntary Arrangement (CVA)** is one of the three main forms of corporate insolvency in England and Wales. It involves a company which is insolvent arranging a binding agreement with its creditors, in order to try and survive. Read R3's page on CVAs or more information.

Corporate Insolvency and Governance Act 2020

The Corporate Insolvency and Governance Act introduced two new procedures to the UK's insolvency and restructuring framework: the **moratorium**, which gives companies in financial distress a breathing space free from creditor pressure to plan a way forward, and the **Restructuring Plan**, a procedure to facilitate the restructuring of the finances and operations of financially distressed companies using a flexible, court-supervised process. You can read more about the moratorium and the Restructuring Plan on R3's website.

Creditor/Liabilities

Someone owed money by a company, business, or individual is a **creditor**, and the money owed to them is known as a **liability** from the point of view of the business or individual who took out the loan.

Creditor days

This is the average number of days your business takes to pay its suppliers.

Director

A **director** is legally responsible for running a company.

Equity

Equity represents the value that would be returned to a company's shareholders if all of its assets were liquidated and all of the company's debts were paid off.

Financial distress

A company is said to be in **financial distress** if it cannot generate sufficient revenues or income, putting it at risk of being unable to meet or pay its financial obligations.

Insolvency

Insolvency arises when a company has insufficient assets to cover its liabilities (debts), or is unable to pay its debts when they fall due.

Information about the different types of corporate insolvency procedures can be found on R3's website.

Insolvency Act 1986

The Insolvency Act provides the legal platform for all matters relating to insolvency in the UK.

Insolvency practitioner

Insolvency practitioners are licensed independent professionals who are authorised to act in relation to an insolvent individual, partnership, or company. An insolvency practitioner is appointed to supervise formal insolvency procedures. Insolvency practitioners must pass stringent exams, and must be regulated by a Recognised Professional Body (ICAEW, ICAS, CAI, or the Insolvency Practitioners Association). Most insolvency practitioners are Chartered Accountants, while some are lawyers.

Insolvency practitioners have to act in the interest of creditors – they can either help the company turn their finances around, or, when this isn't possible, they will gather in all the company's assets (if there are any), turn them into cash and distribute the proceeds back to creditors (in accordance with an 'order of priority' determined by the government).

It is important to remember that where a company has become insolvent, it is very likely that it will not have enough money to pay back all or any of the amount it owes. Insolvency practitioners will do their best to ensure that as much as possible is repaid.

Once formally appointed to look after an insolvent company or individual, the insolvency practitioners may be referred to as the 'office holder', or by a term which is linked to the type of procedure which is being used (i.e. an 'administrator' in administrations, a 'liquidator' in liquidations, or a 'supervisor' in Company Voluntary Arrangements).

Liquidation

Liquidation is one of the three main forms of corporate insolvency in England and Wales. It is the procedure which is used when there is no prospect of rescuing the business as a going concern. Read R3's page on liquidation for more information.

Memorandum and articles of association

When you register your company you need:

- A **'memorandum of association'** - a legal statement signed by all initial shareholders or guarantors agreeing to form the company
- **'Articles of association'** - written rules about running the company agreed by the shareholders or guarantors, directors and

Shadow director

A **shadow director** is someone who exercises a significant amount of control over how a company is run, but who is not officially registered as a director of the company at Companies House.

Shareholder/Member

Most limited companies are 'limited by shares'. This means they are owned by **shareholders**, sometimes known as '**members**', who have certain rights. For example, directors may need shareholders to vote and agree [changes to the company].

Most companies have 'ordinary' shares. This means directors get one vote on company decisions per share, and receive dividend payments.

A company limited by shares must have at least one shareholder, who can be a director. If you are the only shareholder, you own 100% of the company. There is no maximum number of shareholders a company can have.

The price of an individual share can be any value. Shareholders will need to pay for their shares in full if the company has to shut down. You can choose a low share value (for example, £1) to limit the shareholders' liability to a reasonable amount.

