

# *Property in Quarantine*

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**Liquidation Foundation: The Basics of Property Insolvency Part 1**

**- Bankruptcy & Voluntary Arrangements**

## Bankruptcy

- Statutory rehabilitation of an insolvent individual
- Automatic discharge from debts
- IP collects and distributes assets
- Parts VII to XI of the Insolvency Act 1986

## Consequences?

- Automatic vesting – s.306
- Dispositions void - s.284(1)
- Court may stay action, execution or legal process – s.285(1)
- No creditor can pursue own remedy – s.285(3)
- Prove for debt and receive dividend

## Length

- Starts* - when order made
- Ends* - automatically after one year ('discharge')
- May be* - extended if the bankrupt is unco-operative (s.279(3))
- Effect* - release from all debts as at date of bankruptcy order (s.281(11))
- Trustee* - may still continue to act after discharge

## How to make someone bankrupt

- Creditor serves statutory demand
- SD not set aside and debt not paid
- Creditor presents a petition – s.264
- Debt must be £5,000 or more –current or future, unsecured – s.267
- Debt must be liquidated – i.e. ascertained or ascertainable
- Unable to pay / no reasonable prospect of paying – s.267(2)

## Challenge?

- Annulment – s.282
  - Discretionary
  - If order ‘ought not to have been made’ – s.282(1)(a)
  - If debts and expenses have been paid or secured – s.282(1)(b)
  - Effect: estate reverts to bankrupt – s.282(4)
- Rescission – s.375
  - Discretionary
  - Exceptional circumstances
  - E.g. events / facts of which court was unaware

## Bankruptcy in L&T context

- No claim for rent without leave – s.285(3)
- Proceedings for forfeiture possible (incl. on ground of rent arrears)
- Peaceable re-entry permitted
- CRAR exercisable but only for up to 6 months' rent before start of bankruptcy – s.347
- If CRAR exercisable, landlord can collect rent from sub-tenant (s.81 TCEA 2007)

## Voluntary Arrangements

- CVA – Part I Insolvency Act 1986
- IVA – Part VIII
- Agreement between company / individual and creditors compromising debts
- Aim is to rescue – price is creditors accept less than 100%
- 75% of creditors by value can bind minority creditors without consent



## Process

- Directors / individual make a proposal (s.1(1) / s.256A)
- Creditors vote on proposal
- If accepted, binds debtor and all creditors, including dissenters
- Administered by supervisor (s.7(2) / s.263(2))
- Creditors and supervisor can apply for directions

## Consequences

- Every creditor is entitled to vote, according to the value of their claim
- Unliquidated creditors may be given an estimated minimum value
- VA is a statutory contract – consequences depend on its terms
- Can compromise future debts
- Cannot affect the rights of a secured creditor to enforce security (s.4 / s.258)

## Set up?

- Directors or individual make a proposal to creditors
- Qualified IP acts as nominee to supervise
- Nominee reports to court
- Creditors decide – with or without modifications
- Nominee then reports the decision to the court and gives notice
- Moratorium when directors intend to propose a VA
- Similarly, individuals can apply for an interim order (s.252)

## Challenge?

- Unfair prejudice / material irregularity
- By creditors / nominee
- Time limit for application – 28 days
- Court has powers:
  - To revoke / suspend
  - Give directions
  - Revised proposal
  - Supplemental directions

## Consequences for L&T?

- CRAR not available
- But landlords cannot resort to sub-tenants
- VA binds past and future rent
- Right of re-entry is unaffected

## Q&A

**We will now answer as many questions as possible.**

**Please feel free to continue sending any questions you may have via the chat section which can be found along the top or bottom of your screen.**

# Thank you for listening

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