Statutory demand

A **statutory demand** is a request for payment of a debt from an individual or company.

Anyone who is owed money can make a statutory demand. A solicitor is not required.

In most circumstances, if a debt is over 6 years old, a statutory demand cannot be made.

When a company that owes money receives a statutory demand, it has 21 days to either:

- pay the debt, or
- reach an agreement to pay.

Failure to repay may result in a **winding-up petition** being issued.

Winding-up petition

If a company owes £750 or more, a creditor can issue a **winding-up petition** in court. The petition will have a hearing date endorsed on it and then must be served at the registered office of the company. It will then be advertised in [The Gazette], after a period. If the debtor company cannot repay the debt which prompted the issuing of the petition, it will be put into compulsory liquidation.

Working capital

Working capital is the difference between a company's current assets, such as cash, accounts receivable (i.e. customers' unpaid bills), and inventories of raw materials and finished goods, and its current liabilities, such as accounts payable.

Useful contacts

Sources of advice

Insolvency practitioner

An insolvency practitioner is someone who is licensed and authorised to act in relation to insolvent individuals, partnerships or companies. Many insolvency practitioners will offer one hour of free advice. To find an insolvency practitioner who may be able to provide advice, please visit R3's website:

www.r3.org.uk/member-search

Or you can find an insolvency practitioner in your area by visiting:

www.gov.uk/find-an-insolvency-practitioner

The Institute of Directors (IoD)

The objective of the IoD is to ensure the views of directors are taken into account when the government is reviewing policy, legislation or seeking the opinions of the wider business community. The IoD offers a range of resources - including access to business information, training, professional expertise, networking opportunities and flexible working spaces - all of which are designed to help directors strengthen and build on their own success.

www.iod.com

The Institute for Turnaround (IFT)

The IFT is a membership organisation for turnaround experts in the UK. Its members are accredited to the highest standards and help underperforming businesses avoid unnecessary insolvencies.

www.the-ift.com

Turnaround Management Association (TMA)

The TMA UK brings together professionals from across the UK, Europe and worldwide to meet, network and hear the latest news within business recovery, corporate turnaround and restructuring. The TMA was founded in 1988, as a non-profit organisation for professionals in corporate renewal and turnaround management and has almost 10,000 members.

tma-uk.org

The Insolvency Service

The Insolvency Service is a government agency that helps to deliver economic confidence by supporting those in financial distress, tackling financial wrongdoing and maximising returns to creditors.

www.gov.uk/government/organisations/insolvency-service

Companies House

Companies House is the UK's central register of company information. Its website has a section on guidance and regulation containing useful information for directors.

www.gov.uk/government/organisations/companies-house

National Debtline

National Debtline is a free and confidential debt advice service for people in England, Wales and Scotland, run by the Money Advice Trust. Business Debtline can help with debts relating to businesses.

Tel: 0808 808 4000

www.nationaldebtline.co.uk or www.businessdebtline.org

Help with mental health

Samaritans

The Samaritans provides confidential support for people experiencing feelings of distress or despair.

Tel: 116 123 (free 24 hour helpline)

www.samaritans.org.uk

MIND

Mind promotes the views and needs of people with mental health problems.

Tel: 0300 123 3393 (Mon-Fri 9am to 5pm)

www.mind.org.uk

Mental Health Foundation

A source of information and support for anyone with mental health problems or learning difficulties.

www.mentalhealth.org.uk

Mental Health and Money Advice

Clear practical advice and support for people experiencing issues with mental health and money.

www.mentalhealthandmoneyadvice.org.uk

R3 is the trade association for the UK's insolvency, restructuring, advisory and turnaround professionals. R3's members have extensive experience of helping businesses and individuals in financial distress. Our members include insolvency practitioners, who are trained and licensed to give personal debt advice and administer statutory personal insolvency procedures.

www.r3.org.uk

Act early. Seek advice. Get back to business.